

Clerk Authorities/Duties & Standing Orders in Justice Courts

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Harris County
Designation of Clerk

“The Clerk shall perform the duties required by law and shall assist the Justice of the Peace in handling matters before the court.”

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Harris County
Code of Judicial Conduct
Acknowledgment

“I understand that, as an employee of the Court, I am subject to the provisions of the Code of Judicial Conduct, and I agree to abide by and be governed by the Code provisions.”

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Agenda

- ❖ Responsibilities of a Court Clerk – Do's & Don'ts
- ❖ Ex Parte Communication
- ❖ Legal Advice vs. Legal Information
- ❖ Standing Orders

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Responsibilities of a Court Clerk

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Do's & Don'ts

- Handout
- Not Exhaustive

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Do's

- Not all clerks are going to have every authority and duty listed on the handout.
 - Could depend on what department you are in and how duties are divided in your court.
- Some authorities and duties will apply to everyone.

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Do's (Continued)

- Maintain the Records of the Court.
- Follow Reporting Requirements.
- Keep court calendar and handle scheduling.
- Interact with the public.
 - Includes providing information without giving legal advice (more on this coming up!).
 - Includes providing quality customer service and using proper terminology.

- Process case paperwork.
- Assist with other paperwork as needed.
- Use judge's signature stamp, but only at judge's specific direction.
- Hold down the fort when the judge is away.
- Be Professional.
- Follow ethical standards.

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Don'ts

- Provide legal advice.
 - *More on this coming up!*
- Engage in ex parte communication about the merits of a case except as allowed by law.
 - *More on this coming up!*
- Duties reserved for the judge.
- Use judge's signature stamp **other than** at the judge's specific direction.
- Engage in unethical or improper behavior.
- Comment about cases which are in or may come before the court. (Beware

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Not Expressly Prohibited, But TJCTC Recommends That You Don't

- Generate complaints for offenses (including FTAs and VPTAs).
- Serve as an interpreter for your court in hearings/trials.

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Scenario #1

- **A plaintiff brings you a \$50 gift card to a local store to say thank you for being so nice and friendly when they came in to file their petition. What do you do?**
- **Your friend gives you a gift for your birthday. Is this a problem?**

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Scenario #2

There is a dangerous dog case in your court that is getting a lot of media attention. A friend of yours posts a news article about the case on your Facebook wall and asks you what you think about the whole thing.

What do you do?

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Scenario #3

Your judge gets an inquest call, but is not feeling well. They send you to go do the inquest.

- **Is this allowed?**
- **How should you respond?**

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Scenario #4

Your judge is out of the office and calls you to ask you to draft the order for their ruling on a motion that was filed and sign it with their stamp when you are done.

Any issues here?

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Scenario #5

A friend calls and asks you to check if there is a ticket/complaint for her child in your court?

What if they ask you to look and see if her new boyfriend has a record?

What do you do?

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Scenario #6

A clerk from the next precinct over calls and asks if you can do her a favor and get rid of her mom's speeding ticket.

What do you do?

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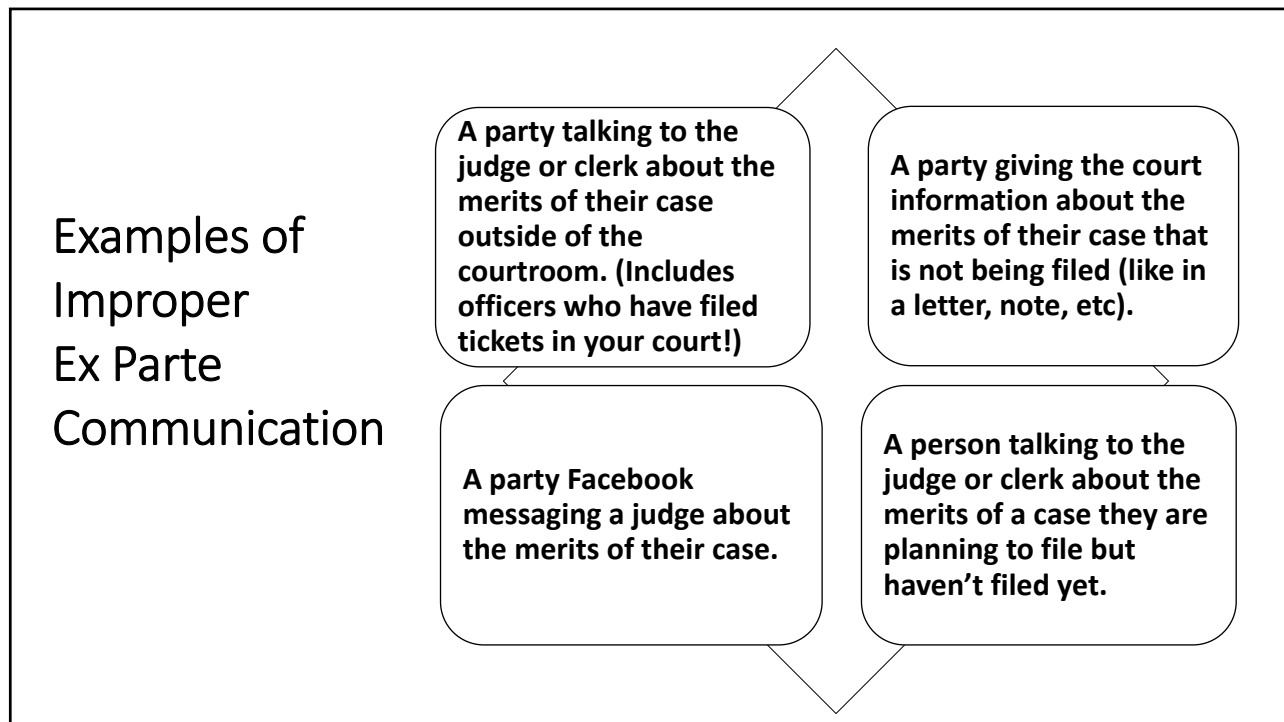
Ex Parte Communication

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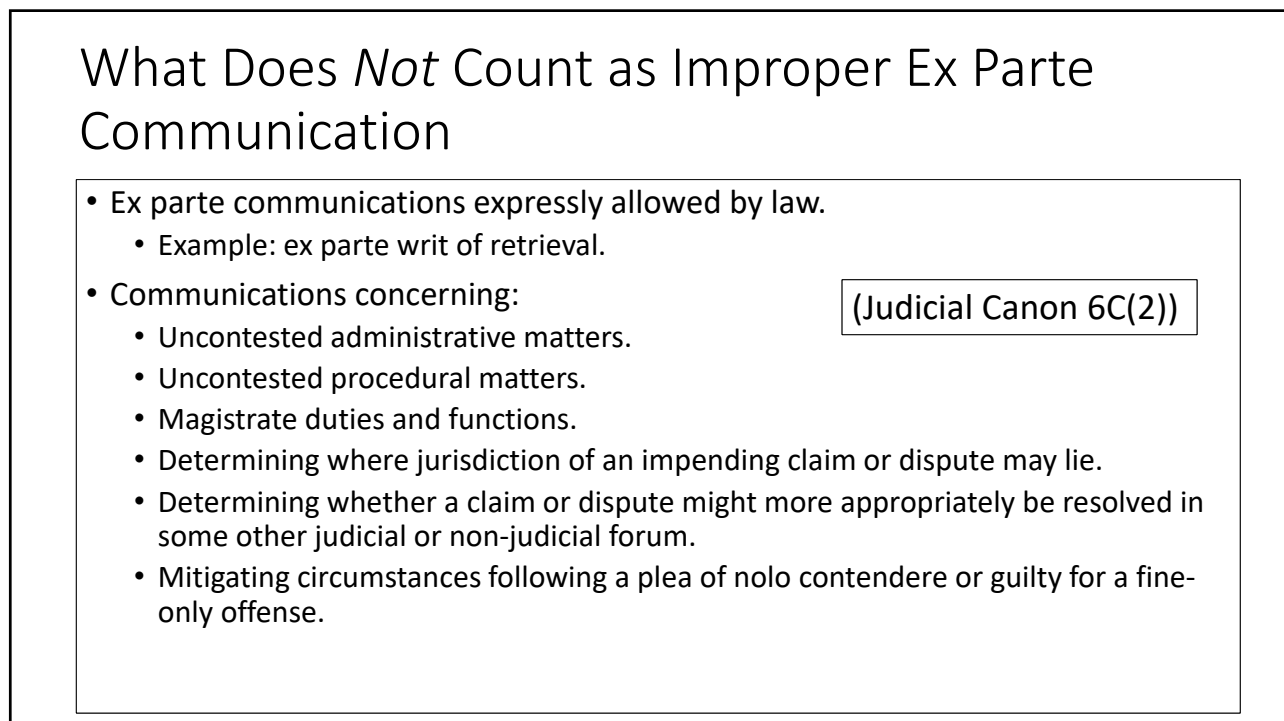
What Is Ex Parte Communication?

- *Ex parte* refers to situations in which only one party appears before a judge or communicates with a judge about the merits of a case.
- TJCTC definition of “ex parte”:
 - On one side only; done for, in behalf of, or on the application of, one party only; to discuss or transact business with one party in the absence of the opposite party to a case.

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The Clerk's Role

You are the firewall for the judge.

- Prevent people from having any sort of improper ex parte communication with the judge.
- Avoid and end any ex parte communication that someone tries to have with you.
 - Do not tell the judge about any details you may have heard.

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Let's Practice!

*Is it Improper?
How Would You
Respond?*

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Is it Improper? How Would You Respond? #1

- 1. “Just tell the judge...” / “Can you give this letter with information about my case to the judge?”**

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Is it Improper? How Would You Respond? #2

- 2. “I’m not sure which court I should file my eviction case in...”**

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Is it Improper? How Would You Respond? #3

3. Officer comes by: "Did you see that ticket I filed? Let me tell you..."

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Is it Improper? How Would You Respond? #4

4. "I'd like to file this letter explaining my side in my case."

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Is it Improper? How Would You Respond? #5

5. In the grocery store: "I have this situation I'm going to need help with in court..."

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Legal Advice
vs.
Legal Information

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Legal Advice

An oral or written statement that:

- a) *interprets* an aspect of the law;
- b) *recommends* a specific course of action;
- c) applies the law to a *specific factual circumstance*

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Legal Information

- Legal fact
- Public information
- Court rules, procedures, and administrative practices
- How the court generally functions
- Referrals to law libraries, state statutes, rules, forms, info packets
 - Don't forget TJCTC's SRL packets! <https://www.tjctc.org/SRL.html>
- Explaining the meaning of terms used in the court process
- Answer questions concerning due dates and deadlines

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Legal Information	Legal Advice
<ul style="list-style-type: none">• Procedural Explanations• General or Public Information• Explaining Legal Terms• Options• Citing Statutes and Court Rules• General Referrals	<ul style="list-style-type: none">• Recommendations• Confidential or Restricted Information• Providing Legal Interpretations• Opinions• Researching• Subjective Referrals

Handout with more information in your materials.

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Let's Practice!

Legal Advice or Legal Info?

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Legal Advice or Legal Info? #1

1. "Can you tell me how to file a small claim?"

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Legal Advice or Legal Info? #2

2. "May I see the docket for today's court?"

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Legal Advice or Legal Info? #3

- 3. “Is it better to take the DSC or request deferred disposition?”**

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Legal Advice or Legal Info? #4

- 4. “I can’t afford an attorney. What do I do?”**

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Legal Advice or Legal Info? #5

5. “What do I need to bring to trial to show the judge?”

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What Questions Do *You* Get?

What questions do you get asked that you are unsure of how (or if) to answer?

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Standing Orders

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What is a Standing Order?

An order entered by the judge that applies to all cases or a certain type of case and that remains in effect until it expires or is rescinded.







Provides direction to the clerk on how to process those cases.

A clerk may take actions (that they might not otherwise be able to do) as specifically authorized by a standing order.

Must be black and white and not require judicial discretion on the part of the clerk.

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Examples of Standing Orders

-  Allowing DSC/deferred if specified requirements are met.
-  Allowing community service if specified requirements are met.
-  Automatic extension of payment plan on first request.
-  Scheduling for pretrials and trials.
-  Virtual hearings – logistics and how evidence will be handled.
-  Continuance policy (typically automatically grant one for each party and one joint, and then any after that will have to be evaluated by the judge).

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STANDING ORDER	§ § § § § § §	IN THE JUSTICE COURT PRECINCT 8 PLACE 1 COUNTY OF HARRIS STATE OF TEXAS
STANDING ORDER ON DISPOSITION OF CITATIONS		
IT IS ORDERED, ADJUGDED, AND DECREED THAT the following order shall apply to all such causes pending in the Justice Court Pct. 8. P. 1:		
1. Driving Safety Course: It is the general policy and order of this Court to allow all defendants who are eligible for defensive driving to request that class and be approved to take that class if they pay the required fee of \$115.00 and request the class from the Court on or before their court date. A defendant is eligible to take defensive driving in order to dismiss a moving traffic violation if the defendant has a current Texas driver's license (not necessary if the defendant is in the military), has valid liability insurance specifically covering him as a driver, is not charged with speeding more than 25 miles an hour over the posted speed limit, is not currently a Commercial Driver's License holder on the date of offense, has not completed DSC in the last 12 months for a ticket		

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Why Use Standing Orders?

Most judges are not at the court all of the time or may be on the bench/magistrating/at an inquest and unavailable.

Standing Orders Provide:

- **Convenience** (Can help ppl right then, they don't have to come back).
- **Consistency and procedural fairness** (Helps courts treat similar cases similarly, makes procedures clear).
- **Efficiency** (Helps clerks process cases while not exceeding their authority, can help clear out dockets).

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What Does *Your* Court Do?

- **Does your court have any standing orders in place?**
- **What is a situation where you think having a standing order would help in your court?**

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Wrapping Up

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Roleplay Activity

1. Find a partner
2. Choose roles – “Clerk” and “Party”
3. Party: Ask a difficult question, make a request, or just do anything a party might come to the court and do.
 - Can be related to any of the topics we have talked about – be creative!
4. Clerk: Respond how you would if you were in your court.
5. A couple people share with the whole group.
6. Switch roles and repeat as time permits.

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Thank You!