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## User Notes

This deskbook on *Officeholding and Ethics* (3<sup>rd</sup> ed. January 2022) represents the Texas Justice Court Training Center's ongoing commitment to provide resources, information and assistance on issues of importance to Texas Justices of the Peace and Constables and their court personnel, and continues a long tradition of support for judicial education in the State of Texas by the Justices of the Peace and Constables Association of Texas, Inc. It is intended to offer a practical and readily accessible source of information relating to issues you are likely to encounter while holding office as a justice of the peace.

*Officeholding and Ethics* is not intended to replace original sources of authority, such as the Government Code, Civil Practice and Remedies Code, Texas Constitution, or the Texas Rules of Civil Procedure. We strongly recommend that you refer to the applicable statutory provisions and rules when reviewing issues discussed in this book. We hope you will find it to be a valuable resource in providing fair and impartial justice to the citizens of Texas.

Please note that all references to "Rule \_\_\_" are to the Texas Rules of Civil Procedure.

Rather than including the citations to cases in the text of the deskbook, we have listed only the case name in the text but have included the entire citation in the appendix of cases.

Please do not hesitate to contact us should you have any questions or comments concerning any of the matters discussed in *Officeholding and Ethics*.

Texas Justice Court Training Center  
January 2022

# Chapter 1: Texas Court Structure

The Texas court system is made up of appellate courts and trial courts, each functioning at a different level and with a different purpose. Appellate courts include the state's highest appellate courts and the intermediate appellate courts. Trial courts include district courts, county level courts, and local courts of limited jurisdiction. Justice courts fall under the categories of trial courts and local courts of limited jurisdiction.

## A. Appellate Courts

Appellate courts do not try cases, have juries, or hear witnesses. They review actions and decisions of the lower courts on questions of law or allegations of procedural error. This is called appellate jurisdiction, where a higher court has the power to review a lower court's decision. In carrying out this review, the appellate courts are usually restricted to the evidence and exhibits presented in the trial court.

### 1. Supreme Court and Court of Criminal Appeals

The state's highest appellate courts are constitutionally created and made up of the Supreme Court of Texas and the Texas Court of Criminal Appeals.

All rulings that come out of these courts are final and cannot be appealed to any other court, except to the U.S. Supreme Court under certain circumstances. All petitions for review of a case to either of these courts must be considered, however the granting of review is discretionary and rare.

### *Texas Court Structure*

#### **Highest Courts:**

- Supreme Court of Texas
- Texas Court of Criminal Appeals

#### **Intermediate Courts**

- Intermediate Courts of Appeal

#### **Trial Courts:**

- District Courts
- County Courts
- Justice Courts
- Municipal Courts

## **Supreme Court of Texas**

There is one Supreme Court made up of nine justices. This court has statewide final appellate jurisdiction for all civil and juvenile cases.

## **Texas Court of Criminal Appeals**

There is one Court of Criminal Appeals made up of nine justices with final appellate jurisdiction for all criminal cases.

## **2. Intermediate Appellate Courts**

The intermediate appellate courts, known as the Courts of Appeal, are constitutionally created and have regional jurisdiction to review trial court decisions from the trial courts in their respective regions. Review of a case by these courts is mandatory if a party appeals a trial court's decision.

There are fourteen regions in Texas with one appeal court per region. Each court has at least three justices, a chief justice and two associate justices for a total of 80 justices throughout the state.

## **B. Trial Courts**

In trial courts, witnesses are heard, testimony is received, exhibits are offered into evidence, and a verdict is rendered. Almost all cases heard in a trial court can be appealed to a higher court.

### **1. Jurisdiction**

#### **Exclusive Jurisdiction**

Exclusive jurisdiction refers to the power of a court to hear a case to the exclusion of all other courts. It is the only court that can determine a particular type of case. Exclusive jurisdiction is determined by the subject matter of a case and whether a particular court can hear that type of case.

#### *Types of Jurisdiction*

- Exclusive
- Original
- Concurrent
- Appellate

An example of a court with exclusive jurisdiction is the justice court when it comes to hearing eviction cases. These cases must be heard first in justice court and can only be heard by another court if they are appealed.

### **Original Jurisdiction**

Original jurisdiction is the power of the court to hear a case for the first time (as opposed to on appeal). For example, a fine-only misdemeanor may be heard for the first time in justice court.

### **Concurrent Jurisdiction**

Concurrent jurisdiction occurs when two or more different courts have jurisdiction over a type of case at the same time. For example, a justice court and a municipal court both have jurisdiction over truancy cases.

### **Appellate Jurisdiction**

Appellate jurisdiction is where a higher court has the power to review a lower court's decision. If the lower court is a court of record, then the appellate court reviews the record taken at the lower court and makes a ruling on whether the trial court acted correctly or not. If an appellate court decides the trial court made a mistake, the appellate court can render a new judgment or send the case back to the trial court to retry it. A court is a "court of record" if transcripts of the proceedings and testimony are made by a court reporter.



KEY  
POINT

Appeals from justice court and municipal courts that are not courts of record are different because those cases are tried de novo at the county court level. Trial de novo is a new trial in which the entire case is presented as if there hadn't been a previous trial. Basically, the case starts over from the beginning and decisions made at the lower court level don't count since the court is not a court of record and there are no transcripts to send up with the original case.

## 2. District Courts

District courts are constitutionally created trial courts.

### District Court Jurisdiction Examples:

- All civil matters where the amount in controversy exceeds \$500,
- Suits for title to land or enforcement of liens on land,
- Contested elections,
- Suits for slander or defamation,
- Suits on behalf of the state for penalties, forfeitures, and escheat,
- All felony criminal cases,
- Misdemeanors involving official misconduct,
- Juvenile matters,
- Contested divorce cases and other family law disputes, **and**
- Contested probate and guardianship matters.

### *District Courts*

As of September 2019, there were 476 district courts and court judges in Texas.

379 of the district courts service one county only, while the remaining 97 courts contain more than one county in their jurisdiction.

Most district courts exercise criminal and civil jurisdiction, but in metropolitan areas there is a tendency for courts to specialize in civil, criminal, juvenile, or family law matters. Thirteen of the district courts are designated as “criminal district courts” giving preference to criminal cases, but still have general jurisdiction to hear any case a district court is allowed to hear.

Appeals from judgments of the district courts, other than death sentence appeals which go straight to the Court of Criminal Appeals, are made to the court of appeals.

### 3. County Courts

County courts are constitutionally and statutorily created trial courts. In addition to the county courts created by the Texas Constitution, the legislature created statutory county courts, or “county courts at law”, to accommodate increasing population growth and caseloads.

#### County Court Jurisdiction Examples:

- Misdemeanors, where the maximum fine that may be imposed exceeds \$500,
- Probate,
- Guardianship,
- Juvenile cases,
- **Constitutional county court:** Civil cases where the matter in controversy exceeds \$200 but does not exceed \$20,000 (increased from \$10,000 for any case filed on or after September 1, 2020), **and**
- **County court at law:** Civil cases where the matter in controversy exceeds \$200 but does not exceed \$250,000 (increased from \$200,000 for any case filed on or after September 1, 2020).

County courts generally have appellate jurisdiction, usually by trial de novo, over cases tried in the justice and municipal courts. To have jurisdiction over a civil case from a justice court, the amount in controversy must be \$250 or more.

Original and appellate judgments of the county courts may be appealed to the court of appeals.

#### *County Courts*

As of September 2019, there were 520 county-level courts and judges in Texas:

- 254 county courts (one for each county),
- 248 county courts at law (in 89 counties + one multi-county court), **and**
- 18 statutory probate courts (in ten counties).

#### 4. Justice and Municipal Courts

Justice and municipal courts make up the local trial courts of limited jurisdiction. Justice courts are constitutionally created, and municipal courts are statutorily created. There is at least one justice court in each county and at least one municipal court in each incorporated city of the state.

##### Justice Court Jurisdiction:

Justice court jurisdiction is discussed beginning on [page 8](#) of this volume, in Chapter 2 of the *Civil Deskbook*, and in Chapter 2 of the *Criminal Deskbook*.

#### *Justice and Municipal Courts*

As of September 2019, Texas had:

- 802 justice courts and judges,
- 944 municipal courts, **and**
- 1,324 municipal judges.

Justice courts are not courts of record, meaning that nothing that is said or occurs in court is recorded or written down by a court reporter. If a case is appealed from the justice court, the case is heard by a higher court as if it was the first time the case was heard, referred to as trial de novo.

##### Municipal Court Jurisdiction Examples:

- Criminal violations of certain municipal ordinances,
- Misdemeanor criminal cases that are punishable by fine only, **and**
- Truancy cases.

Some municipal courts are courts of record, but most are not. Appeals from municipal courts that are not courts of record are de novo to the county courts, and in some instances to the district courts. Appeals from municipal courts that are courts of record are taken on the record to the county courts.

#### C. Resources from the Office of Court Administration (OCA)

For additional information and resources regarding the Texas court system, including a flowchart explaining the court structure, go to this link: <https://www.txcourts.gov/about-texas-courts/>.



## Chapter 2: The Justice Court

### A. Created by the Texas Constitution

The Texas Constitution created the justice courts and governs their jurisdictional powers. The Constitution also allows for additional jurisdiction and duties to be created or added by the legislature through passage of new laws. However, the “existence of the justice court is beyond the power of the legislature to destroy.” [\*Ex Parte Richmond\*](#).

The legislature can add to the duties and jurisdiction of the justice court but it can’t take away any powers or duties. Conferring authority on the justice courts, creating the number of precincts in a county, and establishing the qualification requirements for justices of the peace can only be accomplished by constitutional amendment or by acts of the legislature specifically authorized by the Constitution.

### B. Jurisdiction of the Justice Court

Article V, Section 19 of the Texas Constitution and Section 27.031(a) of the Government Code set out the jurisdiction of the justice courts as it pertains to civil and criminal cases. This topic is also discussed in Chapter 2 of the *Civil Deskbook* and Chapter 2 of the *Criminal Deskbook*.

#### 1. Original Jurisdiction

Justice courts have original jurisdiction of the following:

- Criminal misdemeanor cases punishable by fine only;



#### *Where You Can Find More Information on Each Case Type*

- Criminal Cases
  - *Criminal Deskbook*
- Small Claims & Debt Claim Cases
  - *Civil Deskbook*
- Repair and Remedy Cases
  - *Evictions Deskbook Ch. 10*
- Enforcement of Liens and Foreclosure of Mortgages (Personal Property)
  - *Civil Deskbook Ch. 11*
- Deed Restriction Enforcement Cases
  - *Civil Deskbook Ch. 12*
- Eviction Cases
  - *Evictions Deskbook*
- Truancy Cases
  - *Juvenile Deskbook Ch. 1*

- Small claim and debt claim cases in which exclusive jurisdiction is not in the district or county court, and in which the amount in controversy does not exceed \$20,000 (increased from \$10,000 for any case filed on or after September 1, 2020), excluding statutory interest and court costs;
- Repair and remedy cases in which the amount in controversy *does not exceed \$10,000*, excluding statutory interest and court costs (*note: this amount was not increased by the legislature when the jurisdictional limit for other civil cases was increased*);
- Enforcement of liens and foreclosure of mortgages on personal property in cases in which the amount in controversy is otherwise within the justice court's jurisdiction; **and**
- Deed restriction enforcement suits (more information about the limits to a justice court's jurisdiction in these cases can be found on [page 10](#)).

*Government Code § 27.031(a) and § 27.034; Rule 500.3.*

## **2. Exclusive Jurisdiction**

Justice courts have exclusive jurisdiction of:

- civil matters where the amount in controversy is \$200 or less, **and**
- eviction cases.

## **3. Concurrent Jurisdiction**

Justice courts have concurrent jurisdiction with municipal courts of:

- truancy cases,
- fine-only misdemeanors, **and**
- cases that arise outside a municipality's jurisdiction under an ordinance of the municipality applicable to that location regarding regulation of outdoor signs.

*Government Code § 27.031(c).*

Justice courts have concurrent jurisdiction with county courts of civil cases where the matter in controversy exceeds \$200 but does not exceed \$20,000 (increased from \$10,000 for any case filed on or after September 1, 2020).

Justice courts have concurrent jurisdiction with district courts and municipal courts of record over expunction proceedings relating to the arrest of a person for an offense punishable by a fine only. *Government Code § 27.031(e)*.

#### **4. Jurisdiction Over Deed Restriction Enforcement Suits**

A justice court has jurisdiction over suits relating to enforcement of a deed restriction for a residential subdivision that does not concern a structural change to a dwelling. *Government Code § 27.034(a)*.

The justice court can't issue an injunction or force a party to do something, but the court can order any alternative method of dispute resolution provided by Title 7, Civil Practice and Remedies Code. *Government Code § 27.034(c)*.

A justice has deed restriction jurisdiction regardless of the amount in controversy and jurisdiction is concurrent with the district court. *Government Code § 27.034(e)*.

For more information on these types of suits, see Chapter 12 of the Civil Deskbook.

#### **5. Jurisdiction Over Unfinished Business of the Justice Court**

A justice of the peace may proceed with all unfinished business of the office as if the business had been originally begun before that justice. *Government Code § 27.033*.

#### **6. Issuance of Writs of Attachment, Garnishment, and Sequestration**

Justices of the peace may issue writs of attachment, garnishment, and sequestration within the justice's jurisdiction in the same manner as judges and clerks of the district and county courts. *Government Code § 27.032*.

## 7. Additional Jurisdiction

In addition to the jurisdiction discussed above, justices of the peace have jurisdiction over various administrative proceedings, inquests, and duties related to magistration. Details can be found in the deskbooks for each of these topics.

## 8. What a Justice Court Does Not Have Jurisdiction of



COMMON  
PITFALL

A justice court **does not** have jurisdiction of:

- a suit in behalf of the state to recover a penalty, forfeiture, or escheat,
- a suit for divorce,
- a suit to recover damages for slander or defamation of character,
- a suit for trial of title to land, **or**
- a suit for the enforcement of a lien on land.

*Government Code § 27.031.*

## 9. Appeal from Justice Court

Justice courts are not courts of record, meaning that nothing that is said or occurs in court is recorded or written down by a court reporter. If a case is appealed from the justice court, the case is heard by a higher court as if it was the first time the case was heard, referred to as trial de novo.

## C. Justice Court Precincts and Boundaries

### 1. Number of Precincts and Justices



KEY  
POINT

Each county is divided into precincts. The number of precincts in each county is determined by the county's population and may change periodically.

The number and geography of precincts is determined by the commissioners court, subject to the following rules:

- Counties with populations of less than 18,000 shall have one precinct unless the commissioners court determines the county needs more. There can be no more than four precincts in counties with populations of less than 18,000 people.

- Counties with populations between 18,000 and 50,000 people shall have at least two, but no more than eight precincts.
- Counties with populations greater than 50,000 shall have at least four, but no more than eight precincts.
- Any county divided into four or more precincts on November 2, 1999 will continue to be divided into at least four precincts regardless of the population.
- Chambers County and Randall County shall be divided into at least two but no more than six precincts.

*Texas Constitution Art. 5 § 18(a).*

The number of justices of the peace elected to each precinct is determined by the population of the county and precinct. Each precinct will have at least one justice of the peace who is elected from that precinct's residents.

In a county with a population of 150,000 or more, each precinct may contain more than one justice of the peace. In a county of less than 150,000 people, there will be two justices of the peace for precincts that contain cities with 18,000 or more residents. *Texas Constitution Art. 5 § 18(a).*

## **2. Boundary Changes**

Precincts are re-drawn from time to time, for the convenience of the people, according to the most recent federal census.

If boundaries are redrawn, each justice of the peace in office at the time of the change will serve in the new precinct where the justice resides for the duration of their term if the change:

- causes the justice of the peace's residence to be located outside the precinct where the justice was elected or appointed,
- abolishes the precinct for which the justice was elected or appointed, **or**
- temporarily results in extra justices of the peace serving the precinct.

*Texas Constitution Art. 5 § 18(c); [Op Tex. Att'y. Gen No. LO93-45.](#)*

**For example:** A justice of the peace is elected to precinct one. During the justice's term, the boundaries are redrawn, and the justice now resides in precinct number two. The justice will now serve in precinct two until the end of his term. This is true even if the new boundary lines result in two justices serving in precinct two and no justices serving in precinct one.

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*A public officer has no vested right in the office held, and therefore cannot complain of abolishment of that office. Tarrant County v. Ashmore.*

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However, a person who has served as justice of the peace of a precinct for ten or more consecutive years prior to a boundary change of their precinct is eligible for reelection in that same precinct, even if the new boundaries put their residence outside the precinct, so long as the justice's residence was within the boundaries of the precinct before the change. *Government Code § 27.003.*

### **Vacancies Filled by the Commissioners Court**

When a vacancy occurs in a justice of the peace office as a result of a change in precinct boundaries, the commissioners court will fill the vacancy by appointing a justice of the peace to serve until the next general election. *Texas Constitution Art. 5 § 18(c).*

### **3. Residence Requirements After Election, Appointment, or Redistricting**

After election, appointment, or redistricting, a justice of the peace does not have to continue residing in the precinct in which he or she serves in order to retain office in that precinct so long as he or she continues to reside in the county in which he or she serves. *Op. Tex. Att'y. Gen. No. LO93-45.*

However, the justice does have to continue residing in his or her precinct if he or she wants to run for reelection (unless, as described above, a boundary change causes their residence to no longer be located within the precinct, and they have served as a justice of the peace in the precinct for ten or more consecutive years prior to the change).

## D. Election or Appointment to Office

### 1. Term Lengths Are Four Years

Each justice of the peace shall hold office for four years and until a successor is elected and qualified.

Justices of the peace appointed during a term will serve until the next general election.

### 2. A Justice of the Peace Does Not Have to be an Attorney



KEY  
POINT

A justice of the peace is not required to be an attorney but is required to attend a specific number of judicial training courses each year after taking office. Education requirements are discussed on [pages 67-69](#).

### 3. Qualifications for Public Office

No matter how a justice is selected, he or she must meet the qualifications of the office, take the oath of office, and give a bond.

To be eligible to run for justice of the peace, a person must:

- be a citizen of the United States,
- be at least 18 years old on the first day the person takes office,
- not have been determined to be mentally incapacitated by a final judgment of the court,
- not have been convicted of a felony for which the person has not been pardoned,
- have lived in the state for the twelve months immediately prior to the regular filing deadline,
- have lived in the precinct where the justice court is located for the six months immediately prior to the regular filing deadline, **and**
- satisfy any other eligibility requirements for the office.

*Election Code § 141.001.*

### **Residency Requirements when Boundaries Have Changed**

If a person is appointed, or is running for office, in a precinct where the boundaries are changed less than seven months before the filing deadline, the candidate or appointee must be a resident of the precinct he or she is running for on the date of the filing deadline, and must have lived in the county in which the precinct is located for six months immediately prior to the filing deadline. *Election Code § 141.002.*

### **4. Disqualification for Giving a Bribe**

A person is disqualified from holding any office of profit or trust, and therefore may not be a justice of the peace, if the person has been convicted of giving or offering a bribe to acquire their election or appointment. *Texas Constitution Art. 16 § 5.*

### **5. Elected by the Voters**

A justice of the peace is elected by the qualified voters of the precinct where the office is located.

### **Majority of the Votes Required**

To be elected to a public office, a candidate must receive more votes than any other candidate for that office. *Election Code § 2.001.*

### **What Happens if there is a Tie?**

If two or more candidates for the same office tie for the number of votes required to be elected, a second election will be held.

Only the names of the tying candidates will be printed on the ballot for the second election. Write-in votes will not be permitted. *Election Code § 2.002.*

### **What if No Candidate Received Enough Votes?**

If no candidate receives the number of votes necessary to be elected, a runoff election is required. *Election Code § 2.021.*

Candidates in a runoff election are the candidates who receive the highest and second highest number of votes in the main election, or who tie for the highest number of votes. *Election Code § 2.023.*



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### **What if a Candidate Doesn't Have an Opponent?**

If a candidate running for justice of the peace does not have an opponent in the general election, the county clerk may declare the candidate elected to the office of justice of the peace if:

- that candidate is the only person whose name is to appear on the ballot for that office, **and**
- no other candidate's name is to be placed on a list of write-in candidates.

If a declaration is made, the election for that office is not held, and the name of the candidate is listed on the ballot as elected to the office.

The offices and names of any candidates declared elected will be listed separately on the ballot, under the heading "Unopposed Candidate Declared Elected" following the contested races. *Election Code § 2.056.*

## **6. New Judge Office Checklist**

[Click Here to Open the New Judge Office Checklist](#)

## **E. Rules of Administration**

The justices of the peace in each county shall, by majority vote, adopt local rules of administration. *Government Code § 27.061.*

These rules are specific to each county and can be obtained from the commissioners court.

## F. Dual Office Holding

### Dual Office Holding Generally Allowed for Justices of the Peace

The Texas Constitution specifically allows a justice of the peace to hold two or more offices simultaneously without getting in trouble, known as dual office holding.

Justices of the peace are specifically exempted from the constitutional prohibition against holding, or exercising at the same time, more than one civil office of compensation. *Texas Constitution Art. 16 § 40(a)*.

By statute, justices of the peace are automatically Ex Officio Notary Publics and Local Registrars for the Bureau of Vital Statistics as a result of their position as justice of the peace. Information about these duties, including when the registrar duties can be transferred to the county clerk, are discussed on [page 48](#) and [page 55](#).

Justices can also serve as municipal judges for a city or town at the same time they serve as a justice of the peace.

### Separation of Powers Doctrine

The separation of powers doctrine was created to prohibit giving one branch of government too much power. Each branch has certain powers, and each power is checked by another branch of the government.

The separation of powers doctrine does not come into play when a justice of the peace holds or performs a second job that is part of the executive or legislative branch.

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*It is only when the functioning of the judicial process is interfered with by either of those branches that a constitutional “separation of powers” problem arises. Turner v. Trinity; Ruiz v. State.*

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### Exception: Incompatibility and Dual Office Holding

Even though the Constitution allows dual office holding, a justice of the peace desiring to hold more than one office must make sure the common law doctrine of incompatibility does not prohibit the employment.



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The doctrine of incompatibility generally prohibits a person from holding two positions where one position might impose its policies on the other, or subject it to control in some other way.

There are three aspects to the doctrine of incompatibility:

- Self-appointment,
- Self-employment, **and**
- Conflicting loyalties.

***Incompatibility: Self-appointment***

Self-appointment prohibits an individual from appointing himself or herself to another public position.

***Incompatibility: Self-employment***

Self-employment prevents one person from holding public office and having subordinate employment with an entity the public office supervises.

The fundamental consideration is whether the public office supervises the subordinate employment.

For example, a city manager cannot serve as police chief if, as city manager, he or she has supervisory authority over the police chief. [Tex. Att’y. Gen. Letter Opinion No. GA-0077.](#)

***Incompatibility: Conflicting Loyalties***

Conflicting loyalties only applies when the two positions are both public offices. It prevents a person from holding two public offices whose duties are inconsistent or in conflict.

The determining factor which distinguishes a public officer from an employee is whether the individual exercises any sovereign function of government for the benefit of the public and largely independent of the control of others. [Tex. Att’y. Gen. Letter Opinion No. GA-0738.](#)

For example, the offices of justice of the peace and county commissioner are incompatible because they are both public offices, and the commissioners court is required to approve

the accounts of the justice of the peace. Therefore, a justice of the peace may not serve simultaneously as a county commissioner.” [Tex. Att’y. Gen. Letter Opinion No. 0-3576.](#)

## **G. Oath of Office and Bond**

### **1. Bond**

Once elected, each justice of the peace must give a bond of not more than \$5,000, payable to the county judge, and conditioned that the justice will faithfully and impartially discharge the duties required by law, and promptly pay to the entitled party all money that comes into the justice’s hands during the term of office. *Government Code § 27.001.*

### **2. Commissioned as Justice of the Peace and Ex Officio Notary Public**

Each justice of the peace shall be commissioned as justice of the peace of the applicable precinct and ex officio notary public of the county. *Government Code § 27.002; Texas Constitution Art. 5 § 19.*

The justice’s duties as an ex officio notary public are discussed in detail in [Chapter 3.](#)

### **3. Anti-bribery Statement**

Once elected or appointed, all justices of the peace, before taking the oath or affirmation of office and entering upon the duties of office, shall swear to and sign the following statement:

“I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.”

*Tex. Constitution Art. 16 § 1(b).*



REQUIRED  
LANGUAGE



KEY  
POINT

The signed statement shall be filed with the Secretary of State before the justice takes the oath or affirmation of office. *Texas Constitution Art. 16 § 1(c)*.

#### 4. Oath or Affirmation

All elected and appointed justices of the peace, before they enter upon the duties of their office, shall take the following oath or affirmation:

“I, \_\_\_\_\_, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of justice of the peace of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.”



REQUIRED  
LANGUAGE

*Texas Constitution Art. 16 § 1(a)*.



COMMON  
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The Texas Court of Criminal Appeals has held that the acts of a judge who has not taken the oath of office are void. [\*French v. State\*](#).

No court has addressed the status of actions of a judge who has taken the oath of office but has not filed the statement with the Secretary of State. The Attorney General’s position is that the acts of a judge who has taken the oath of office but has not filed the written statement would probably be deemed valid. [\*Op. Tex. Att’y. Gen. No. LO 96-056\*](#).

#### 5. Forms



CLICK  
HERE

Click here for the [\*Anti-Bribery Statement\*](#) and [\*Oath of Office\*](#) forms. They can also be found in Chapter 10 of the Political Subdivisions Forms Index on the [\*Secretary of State’s website\*](#).

## H. Court Seal

The commissioners court shall furnish to each justice of the peace a seal that has a star with five points in the center. The seal must also have “Justice Court, \_\_\_\_\_ County, Texas” and any applicable precinct number on it. *Government Code § 27.059(a)*.

The seal may be attached to all process, other than subpoenas, issued out of the justice court, and may be used to authenticate the official acts of the justice clerk and the justice of the peace. *Government Code § 27.059(b)*.

*Example of a Court Seal*



## I. Transfer of Records and Other Property When a New Judge is Elected

### **A Justice Must Keep All Dockets, Books, and Papers Filed**

Each justice shall arrange and safely keep all dockets, books, and papers transmitted to the justice by the justice’s predecessors, and all papers filed in a case in justice court. *Government Code § 27.004(a)*. For information on how long documents must be kept and public access to documents, see Chapters 1 and 2 of the *Recordkeeping and Reporting Deskbook*.

### **When a Justice Vacates Office**

When a person vacates the office of justice of the peace, that person **shall** transfer all court records, documents, property, and unfinished business to their successor on the date the successor takes office. *Government Code § 27.004(a-1)*.

After the transfer, any pending court business must be completed by the successor justice as if the successor were the original justice of the peace. *Government Code § 27.004(a-1)*.

## Delivery of Documents Upon Demand

A person who has possession of docket, books, or papers belonging to the office of any justice of the peace shall deliver those docket to the new justice on demand. *Government Code § 27.004(b)*.

If the person refuses to deliver them, the person may be attached and imprisoned by the order of a county judge until the person makes delivery, if a motion supported by an affidavit is filed. *Government Code § 27.004(b)*.

## J. Time and Location for Holding Court

### 1. General Rules

The commissioners court sets the time and place for holding justice court, and the justice of the peace must hold court at the justice's office at those times (unless an alternative location and/or term of court has been designated during a disaster as described below). *Government Code § 27.051(b)*.

Each justice of the peace must hold court for civil and criminal business at least once each month. Court can go from day to day until all business is disposed of or can be adjourned until a particular day. *Government Code § 27.051(a)&(c)*.

Civil and criminal business can be handled on the same day or on separate days.

The location of a justice of the peace's office and whether the commissioners court must or may provide the offices is determined by several factors.

### When Commissioners Court *Must* Provide a Courtroom

- If the justice court precinct in which the county courthouse is located has more than 75,000 people, the commissioners court **must** provide and furnish a suitable

*Does the Justice of the Peace Get to Have Input on the Times Set for Holding Court?*

While it is up to the commissioners court to set the time for holding justice court, most courts work with their commissioners to come up with a mutually agreeable schedule.



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place in the courthouse for the justice of that precinct to hold court. *Government Code § 27.051(e)*.

- Upon request of a justice of the peace handling an average of 50 or more cases a month, the commissioners court **must** furnish the justice of the peace with suitable office space and necessary telephones, equipment, and supplies. *Local Government Code § 291.004*.

### **When Commissioners Court *May* Provide a Courtroom**

When a commissioners court is not required to provide a place to hold court (as described above), the commissioners court **may**, if requested by the justice, provide and furnish a suitable place in the courthouse or another facility for the justice to hold court.

*Government Code § 27.051(f); Local Government Code § 291.004(b)*.

### **Location of Courtroom**

A justice court **may not** be housed in a building located outside the court's precinct except in one of the following situations:

- In a county with less than 30,000 people, where the court is housed in the county courthouse or another facility provided under Section 292.002(a) of the Local Government Code;
- In a county with a population of at least 305,000, the county seat of which is located in the Llano Estacado region of this state, and where the court is housed in the county courthouse (Lubbock County); **or**
- When an alternative location has been designated due to a disaster as described below.

*Local Government Code § 292.001(d)*.



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The commissioners court may purchase, construct, reconstruct, improve, equip, or provide by other means, a branch office in the unincorporated area of the county. *Local Government Code § 292.030(a)*.

Any county officer may maintain an office there and the county may provide any county service at the branch office. *Local Government Code § 292.030(b)*.

### **Joint Ownership Between County and Municipality**

A building to be used by the justice of the peace may be jointly owned, constructed, equipped, enlarged, or maintained by:

- a municipality with a population of 2,000 or more which is located more than 10 miles from the county seat in which the municipality is located, **and**
- a county in which the municipality is located.

*Local Government Code § 305.001.*

### **2. Holding Court During Disasters**

If a court cannot continue business as usual due to a disaster as defined below, the presiding judge of the administrative judicial region may, with the affected judge's approval, designate an alternate location and alternate terms or sessions of court.

The alternate location may be:

- in the county, **or**
- outside the county at the location the presiding judge determines is closest in proximity to the court's precinct that allows the court to conduct its proceedings safely and practicably, provided the presiding judge of that administrative judicial region approves.

*Government Code § 27.0515.*

A "disaster" is defined as the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, extreme heat, cybersecurity event, other public calamity requiring emergency action, or energy emergency. *Government Code § 418.004(1).*

In addition, the Texas Supreme Court may issue emergency orders that:

- alter the requirements for the location, terms, and sessions of courts,
- modify the current laws and rules that courts must follow, **and/or**
- create new requirements and procedures that courts must follow.

## K. Clerk of the Court

Each justice of the peace may designate one or more people to serve as justice court clerk. *Government Code § 27.056(a)*.

### A Justice Clerk Has No Authority to Act Independently

Generally, a justice court clerk is considered a ministerial officer of the court who has custody of the court's records. [12 Tex. Jur. 3d, Clerks of Court § 1.](#)

A clerk has no authority to perform acts independently, but may assist the justice of the peace and act at the justice's discretion.

A clerk **cannot** exercise any judicial authority or do any act of a judicial nature that is required to be performed by a judge.

### A Clerk Can't Be Involved in a Proceeding if They Are an Interested Party

A clerk should not participate in any way in an action if the clerk is party to that action or suit. [60 Tex. Jur. 3d Public Officers and Employees.](#)



COMMON  
PITFALL

If the clerk performs the duties of office in a case where the clerk is an interested party, the proceedings are void.

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*Clerks are subject to Texas Code of Judicial Conduct Canon 1 which requires them to uphold the integrity and independence of the judiciary. [Ethics Op. No 106.](#)*

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### 1. Duties of the Justice Clerk

As part of the clerk's duties, the clerk **must**:

- maintain docket records for all cases filed in the justice court,
- maintain an index of all court judgments for cases arising in the justice court,
- assist the judge in handling matters before the court, **and**
- perform other duties required by law.

*Government Code § 27.056(c)*.

A justice court clerk **may**:

- administer oaths and affidavits,
- make certificates,
- affix the court's seal to certificates made by the clerk, **and**
- issue citation in the manner provided for justices of the peace.

*Government Code § 27.056(b) & § 27.057.*

Additional potential justice court clerk duties are included on the "Justice Court Clerks Do's and Don'ts" list that is linked below.

If a justice clerk is also a notary public, the clerk may take acknowledgments or proofs of written instruments. *Civil Practice and Remedies Code § 121.001.*

An acknowledgment occurs when the signer of a document swears to a notary public that he or she signed the document, that he or she understands the document, and that he or she is aware of the consequences of executing the document.

A proof is a declaration made by a subscribing witness usually stating that he or she witnessed the signature of the signer of the document.

## **2. Use of a Judge's Signature Stamp**

Another person may place a judge's signature on a document by using a signature stamp if:

- the person using the stamp is under the judge's immediate authority, **and**
- the judge has specifically directed the person to use the signature stamp to place the judge's signature on the document.

*In re Barber.*

## **3. Justice Court Clerks Do's and Don'ts List**

[Click Here to Open the Justice Court Clerks Do's and Don'ts List](#)

## L. Documents, Resources, and Information for the Public

### 1. Criminal Docket Settings

If a justice court does not provide online internet access to their criminal case records, the court **must** post notice of all prospective criminal court docket settings in a designated public place in the courthouse. *Code of Criminal Procedure Art. 17.085.*

*Who Should Be In-Charge of Making Documents, Resources, and Information Available to the Public?*

### 2. Texas Rules of Civil Procedure and Texas Rules of Evidence

A justice court **must** make the Rules of Civil Procedure and the Rules of Evidence available for examination, either in paper form or electronically, during the court's business hours. *Rule 500.3(f).*

Many of these tasks are generally duties that the justice court clerk will carry out, but the judge needs to make sure that all requirements are being met.

These rules can be found on the [Texas Courts](#) webpage.

### 3. Supreme Court's Statement of Inability to Afford Payment of Court Costs Form

A justice court **must** make the Supreme Court's "Statement of Inability to Afford Payment of Court Costs" form available to all persons without charge or request. *Rule 502.3(b).* One example of how this can be done is by having the forms on display and clearly marked on a countertop and also placed on the court's website.

This form can be found on the TJCTC forms page under "Civil Procedure".

### 4. Chapter 15, Subchapter E of the Texas Civil Practice and Remedies Code

Laws specifying the venue – the county and precinct where a lawsuit may be brought – are found in Chapter 15, Subchapter E of the Texas Civil Practice and Remedies Code. This section of the statute **must** be available for examination during a justice court's business hours. *Rule 502.4(a).*





A copy of the statute can be found here: <https://statutes.capitol.texas.gov/>

## 5. Notice of Self-Help Resources

Each court in the state **must** post the following links on a sign conspicuously displayed in their office in a location frequently accessed by the public and on their website (if they have one):

- The self-help resources webpage designated by the Office of Court Administration, in consultation with the Texas Access to Justice Commission:

<http://www.texascourthelp.gov/>

- The State Law Library’s website: <http://www.sll.texas.gov/>

*Government Code § 51.808.*

## 6. TJCTC’s Self-Represented Litigants Resources



While not required, many courts choose to provide TJCTC’s Self-Represented Litigants resources to the public: <https://www.tjctc.org/SRL.html>. These resources include information packets organized by case type, forms, and other information that may be useful for self-represented litigants.



The resources can be provided by sharing the link to the webpage listed above and/or by providing physical copies of the materials. Many questions that self-represented litigants often wish to ask the court may be answered by referring the person to the information packet.

## 7. Model Court Websites and Signage



The Texas Municipal Court Education Center and the Center for Court Innovation have developed resources for creating effective websites and court signage that promote access to justice. These resources can be found at this link:

<https://www.tmcec.com/procedural-justice1/>

## 8. Legal Information vs. Legal Advice Guidelines and Instructions

While courts should (and sometimes must) provide **legal information** to the public, they are prohibited from providing **legal advice** to people. A publication has been jointly distributed by the Texas Office of Court Administration, Texas Access to Justice Commission, Texas Access to Justice Foundation, and Texas Legal Services Center to provide guidelines and instructions on this topic. The publication is titled: “Legal information vs. Legal Advice: Guidelines and Instructions for Clerks and Court Personnel Who Work with Self-Represented Litigants in Texas State Courts”.

[Click Here to Open the Guidelines and Instructions Document](#)

## M. Vacancy or Absence of a Justice of the Peace

### The Nearest Justice in the County May Serve Temporarily

If the office of justice of the peace is vacant in a precinct, or if the justice is absent, unable, or unwilling to perform his duties, the nearest justice in the county may temporarily perform the duties of the office. *Government Code § 27.052.*

### A Vacancy is Filled by the Commissioners Court

A vacancy in the office of justice of the peace will be filled by the commissioners court and the person appointed will serve until the next general election. *Texas Constitution Art. 5 § 28.*

The commissioners court shall fill a vacancy by a majority vote of the commissioner members who are present and voting. *Local Government Code § 87.041.*

## N. Exchange of Benches

### 1. Location and Length of Bench Exchange

A justice of the peace may hold court for any other justice of the peace in any Texas county at the request of that justice. This is done by going to the other justice's location and holding court in their place and does **not** transfer the case from one court to the other. *Government Code § 27.054(a)*; *Government Code § 74.121(a)*; [Att'y. Gen. Op. No. H-671](#).

So, for example, if the Apple County Precinct One judge exchanged benches with the Bee County Precinct One judge to hear a case that was filed in Bee County Precinct One, the Apple County judge would sign the judgment as the acting Judge for Bee County Precinct One, and the case files and documents would be maintained in Bee County Precinct One.

Justices may exchange benches for a period **not to exceed** five days at a time if the justices consider it beneficial to do so. *Government Code § 27.054(b)*. If so desired, the bench exchange agreement can be written so that it **automatically renews** every five days until one of the judges opts out of the agreement.

A bench exchange agreement can be found on the TJCTC forms page under "General Officeholding".

### 2. No Compensation for Exchanging Benches

A justice who exchanges benches with another justice is not entitled to receive compensation from the commissioners court of the county in which the regular justice serves. *Government Code § 27.054(c)*.

#### *Exchange of Benches*

- Can be with another justice of the peace in any Texas County
- For up to 5 days at a time
- No compensation

### **3. Inquest Bench Exchange**

If the justice of the peace serving the precinct where the body is found is not available to conduct an inquest, a justice of the peace of another county may be requested to conduct the inquest. However, this is only allowed if justices of the peace in the other county also perform inquests. *Government Code § 27.0545(a)*.

A justice of the peace who conducts an inquest on request shall transfer all information related to the inquest to the justice of the peace of the precinct in which the death occurred for final disposition of the matter no more than five days after the date the inquest is initiated. *Government Code § 27.0545(b)*.

The justice of the peace with jurisdiction over the case signs the death certificate after getting all inquest information back from the justice who performed the inquest.

The justice who conducts the requested inquest is not entitled to receive compensation, other than mileage, from the commissioners court of the county in which the death occurred. *Government Code § 27.0545(c)*.

An inquest bench exchange agreement can be found on the TJCTC forms page under “Inquests”.

For more information on Inquests, refer to the *Inquests Deskbook*.

## **O. Transfer of Cases**

### **1. General Procedures for All Cases**

Justices of the peace within the same county **may** transfer cases to and from the dockets of their respective courts; except that a case **may not** be transferred without the consent of the justice of the peace **receiving** the case, and the case may not be transferred unless the receiving court has jurisdiction. *Government Code § 74.121(a)*.

A party to a case could also file a motion to transfer venue. For more information on motions to transfer venue, see Chapter 2 of the *Criminal Deskbook* and Chapter 4 of the *Civil Deskbook*.

## **2. Specific Procedures for Criminal Cases**

If a justice of the peace is disqualified from sitting in any part of a criminal action pending before him, he must transfer the case to any justice of the peace in the county who is not disqualified. The transfer order needs to state the reason for the transfer, the name of the court the case is being transferred to, and the time and place where the parties and witnesses need to appear. *Code of Criminal Procedure Art. 30.07-30.08*.

In addition, each county is required to adopt administrative rules to provide for the transfer of criminal cases from precinct to precinct. *Code of Criminal Procedure Art. 4.12(e)*. For example, a county could adopt a rule mandating that courts automatically transfer a case to the court in the precinct where the offense occurred. For more information on transfer of criminal cases, see Chapter 2 of the *Criminal Deskbook*.

## **3. Case File and All Paperwork Goes to the Court Accepting the Transfer**

Each judgment and order shall be entered on the docket of the court in which the case is currently pending. *Government Code § 74.121(a)*.

All processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court where the case is transferred as if originally issued by that court. *Government Code § 74.121(c)*.

## **P. Special and Temporary Justices**

### **1. Appointment of a Qualified Person as a Temporary Justice**



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If a justice of the peace who has jurisdiction of a **civil** case is sick, absent from the precinct, or is disqualified from hearing the case the parties to the case may agree on a person to try their case. *Government Code § 27.055(a)*. However, if the parties can't agree on a person to hear their case at the first court setting after service is perfected, the county

judge shall then appoint a qualified person (as defined below) to try the case upon request of the justice or either party. *Government Code § 27.055(a)*. The disqualification, absence, or illness of the justice, and the selection by agreement or appointment of another person to try the case must be noted on the docket. *Government Code § 27.055(a)*.

In addition, if a justice is temporarily unable to perform official duties (**whether civil or criminal**) because of absence, recusal, illness, injury, or another reason, the county judge on his own motion, or at the request of the justice of the peace, may appoint a qualified person (as defined below) to serve as temporary justice for the duration of the justice of the peace’s absence from the bench. *Government Code § 27.055(b)*.

“Qualified person” means a person who has served as a justice of the peace, county judge, or the judge of a county court at law for not less than four years (but does not have to be currently serving), and who has not been convicted of a criminal offense that involves moral turpitude. *Government Code § 27.055(c)*.

### ***Moral Turpitude***

Something that is inherently immoral or dishonest, such as theft or swindling. *Hardeman v. State*; *Huston v. State*.

## **2. What Happens if a Qualified Person Can’t Be Found?**

If the county judge cannot find a “qualified person” who agrees to serve as a temporary justice of the peace, they can appoint anyone who meets the following requirements:

- They are a qualified voter under Section 11.002 of the Election Code; **and**
- They have experience and knowledge relevant to judicial or justice court processes and procedures and are approved by the county judge and a justice of the peace in the county.

## **3. Compensation, Powers, and Residence of Temporary Justice**

### **Compensation**

The temporary justice will be paid by the commissioners court by the day, week, or month as applicable, in an amount equal to the pay of the regular justice. *Government Code §*

27.055(b). If the temporary justice is already serving as a regular justice of the peace in the same county, they are not entitled to double pay, except that the commissioners court may authorize reimbursement for the mileage expenses incurred in performing the official duties of the temporary justice. *Government Code § 27.055(e)*.

### **Powers**

A temporary justice has all the rights and powers of the justice of the peace while serving in that capacity, but may not make personnel decisions about, or significant changes in, the justice of the peace's office. *Government Code § 27.055(b)*.

### **Residence**

A temporary justice does not have to reside in the county where the person is appointed as temporary justice of the peace. *Government Code § 27.055(d)*.

## **4. Temporary Justices Appointed to Dispose of Accumulated Court Business in Certain Counties**

In a county with a population greater than 800,000 and with no more than five justices of the peace, the county judge may appoint a qualified person to serve as a temporary justice of the peace to hold court when necessary to dispose of accumulated business in the precinct. *Government Code § 27.055(f)*.

The county judge may appoint a qualified person to serve as a temporary justice of the peace for the precinct in which a municipality or part of a municipality is located, to hold court and perform justice of the peace duties when necessary to dispose of accumulated business. This only applies in a county:

- less than 940 square miles in size,
- with a population between 120,000 and 130,000 people,
- that includes a state park, **and**

### ***Temporary Justices***

- Serve for the duration of an absence,
- Appointment must be noted on the docket,
- Are paid the same,
- Have the same powers as the regular justice, **and**
- Can live in any county

- that has no more than two justice precincts, so long as at least one of the precincts contains all or part of a municipality with a population between 190,000 and 200,000.

*Government Code § 27.055(g).*

## **Q. Temporary Replacement of Public Officer on Military Active Duty**



KEY  
POINT

An elected or appointed officer of the state who enters active duty in the military as a result of being called to duty, drafted, or activated, does not vacate the office held. *Texas Constitution Art. 16 § 72(a).*

### **Temporary Justice Appointed if the Active-Duty Term is More Than 30 Days**

While the justice is serving in the military, the appropriate authority may appoint a replacement to serve as temporary justice of the peace, if the justice will be on active duty for longer than thirty days. *Texas Constitution Art. 16 § 72(a).*

A temporary justice of the peace shall perform the duties of office for the justice of the peace's term of active military service, or for the remaining term of office; whichever is shorter. *Texas Constitution Art. 16 § 72(g).*

### **Compensation and Powers of a Temporary Justice**

A temporary justice of the peace has all the powers, privileges, and duties of the office and is entitled to the same compensation, payable in the same manner and from the same source, as the justice of the peace who is temporarily replaced. *Texas Constitution Art. 16 § 72(f).*

## **R. Declining Compensation**

### **Compensation Can Be Declined**

A justice of the peace may decline compensation (may sometimes be called remuneration), associated with the office. Compensation includes:

- salary,
- compensatory per diem,
- reimbursement for expenses,
- longevity pay, **and**

- fees.

*Government Code § 659.003(a)-(b).*

### **How to Decline Compensation**

To decline compensation, the justice must execute a declination form created by and filed with the Secretary of State.

The form allows a person to decline all compensation or to decline particular compensation from among various types associated with the office. *Government Code § 659.003(b).*

### **Effective Date of Declination**

A declination is effective on the date it is filed with the secretary of state. *Government Code § 659.003(c).*

### **Revocation of a Declination**

A declination filed after an officer has qualified for office may be revoked at any time. *Government Code § 659.003(d).*

A declination filed before a person has qualified for office may not be revoked during the term of office to which the person is appointed or elected. *Government Code § 659.003(d).*

#### ***Revocation of a Declination***

The ability to revoke a declination depends upon when a justice of the peace filed the form with the Secretary of State.

A person who has irrevocably declined remuneration is considered not compensated for purposes of state law. *Government Code § 659.003(e).*



CLICK  
HERE

Form 2207, the [\*\*Remuneration Declaration Form\*\*](#), can be found on the Secretary of State's website.

## **S. Additional Rules for Harris County Justice Courts**

Government Code Section 75.404 sets out additional rules that apply to Harris County justice courts only.

### **Selection of a Presiding Judge**

In Harris County, the justices of the peace may select a presiding judge from among themselves. The presiding judge is selected by a two-thirds vote the month before the term he will serve, and serves a one-year term unless two-thirds of the judges vote to cancel the current presiding judge selection and another judge is selected to serve the unexpired term. *Government Code § 75.404(a)*.

The presiding judge shall:

- preside at any session of the judges,
- keep a record of the decisions of the judges,
- appoint special or standing committees necessary for court management and administration,
- implement local rules, including assignment, docketing, transfer, and hearings of cases, **and**
- provide statistical and management information requested by the Supreme Court or Office of Court Administration of the Texas Judicial System

*Government Code § 75.404(d)*.

### **Appointment of a Special Judge to Assist a Qualified Person**

If a Harris County justice of the peace is absent, or for any reason unable to preside, the presiding judge may appoint a special judge, in addition to a qualified person authorized by law, to preside for the justice of the peace. *Government Code § 75.404(e)*.

### **Who Can Be Appointed as a Special Judge?**

A special judge must consent to the appointment and may be a former:

- Justice of the peace,
- County court judge,
- Statutory county court judge, **or**
- District court judge.

*Government Code § 75.404(e)*.

### **Duration of Appointment of a Special Judge**

The presiding judge may designate the duration of the appointment, but appointment cannot exceed 60 days. The presiding judge may revoke an appointment at any time.

*Government Code § 75.404(e)*.

**Duties and Powers of a Special Judge**

The duties and powers of a special judge are the same as for the regular justice of the peace. The special judge may be compensated by the commissioners court. *Government Code § 75.404(e)*.

## Chapter 3: Other Duties and Powers of a Justice of the Peace

In addition to serving as judge of the justice court, a justice of the peace has other duties and powers that are inherent to the office.

These duties and powers include the ability to hold people in contempt, being an Ex Officio Notary Public, being the local registrar for the Bureau of Vital Statistics, performing wedding ceremonies, and collecting money for the county.

### A. Contempt Powers

Government Code Section 21.002 is the main statutory authority on contempt, however, contempt in Texas is largely governed by common law.

#### 1. General Contempt



KEY  
POINT

There are two types of contempt:

- Direct contempt **and**
- Indirect contempt, which is also referred to as constructive contempt.

There are two types of punishment that justices of the peace can order:

- A punitive (or criminal) contempt order; **or**
- A coercive (or civil) contempt order.

Whether the contempt is direct or indirect depends upon where it was committed (in the presence of the court or outside the presence of the court). The nature of the punishment depends upon the purpose of holding the person in contempt (to punish the person for disrespect to the court or violating a court order, or to force the person to comply with a court order).

#### a. *Direct Contempt*

Direct contempt is behavior that occurs in the presence of the court. It is behavior of which the judge has personal knowledge because the judge either saw it or heard it.

## What is “in the Presence of the Court”?

In the presence of the court generally means whenever the court is in session. It includes any essential parts of the court that are engaged in court business.

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*Areas such as the jury room, adjoining holdover cells, or even the hall may, depending on the circumstance, be considered part of the court for contempt purposes. Ex Parte Aldridge.*

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### Examples of direct contempt include:

- outbursts by anyone participating in the trial, including officers of the court,
- disruptive behavior by those observing the trial,
- violating direct orders of the judge made in an attempt to maintain order or ensure a fair trial to the litigants,
- repeatedly arguing or asking a question designed to elicit inadmissible evidence, despite a previous order from the judge to stop, **and**
- attempts to bribe or improperly influence a juror, committed in the presence of the court.

### Immediate Punishment vs. Notice and Hearing

Punishment usually happens immediately after the contempt occurs. Since the contempt occurred in the presence of the judge, the person accused of contempt (the “contemnor”), does not need to be given formal notice of the violation. This summary finding of guilt and immediate imposition of punishment allows the court to instantly maintain order.

### *What if Court is Not in Session?*

A special court of review has held that direct contempt cannot occur if the acts take place in the presence of the judge, but at a time when court is not in session, and the judge is not acting as the court. A party may be held in contempt during trial for exhibiting contemptuous behavior, appearance, conduct or expressions which exhibit disrespect for the courts’ ruling and orders. Ex Parte Sentell.

However, direct contempt **may not** be punished immediately if there is not a specific immediate need to do so, for example, when contempt occurs after the hearing is over. Even though contempt occurred in the justice's presence, immediate punishment is not necessary to maintain order. In this situation, notice and a hearing is required as described below.

**Contemnor:**

A person accused of contempt.

**b. Indirect (Constructive) Contempt**

Indirect, or constructive, contempt is when the alleged bad act occurs outside the presence of the court and the court did not see the bad act happen. This happens when a person fails to obey a court order.

A contemnor must have willfully disobeyed the court's order for an act to be indirect contempt. The original court order the contemnor was supposed to abide by must be clear, specific, unambiguous, and in writing. Oral orders **do not** meet the specificity required to hold someone in contempt. [Ex Parte Slavin](#).

Note however, that when other remedies exist for certain types of failures to follow court orders (such as failing to pay the fine/costs in an adult criminal case), contempt is **not appropriate**. See [page 45](#) for more information.

**Notice and Opportunity for a Hearing**

Before a finding of indirect contempt, the accused is entitled to written notice of how, when, and by what means the party committed the alleged contempt.

At a show cause hearing, guilt of the alleged contemptuous act must be proven beyond a reasonable doubt. An evidentiary hearing must be held to allow the accused an opportunity to present any defenses, or the accused must waive their rights. Due process must be satisfied at the hearing.

The accused has the right against self-incrimination, and the right to hire and be represented by counsel (which is different than having counsel *appointed* when indigent).

If the potential jail time is six months or more (which could be possible if the contemnor is jailed under a “coercive contempt” order until they obey as described on [page 43](#)), then the contemnor **also** has a right to a jury trial and to have counsel appointed for them if they are indigent. But if the potential punishment is less than six months, the contemnor **does not** have a right to a jury trial or to have counsel appointed if indigent.



KEY  
POINT

### **Contemnor Presence at the Hearing**

The right of a contemnor to be present at the hearing is fundamental. A justice of the peace **may not** enter a finding of indirect contempt until the alleged contemnor appears before the court. “Appearing before the court” does not necessarily mean being physically present, and the hearing requirement may be satisfied by affidavits. The court is required to give the contemnor an opportunity to explain his behavior, but there is no requirement to hold a live hearing.

If the contemnor fails to appear after proper notice, the proper procedure is to issue an attachment, and hold a hearing once the contemnor is brought before the court.

### **c. Punitive vs. Coercive Contempt**

Both direct and indirect contempt can be punished as punitive contempt or coercive contempt. Designations of punitive and coercive contempt have no relationship to the kind of case during which the contempt occurs, it has to do with the type of punishment given by the judge.

### **Punitive Contempt Orders**

Punitive, or criminal, contempt orders are solely to punish the contemnor for his behavior or for an act done by him. Direct contempt and indirect contempt can both result in punitive contempt orders.

Punitive contempt orders are unconditional in that the punishment remains even if the contemnor later complies with the original court order.

Punishment in the justice court can be:

- \$100 fine,

- Up to three days in jail, **or**
- Both fine and confinement.

Government Code § 21.002(c); [Ex Parte Werblud](#).

### Coercive Contempt Orders

Coercive, or civil, contempt orders seek to remedy a violation and encourage obedience with a court order. The contemnor must obey the court order or remain in jail until he or she obeys. In addition to confining a person to jail until they obey, the judge can also impose punishment as described above.

Jail time can be for a set period of time or an open-ended amount of time with a maximum period of 18 months from the date of confinement to the date the person complies with the court order (but if this period is six months or more, the contemnor has a right to a jury trial and to have counsel appointed if they are indigent— see [page 42](#)).

The contemnor should be given a final opportunity to comply with the court order before being committed to jail.

Coercive contempt orders are conditional in that the contemnor may escape the sentence by complying with the original court order. The contemnor “*holds the keys to the jail*” because the contemnor will be released whenever he or she decides to obey the order.

### A Contempt Order Can Be Both Punitive and Coercive

A contempt order can be both punitive and coercive if it contains elements of each. An example would be to jail a lawyer for 24 hours for repeatedly failing to comply with a discovery order and ordering him to remain in jail until he provides discovery.

The order is punitive because the lawyer is being punished by being sent to jail for 24 hours for not giving discovery. It is also coercive because, in an effort to encourage compliance with the court’s order, the lawyer is being sent to jail until he complies with the discovery order that he has ignored.

### *Punitive v. Coercive Contempt*

**Punitive:** seeks to punish the contemnor for his behavior or for an act done by him.

**Coercive:** seeks to remedy a violation and encourage obedience with a court order.

**d. Contempt Orders**

A contemnor may be detained by the bailiff or sheriff while the justice of the peace prepares the written judgment of contempt and signs the order of commitment. A person can only be detained for a reasonable amount of time.

**Judgment**

The essential elements of the contempt judgment are:

- It must be in writing,
- contain all the necessary facts to show that the subject matter of the underlying contempt was within the jurisdiction of the court,
- contain the facts and allegations of the contempt in definite and specific terms, not merely a conclusory statement that the accused was held in contempt, **and**
- contain an order of commitment where the contemnor is committed to the county jail. If a commitment order is not contained in the judgment, a separate order of commitment must accompany the judgment.

*Ex Parte Calbrillo Amaya; Ex Parte Ustick; Ex Parte McGraw; Ex Parte Mackin.*

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*The reason for specificity in the judgment is to satisfy the requirement that the contemnor be fully informed of the act of misconduct. Ex Parte Hart.*

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**Order of Commitment**

The order of commitment must:

- fully and specifically describe the contemptuous act,
- clearly state the specific number of days or hours of jail time assessed,
- state any fine assessed,
- direct the bailiff to take the contemnor into custody, **and**
- if applicable, specifically spell out how the contempt can be removed through compliance with the judge’s orders.

***Statement of Facts***

**Bad (not enough specificity):** “Joe Jones committed an act in the presence of the court for which he was held in contempt”

**Good:** “Joe Jones used abusive, disrespectful, and discourteous language which disrupted the orderly proceeding of the court.”

**e. Last Resort and Only Available When No Other Remedies**



Confinement for contempt is serious and should be used sparingly. Before confining someone, the justice should consider if there are other options the court may employ to get the same results. Imposition of a fine is usually enough, and often the threat of confinement is more than sufficient to get compliance with a court order.

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*The right of a judge to punish for contempt is not given for the private advantage of the judge, but to preserve the respect due the court. In exercising this authority, the judge should act to redress a public wrong, not seek revenge for private grievances. Ex Parte Davis.*

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**Contempt Is Not Appropriate Where There Are Other Remedies**

Contempt should not be used at all in situations where other remedies exist to specifically address an action. Here are a few examples where other remedies should be used instead of contempt:

***Deferred Disposition Violations***

In a case where a defendant is given deferred disposition, a violation of a deferral order can result in a conviction (after a show cause hearing). The defendant **cannot** be held in contempt for either violating the conditions of the deferral or failing to appear at a show cause hearing.

***Failure to Attend Alcohol Awareness Class***

Failure to attend a required alcohol awareness course can lead to a person's driver's license being suspended.

***Failure to Pay Fines and Costs***

Failure of an adult to pay fines and costs can result in the issuance of a Capias Pro Fine, being entered into OMNI, and/or being referred to collections.

**f. No Right to Appeal**

If a judge holds a person in contempt of court, the ruling cannot be appealed. The only remedy is by writ of habeas corpus. [Medearis v. Medearis](#).

**2. Contempt by an Officer of the Court**

If the contemptuous act is done by an officer of the court, certain rules apply.

**Who is an Officer of the Court?**

Officers of the court include, but are not limited to:

- Attorneys representing clients or the state,
- Court reporters,
- Court clerks,
- Bailiffs,
- Probation officers,
- Guardians' ad litem, **and**
- Law enforcement officers with legal duties.

***What If a Bailiff is Not Doing Their Job in Court?***

An officer of the court may be held in contempt for failing to perform the officer's duties.

[Kreugel v. Williams](#).

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***An officer of the court is a person who has responsibility for, and upon whom, the court relies for the functioning of the court and enforcing of its orders. [Merritt v. Harris County](#).***

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**Notice and Hearing**

Notice must be given, and a hearing must occur regardless of whether the contempt is direct or indirect. A judge, other than the judge from the court where the contempt occurred, will be assigned to hold the hearing, and determine the guilt or innocence of the officer of the court charged with contempt. *Government Code § 21.002(d)*.

It is mandatory that the justice of the court where the contempt occurred notify the presiding judge of the administrative judicial district for the county affected that appointment of a judge is needed to conduct the hearing on guilt or innocence of a court officer charged with contempt.

An officer of the court who is held in contempt shall be released on his or her own personal recognizance while a determination of his guilt or innocence is pending, if a proper motion is filed in the court where the contempt occurred.

### **When these Special Rules Do Not Apply to an Officer of the Court**

When an attorney takes the witness stand to testify, the attorney's status as an officer of the court is lost. The attorney becomes a witness subject to being held in direct contempt, and the special procedures for an officer of the court do not have to be followed. [\*Ex Parte Howell\*](#).

### **3. Contempt Related to Writs of Re-Entry and Restoration**



KEY  
POINT

In addition to general contempt, justices of the peace can also hold someone in contempt under Chapter 92 of the Property Code when a person fails to obey a writ of re-entry or writ of restoration. *Property Code § 92.009; 92.0091*.

More information, including the specific procedures that must be followed, may be found in Chapter 9 of the *Evictions Deskbook*.

### **4. Juvenile Contempt**



KEY  
POINT

Justices of the peace can hold juveniles in contempt, but juveniles are subject to different rules than adults.

Contempt rules related to truancy cases are discussed in Chapter 1 of the *Juvenile Deskbook*.

Contempt rules related to juvenile criminal cases are discussed in Chapter 3 of the *Juvenile Deskbook*.



## B. Ex Officio Notary Public

### 1. Authority and Duties

When a justice of the peace is elected or appointed, they automatically become an ex officio notary public because ex officio means by virtue of the office. *Texas Constitution Art. 5 § 19; Government Code § 27.002; Black’s Law Dictionary (8th ed. 2004)*. However, the acts of an ex officio notary public are separate and distinct from the duties of justice of the peace. A justice of the peace serving as ex officio notary public must, when acting as a notary, conform to the statutes governing notary publics. *Government Code §§ 406.001-406.025*.

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*The authority of an ex officio notary public is the same as that of an ordinary notary public. Wilson v. Simpson.*

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An ex officio notary public serves for the duration of their term of office as justice of the peace, so long as he or she does not permanently move from their precinct. *Government Code § 406.021*.

When a justice of the peace leaves office, or the justice’s term expires, the justice of the peace no longer has authority to serve as ex officio notary public because the authority to do so derives from holding office as justice of the peace.

#### **No Bond or Oath Required**

When a person has qualified as justice of the peace of a precinct, the justice is not required to take the oath or give the bond required of a notary public in order to serve as ex officio notary public. *Att’y. Gen. Op. No. O-5606; Att’y. Gen. Op. No. O-84.*

#### **An Ex Officio Notary Public Can’t Notarize an Instrument He or She Is a Party To**

If an ex officio notary public is an interested party to an instrument being signed, the ex officio notary is disqualified from notarizing it. *Terrell v. Chambers; Morris v. Dunn.* Generally, an ex officio notary is disqualified if the ex officio notary has a financial or beneficial interest in the transaction, no matter how small the interest. *Creosoted Block Paving Co. v. McKay; Morris v. Dunn.*

## **Authority to Take Acknowledgments or Proofs of Written Instruments**

An ex officio notary public has the same authority as the county clerk to:

- take acknowledgments or proofs of written instruments,
- protest instruments permitted by law to be protested,
- administer oaths,
- take depositions, **and**
- certify copies of documents not recordable in the public records.

*Government Code § 406.016.*

## **Authority to Make a Certificate of Dishonor**

An ex officio notary may make a certificate of dishonor, or protest, that a negotiable instrument has been dishonored. *Business and Commerce Code § 3.505(b).*

## **Statewide Jurisdiction to Perform Notary Functions**

An ex officio notary public has statewide jurisdiction and may perform notary functions anywhere within the boundaries of Texas. *Government Code § 406.003.*

## **Oaths Made in Texas**

An oath made in Texas may be administered, and a certificate of the fact given by:

- A justice of the peace,
- A clerk of a justice court, **or**
- A notary public / ex officio notary public.

## **Oaths Made Outside Texas**

An oath made outside Texas but within the United States or its territories may be administered, and a certificate of the fact given by an ex officio notary public.

## ***Acknowledgments and Proofs***

**Acknowledgment:** When the signer of a document swears to a notary public that they signed the document, understand the document, and are aware of the consequences of executing the document.

**Proof:** Declaration made by a subscribing witness usually stating that they witnessed the signature of the signer of the document.

### **Ex Officio Notary Public Not Responsible for Filing a Notarized Instrument**

It is not the duty of the ex officio notary to forward a notarized instrument to the county clerk for filing, but rather the duty of the person requesting notarization. [Sitton v. American Insurance Co.](#)

### **Proof of Identity of Person Requesting Notary Services**

An ex officio notary public may not take the acknowledgment of a written instrument unless he or she knows, or has satisfactory evidence, that the acknowledging person is the person who signed the instrument and is described in it. *Civil Practice and Remedies Code § 121.005(a)*.

Proof of identity may be established by:

- personal knowledge by the ex officio notary public of the person signing;
- the oath of a credible witness known to the ex officio notary, that the person signing is who he says he is; **or**
- by a current identification card issued the federal or any state government that contains a photo and signature of the person.

*Civil Practice and Remedies Code § 121.005(a)*.

An ex officio notary public must note in the certificate of acknowledgment:

- that the ex officio notary personally knows the acknowledging person,
- that evidence of a witness was used to identify the acknowledging person, **or**
- that an identification card or other document was used to identify the acknowledging person.

This information is not required in a short form certificate of acknowledgment authorized by Section 121.008 Civil Practice and Remedies Code. *Civil Practice and Remedies Code § 121.005(b)*.

### **Signing a Document for an Individual with a Disability**

An ex officio notary may sign the name of an individual who is physically unable to sign or make a mark on a document presented for notarization if:

- the ex officio notary is directed to do so by that individual, **and**

- the individual and the ex officio notary public are in the presence of a witness who has no legal or equitable interest in any real or personal property that is the subject of, or is affected by, the document being signed.

*Government Code § 406.0165(a).*

Beneath the ex officio notary’s signature, the ex officio notary must write the following or a substantially similar sentence: "Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code."

*Government Code § 406.0165(b).*

A signature made under Section 406.0165, Government Code is effective as the signature of the individual on whose behalf the signature was made for any purpose. A subsequent bona fide purchaser for value may rely on the signature of the notary as evidence of the individual's consent to execution of the document. *Government Code § 406.0165(c).*

## 2. Notary Seal and Certificate of Acknowledgment

An ex officio notary public shall authenticate all official acts with the seal of office.

*Government Code § 406.013(a).*

Because the offices of justice of the peace and ex officio notary public are separate and distinct, the court seal is to be used when acting as a justice of the peace, and the notary seal is to be used when acting as ex officio notary public.

### Wording Required to be on the Notary Seal

The seal, whether embossed, stamped, or printed, shall clearly show:

- the words “Notary Public, State of Texas” around a five-point star,
- the ex officio notary’s name, **and**
- the date the ex officio notary public’s commission expires.

*Government Code § 406.013(a).*

### *Which Seal Should be Used?*

The **court seal** is to be used when acting as a justice of the peace.

The **notary seal** is to be used when acting as ex officio notary public.

Immediately under the ex officio notary's name, write the words "Justice of the Peace and Ex Officio Notary Public." The commission expiration date is the date when the justice's elected term of office ends.

### **Size and Shape of the Notary Seal**

The shape of the seal may be:

- a circular form not more than two inches in diameter, **or**
- a rectangular form not more than one inch in width by two and one-half inches in length.

The seal must have a serrated or milled edge border. *Government Code § 406.013(b).*

### **A Seal Press or Stamp with Permanent Ink Must Be Used**

A seal press or stamp with permanent ink must be used to affix the seal, and the required elements of the seal have to be legibly reproduced when being copied or scanned in order to authenticate the ex officio notary public's official act. *Government Code § 406.013(c).*

For an electronically transmitted authenticated document, the document must legibly reproduce the required elements of the seal. *Government Code § 406.013(d).*

### **Form of an Ordinary Certificate of Acknowledgment**

The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of \_\_\_\_\_, County of \_\_\_\_\_, "Before me \_\_\_\_\_ (here insert the name and character of the officer) on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_ (description of identity card or other documents) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that executed the same for the purposes and consideration therein expressed. (Seal) "Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_."

*Civil Practice and Remedies Code § 121.005(b).*

### **What Happens if a Notary Seal is not Attached to an Instrument?**

If an ex officio notary public fails to attach an official notary seal to a certificate of an acknowledgment, proof of a written document, or other proof made outside Texas but

within the United States or its territories, the document is invalid only if the jurisdiction in which the document is made or taken requires the notary public to attach the seal. *Civil Practice and Remedies Code § 121.004(c)*.

### **3. Fees**

The fees an ex officio notary public may charge are set by statute and can be found in Section 406.024, Government Code. The fees include, but are not limited to, charging fees for certificates and seals, taking acknowledgments or proofs, for administering oaths or affirmations, and taking depositions. *Government Code § 406.024(a)*.

#### **Fee Lists Must Be Posted**

The complete list of fees shall be posted at all times in a conspicuous place in the office. *Government Code § 603.008*.

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*A justice of the peace may not collect a notary public fee for acknowledging sworn pleadings filed in the justice court. Att’y Gen. Op. No. MW-456 (1982).*

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#### **Fees Not Due Until a Bill is Produced**

No fee is payable until the notary produces a signed bill or written account containing the details of the charge. *Government Code § 603.007*.

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*Fees received for performing duties as an ex officio notary public are required to be deposited in the treasury and are not personal compensation for the justice. Op. A.G. No. GA-0145 (2004).*

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### **4. Recordkeeping and Reporting**

A notary public, other than a court clerk notarizing instruments for the court, shall keep a record of specified information. *Government Code § 406.014*.

**a. A Notary Must Maintain a Fee Book**

A notary must also keep and maintain a fee book and shall enter therein all fees charged for services rendered. The fee book shall, at all times, be subject to the inspection of any person wishing to see the fees charged. *Government Code § 406.014(c)*.

The notary's record book shall reflect the following for all instruments notarized:

- The date of each instrument notarized,
- The date of the notarization,
- The name of the signer, grantor, or maker,
- The signer's, grantor's, or maker's residence or alleged residence,
- Whether the signer, grantor, or maker is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the signer, grantor, or maker,
- If the instrument is proven by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness,
- The name and residence of the grantee,
- If land is conveyed or charged by the instrument, the name of the original grantee and the county where the land is located, **and**
- A brief description of the instrument.

*Government Code § 406.014(a)(1)–(9)*.

**b. Records Are Public Information**

The entries in the notary's record book are public information and subject to public scrutiny. *Government Code § 406.014(b)*.

Upon payment of all fees, a notary shall provide a certified copy of any record of official acts in the notary public's book of record to any person requesting the copy. *Government Code § 406.014(c)*.

## C. Local Registrar for the Bureau of Vital Statistics

### 1. General Information

#### State Divided into Registration Districts

The state is divided into registration districts for the purposes of registering births, deaths, and fetal deaths. Each justice of the peace precinct and municipality with a population of 2,500 or more is a registration district. *Health and Safety Code § 191.021(a)*. To facilitate registration, the Department of State Health Services may combine or divide registration districts *Health and Safety Code § 191.021(b)*.

#### *Is a Justice of the Peace a Local Registrar?*

#### Who is the Local Registrar?

A justice of the peace is the local registrar of births and deaths in their precinct. However, the duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing, and the agreement is approved by the commissioners court. *Health and Safety Code § 191.022(a)*.

Most justices of the peace are not the local registrar for their precinct, because agreements have been entered into with the county clerk transferring that duty.

#### Deputy Registrars to be Appointed

Each local registrar shall appoint a deputy registrar so that a registrar will be available at all times for the registration of births and deaths *Health and Safety Code § 191.022(c)*.

#### Failure or Refusal to Register Births and Deaths

If a local registrar fails or refuses to register each birth and death in the district and neglects duties, the county judge or mayor shall appoint a new local registrar. *Health and Safety Code § 191.022(e)*.

## **2. Certificates and Records**

### **a. Record Books**

A municipality shall supply its local registrar, and each county shall supply the county clerk, with permanent record books for recording the births, deaths, and fetal deaths occurring in their respective jurisdictions. *Health and Safety Code § 191.025(b)*.

The local registrar shall secure a complete record of each birth, death, and fetal death that occurs in the local registrar's jurisdiction. *Health and Safety Code § 191.026(a)*.

The local registrar shall copy in the record book each certificate that the local registrar registers, unless the local registrar keeps photographic duplicates. Photographic duplicates of each certificate shall be permanently preserved in the local registrar's office as the local record, in the manner directed by the state registrar. *Health and Safety Code § 191.026(c)*.

The local registrar may permanently bind duplicate reports of births and deaths, if the duplicates are required by local ordinance, and index them in the manner that the state registrar indexes records. *Health and Safety Code § 191.026(d)*.

The local registrar may be notified by the state registrar of a person's death if they were born in their precinct. They must then note the date of death on the deceased's birth certificate. *Health & Safety Code § 191.034*.

The local registrar must provide a certified copy of a record if requested by a properly qualified applicant. *Health & Safety Code § 191.051*.

### **b. Certificate Requirements**

Forms for the registration of births, deaths, and fetal deaths must be approved by the Department of State Health Services. *Health and Safety Code § 191.025(a)*. A local registrar shall supply forms of certificates to persons who need them. Rules shall be established for strict accountability of birth certificates to prevent fraud. *Health and Safety Code § 191.025(c)*.

Information required on a certificate must be written legibly in durable blue or black ink or may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar. *Health and Safety Code § 191.025(d)*. A certificate must contain each item of information required on the certificate or a satisfactory reason for omitting the item. *Health and Safety Code § 191.025(e)*.

The local registrar shall carefully examine each birth or death certificate when presented for registration to determine if it is completed as required. *Health and Safety Code § 191.027(a)*.

The local registrar shall consecutively number birth and death certificates in separate series, beginning with the number “1” for the first birth and the first death in each calendar year. *Health and Safety Code § 191.026(b)*.

The local registrar shall sign each certificate to attest to the date the certificate is filed in the local registrar’s office. *Health and Safety Code § 191.026(b)*.

**c.      *Amendment of Certificates***

A record of a birth, death, or fetal death accepted by a local registrar for registration may not be changed unless an amending certificate is filed. *Health and Safety Code § 191.028(a)*. An amending certificate may be filed to complete or correct a record that is incomplete or proved by satisfactory evidence to be inaccurate. The amendment must be in a form prescribed by the Department of State Health Services (DSHS) and shall be attached to and become a part of the legal record of the birth, death, or fetal death if the amendment is accepted for filing. *Health and Safety Code § 191.028(b)*.

Not later than the 30<sup>th</sup> business day after the date DSHS receives an amending certificate, the department shall notify the individual of whether the amendment has been accepted for filing. *Health and Safety Code § 191.028(c)*.

**d.      *Permanent Records May Be Destroyed if the Records Are Available Online***

The local registrar may, after the first anniversary of the date of registration of a birth, death, or fetal death, destroy the permanent record if:

- The local registrar has access to electronic records of births, deaths, and fetal deaths maintained by the vital statistics unit; **and**
- Before destroying the records, the local registrar certifies to the state registrar that each record maintained by the local office that is to be destroyed has been verified against the records contained in the unit's database and that each record is included in the database or otherwise accounted for.

*Health and Safety Code § 191.026(e).*

### **3. Birth Certificates**

If a birth certificate is incomplete, the local registrar shall immediately notify the informant and require the informant to supply the missing information if it can be obtained. *Health and Safety Code § 191.027(c).*

A parent may request that a person required to file a birth certificate or report a birth, delay filing the certificate or making the report until the parent contacts that person with the child's name, if the delay in naming the child is due to the parent's religious beliefs. If the parent does not name the child within four days, the parent must contact the person required to file the birth certificate or report the birth with the child's name as soon as the child is named.

A person required to file the birth certificate or report the birth who delays filing in accordance with the parent's request, must file the certificate or make the report no later than 15 days after the child's birth, regardless of whether or not the parent has contacted them and provided the child's name. *Health and Safety Code § 192.003.*

### **4. Certificate of Birth Resulting in Stillbirth**

A local registrar is authorized to issue a certificate of birth resulting in stillbirth on request of a parent (without regard to the date on which the fetal death certificate was issued). *Health and Safety Code § 192.0022.* Stillbirth means an unintended, intrauterine fetal death occurring after a gestational age of not less than 20 completed weeks. *Health and Safety Code § 192.0022(a)(1).*

A parent may provide a name for a stillborn child in the request for a certificate of birth resulting in stillbirth. If the requesting parent does not wish to provide a name, the vital statistics unit shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent. The name of the stillborn child provided on, or later added by amendment to, the certificate of birth resulting in stillbirth shall be the same name that is placed on the original or amended fetal death certificate. *Health and Safety Code § 192.0022(c)*.

A certificate of birth resulting in stillbirth must include the state file number of the corresponding fetal death certificate. *Health and Safety Code § 192.0022(d)*. On issuance of a certificate of birth resulting in stillbirth to a parent who has requested the certificate, the vital statistics unit shall file an exact copy of the certificate with the local registrar of the registration district in which the stillbirth occurred. The local registrar shall file the certificate of birth resulting in stillbirth with the fetal death certificate. *Health and Safety Code § 192.0022(g)*.

## **5. Death Certificates**

### ***a. Form Must Inquire if the Decedent Was a Peace Officer***

The form for the registration of deaths must include the question, "Was the decedent a peace officer or an honorably retired peace officer in this state?" *Health and Safety Code § 191.025(f)*.

### ***b. Filing Requirements***

Not later than the 10<sup>th</sup> day after the date of a death, a death certificate shall be filed with the local registrar of the registration district in which:

- The death occurs, **or**
- The body is found, if the place of death is not known.

*Health and Safety Code § 193.003(a)*.

A certificate of a fetal death that occurs shall be filed with the local registrar of the registration district in which:

- The fetal death occurs, **or**

- The body is found, if the place of the fetal death is not known.

*Health and Safety Code § 193.003(b).*

If a death certificate is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return. *Health and Safety Code § 191.027(b).*

**c. *Death Certificate for a Person Missing After a Natural Disaster or Other Major Accident***

If a natural disaster or another type of incident happens, a certificate of death by catastrophe may be an option. The local registrar shall issue a certificate of death by catastrophe for a person if:

- An individual provides an affidavit stating that:
  - it has been 10 days since the person was last seen and they were located at the scene of the catastrophe; **and**
  - the affiant does not know if the person is dead or alive and has no reason to believe that anything other than the catastrophe killed the person;
- the affiant did not cause the catastrophe; **and**
- a government authority has provided a written statement that they conducted a diligent search for the person.

*Health & Safety Code § 193.010(a).*

***Definition of Catastrophe***

The occurrence of a substantial force that causes widespread or severe damage, injury, or loss of life or property and from which it is not reasonable to assume that a person could survive. *Health & Safety Code 193.010(a).*

**Examples:** floods, earthquakes, tornadoes, explosions, fires, and motor vehicle, train, or airplane crashes involving more than one person.

**6. Fees**

Fees may be collected for providing services to the public and performing other activities in connection with maintenance of the vital statistics system, including:

- Performing searches of birth, death, fetal death, marriage, divorce, annulment, and other records;

- Preparing and issuing copies and certified copies of birth, death, fetal death, marriage, divorce, annulment, and other records; **and**
- Filing a record, amendment, or affidavit.

*Health and Safety Code § 191.0045(a).*

The executive commissioner of the Department of State Health Services may prescribe a fee schedule for vital statistics services. *Health and Safety Code § 191.0045(b).*

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*Fees received for performing duties as a local registrar are required to be deposited in the treasury and are not personal compensation for the justice. OP. A.G. No. GA-0145 (2004).*

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### **Local Registrars Collect the Same Fees as the Department**

A local registrar who issues a certified copy of a birth or death certificate shall collect the same fees as collected by the Department of State Health Services. *Health and Safety Code § 191.0045(d).* A fee shall be collected by the registrar on the issuance of a vital statistics record, including a record issued through a Remote Birth Access site. *Health and Safety Code § 191.0045(i).*

### **Fees Retained and Remitted for Issuing Birth Certificates**

A local registrar who collects a fee for a certified copy of a birth certificate shall deduct 20 cents of that fee to apply to the registrar's administrative costs and remit \$1.80 of that fee to the comptroller. *Health and Safety Code § 191.022(f).*

### **Additional Fees**

An additional \$2 fee shall be collected for each of the following:

- Issuing a certified copy of a certificate of birth;
- Issuing a wallet sized certification of birth; **and**
- Conducting a search for a birth certificate.

*Health and Safety Code § 191.0045(e).*

A local registrar may collect a fee not to exceed \$1 for:

- Preserving vital statistics records maintained by the registrar, including birth, death, fetal death, marriage, divorce, and annulment records;

- Training registrar employees regarding vital statistics record; **and**
- Ensuring the safety and security of vital statistics records.

*Health and Safety Code § 191.0045(h).*

### **Fee Exemptions**

A local registrar shall not charge a fee that is associated with searching for or providing a record, including a certified copy of a birth record, if the applicant states that he or she is requesting the record for the purpose of obtaining an election identification certificate under Section 521A.001, Transportation Code. *Health and Safety Code § 191.0046(e).*

## **7. Reporting Requirements**

Each local registrar shall submit a self-assessment report to the state registrar annually. The Department of State Health Services shall prescribe the information that must be included in the report to allow a thorough desk audit of a local registrar.

On the 10<sup>th</sup> day of each month, the local registrar shall send to the state registrar:

- the original certificates that the local registrar registered during the preceding month, **and**
- a report of no births or deaths on a card provided for that purpose if no births or deaths occurred during the preceding month.

*Health and Safety Code § 191.029.*

On the 10<sup>th</sup> day of each month, the local registrar shall send to the state registrar:

- the original certificates that the local registrar registered during the preceding month, **and**
- a report of no births or deaths on a card provided for that purpose if no births or deaths occurred during the preceding month.

*Health and Safety Code § 191.029.*

On the state registrar's demand, a person, including a local registrar, who has information relating to a birth, death, or fetal death shall supply the information to the state registrar in person, by mail, or through the local registrar. The person shall supply the information on a form provided by DSHS or on the original certificate. *Health and Safety Code § 191.024(a).*

The local registrar must sign each report made to DSHS. *Health and Safety Code § 191.022(d)*.

## D. Marriage Ceremonies

Justices of the peace and certain retired justices of the peace are authorized to conduct marriage ceremonies in any county in Texas as long as the marriage license was issued in Texas. [Cummings v. State](#).

A Texas justice of the peace cannot perform a wedding in another state using a Texas license and cannot perform a wedding in Texas using another state's license.

There is no official or mandatory wedding ceremony or ritual in Texas.

### 1. Wedding Advertising and Fees

A justice of the peace may receive, in addition to salary, all fees, commissions, or payments for performing marriage ceremonies (whether performed during regular office hours or after hours), as long as they do not take advantage of their official position to conduct such services. However, a justice of the peace may not advertise that they perform marriage ceremonies. *Local Government Code § 154.005(a)*; [Judicial Opinion 236 \(1998\)](#).

### 2. Requirements Related to the Marriage License

Two people desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk of any county in Texas. *Family Code § 2.001(a)*. Both people applying for a marriage license must be at least 18 years old or have court documentation that they have been emancipated and the disabilities of minority have been removed. *Family Code § 2.101*.

### *Which Retired Justices of the Peace Can Perform Marriages?*

A former justice of the peace can perform marriages if they:

- are vested in the Judicial Retirement System of Texas, **or**
- have served at least 12 years on the bench (these do not have to be consecutive and can be combined with years on other benches, such as county or district court).

*Family Code § 2.202(a)(4)*

Upon receiving an unexpired marriage license, a justice of the peace may conduct the marriage ceremony. *Family Code § 2.203(a)*.

A marriage license expires 90 days after it is issued, therefore a marriage ceremony must occur within 89 days of the license being issued. *Family Code § 2.201*.

### **Filling Out and Returning License**

The person who conducts a marriage ceremony must:

- write the date the ceremony is performed,
- write the county where the marriage occurred,
- write their name on the license,
- sign the license, **and**
- return it to the county clerk who issued it, no more than thirty days after the ceremony is conducted.

*Family Code § 2.206*.

If a justice of the peace conducts a marriage ceremony, it is his or her responsibility to return the marriage license to the county clerk in the county it was issued. *Family Code § 2.206*.



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If a justice of the peace relies upon, asks, or allows the people married to return the license, the justice could get in trouble if the license is never returned. In this situation, the justice should make sure the people know they have thirty days to return the license or should return it himself or herself to be safe.

### **3. 72-Hour Waiting Period and Waiver**

#### **Waiting Period**

A marriage ceremony cannot take place during the 72-hour period immediately following the issuance of the marriage license unless at least one of the applicants:

- is a member of the military and on active duty,
- is not a member of the military, but performs work for the United States Department of Defense as a department employee or under a contract with the department,
- obtains a written waiver, **or**



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- completes a premarital education course and provides to the county clerk a course completion certificate taken less than one year before the marriage license application is filed.

*Family Code § 2.204(a)-(b).*

### **Waiver**

An applicant may request a written waiver permitting the marriage ceremony to take place during the 72-hour period immediately following the issuance of the marriage license from:

- a judge with family law jurisdiction,
- a supreme court justice,
- an appeals judge, **or**
- a county judge.

If the judge finds there is good cause for the marriage to take place during the waiting period, the judge shall sign the waiver. *Family Code § 2.204(c).*



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A justice of the peace may not issue a waiver to the 72-hour waiting period.

A marriage performed during the 72-hour period immediately following the issuance of the marriage license may be annulled if a party to the marriage requests an annulment. *Family Code § 6.110(a).* A suit for annulment must be brought within 30 days of the marriage ceremony occurring. *Family Code § 6.110(b).*

## **4. Same-Sex Marriages**

### **Marriage Licenses**

The Fourteenth Amendment requires states to issue marriage licenses to same-sex couples. The right to marry is protected by the Constitution and excluding same-sex couples from marriage conflicts with that right.

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*Even though the Family Code says a marriage license cannot be issued for same-sex couples, the Supreme Court has said that failing to recognize a same-sex marriage violates the United States Constitution. Obergefell v. Hodges.*

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### Performing Same-Sex Marriages

A justice of the peace has the choice to perform all marriage ceremonies or no marriage ceremonies, but can't discriminate by performing opposite-sex ceremonies and not same-sex ceremonies.

In performing a marriage ceremony, a justice of the peace is a state actor, but does not have governmental or judicial immunity in a federal civil rights discrimination lawsuit.

*Can a Judge Refuse to Perform Same-Sex Marriage Ceremonies?*

**Yes**, but then they can't perform opposite-sex marriage ceremonies either.



### Discrimination and Removal from Office

A person authorized to conduct a marriage ceremony is prohibited from discriminating on the basis of race, religion, or national origin against an applicant who is otherwise competent to be married.

If the State Commission on Judicial Conduct determines a justice of the peace has intentionally engaged in discrimination, the Commission may recommend the justice be removed from office. *Family Code § 2.205.*

### 5. Marriage by Proxy

A person can be married by proxy, by having someone stand in for them at the ceremony, but only if that person:

- is in the military,
- is stationed in another country, **and**
- cannot be present at his or her wedding.

*Family Code § 2.203.*

The person seeking marriage by proxy must submit an Affidavit of Absent Applicant to the county clerk. The Applicant must include:

- his or her personal information,
- wedding details,
- reason for the absence, **and**

- name an adult, other than the person they are going to marry, who will stand in for the marriage for the purpose of participating in the ceremony.

*Family Code § 2.007.*

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*Marriage by proxy where at least one of the parties to the marriage is incarcerated is not allowed. Though it was previously allowed, the law was changed in 2013 by House Bill 869.*

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## **E. Collecting Fines, Fees, and Costs**

Each justice of the peace is authorized to charge and collect fines, fees, and costs, subject to the terms and restrictions of relevant law. Please see the *Fines, Fees, and Costs Deskbook* for more information.

## **F. Education Requirements**

The educational requirements for justices of the peace are found in Government Code Section 27.005, as well as the Rules of Judicial Education, which are created by the Texas Court of Criminal Appeals. *Government Code § 56.005*. Failure to complete educational requirements is considered “incompetence” and is grounds for removal from office. *Government Code § 27.005(a); Local Government Code § 87.011, 87.013.*

[\*Read the Rules of Judicial Education.\*](#)

### **1. Non-Attorney Justice of the Peace Education Requirements**

- **First year:** 80 hours of education in the performance of the judge’s duties. These must be obtained from the Texas Justice Court Training Center within one year from when the judge is first elected. 40 of the required hours must be met by attending a live course, and the remaining 40 hours may consist of hours achieved by electronic means. A justice of the peace must also receive eight hours of training on magistration duties, including the DPS course required to access criminal history record information, within the first 90 days after taking office. Any



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magistrate in office on April 1, 2022 has until December 1, 2022 to fulfill these requirements. *Government Code § 27.005(a); Code of Criminal Procedure Arts. 17.024, 17.0501.*

- **Second and subsequent years:** 20 hours of education approved by a justice court education committee in the performance of the judge's duties. At least 10 of the total required hours must be met by attending courses provided by the Texas Justice Court Training Center. The remaining hours may be achieved through courses sponsored by any approved provider. Up to 10 of the total hours may be satisfied by electronic courses. At least 10 of the total hours must include instruction regarding substantive, procedural, and evidentiary law in civil matters in accordance with Section 27.005(a) of the Government Code. A justice of the peace in office on April 1, 2022 must receive eight hours of training on magistration duties, including the DPS course required to access criminal history record information, by December 1, 2022. All justices of the peace must complete two hours of magistration training each subsequent fiscal biennium (two-year period beginning on September 1 of odd-numbered years, for example, September 1, 2021 through August 31, 2023) after they have completed the initial eight hours of training described above and in the first year education requirements. *Government Code § 27.005(a); Code of Criminal Procedure Arts. 17.024, 17.0501.*
- **Every fiscal year ending in 0 or 5:** Two hours of course instruction related to understanding relevant issues of child welfare and the Individuals with Disabilities Education Act. This may be completed through any live course or through an electronic course provided by the Texas Justice Court Training Center.

**Note:** All electronic courses must include interactive components and the participation time in electronic courses must be verified.

## 2. **Attorney Justice of the Peace Education Requirements**

- **First year:** 80 hours of education in the performance of the judge's duties. These must be obtained from the Texas Justice Court Training Center within one year from when the judge is first elected. 40 of the required hours must be met by attending a live course, and the remaining 40 hours may consist of hours achieved

by electronic means. A justice of the peace must also receive eight hours of training on magistration duties, including the DPS course required to access criminal history record information, within the first 90 days after taking office. Any magistrate in office on April 1, 2022 has until December 1, 2022 to fulfill these requirements. *Government Code § 27.005(a); Code of Criminal Procedure Arts. 17.024, 17.0501.*

- **Second and subsequent years:** 20 hours of education in the performance of the judge's duties. These may be obtained from any entity listed in Rule 2c of the Rules of Judicial Education, and up to 10 hours may be completed by electronic means. At least 10 of the total hours must include instruction regarding substantive, procedural, and evidentiary law in civil matters in accordance with Section 27.005(a) of the Government Code. A justice of the peace in office on April 1, 2022 must receive eight hours of training on magistration duties, including the DPS course required to access criminal history record information, by December 1, 2022. All justices of the peace must complete two hours of magistration training each subsequent fiscal biennium (two-year period beginning on September 1 of odd-numbered years, for example, September 1, 2021 through August 31, 2023) after they have completed the initial eight hours of training described above and in the first-year education requirements. *Government Code § 27.005(a); Code of Criminal Procedure Arts. 17.024, 17.0501.*
- **Every fiscal year ending in 0 or 5:** Two hours of course instruction related to understanding relevant issues of child welfare and the Individuals with Disabilities Education Act. This may be completed through any live or electronic course provided by any entity listed in Rule 2c of the Rules of Judicial Education.

**Note:** All electronic courses must include interactive components and the participation time in electronic courses must be verified.

## Chapter 4: Ethics

The legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws. A justice of the peace is the arbiter of facts and law for the resolution of disputes.

Because the judge is a highly visible symbol of government, it is important that parties to a case, and the public in general, perceive those actions taken by the justice of the peace result in fair trials and that the court process is equitable and just. Public confidence is the cornerstone of the judicial system. Justices should be diligent to ensure their actions are above reproach and not subject to criticism due to any perceived conflicts, whether real or imagined.

### A. Code of Judicial Conduct

The Code of Judicial Conduct contains eight canons that establish standards for a judge's conduct on and off the bench. The objective of the Code is to establish basic standards which should govern the conduct of all judges and provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct. It is not intended as an exhaustive guide for the conduct of judges. Judges should also be governed in their judicial and personal conduct by general ethical standards. Judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in the legal system.



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The canons are discussed in the text as they apply to justices of the peace. [Read the Code of Judicial Conduct.](#)



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The Committee on Judicial Ethics, appointed by the Judicial Section of the State Bar of Texas, renders advisory opinions on the Code of Judicial Conduct to assist judges with understanding and properly implementing the canons. Some opinions are included in this deskbook to help illustrate certain situations. [Read Judicial Ethics Opinions.](#)

**1. Canon 1 – Upholding the Integrity and Independence of the Judiciary**

A justice of the peace should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved.

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*A justice of the peace should not be the subject of a fund-raising “roast” because such activity could undermine the high standards and integrity of the office. Judicial Opinion 198 (1996).*

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*A justice cannot, at any time, act as a prosecutor in any capacity. If the justice of the peace is prosecuting cases within its jurisdiction, especially contacting defendants for guilty plea arrangements, then the justice is violating the Code of Judicial Conduct and the Texas Constitution. Judicial Opinion 225 (1998).*

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**2. Canon 2 – Avoiding Impropriety and the Appearance of Impropriety in All of the Justice’s Activities**

**A Justice of the Peace Must Comply with the Law**

A justice of the peace must comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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*A justice may not publicly endorse a candidate for public office because it involves the use of the prestige of the justice and the prestige of his office. A justice’s involvement in another person’s political race gives the public reason to question the justice’s independence. Judicial Opinion 73 (1984).*

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*A justice of the peace may not be employed as a peace officer or bailiff because this would create an appearance of impropriety. If the justice is a certified peace officer, the justice must be on inactive status as a peace officer. Judicial Opinion 242 (1999).*

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### **A Justice of the Peace Must Not Be Improperly Influenced by a Relationship**

A justice must not allow any relationship to influence judicial conduct or judgement. A justice shall not lend the prestige of judicial office to advance the private interests of the justice or others; nor shall a justice convey, or permit others to convey, the impression that they are in a special position to influence the justice.

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*Courts may not allow a law firm to post court dockets on the firm's web page. This would lend the prestige of the judicial office to a private firm and would give the impression that the firm has a special ability to influence the judiciary. Judicial Opinion 248 (1999).*

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*Brochures that announce the availability of a county bar sponsored lawyer referral service may be allowed in the courtroom and other public areas in the courthouse. Doing so promotes meaningful access to the legal system for all persons regardless of their economic conditions, and the justice is not promoting an individual lawyer but assisting the public to locate a lawyer. Judicial Opinion 203 (1996).*

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A justice of the peace shall not testify voluntarily as a character witness.

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*A justice of the peace may write letters of recommendation and allow his name to be used as a reference so long as the recommendation comes from personal knowledge, and the recommendation or reference is given to a specific person for a specific use. Judicial Opinion 222 (1998).*

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### **No Participation in Discriminatory Organizations**

A justice of the peace shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

### 3. Canon 3 – Performing the Duties of the Judicial Office Impartially and Diligently

#### Judicial Duties Take Precedence

The judicial duties of a justice take precedence over all the justice’s other activities. Judicial duties include all the duties of the justice’s office prescribed by law; adjudicative, administrative, and disciplinary responsibilities.

A justice should dispose of all judicial matters promptly, efficiently, and fairly. A justice can be admonished for refusing to accept filings for cases that are properly within the court’s jurisdiction or unreasonably delaying in signing and issuing arrest warrants.

#### *What if a Justice Doesn’t Accept a Case They Should Have?*

A justice can be admonished for refusing to accept filings for cases that are properly within the court’s jurisdiction.

#### **A Justice Must Hear All Matters Unless Disqualification is Required**

A justice of the peace shall hear and decide matters assigned to him, except those in which disqualification is required or recusal is appropriate.

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*A justice should recuse himself from presiding over a case in which a defendant has civil actions pending against the justice in another court. Judicial Opinion 172 (1994).*

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#### **A Justice Must Be Faithful to and Competent in the Law**

A justice of the peace should be faithful to the law and must maintain professional competence in it. A justice must not be swayed by partisan interests, public clamor, or fear of criticism. He or she shall perform judicial duties without bias or prejudice.

### **Order and Decorum Required**

A justice shall require order and decorum in proceedings before him, and shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the justice deals in an official capacity. Similar conduct should be required of lawyers, staff, court officials, and others subject to the justice's direction and control.

### **No Bias or Prejudice by a Justice of the Peace, Attorneys, or Those Under the Justice's Control**

A justice shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not knowingly permit staff, court officials, and others subject to the justice's direction and control to do so. Lawyers appearing before the court are also required to refrain from exhibiting, by words or conduct, such bias or prejudice.

This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

### **A Justice Must Not Comment About Cases**

A justice may not talk about the position he takes on a pending or impending proceeding which may come before the justice's court. This applies to a candidate for judicial office with respect to judicial proceedings pending or impending in the court in which the candidate would serve if elected. It does not apply to proceedings in which the justice or judicial candidate is a litigant in a personal capacity.

Similar abstention shall be required from court personnel who are subject to the justice's direction and control.

### *I Can Get in Trouble for That?*

A justice can be reprimanded for addressing lawyers, litigants, witnesses, and others with indecorous and discourteous language, or for using racial or ethnic epithets from the bench.

A justice can also be reprimanded for losing his temper and abusing the court's contempt powers.

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*Because a decision can be revisited, a justice may not write an opinion or editorial piece discussing his stated position on a case or respond publicly to criticism of his actions in the case.*

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## Justices of the Peace May Explain Court Procedure to the Public

A justice of the peace is allowed to make public statements in the course of their official duties or explain, for public information, the procedures of the court.

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*Justices may explain court procedure but may not discuss pending matters.  
Judicial Opinion 209 (1997).*

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## Disclosure of Nonpublic Information Unrelated to Judicial Duties is Prohibited

A justice of the peace shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of justices and court personnel about cases are confidences of the court and shall be revealed only through a court's judgment, or written opinion.

## Administrative Duties Should Be Promptly Discharged

Administrative responsibilities should be diligently and promptly discharged without bias or prejudice. Justices should maintain professional competence in judicial administration and cooperate with other judges and court officials in the administration of court business.

## Staff and Court Officials Must Refrain from Bias and Prejudice

Staff, court officials, and others subject to a justice of the peace's direction and control should observe the same standards of fidelity and diligence that apply to the justice and should refrain from manifesting bias or prejudice in the performance of their official duties.

## No Unnecessary Appointments, Nepotism, or Favoritism

A justice shall not make unnecessary appointments and shall exercise the power of appointment impartially and on the basis of merit. A justice shall avoid nepotism and favoritism, and shall not approve compensation of appointees beyond the fair value of services rendered.



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*Am I Responsible for  
My Staff's Actions?*

**Yes!** A justice of the peace can be sanctioned for his employees' non-compliance with the judicial code. *Judicial Opinion 106 (1987).*

### **Justices of the Peace Must Comply with Rules Regarding Public Access to Records**

Rules regarding public access to judicial records, found in Rule 12 of the Rules of Judicial Administration and discussed in Chapter 3 of the *Recordkeeping and Reporting Deskbook*, must be followed. Failure to comply is a knowing violation of the rule.

#### **A Justice Must Act if He or She Knows Another Judge Has Violated the Code**

A justice with information that clearly establishes that another judge or justice has committed a violation of this code should take appropriate action. A justice having knowledge that another judge or justice has committed a violation of this code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

#### ***Do I Have to Get Involved?***

If a justice of the peace knows another judge, justice of the peace, or attorney has violated rules of conduct, the justice of the peace must take appropriate action.

#### **A Justice Must Act if He or She Knows an Attorney Has Violated Their Rules of Conduct**

A justice who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A justice having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

#### **4. Canon 4 – Conducting the Justice's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations**

A justice of the peace shall conduct all of his or her extra-judicial activities so that they do not cast reasonable doubt on the justice's capacity to act impartially as a justice or interfere with the proper performance of judicial duties.

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*A justice may not serve as a member of a Board of Directors of a non-profit corporation that trains volunteers and employs professional staff that are appointed by the justice to serve as guardians of incapacitated or minor persons because the qualifications and competence of a guardian must be determined and approved by the justice. A justice cannot rule on the qualifications and competence of an individual trained by a corporation if the justice is a member of the board of that corporation because such action creates an appearance of impropriety regarding the justice's capacity to act impartially. Judicial Opinion 240 (1999).*

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### **Speaking, Writing, and Teaching Allowed**

A justice of the peace may speak, write, lecture, teach, and participate in extra-judicial activities concerning:

- the law,
- the legal system,
- the administration of justice, **and**
- non-legal subjects.

### **Justices Allowed to Serve on Boards Where Activities Are Related to the Improvement of Law**

A justice may also serve as a member, officer, or director of an organization or governmental agency devoted to:

- the improvement of the law,
- the legal system, **or**
- the administration of justice.

The justice may assist such an organization in raising funds and may participate in their management and investment but **should not** personally participate in public fund-raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

### **Civic or Charitable Activities**

A justice may participate in civic and charitable activities that do not reflect adversely upon the justice's impartiality or interfere with the performance of judicial duties. A justice may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

- A justice should not serve if it is likely the organization will be engaged in proceedings that would ordinarily come before the justice or will be regularly or frequently engaged in adversary proceedings in any court;
- The justice shall not solicit funds for such an organization, but may be a speaker or a guest of honor at the organization's fund-raising events; **and**
- A justice should not give investment advice, but may serve on the board of directors or trustees even though the board has the responsibility for approving investment decisions.

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*The name of a justice of the peace who is director of a non-profit organization may appear on the letterhead as a director on a fund-raising letter, but the justice may not serve as the chairperson of the annual fundraiser because the position of chairperson entails duties that are so connected to fundraising that it would constitute fundraising. Judicial Opinion 245 (1999); Judicial Opinion 249 (1999).*

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*A justice may serve on an honorary committee for a charity fund raiser as long as the justice does no actual fundraising since such a position is analogous to being a speaker or guest of honor. Judicial Opinion 251 (1999).*

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*A justice may appear on television in a public service announcement for a non-profit organization asking people to volunteer their time so long as the prestige of the judicial office is not used. The justice may be identified as a justice of the peace, but should not appear in his robe because this would inappropriately lend the prestige of office to the activity. Judicial Opinion 253 (1999).*

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## Financial Activities That Must Be Avoided

A justice of the peace shall refrain from financial and business dealings that tend to:

- reflect adversely on the justice’s impartiality,
- interfere with the proper performance of judicial duties,
- exploit his or her judicial position, **or**
- involve the justice in frequent transactions with lawyers or persons likely to come before the justice’s court.

This limitation does not prohibit a justice or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

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*A justice may not portray a judge on a television show for compensation or be employed as a consultant sharing technical expertise with writers of such a show because that would be exploiting the judicial office for financial gain. Such activities are not prohibited if the justice is not paid, so long as all other portions of the judicial code are followed. Judicial Opinion 204 (1997).*

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## Gifts, Favors, and Loans Are Subject to Strict Guidelines

Neither a justice of the peace nor a family member residing in the justice’s household shall accept a gift, bequest, favor, or loan from anyone except as follows:

- Gifts incident to public honor of a justice, books and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to a justice and spouse to attend a bar-related function or activity devoted to the improvement of law, the legal system, or the administrations of justice are allowed;

### *What if Someone Gives Me a Gift?*

Whether or not a gift can be accepted depends upon many factors such as:

- the type of gift,
- the amount of the gift, **and**
- the relationship between the justice and the person giving the gift.

- Ordinary social hospitality, a gift, bequest, favor, or loan from a relative, a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship, a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges, or a scholarship or fellowship awarded on the same terms applied to other applicants may be accepted;
- Acceptance of any other gift, bequest, favor, or loan is allowed as long as the donor is not a party or person whose interests have come, or are likely to come, before the justice; **and**
- A gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or family member residing in the justice's household, including gifts, awards, and benefits for the use of both the spouse or family member and the justice as spouse or family member, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the justice in the performance of judicial duties.

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*Justices and court staff may not accept holiday or seasonal gifts from lawyers or law firms unless they are personal friends. Where a friendship exists, the gift must be commensurate with the occasion and relationship. Attending a holiday party at a law firm is allowed as long as the party is open to people other than judges and their staff. Judicial Opinion 194 (1996).*

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### **Service as Arbitrator or Mediator**

If a justice court has jurisdiction of a matter or of parties involved in arbitration or mediation, an active full-time justice of the peace shall not act as an arbitrator or mediator for compensation outside the judicial system, but may encourage settlement in the performance of official duties. This does not mean a justice of the peace can ask parties what they would accept to make a case go away. This means the justice can suggest the parties go to mediation or the parties and their attorneys try to work out the case before trial becomes a necessity.

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*A justice who has suffered a catastrophic loss such as a house burning down may not accept gifts from lawyers or parties who have come or might come before the court, even if the gifts or donations were placed in a blind trust. Judicial Opinion 215 (1997).*

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### **Practice of Law**

A justice of the peace who is not an attorney shall not practice law except in his or her capacity as a justice court judge. However, a justice may act pro se and may, without compensation, give legal advice to, and draft or review documents for a family member. A justice of the peace who is an attorney may practice law, but must not appear in his or her own court as an attorney, or handle anything related to a case in which the justice has served as a judge.

### **Compensation for Extra-Judicial Activities**

Compensation and reimbursement of expenses for permitted extra-judicial activities may be received by the justice **if** the source of such payments does not give the appearance of influencing the justice's performance of judicial duties or otherwise give the appearance of impropriety. Compensation shall not exceed a reasonable amount, nor shall it exceed what a person who is not a judge would receive for the same activity.

Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the justice and, where appropriate to the occasion, by the justice's family. Any payment in excess of such an amount is compensation.

### **Financial Reports Must Be Filed as Required by Law**

A justice of the peace shall file financial and other reports as required by law.

## 5. Canon 5 – Refraining from Inappropriate Political Activity

A justice of the peace or judicial candidate shall not:

- make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest that the justice is predisposed to a probable decision in cases within the scope of the pledge,
- knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent, **or**
- make a statement about pending or impending proceedings that may come before the justice’s court that suggests the justice’s probable decision in a specific case.

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*A candidate for justice of the peace who is a former justice of the peace may not imply in his political advertising that he is a current justice of the peace. Judicial Opinion 193 (1996).*

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### **A Justice of the Peace Can’t Publicly Endorse Another Candidate for Office**

A justice of the peace or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party.

A justice or judicial candidate may attend political events and express his or her views on political matters so long as he or she does not make a statement about pending or impending proceedings that may come before the justice’s court that suggests the justice’s probable decision in a specific case.

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*A justice of the peace and constable’s association may not endorse candidates for political office even if the group contains some non-judicial members. Judicial Opinion 224 (1998).*

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### **A Justice Must Resign if Running for a Non-Judicial Office in a Contested Election**

A justice of the peace shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office. A justice may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, or while being a candidate for election to any judicial office.



COMMON  
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In addition, a justice of the peace automatically resigns his or her position if they announce candidacy or become a candidate for **any** elective office (other than the one they currently hold) when they have more than one year, and 30 days left in their current term. *Texas Constitution Art. 16, § 65.*

## **6. Canon 6 – Compliance with the Code of Judicial Conduct**

### **Ex Parte Communications**

A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.

This does not prohibit communications concerning:

- uncontested administrative matters,
- uncontested procedural matters,
- magistrate duties and functions,
- determining where jurisdiction of an impending claim or dispute may lie,
- determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,
- mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense, **or**
- any other matters where *ex parte* communications are contemplated or authorized by law.

### **Temporary Justices Must Abide by the Code**

A temporary justice, while acting as such, shall comply with all provisions of this Code applicable to the court on which he or she is serving, and after serving as a temporary justice, should not act as a lawyer in a proceeding in which he or she has served or in any other related proceeding.



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### **Applicability of the Code to Judicial Candidates**

Any person seeking elective judicial office shall be subject to the same standards regarding inappropriate political activity that are required of members of the judiciary.

### **Violations of the Code**

Any justice of the peace who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct. Any lawyer who is a candidate seeking judicial office who violates the provisions regarding inappropriate political activity or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.

The conduct of any other candidate for elective judicial office who is not a justice of the peace or attorney who violates the provisions regarding inappropriate political activity or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

### **7. Canon 7 – Effective Date of Compliance**

A justice of the peace should arrange his or her affairs as soon as reasonably possible to comply with the Code.

### **8. Canon 8 – Construction and Terminology of the Code**

#### **The Code Establishes Basic Standards for Ethical Conduct**

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. The sections are rules of reason, which should be applied

### ***What Happens if I Violate the Code?***

Any justice of the peace who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.

### ***Terminology***

- “Shall” or “shall not” - required obligations which can result in disciplinary action if violated.
- “Should” or “should not” – conduct that is or is not appropriate, but is not a binding rule under which a judge may be disciplined.
- “May” – permissible discretion or, depending on the context, action that is not covered by specific prohibitions.

consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances.

### **The Code is Not Intended to Hinder Judges' Decision-Making Abilities**

The Code is to be construed so as not to hinder the essential independence of judges in making judicial decisions.

### **The Code is Designed to Provide Guidance and Structure**

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. The purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in proceeding.



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### **Disciplinary Action Dependent Upon Multiple Factors**

It is not intended that every transgression will result in disciplinary action. Whether disciplinary action is appropriate and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as:

- the seriousness of the transgression,
- whether there is a pattern of improper activity, **and**
- the effect of the improper activity on others or on the judicial system.

## **B. Disqualification**

Justices of the peace may be removed from a particular case because they are constitutionally disqualified from hearing a case or because they are subject to statutory prohibitions that prevent them from hearing it. *Texas Constitution Art. 5 § 11; Government Code § 27.055; Code of Criminal Procedure Art. 30.07.*

### **1. When is a Justice of the Peace Disqualified?**

A justice of the peace is disqualified from any proceeding or stage of litigation in which:



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- the justice served at any time as a lawyer in the matter in controversy, or a lawyer the justice previously practiced law with is a lawyer in the matter in controversy,
- the justice knows that, individually or as a fiduciary, the justice has an interest in the subject matter in controversy, **or**
- any of the parties to the case may be related to the justice by affinity or consanguinity within the third degree. See [pages 87-89](#).

*Texas Constitution Art. 5 § 11; Government Code § 27.055; Rule 18b(a); Code of Criminal Procedure Art. 30.01; Texas Code of Judicial Conduct Canons 1-3.*

### **Who is a Fiduciary?**

Fiduciary includes relationships such as executor, administrator, trustee, or guardian. *Rule 18b(d)(3)*.

### **What Counts as a Financial Interest?**

A financial interest is ownership of an interest, no matter how small, or a relationship as director, advisor, or other active participant in the affairs of a party.

Situations that don't count as financial interests:

- Ownership in a mutual or common investment fund that holds securities does not create a financial interest in those securities unless the justice participates in the management of the fund;
- An office in an educational, religious, charitable, fraternal, or civic organization does not have a financial interest in securities held by the organization;
- The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest creates a financial interest in the organization only if the outcome of the court proceeding could substantially affect the value of the interest;

- Ownership of government securities creates a financial interest in the issuer only if the outcome of the court proceeding could substantially affect the value of the securities;
- An interest as a taxpayer or utility ratepayer, or any similar interest, does not create a financial interest unless the outcome of the court proceeding could substantially affect the liability of the justice or a person related to him within the third degree, more than the liability of other judges or justices.

*Rule 18b(d)(4).*

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*The interest which disqualifies a judge is “that interest, however small, which rests upon a direct pecuniary or personal interest in the result of the case presented to the judge or court.” Cameron v. Greenhill.*

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## **2. Consanguinity**

As noted above, a judge may not be related to any party by consanguinity within the third degree. The term “party” includes all people directly interested in the subject matter and result of the suit, whether or not their names appear in the record.

Two individuals are related to each other by consanguinity if they are related by blood because one is a descendant of the other, or they share a common ancestor. *Government Code § 573.022(a)*. An adopted child is considered a natural child of the adoptive parent for purposes of determining consanguinity. *Government Code § 573.022(b)*.

### **Determining Degree of Consanguinity**

The degree of consanguinity between an individual and the individual’s descendant is determined by the number of generations that separate them:

- A parent and child are related in the first degree,
- A grandparent and grandchild in the second degree,
- A great-grandparent and great-grandchild in the third degree and so on.

*Government Code § 573.023(a).*

If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding the number of generations between the individual and the nearest common ancestor of the individual to the number of generations between the relative and the nearest common ancestor. *Government Code § 573.023(a)*. See example.

### **Relatives Within the Third Degree by Consanguinity**

An individual's relatives within the third degree by consanguinity are the individual's:

- Relatives in the first degree: a parent or child,
- Relatives in the second degree: a brother, sister, grandparent, or grandchild, **and**
- Relatives in the third degree: a great-grandparent, great-grandchild, aunt who is a sister of the individual's parent, uncle who is a brother of the individual's parent, nephew who is a child of the individual's brother or sister, or niece who is a child of the individual's brother or sister.

*Government Code § 573.023(c)*.

### **3. Affinity**

As noted above, a judge may not be related to any party by affinity within the third degree. The term "party" includes all people directly interested in the subject matter and result of the suit, whether or not their names appear in the record.

Two individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual.

*Government Code § 573.024(a)*.

### ***Common Ancestor Consanguinity Example:***

Bob and Sally are cousins.

Bob's father and Sally's mother are brother and sister.

The nearest common ancestor between Bob and Sally are their grandparents.

Bob is a relative in the second degree of their grandparents.

Sally is also a relative in the second degree of their grandparents.

Therefore, **Bob and Sally are relatives in the fourth degree** since you add Bob's degree of relationship to their grandparents with Sally's degree of relationship with their grandparents.

Ending of a marriage by divorce or death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living. In that case, the marriage is considered to continue as long as a child of that marriage lives. *Government Code § 573.024(b)*.

### **Determining Degree of Affinity**

A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity.

If two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity. See example. *Government Code § 573.025(a)*.

### **Relatives Within the Third Degree by Affinity**

An individual's relatives within the third degree by affinity are:

- anyone related by consanguinity to the individual's spouse as determined for consanguinity in the third degree, **and**
- the spouse of anyone related to the individual by consanguinity as determined for consanguinity in the third degree.

*Government Code § 573.025(b)*.

## **4. Degree of Consanguinity and Affinity Chart**

[Click Here to Open the Degree of Consanguinity and Affinity Chart](#)

### ***Affinity Example:***

Susie is married to David. Susie and David are related to each other by affinity.

David's brother is Ted. Because David and Ted are related by consanguinity, Susie and Ted are related by affinity.

Because David and Ted are related to each other in the second degree of consanguinity, **Susie and Ted are related in the second degree of affinity.**

## 5. Procedure When a Justice is Disqualified

Another judge will need to hear the case if the judge who currently has the case is disqualified. If it is a criminal case, it must be transferred. For other cases, transfer, bench exchange, or appointment of a temporary justice are all options. See [pages 30-35](#) of this volume for information on the requirements for all of these procedures.

If a disqualified justice of the peace renders a judgment on a case, the judgment is void. This means that the judgment has no effect and may not be enforced.

[Harrison v. Lokey.](#)

### C. Recusal

Recusal from a case occurs when a justice of the peace is not statutorily prohibited from hearing the case, but the justice's relationship to some of the parties involved, or the nature of the case, may cast doubt upon the justice's ability to rule objectively.

#### 1. Grounds for Recusal

A justice must recuse himself from any proceeding in which:

- the justice's impartiality might reasonably be questioned,
- the justice has a personal bias or prejudice concerning the subject matter or a party,
- the justice has personal knowledge of disputed evidentiary facts in the proceeding,
- the justice or a lawyer with whom the justice previously practiced law has been a material witness in the proceeding,

### *Disqualification v. Recusal*

**Disqualification:** Constitution or statute specifically says the justice cannot hear the case due to his or her relationship with some part of, or party to, the case.

**Recusal:** the justice isn't prohibited from hearing the case, but hearing it could cast doubt upon the justice's ability to rule objectively due to a justice's relationship to a party, or the nature of the case.

- the justice participated as counsel, advisor, or material witness in the matter in controversy, or expressed an opinion concerning the merits of it while acting as an attorney in government service,
- the justice knows that he, individually or as a fiduciary, or the justice's spouse or minor child residing in the justice's household, has a financial interest in the subject matter in controversy, in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding,
- the justice, the justice's spouse, a person within the third degree of relationship to either of them, or the spouse of such a person:
  - is a party to the proceeding or an officer, director, or trustee of a party,
  - is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding, **or**
  - is, to the justice's knowledge, likely to be a material witness in the proceeding, **or**
- the justice, the justice's spouse, a person within the first degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

*Rule 18b(b)(1)-(8); Texas Code of Judicial Conduct Canons 1-3.*

### **A Justice Should Have Knowledge of His or Her Financial Interests and His or Her Spouse's**

A justice of the peace should inform himself about personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in the household. *Rule 18b(c).*

### **Recusal Not Required if a Justice Divests Himself or Herself of a Financial Interest Requiring Recusal**

If a justice of the peace does not discover that he or she is recused from a case due to financial interests or other interests that could be substantially affected by the outcome of the proceeding until after the justice of the peace has devoted substantial time to the matter, the justice is not required to recuse himself or herself if the justice or the person

related to the justice divests himself or herself of the interest that would otherwise require recusal. *Rule 18b(f)*.

This applies to situations where one of the following people has a financial interest in the subject matter in controversy, in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding:

- The justice, individually or as a fiduciary,
- The justice's spouse,
- A minor child residing in the justice's household,
- A person related within the third degree of consanguinity or affinity to the justice or the justice's spouse, **or**
- The spouse of a person related within the third degree of consanguinity or affinity to the justice.

### *Can Disqualification or Recusal Be Waived?*

**Disqualification:** parties can't waive grounds for disqualification and a judgment is void if rendered by a disqualified justice.

**Recusal:** parties can waive grounds for recusal in a civil case after the reason is disclosed.

## 2. Waiver of Grounds for Recusal in Civil Cases



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The parties to a civil proceeding may waive any ground for recusal after it is fully disclosed on the record. *Rule 18b(e)*.

## 3. Procedure When a Justice Must Recuse

When a justice is unable to hear a case due to recusal, the following are all possible options depending on the situation:

- transfer,
- bench exchange, **or**
- appointment of a temporary justice.

For more information on the procedures for each of these, see [pages 30-35](#) of this volume.

## **D. Nepotism**

Nepotism is when a person in a position of power or influence shows favoritism to relatives or friends, especially by giving or appointing them to jobs.

### **No Appointment or Confirmation of Appointment of Relatives**

A justice of the peace may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

- the individual is related to the justice of the peace by consanguinity, **or**
- the justice of the peace holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court by consanguinity.

*Government Code § 573.041.*

### **Exception**

A nepotism prohibition does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

- the individual is already employed before the justice of the peace the individual is related to is elected or appointed, **and**
- prior employment of the individual is continuous for at least
  - 30 days if the justice is appointed,
  - six months if the justice is elected at an election other than the general election for state and county officers, **or**
  - one year if the justice is elected at the general election for state and county officers.

*Government Code § 573.062(a).*

If an individual continues in a position, the justice of the peace to whom the individual is related, may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual, if that action applies only to the individual and is not taken regarding a bona fide class or category of employees. *Government Code § 573.062(b).*

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*A justice of the peace cannot appoint or vote for the appointment of a child or someone they are related to by blood such as a brother, sister, aunt, uncle, cousin, or parent.*

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### **1. Removal from Office for Violating Nepotism Laws**



An individual who violates the laws regarding nepotism shall be removed from the individual's position. Removal must be made in accordance with any removal provisions in the Constitution if applicable. If the Constitution does not govern the removal, the removal is governed by Section 573.081, Government Code. *Government Code § 573.081(a).*

Removal from a position shall be made immediately and summarily if a criminal conviction against the appointee for a violation of the nepotism laws becomes final. *Government Code § 573.081(b).*

## **E. Campaigns and Contributions**

### **1. Political Contributions Cannot Be Converted to Personal Use**

A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. *Election Code § 253.035(a).*

### **2. Code of Fair Campaign Practices**

#### **Purpose of the Code of Fair Campaign Practices**

The legislature has created a Code of Fair Campaign Practices to encourage every candidate to follow the basic principles of decency, honesty, and fair play during their campaign. This was done to encourage healthy competition, open discussion of issues and candidate qualifications, and to discourage practices that cloud the issues or unfairly attack opponents. *Election Code § 258.002.*

### **Subscription to the Code of Fair Campaign Practices is Voluntary**

Subscription to the Code of Fair Campaign Practices is voluntary, however it is the intent of the legislature that every candidate will subscribe to the Code. When a candidate files its campaign treasurer appointment, the candidate will receive a blank Code of Fair Campaign Practices the candidate can sign and return to the authority with whom the campaign treasurer appointment is filed. *Election Code § 258.003.*

### **A Candidate Can Advertise Their Subscription to the Code if They Have Filed a Signed Copy**

A candidate that has filed a signed copy of the Code of Fair Campaign Practices may indicate their subscription on their political advertising. *Election Code § 258.008.*

### **Code of Fair Campaign Practices Pledge Promises**

The Code of Fair Campaign Practices pledge includes promises to:

- conduct the campaign openly, publicly, and limit attacks on opponents to legitimate challenges to the opponents' records and stated positions on issues,
- avoid the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or the candidate's personal or family life,
- avoid any appeal to negative prejudice based on race, sex, religion, or national origin,
- avoid the use of campaign material of any sort that misrepresents, distorts, or otherwise falsifies the facts, as well as avoiding the use of malicious or unfounded accusations that aim at creating or exploiting doubts, without justification, as to the personal integrity or patriotism of an opponent,
- avoid and not condone any dishonest or unethical practice that tends to corrupt or undermine the system of free elections or that hampers or prevents the full and free expression of the will of the voters, including any activity aimed at intimidating voters or discouraging them from voting,



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- defend and uphold the right of every qualified voter to full and equal participation in the electoral process, and not engage in any activity aimed at intimidating voters or discouraging them from voting, **and**
- immediately and publicly repudiate methods and tactics that may come from others, and taking firm action against any subordinate who violates any provision of the code or laws governing elections.

*Election Code § 258.004.*



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### **Code of Fair Campaign Practices Form**

A copy of the [Code of Fair Campaign Practices form](#) can be located on the Texas Ethics Commission website.

## Chapter 5: Liability

### A. Civil Liability

A justice of the peace can face civil liability based on actions taken in his or her capacity as justice of the peace. He or she can be sued by the public as well as employees. In some instances, the justice's actions can result in civil and criminal liability.

#### 1. How Can a Justice of the Peace Be Sued?



A justice of the peace can be sued in his or her individual capacity and in his or her official capacity.

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*If a state employee is sued in his official capacity and a judgment is rendered against him, the judgment is paid by the state. An employee sued in his official capacity may raise any defense available to the state, including sovereign immunity.*

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*A state employee sued in his individual capacity is personally liable for any judgment rendered against him, however, he may also be entitled to raise the affirmative defense of qualified immunity. Gonzalez v. Avalos.*

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#### 2. Definition of Public Servant for Civil Liability

For purposes of civil liability and responsibility, a public servant means a person who is:

- a public official elected or appointed to serve a governmental unit, **and**
- acting in that capacity when the act or omission on which the damages were based occurred, **or**
- a person who is covered by § 104.001 or § 102.001, Civil Practice and Remedies Code.

*Civil Practice and Remedies Code § 108.001(1).*

Chapter 104 of the Civil Practice and Remedies Code governs state liability for conduct of public servants. A person covered under §104.001 is an employee, a member of the governing board, or any other officer of a state agency, institution, or department. *Civil Practice and Remedies Code § 104.001(1)*.

Chapter 102 of the Civil Practice and Remedies Code governs tort claim payments by local governments. A person covered under §102.001 is an officer, volunteer, or employee of a local government. *Civil Practice and Remedies Code § 102.001(1)*.

### 3. Immunity and Limitations

#### Absolute Judicial Immunity

Absolute Immunity is a tool designed to allow judges the ability to effectively perform their job. A judge acting in his or her official judicial capacity enjoys absolute immunity from liability for judicial acts performed within the scope of their jurisdiction.

#### *Stump v. Sparkman.*

A justice of the peace is entitled to absolute judicial immunity as long as the judge acts:

- within his or her judicial capacity, **and**
- within his or her jurisdiction.

Immunity applies even when the judge is accused of acting corruptly or maliciously.

The factors considered in determining whether a justice's act is a judicial one are whether:

- the act complained of is one normally performed by a judge,
- the act occurred in the courtroom or in close proximity such as the judge's chambers,
- the controversy centered around a case pending before the judge, **and**
- the act arose out of a visit to the judge in his judicial capacity.



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#### *Immunity Available to a Justice of the Peace:*

##### **Judicial Immunity-**

Immunity when acting in his or her judicial capacity

##### **Qualified Immunity-**

Affirmative defense for government employees sued in their individual capacity

In determining whether the act was clearly outside a judge’s jurisdiction for judicial immunity purposes, the focus is on the nature of the function performed, not the identity of the actor. *Delcourt v. Silverman*.

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*“Judges enjoy absolute judicial immunity from liability for judicial acts, no matter how erroneous the act or how evil the motive, unless the act is performed in the clear absence of all jurisdiction.” Alpert v. Gerstner.*

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*Texas judges have absolute immunity for their judicial acts “unless such acts fall clearly outside the judge’s subject-matter jurisdiction.” Spencer v. City of Seagoville.*

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### **Qualified Immunity**

Qualified immunity is an affirmative defense available to government employees sued in their individual capacities that renders them immune from liability and suit. If an official, including a justice of the peace, is performing administrative tasks not integrally associated with the judicial process, but necessary nonetheless, then qualified immunity may still apply even if judicial immunity doesn’t.

The justification for the qualified immunity doctrine is that “public officials performing discretionary functions should be free to act without fear or retributive suits for damages except when they should have understood that particular conduct was unlawful.” *EPISD v. McIntyre*.

“Qualified immunity shields officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Mullenix v. Luna*.

#### ***Other Names for Qualified Immunity***

- Official immunity,
- Quasi-judicial immunity,
- Discretionary immunity, **or**
- Good faith immunity

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*The qualified immunity defense should prevail unless the unlawfulness of the challenged conduct was apparent when undertaken. EPISD v. McIntyre.*

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Government employees are entitled to qualified immunity from suit arising from performance of their discretionary duties in good faith, so long as they are acting within the scope of their authority. Richardson v. Parker. Public officials act within the scope of their authority if they are discharging the duties generally assigned to them.

### **Public Officials Held Accountable in Other Ways**

Public officials are accountable through elections, state criminal and civil statutes, federal causes of action, and other mechanisms to police the conduct of public officials.

Ballantyne v. Champion Builders.

### **Limitations on Civil Liability**

A public servant is not personally liable for damages in excess of \$100,000 arising from property damage, personal injury, death, or deprivation of a right, privilege, or immunity if:

- the damages are the result of an act or omission by the public servant in the course and scope of the public servant’s office, employment, or contractual performance for or on behalf of a state agency, institution, department, or local government, **and**
- for the amount less than \$100,000, the public servant is covered by
  - the state’s obligation or authorization to indemnify,
  - liability or errors and omissions insurance, **or**
  - liability or errors and omissions coverage under an interlocal agreement.

This protection does not apply to actions arising under the Constitution or laws of the United States. *Civil Practice and Remedies Code § 108.002(a)*.

### **Justices of the Peace May Be Entitled to Representation**

A county official sued by anyone other than the county with which the official serves, for an action arising from the performance of public duty is entitled to be represented by the district or county attorney. *Local Government Code § 157.901(a)*. If additional counsel is



necessary or proper, or if it reasonably appears the act complained of may form the basis for the filing of a criminal charge against the official, the official is entitled to have the commissioners court employ and pay private counsel. *Local Government Code § 157.901(b)*.

A county official is not required to accept the legal counsel provided. *Local Government Code § 157.901(c)*.

#### **4. Examples of Potential Civil Liability**

##### ***a. Prohibited Retaliation for Reporting a Violation of Law***

A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority. *Government Code § 554.002(a)*.

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***“Personnel action” means an action that affects a public employee’s compensation, promotion, demotion, transfer, work assignment, or performance evaluation. Government Code § 554.001(3)***

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#### **An Employee Who Suffers Retaliation May Sue**

An employee whose employment is suspended, terminated, or who is subjected to an adverse personnel action is entitled to sue for:

- injunctive relief,
- actual damages,
- court costs,
- reasonable attorney fees,
- reinstatement to the employee’s former position or an equivalent position,
- compensation for wages lost during the period of suspension or termination,
- reinstatement of fringe benefits and seniority rights lost because of the suspension or termination, **and**

- compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other nonpecuniary losses capped based on the total number of employees.

*Government Code § 554.003(a)-(b).*



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### **Liability of Supervisor**

A supervisor who suspends or terminates the employment of a public employee or takes an adverse personnel action against the employee is liable for a civil penalty not to exceed \$15,000. *Government Code § 554.008(a).*

A civil penalty assessed under this section shall be paid by the supervisor and may not be paid by the employing governmental entity. *Government Code § 554.008(d).*

The personal liability of a supervisor is limited to the civil penalty that may be assessed. *Government Code § 554.008(e).*

### **b. Firearm Liability**

#### **Possession of Firearms in a Parking Lot**

A public or private employer may not prohibit an employee who:

- holds a license to carry a handgun,
- otherwise lawfully possesses a firearm, **or**
- lawfully possesses ammunition,

from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees. *Labor Code § 52.061.*

Section 52.061 does not:

- authorize a person who holds a license to carry a handgun, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition to possess a firearm or ammunition on any property where the possession of a firearm or ammunition is prohibited by state or federal law, **or**
- apply to a vehicle owned or leased by a public or private employer and used by the employee in the course and scope of the employee's employment unless the



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employee is required to transport or store a firearm in the official discharge of the employee's duties.

*Labor Code § 52.062(a).*

### **Possession of Firearms on the Employer's Premises**

Section 52.061 does not prohibit an employer from prohibiting an employee who holds a license to carry a handgun, or who otherwise lawfully possesses a firearm, from possessing a firearm on the premises of the employer's business. *Labor Code § 52.062(b).*

### **Liability for Occurrences Involving a Firearm**

Except in cases of gross negligence, a public or private employer is not liable in a civil action for personal injury, death, property damage, or other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow on the employer's property. The presence of a firearm or ammunition on an employer's property does not by itself constitute a failure by the employer to provide a safe workplace. *Labor Code § 52.063.*



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### **c. *Failure to Comply with Required Financial Reporting***

#### **Determination of Failure**

Upon receipt of a written notice that a person required to file a financial statement failed to do so, the county or criminal district attorney shall determine if the person failed to file a statement. On making that determination, the county or criminal district attorney shall immediately mail by certified mail a notice of the determination to the person who was required to file a financial statement. *Local Government Code § 159.010(b).*

#### **Penalty**

If the person responsible for filing the statement fails to file the statement within 30 days of receiving notice from the county or criminal district attorney, the person is civilly liable to the county for an amount not to exceed \$1,000. *Local Government Code § 159.010(c).*

### **d. *Prohibited Discriminatory Employment Practices***

Title VII of the Civil Rights Act of 1964 and Title 1 of the Americans with Disabilities Act of 1990 apply to all elected officials in Texas.

“Employer” specifically includes:

- an individual elected to public office, **and**
- a county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed.

*Labor Code § 21.002(8).*

It is an unlawful employment practice for a person elected to public office to discriminate against an employee, or applicant for employment, who:

- serves on the elected official’s personal staff,
- serves the elected official on a policy-making level, **or**
- serves the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

*Labor Code § 21.126.*



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### **Definition of Disability**

“Disability” means:

- a mental or physical impairment that substantially limits at least one major life activity of that individual,
- a record of such an impairment, **or**
- being regarded as having such an impairment.

The term does not include:

- a current condition of addiction to the use of alcohol, drugs, illegal substances, or a federally controlled substance, **or**
- a currently communicable disease or infection that constitutes a direct threat to the health or safety of other persons, or that makes the affected person unable to perform the duties of the person’s employment.

*Labor Code § 21.002(6).*

The term shall be construed in favor of broad coverage to the maximum extent allowed and includes an impairment that is episodic or in remission that substantially limits a major life activity when active. *Labor Code § 21.0021(a).*

### **Definition of Qualified Individual with a Disability**

A qualified individual with a disability is a person:

- who meets legitimate skill, experience, education, or other requirements of an employment position that he holds or seeks, **and**
- who can perform the “essential functions” of the position with or without reasonable accommodation.

### **Failure to Hire and Segregation of an Employee**

An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age, the employer:

- fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment, **or**
- limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

*Labor Code § 21.051.*

### **Retaliation**

An employer commits an unlawful employment practice if the employer retaliates or discriminates against a person who:

- opposes a discriminatory practice,
- makes or files a charge,
- files a complaint, **or**
- testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

*Labor Code § 21.055.*

### **Reasonable Workplace Accommodations Required**

It is an unlawful employment practice to fail, or refuse to make, a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or applicant for

#### ***Discriminatory Employment***

##### ***Practice Examples:***

- Refusal to hire based on race, color, or disability;
- Segregation due to race, color, or disability;
- Retaliation against someone who reports discriminatory employment practices; **and**
- Refusal to make reasonable workplace accommodations.

employment, unless the employer demonstrates that the accommodation would impose an undue hardship on the operation of the business. Labor Code § 21.128(a).

A showing of undue hardship by the employer is a defense to a complaint of discrimination Labor Code § 21.128(b).

### **Civil Action**

The Texas Workforce Commission may bring a civil action against an employer if efforts to resolve the discriminatory practice to the satisfaction of the employee and employer through conciliation have been unsuccessful. Labor Code § 21.251.

Upon a finding that an employer engaged in an unlawful employment practice as alleged in the complaint, a court may:

- issue an injunction prohibiting the employer from engaging in an unlawful employment practice and order additional equitable relief as appropriate, including but not limited to:
  - hiring or reinstating with or without back pay,
  - upgrading an employee with or without pay, **or**
  - admitting to or participating in a guidance program, on-the-job training, or retraining program, **or**
  
- award compensatory and punitive damages.

*Labor Code § 21.258.*

Compensatory damages can include:

- Current and future pecuniary losses,
- Emotional pain,
- Suffering,

### ***When an Employer Has Engaged in Unlawful Employment Practices:***

A court can:

- issue an injunction against the employer and order equitable relief, **or**
- award compensatory and punitive damages payable by the employer.

- Inconvenience,
- Mental anguish, **and**
- Loss of enjoyment of life.

*Labor Code § 21.2585(d).*

The sum of compensatory and punitive damages are capped based on the total number of employees. *Labor Code § 21.2585(d).*

### **Resources**

The following links may be useful for addressing discriminatory and other problematic employment practices:

- <https://www.county.org/Risk-Management/Risk-Control>
- <https://www.eeoc.gov/laws/types/harassment.cfm>
- <https://twc.texas.gov/>
- [\*\*\*Blog Including Recommended and Required Sexual Harassment Training\*\*\*](#)



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### **e. *Violations of Campaign Contribution Laws and Restrictions***

A person who knowingly makes or accepts a campaign contribution, or makes a campaign expenditure, in violation of the laws regarding campaign contributions and restrictions (Election Code Chapter 253) is liable to:

- opposing candidates for damages, **and**
- the state for damages in the amount of triple the value of the unlawful contribution or expenditure.

*Election Code § 253.131(a); Election Code § 253.133.*

Civil penalties can be imposed in addition to criminal penalties or other sanction imposed by law. *Election Code § 253.134.*

**f. Liability for a Justice of the Peace Acting as Ex Officio Notary Public**

To avoid liability, an ex officio notary must faithfully execute the duties of the office by strictly following the requirements of the statutes when taking an acknowledgment.

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*An ex officio notary public may be civilly liable for official misconduct or negligence. Couch v. Babb; Sitton v. American Insurance Co.*

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**g. Overcharging of Fees**

**Liability if an Officer Acts in Bad Faith**

An officer who in bad faith demands and receives a higher fee than authorized, or a fee that is not authorized, is liable to the aggrieved person for four times the amount unlawfully demanded and received. *Local Government Code § 118.801(a)*. A party may recover attorney's fees, interests, or costs of court as well. *Local Government Code § 118.801(e)*.

Bad faith includes a demand that an officer makes with the knowledge that a fee is not authorized by law. *Local Government Code § 118.801(d)*.

***Liability for Collecting Fees***

The amount of damages an officer is liable for when collecting fees improperly depends upon whether he or she was acting in good or bad faith.

**Liability if an Officer Acts in Good Faith**

An officer who in good faith demands and receives a higher fee than authorized or a fee not authorized is liable to the aggrieved person for the difference between the amount demanded and received and the amount of the fee authorized. *Local Government Code § 118.801(b)*. The demand for and receipt of a fee authorized by the legislature that is later determined to be unlawful is considered to be a good faith action by the officer. *Local Government Code § 118.801(c)*.

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*An elected official will be held personally responsible for any shortages or misappropriation of funds coming into the office. Op. Tex. Att'y. Gen. No. JM-517 (1986).*

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## B. Criminal Liability

Justices of the peace can be prosecuted for any and all crimes they engage in. The crimes discussed in this section apply specifically to justices of the peace acting in their official capacity when the offense is committed, or who face criminal liability due to their position as a public servant.

### 1. Theft

#### Offense

A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of that property. *Penal Code § 31.03.*

#### Punishment Enhanced If the Person Is a Public Servant

Punishment for an offense is increased to the next higher category of offense if it is shown at trial that the actor was a public servant at the time of the offense, and the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant. *Penal Code § 31.03(f).*

For example:

- A Class C misdemeanor becomes a Class B misdemeanor if the value of the property stolen is less than \$100;
- A Class B misdemeanor becomes a Class A misdemeanor if the value of the property stolen is \$100 or more but less than \$750, or the defendant has previously been convicted of theft; **and**
- Continues on up through a second-degree felony becoming a first-degree felony.

A felony of the first degree remains a felony of the first degree for stolen property with a value of \$300,000 or more.

For a list of all the ways theft can be committed and their degree of punishment, see Penal Code Section 31.03(e).

*Are These the Only Crimes a Justice of the Peace Can Be Charged With?*

**No!** A justice of the peace can be charged with any crime they commit.

Only crimes committed while a justice is acting in their official capacity are discussed here.

## 2. Bribery

### Offense

A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept from another:

- any benefit as consideration for his decision, opinion, recommendation, vote, or other exercise of discretion as a public servant,
- any benefit as consideration for his decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding,
- any benefit as consideration for a violation of a duty imposed by law on a public servant, **or**
- any benefit that is a political contribution if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise would not have been taken or withheld but for the benefit.

*Penal Code § 36.02.*

### Benefit

Benefit means anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest. *Penal Code § 36.01(3).*

### Public Servant

A public servant is a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government, or a candidate for nomination or election to public office. *Penal Code § 1.07(a)(41).*

### *Bribery*

Bribery can be committed in two ways:

- It is a crime for a justice of the peace to **ask** someone else for a benefit; **and**
- It is a crime for a justice of the peace to **accept** a benefit from someone.



### **If Person Has Not Assumed Office Yet**

It is **not** a defense to prosecution that a person whom the actor sought to influence was not qualified to act in the desired way because he had not yet assumed office, or he lacked jurisdiction for any other reason. *Penal Code § 36.02(b)*.

### **Timing of Bribe**

It is **not** a defense to prosecution that the benefit is not offered or conferred, or that the benefit is not solicited or accepted until after:

- the decision, opinion, recommendation, vote, or other exercise of discretion has occurred, **or**
- the public servant ceases to be a public servant.

*Penal Code § 36.02(c)*.

### **Punishment**

An offense under this section is a felony of the second degree.

## **3. Acceptance of Honorarium**

### **Offense**

A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services the public servant would not have been requested to provide but for the public servant's official position or duties. *Penal Code §36.07(a)*.

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*Honorarium is payment for a service that someone receives for doing something which is not a normal part of their job. For example, making a speech.*

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### **Punishment**

An offense under this section is a Class A misdemeanor. *Penal Code § 36.07(c)*.

### **Lodging and Transportation Expenses Allowed**

This section does not prohibit a public servant:

- from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent those services are more than merely routine, **or**
- from accepting meals in connection with such an event.

*Penal Code § 36.07(b).*

#### **4. Gift to Public Servant by a Person Subject to His or Her Jurisdiction**

##### **Offense**

A public servant who has judicial or administrative authority commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in, or likely to become interested in, any matter before the public servant.

*Penal Code § 36.08(e).*

##### **Punishment**

An offense under this section is a Class A misdemeanor. *Penal Code § 36.08(h).*

##### **Unsolicited Gifts May be Donated**

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting may:

- donate the benefit to a governmental entity that has the authority to accept the gift, **or**
- donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

*Penal Code § 36.08(i).*

##### **When This Section Does Not Apply**

This section does not apply to:

- a fee prescribed by law to be received by a public servant,
- any other benefit to which the public servant is lawfully entitled, **or**

*What If a Landlord Who Files a Bunch of Eviction Cases in My Court Gives Me a Christmas Present?*

A justice of the peace cannot accept a gift from a person who has an interest in, or is likely to have an interest in, a matter before that justice.

- any other benefit for which the public servant gives legitimate consideration in a capacity other than as a public servant.

*Penal Code § 36.10(a)(1).*

It is not a crime to receive payment for performing marriage ceremonies, acting as local registrar for the Bureau of Vital Statistics, or acting as ex officio notary public.

This section does not apply to a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient. *Penal Code § 36.10(a)(2).*

### *So, Friends and Family Can't Give Me Gifts?*

Friends and family can give gifts to a person who happens to be a justice of the peace, if the gift is given in a personal and not a professional capacity.

## **5. Tampering with Governmental Records**

### **Offense**

A person commits an offense if he:

- knowingly makes a false entry in, or false alteration of, a governmental record,
- makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record,
- intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record,
- possesses, sells, or offers to sell a governmental record or a blank governmental record from with intent that it be used unlawfully,
- makes, presents, or uses a governmental record with knowledge of its falsity, **or**
- possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

*Penal Code § 37.10(a).*

### **Punishment**

An offense under this section is a Class A misdemeanor, unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony. *Penal Code § 37.10(c)(1).*

## 6. Abuse of Official Capacity

### Offense

A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

- violates a law relating to the public servant’s office or employment, **or**
- misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment.

*Penal Code § 39.02(a).*

### Punishment for Violating a Law Relating to the Public Servant’s Office or Employment

An offense for violating a law relating to the public servant’s office or employment is a Class A misdemeanor. *Penal Code § 39.02(b)*. The term “law relating to a public servant’s office or employment” means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant, or governs the conduct of the public servant. *Penal Code § 39.01(1)*.

### Punishment for Misusing Government Property, Services, or Personnel

An offense for misusing government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant’s custody or possession by virtue of the public servant’s office or employment is based on the value of the thing misused. *Penal Code § 39.02(c)*.

For example:

- A Class C misdemeanor if the value of the use of the thing misused is less than \$100;
- A Class B misdemeanor if the value of the use of the thing misused is \$100 or more but less than \$750; **and**
- On up through a first-degree felony if the value of the use of the thing misused is \$300,000 or more.

### *Punishment for Misusing Government Property, Services, or Personnel*

Punishment is based on the value of the thing misused and can range anywhere from a Class C misdemeanor to a 1<sup>st</sup> Degree felony.

For a list of all the possible punishments, see Penal Code § 39.02(c)(1)-(7).

The term “misuse” means to deal with property contrary to:

- an agreement under which the public servant holds the property,
- a contract of employment or oath of office of a public servant,
- a law, including provisions of the General Appropriations Act specifically relating to government property that prescribes the manner of custody or disposition of the property, **or**
- a limited purpose for which the property is delivered or received.

*Penal Code § 39.01(2).*



KEY  
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If separate transactions are conducted pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the value of the things misused may be added together in determining the classification of the offense. *Penal Code § 39.02(e).*

### **Travel Rewards, Discounts, and Coupons Are Not Things of Value**

A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons are not things of value belonging to the government for purposes of this section. *Penal Code § 39.02(d).*

### **Concurrent Jurisdiction to Prosecute**

Offenses can be prosecuted by either the local county or district attorney, or the attorney general.

The attorney general must first get consent of the local, county or district attorney before prosecuting. *Penal Code § 39.015.*

## **7. Official Oppression**

### **Offense**

A public servant acting under color of his office or employment commits an offense if he:

***Can I Get Frequent Flyer Miles for Business Related Travel?***

**Yes!** A discount or award given for travel, rental car or hotel discounts, or food coupons are not considered things of value for this section.

- intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful,
- intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful, **or**
- intentionally subjects another to sexual harassment

*Penal Code § 39.03(a).*

### **When is a Public Servant Acting Under Color of His or Her Office or Employment?**

A public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity. *Penal Code § 39.03(b).*

### **Definition of Sexual Harassment for Purposes of Official Oppression**

Sexual harassment means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly. *Penal Code § 39.03(c).*

### **Punishment**

An offense is a Class A misdemeanor, except that an offense is a third-degree felony if the public servant acted with the intent to impair the accuracy of data reported to the Texas Education Agency. *Penal Code § 39.03(d).*

## **8. Misuse of Official Information**

### **Offenses**

A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office or employment and that has not been made public, the person:

- acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information,
- speculates or aids another to speculate on the basis of the information, **or**
- as a public servant coerces another into suppressing or failing to report that information to a law enforcement agency.

*Penal Code § 39.06(a).*

A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that he has access to by means of his office or employment, and has not been made public. *Penal Code § 39.06(b)*.

Information that has not been made public means any information to which the public does not generally have access and is prohibited from disclosure. *Penal Code § 39.06(c)*.

### **Punishment**

An offense is a third-degree felony, except that an offense where a public servant coerces another into suppressing or failing to report that information to a law enforcement agency is a Class C misdemeanor. *Penal Code § 39.06(e)-(f)*.

## **9. Restrictions on Blacklisting**

### **Offense**

A person commits an offense if the person:

- blacklists an employee,
- causes an employee to be blacklisted, **or**
- conspires to prevent an employee discharged by a corporation, company, or individual from procuring employment.

*Labor Code § 52.031(b)*.

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*Blacklist means to place on a book or list or publish the name of an employee who was discharged or who voluntarily left employment, intending to prevent the employee from engaging in or securing employment of any kind anywhere else. Labor Code § 52.031(a).*

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### **Punishment**

An offense is punishable by:

- a fine of not less than \$50 or more than \$250,
- imprisonment in jail for not less than 30 days or more than 90 days, **or**
- both fine and imprisonment.

*Labor Code § 52.031(c)*.

## 10. Violating Nepotism Laws is an Offense Involving Official Misconduct

### Offense

An individual commits an offense involving official misconduct if the individual violates the nepotism laws. *Government Code § 573.084(a)*.

### Punishment

An offense is a misdemeanor punishable by a fine not less than \$100 or more than \$1,000. *Government Code § 573.084(b)*.

## 11. Violation of Campaign Contribution Laws

### a. Cash Contributions of \$100 or More From One Person

#### Offense

A candidate or officeholder may not knowingly accept from a contributor, in a reporting period, cash political contributions that in the aggregate exceed \$100. *Election Code § 253.003(b)*.

#### Punishment

An offense is a Class A misdemeanor. *Election Code § 253.003(d)*.

### b. Contributions in Certain Public Buildings

#### Offenses

A person may not knowingly make or authorize a political contribution while in a courthouse to:

- A candidate or officeholder,
- A political committee, **or**
- A person acting on behalf of a candidate, officeholder, or political committee.

*Election Code § 253.039(a)*

A candidate, officeholder, or person acting on behalf of a candidate or officeholder may not knowingly

#### *Definition of Courthouse*

Courthouse means any building owned by the state, a county, a municipality, or an office leased to the state, a county, or a municipality in which a justice or judge sits to conduct court proceedings. *Election Code § 253.039(h)*.

accept a political contribution, and shall refuse a contribution received in a courthouse. *Election Code § 253.039(b)*.

Contributions made in a courthouse through the U.S. postal service or contract carrier are not prohibited. *Election Code § 253.039(c)*.

#### **Punishment**

An offense under this section is a Class A misdemeanor. *Election Code § 253.039(d)*.

#### **c. Campaign Contributions Shall be Kept Separate**

#### **Offense**

Each candidate or officeholder shall keep the person's campaign and officeholder contribution in one or more accounts that are separate from any other account maintained by the person. *Election Code § 253.040(a)*.

#### **Punishment**

An offense under this section is a Class B misdemeanor. *Election Code § 253.040(b)*.

### **12. Violation of Required Financial Reporting**

#### **Offense**

A justice of the peace or candidate for justice of the peace commits an offense if he knowingly fails to file a financial statement. *Local Government Code § 159.008(a)*.

#### **Punishment**

An offense under this section is a Class B misdemeanor. *Local Government Code § 159.008(b)*. It is a defense to prosecution that the justice or candidate did not receive copies of the financial statement form required to be mailed to the justice or candidate. *Local Government Code § 159.008(c)*.

### **13. Failure to Furnish County Auditor with Report**

#### **Offense**

A county official who is required to provide a report, statement, or other information to the county auditor and who intentionally refuses to comply with a reasonable request of the county auditor relating to the report, statement, or information, commits an offense. *Local Government Code § 114.003.*

#### **Punishment**

An offense is a misdemeanor punishable by:

- a fine of not less than \$25 or more than \$200,
- removal from office, **or**
- both a fine and removal from office.

*Local Government Code § 114.003.*

### **14. Solicitation or Acceptance of Referral Fees or Gifts by a Justice of the Peace**

#### **Offense**

A judge commits an offense if the judge solicits or accepts a gift or a referral fee in exchange for referring any kind of legal business to an attorney or law firm. *Government Code § 33.051(a).*

#### **Defenses**

It is an affirmative defense to prosecution that:

- The judge solicited the gift or referral fee before taking the oath of office but accepted the gift or fee after taking the oath of office; **or**
- The judge solicited or accepted the gift or referral fee after taking the oath of office in exchange for referring to an attorney or law firm legal business that the judge was engaged in but was unable to complete before taking the oath of office.

*Government Code § 33.051(b).*

This section does not apply to a justice of the peace if that justice accepts a gift or referral fee in exchange for referring legal business that involves a matter over which the justice does not have subject matter jurisdiction. *Government Code § 33.051(f).*

### **Punishment**

An offense under this section is a Class B misdemeanor. *Government Code § 33.051(c)*. If the State Commission on Judicial Conduct determines a judge engaged in this conduct, the Commission may issue a sanction or institute formal proceedings, regardless of whether the judge is being prosecuted or has been convicted of an offense. *Government Code § 33.051(d)*.

A judge who has information that a judge engaged in this conduct shall file a complaint with the Commission not later than 30 days after the judge obtained the information. A judge who fails to comply is subject to sanctions by the Commission. *Government Code § 33.051(e)*.

## **15. Collecting Debt for Another**

### **Offense**

A justice commits an offense if the justice:

- accepts for collection, or undertakes the collection of, a claim for a debt for another, unless the justice acts under a law that prescribes the duties of the justice, **or**
- accepts compensation not prescribed by law for accepting for collection or undertaking the collection of a claim for debt for another.

*Government Code § 27.006(a)*.

### **Punishment**

An offense under this section is a misdemeanor punishable by a fine not less than \$200 or more than \$500. *Government Code § 27.006(b)*. In addition to the fine, the justice may be removed from office. *Government Code § 27.006(c)*.

This section does not prohibit a justice who is authorized by law to act for others in the collection of debts from undertaking to collect a debt for another if the amount of the debt is beyond the jurisdiction of the justice court. *Government Code § 27.006(d)*.

## 16. Ex Officio Notary Public Misrepresenting Himself or Herself

### Offense

A person commits an offense if the person is an ex officio notary public and the person:

- states or implies that the person is an attorney licensed to practice law in this state,
- solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters,
- solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States, **or**
- uses the phrase “notario” or “notario publico” to advertise the services of a notary public, whether by signs, pamphlets, stationary, or other written communication or by radio or television.

*Government Code § 406.017(a).*

### Special Requirement for Notary Services Advertised in a Language Other Than English

A notary public who advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, must post or otherwise include with the advertisement a notice.

The notice must:

- state that the notary public is not an attorney,
- be in English and in the language of the advertisement, **and**
- be in letters of a conspicuous size.

If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message.

The notice must include the fees that a notary public may charge and the following statement:



REQUIRED  
LANGUAGE

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

*Government Code § 406.017(b).*

### **Exception to Prosecution**

It is an exception to prosecution that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas.

*Government Code § 406.017(c).*

### **Punishment**

An offense is a Class A misdemeanor unless the defendant has been previously convicted under this section, then it is a felony of the third degree. *Government Code § 406.017(d).*

Failure to comply with these restrictions is also a deceptive trade practice actionable under Chapter 17 of the Business & Commerce Code. *Government Code § 406.017(f).*

## **17. Failure to Return the Marriage License**

### **Offense**

The person who conducts a marriage ceremony shall:

- Record on the license the
  - Date the ceremony is performed,
  - County where the ceremony is performed, **and**
  - Name of the person who performed the ceremony,
- Sign the license, **and**
- Return the license to the county clerk who issued it not later than the 30th day after the date the ceremony is conducted.

*Family Code § 2.206(a).*

### **Punishment**

A person who fails to comply with this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than \$200 and not more than \$500. *Family Code § 2.206(b).*

## **18. Performing a Marriage Ceremony with an Expired Marriage License**

### **Offense**

A person who is to conduct a marriage ceremony shall determine whether the license has expired from the county clerk's endorsement on the license. *Family Code § 2.207(a)*. A person who conducts a marriage ceremony after the marriage license has expired commits an offense. *Family Code § 2.207(b)*.

### **Punishment**

An offense under this section is a misdemeanor punishable by a fine of not less than \$200 and not more than \$500. *Family Code § 2.207(b)*.

## **19. Violation of Provisions Related to Keeping Receipt Books**

### **Offense**

An officer commits an offense if the officer violates a provision related to the keeping of a receipt book or an audit.

### **Punishment**

An offense is a Class C misdemeanor. An officer may also be removed from office on the petition of the county or district attorney. *Code of Criminal Procedure Art. 103.012*.

## Chapter 6: Sanctioning Bodies and the Complaint Process

Depending on the type of violation, whether it's civil or criminal, and the law governing the violation, the complaint process, proceedings, and consequences will be different. Some violations can have criminal and civil consequences. Some violations can result in sanctions, reprimands, or even removal.

### A. Discipline by State Bar of Texas

The State Bar of Texas administers discipline to attorneys who violate the law. A justice of the peace who is an attorney can receive discipline from both the State Commission on Judicial Conduct and The State Bar of Texas.

### B. Discipline by State Commission on Judicial Conduct (SCJC)

The State Commission on Judicial Conduct is an agency of the judicial branch that administers judicial discipline to judges and justice of the peace who violate the law. *Government Code § 33.002(a-1)*. The Commission's proceedings and rulings can occur in addition to any statutory penalties that justices of the peace face.

The State Commission on Judicial Conduct does not have the power or authority of a court. *Government Code § 33.002(a-1)*.

Numerous resources related to the SCJC can be found at their website:

<http://www.scjc.texas.gov/>.

#### 1. The Commission's Jurisdiction and Objective

The Commission exercises jurisdiction over judges and judicial officers in Texas including justices of the peace, magistrates, and retired or former justices who are available for assignments as visiting justices of the peace. *Government Code § 33.002*.

### *Agencies Responsible for Discipline*

- State Bar of Texas
- State Commission on Judicial Conduct
- District Court Judges



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The Commission’s objectives are to preserve the integrity of all judges in the state, to ensure public confidence in the judiciary, and to encourage judges to maintain high standards of both professional and personal conduct. *Government Code § 33.002.*

The Commission shall develop and distribute plain-language materials to judges and the public. *Government Code § 33.007(a).*

The materials must include a description of:

- the Commission’s responsibilities,
- the types of conduct that constitute judicial misconduct,
- the types of sanctions issued by the Commission, including orders of additional education, **and**
- the policies and procedures relating to complaint investigation and resolution.

*Government Code § 33.007(b).*

## **2. Public Statements Issued by the Commission**

The Commission issues public statements regarding significant issues affecting judicial conduct. To see all statements issued since 2000, go to the State Commission on Judicial Conduct website at [www.scjc.state.tx.us/public-information/public-statements](http://www.scjc.state.tx.us/public-information/public-statements).

## **3. Investigations and Formal Proceedings**

### ***a. Preliminary Investigations***

The Commission may conduct a preliminary investigation of the circumstances surrounding an allegation or appearance of misconduct or disability of a judge to determine if the allegation or appearance is unfounded or frivolous. *Government Code § 33.022(a).*

### ***How Do I Know What Counts as Official Misconduct?***

The Commission must provide a judge with materials that describe the type of conduct that constitutes judicial misconduct.

A justice can also read the Commission’s Public Statements on their website to get clarification.



### **Unfounded or Frivolous Allegations**

If, after conducting a preliminary investigation, the Commission determines an allegation or appearance of misconduct or disability is unfounded or frivolous, the Commission shall terminate the investigation. *Government Code § 33.022(b)*.

### **A Complainant May Request Reconsideration of a Dismissed Complaint**

A complainant may request reconsideration of a dismissed complaint if, not later than 30 days after the date of the communication informing the complainant of the dismissal, the complainant provides additional evidence of misconduct committed by the judge. *Government Code § 33.035(a)*. A complainant may request reconsideration of a dismissed complaint only once. *Government Code § 33.035(f)*.

### **b. Full Investigations**

If, after conducting a preliminary investigation, the Commission does not determine that an allegation or appearance of misconduct or disability is unfounded or frivolous, the Commission **shall**:

- conduct a full investigation of the circumstances surrounding the allegation or appearance of misconduct or disability, **and**
- notify the judge in writing of the commencement of the investigation and the nature of the allegation or appearance of misconduct or disability being investigated.

The Commission **may** also:

- order the judge to appear informally or submit a written response to the allegation or appearance of misconduct or disability,
- order the deposition of any person, **or**
- request the complainant to appear informally before the Commission.

*Government Code § 33.022(c)*.

### ***Will I Be Notified of a Complaint or Investigation?***

- If a complaint is filed and the Commission determines it is unfounded, the justice might never be notified.
- If a complaint is filed and a full investigation is required, the Commission must notify the justice of the investigation and nature of the allegation.

The commission shall notify the judge in writing of the disposition of a full investigation. *Government Code § 33.022(f)*.

The investigation could result in a sanction or censure, or it could include institution of formal proceedings.

**c. Formal Proceedings Following an Investigation**

**Written Notice and Answer**

If formal proceedings are to be instituted after an investigation is completed, written notice of the institution of formal proceedings shall be served on the judge without delay. *Government Code § 33.022(g)*.

The judge will receive notice of the charges against him, the alleged facts on which the charges are based, and the specific standards contended to have been violated. *Government Code § 33.022(h)*.

The judge is entitled to file a written answer to the charges not later than the 15<sup>th</sup> day after the notice is served. *Government Code § 33.022(h)*.

**Hearing Procedures and Rights**

- A justice of the peace undergoing a formal proceeding has the right of discovery of evidence, and due process of law in the same manner that any person whose property rights are in jeopardy in an adjudicatory proceeding has. This includes the right to notice, counsel, hearing, confrontation of accusers, and all other incidents of due process. *Texas Constitution Art. 5 § 1-a(11)*.
- The Commission may hold the formal hearing itself or ask for a Special Master to be appointed who will report his findings to the Commission. *Texas Constitution Art. 5 § 1-a(8)*.
- At the judge's request, a judge may elect to have any hearing open to the public. The right to an open hearing does not prevent the exclusion of witnesses in the courtroom during trial. *Government Code § 33.022(j)*.

- A judge is not entitled to a jury trial in formal proceedings before the Commission or Special Master. *Government Code § 33.022(k)*.

### **A Complainant's Identity May Be Kept Confidential**

On the request of a complainant, the Commission may keep the complainant's identity confidential. *Government Code § 33.0321*.

### **d. Review of Commission's Decision**

#### **Request**

A judge who receives a sanction or censure is entitled to a review of the Commission's decision. A judge is not entitled to review the Commission's decision to institute formal proceedings. *Government Code § 33.034(a)*.

Not later than the 30<sup>th</sup> day after the date the Commission issues its decision, the judge must file with the Chief Justice of the Supreme Court a written request for appointment of a special court of review. *Government Code § 33.034(b)*.

Not later than ten days after the request is received, a court of review will be selected. *Government Code § 33.034(c)*. Within 15 days after appointment of the court of review, the Commission shall file a charging document that includes a copy of the censure or sanction issued and any additional charges to be considered by the court. The charging document is public upon its filing. *Government Code § 33.034(d)*.

#### **Review of a Formal Proceeding is by Review of the Record**

Review of a sanction or censure issued in a formal proceeding is a review of the record of the proceedings that resulted in the sanction or censure, and is based on the law and facts presented in the proceedings and any additional evidence the court may permit. *Government Code § 33.034(e)*.

#### **Review of an Informal Proceeding is by Trial De Novo**

Review of a sanction issued in an informal proceeding is by trial de novo as that term is used in the appeal of cases from the justice to county court. *Government Code § 33.034(e)*. The procedure for review of a sanction issued in an informal proceeding is governed by the rules that apply to the trial of civil actions. *Government Code § 33.034(f)*.

A judge is not entitled to a trial by jury in a review of a sanction issued in an informal proceeding. *Government Code § 33.034(g)*.

### **Hearing and Continuances**

A hearing shall be held within 30 days of the filing of the charging document. *Government Code § 33.034(h)*. Any hearings of the court shall be public and held at the location determined by the court. *Government Code § 33.034(e-1)*.

The court may grant one or more continuances not to exceed a total of 60 days. *Government Code § 33.034(h)*.

### **Decision**

The court shall issue a decision as to the proper disposition of appeal within 60 days of the filing of the charging instrument. *Government Code § 33.034(h)*. The reviewing court's decision is not appealable. *Government Code § 33.034(i)*.

#### ***e. If Removal is Recommended***

If removal of a judge is recommended, the Commission shall submit the record to a review tribunal. *Texas Constitution Art. 5 § 1-a(9)*. Within 90 days, the review tribunal shall order public censure, retirement, removal, or dismiss the proceedings. *Texas Constitution Art. 5 § 1-a(9)*.

A judge may appeal a decision of the review tribunal to the Supreme Court under the substantial evidence rule. *Texas Constitution Art. 5 § 1-a(9)*.

Upon an order of removal, the office shall become vacant, and the review tribunal may prohibit the judge from holding judicial office in the future. The judge is not eligible for judicial retirement benefits. *Texas Constitution Art. 5 § 1-a(9)*.

#### **4. Complaint Process Flowchart**

[Click Here to Open the Complaint Process Flowchart](#)

## **5. Physical or Mental Incapacity of a Judge**

In any investigation or proceeding that involves the physical or mental capacity of a judge, the Commission may order the judge to submit to a physical or mental examination.

*Government Code § 33.023(a)*. If a judge refuses to submit to an examination, the Commission may petition a district court for an order compelling the judge to submit. *Government Code § 33.023(d)*.

## **6. Confidentiality of Papers, Records, and Proceedings**

### **Confidentiality During Informal Proceedings**

Papers filed with, and proceedings before, the Commission are confidential prior to the filing of formal charges. *Government Code § 33.032(a)*.

### **Formal Hearings Are Public**

The formal hearing and any evidence introduced during the formal hearing shall be public. *Government Code § 33.032(b)*.

### **Informal Records Become Public if Punishment is Assessed**

On issuance of a public admonition, warning, reprimand, or public requirement that a judge obtain additional training or education by the Commission, the record of the informal appearance shall become public. *Government Code § 33.032(c)*.

### **Disciplinary Records Are Admissible at Subsequent Proceedings**

The disciplinary record of a judge, including any private sanctions, is admissible in a subsequent proceeding before the:

- Commission,
- a Special Master,
- a special court of review, **or**
- a review tribunal.

*Government Code § 33.032(d)*.

### **All Records and Proceedings Are Public if Justice is Suspended Upon Indictment**

If the Commission issues an order suspending a judge who has been indicted for a criminal offense, all records and proceedings related to the suspension shall be public. *Government Code § 33.032(g)*.

### **Voluntary Resignation in Lieu of Disciplinary Action is Public**

A voluntary agreement to resign from judicial office in lieu of disciplinary action shall be public. *Government Code § 33.032(h)*.

### **Certain Disclosure of Information**

To protect the public interest, the Commission **may** disclose information relating to an investigation or proceeding to:

- a law enforcement agency,
- a public official who is authorized or required by law to appoint a person to serve as a judge, the supreme court, **or**
- an entity that provides commission-ordered education to judges.

*Government Code § 33.036(a)*.

Information may be disclosed only to the extent necessary for the recipient of the information to perform an additional duty or function. *Government Code § 33.036(b)*.

The Commission **shall** routinely provide information relating to judicial misconduct resulting in sanctions or orders of additional education to entities that provide education to judges. *Government Code § 33.008*.

### **Access to Criminal History Record Information**

The Commission is entitled to obtain from the Department of Public Safety, criminal history record information maintained by the Department that relates to a person who is:

- a judge who is the subject of an investigation or proceeding under Government Code Chapter 33, **or**
- the complainant or a witness in an investigation.

*Government Code § 411.140(a)*.

Information received by the Commission is confidential and may be disseminated only in an investigation or proceeding conducted by the Commission, or with the consent of the

person who is the subject of the criminal history record information. *Government Code § 411.140(b)*.

The Commission shall destroy criminal history record information promptly after a final determination is made in the matter for which the information was obtained. *Government Code § 411.140(c)*.

## **7. Punishment by the State Commission on Judicial Conduct**

When the Commission determines punishment of a judge is necessary, the Commission can order sanctions, censure, suspension, removal, or retirement.

### **a. Sanctions**

Sanctions:

- are remedial in nature,
- are issued prior to the institution of formal proceedings to:
  - deter similar misconduct by judges in the future,
  - promote proper administration of justice,
  - reassure the public that the judicial system neither permits nor condones misconduct, **and**
- can include:
  - publicly or privately issued admonitions,
  - publicly or privately issued warnings,
  - publicly or privately issued reprimands,
  - publicly or privately issued requirement that a person obtain additional training and education.

*Government Code § 33.001(a)(10); Procedural Rules for Removal Rule 1(e)*.

### **b. Censure**

A censure is an order that is tantamount to denunciation of the offending conduct. It is more severe than the remedial sanctions issued prior to a formal hearing. *Procedural Rules for Removal Rule 1(f)*.

**c. Suspension**

A judge may be suspended, with or without pay, by the Commission immediately upon:

- being indicted by a state or federal grand jury for a felony offense, **or**
- being charged with a misdemeanor involving official misconduct.

*Procedural Rules for Removal Rule 15(a).*

A misdemeanor involving official misconduct includes a misdemeanor:

- involving an act relating to a judicial office, **or**
- involving an act involving moral turpitude.

*Government Code § 33.01(d).*

A suspended judge has the right to a post-suspension hearing to demonstrate that his or her continued service would not jeopardize the interests of parties involved in court proceedings over which the judge would preside, nor impair public confidence in the judiciary. *Procedural Rules for Removal Rule 15(a).* A written request for a post-suspension hearing must be filed within 30 days of the justice receiving the order of suspension.

*Procedural Rules for Removal Rule 15(a).*

If a judge who is convicted of a felony or a misdemeanor involving official misconduct appeals the conviction, the Commission shall suspend the judge from office without pay pending final disposition of the appeal. *Government Code § 33.037 Gov. Code.*

**d. Removal or Retirement**

Based upon the severity of the judge's conduct, a judge can be removed from office by the Commission. A judge may choose to retire from his or her judicial position in lieu of being removed by the Commission.



CLICK  
HERE

The procedure for the removal or retirement of judges can be found on the State Commission on Judicial Conduct website by clicking [here](#).



KEY  
POINT

A justice of the peace can be removed from office by the State Commission on Judicial Conduct for:

- willful or persistent violation of rules promulgated by the Supreme Court of Texas,

- incompetence in performing the duties of the office,
- willful violation of the Code of Judicial Conduct, **and**
- willful or persistent conduct that is clearly inconsistent with the proper performance of a justice of the peace’s duties, or that casts public discredit upon the judiciary or administration of justice.

*Texas Constitution Art. 5 § 1-a.*

### **Willful Conduct Clearly Inconsistent with the Proper Performance of Duties**

Willful or persistent conduct that is clearly inconsistent with the proper performance of a justice of the peace’s duties, or that casts public discredit upon the judiciary or administration of justice includes:

- willful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business,
- willful violation of a provision of the Texas penal statutes or the Code of judicial conduct,
- persistent or willful violation of the rules promulgated by the Supreme Court,
- incompetence in the performance of the duties of the office,
- failure to cooperate with the Commission, **or**
- violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the Commission.

*Government Code § 33.001(b).*

### **Discrimination in Performing Wedding Ceremonies**

On a finding by the Commission that a justice of the peace has intentionally discriminated on the basis of race, religion, or national origin against someone wanting to be married who is otherwise competent to be married, the Commission may recommend to the Supreme Court that the justice be removed from office. *Family Code § 2.205.*

## **C. Discipline by District Court Judges**

### **1. Removal from Office**

Under the Texas Constitution and Chapter 87 of the Local Government Code, district court judges can remove justices of the peace for certain violations.



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A justice of the peace can be removed by the judges of the district courts for:

- incompetency,
- official misconduct,
- intoxication on or off duty by drinking an alcoholic beverage,
- failure to give bond, **and**
- other causes defined by law.

*Texas Constitution Art. 5 § 24; Local Government Code § 87.013; Local Government Code § 87.014.*

### **Incompetency**

Incompetency is defined as:

- gross ignorance of official duties,
- gross carelessness in the discharge of those duties,
- unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of the justice's election, **or**
- failure of the justice of the peace to successfully complete the judicial education requirements discussed on [page 67](#) of this volume.

*Local Government Code § 87.011(2); Government Code § 27.005(a)(1)-(2).*

### **Official Misconduct**

Official misconduct is defined as intentional and unlawful behavior relating to the official duties of a justice of the peace entrusted with the administration of justice or the execution of law. The term includes an intentional or corrupt failure, refusal, or neglect of a justice of the peace to perform a duty imposed on the justice by law. *Local Government Code § 87.011(3).*

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*Official misconduct is not to be confused with the criminal offense of Abuse of Official Capacity. [Talamantez v. State.](#)*

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### **Intoxication**

Intoxication is not a ground for removal if it appears at trial that the intoxication was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician practicing in the state. *Local Government Code § 87.013(b).*

### **Failure to Give Bond**

A county officer required by law to give an official bond may be removed if the officer:

- Fails to execute the bond within the time prescribed by law, **or**
- Does not give a new bond, or an additional bond or security, if required by law to do so.

*Government Code § 87.014.*

### **Violating Laws Related to Keeping Receipt Books or Audits**

A justice of the peace who violates a provision related to the keeping of a receipt book or an audit may be removed from office on the petition of the county or district attorney.

*Code of Criminal Procedure § 103.012.*

## **2. Petition for Removal**

A proceeding for the removal of a justice of the peace is begun by filing a written petition for removal in a district court of the county in which the justice resides. *Local Government Code § 87.015(a).*

### **Who Can File a Petition for Removal?**

Any resident who has lived for at least six months in the county in which the petition is to be filed, and who is not currently under indictment in the county may file the petition. At least one of the parties who files the petition must swear to it at or before the filing. *Local Government Code § 87.015(b).*

### **Requirements of the Petition**

The petition must be addressed to the district judge of the court in which it is filed. The petition must set forth the grounds alleged for removal of the justice and must cite the time and place of the occurrence of each act alleged as a ground for removal with as much certainty as the case permits. *Local Government Code § 87.015(c).*

## **3. Citation**

After the petition for removal is filed, the person filing shall apply to the district judge, in writing, for an order requiring a citation and a certified copy of the petition to be served on the justice of the peace. *Local Government Code § 87.016(a).*



### **If Order for Citation Denied**

If the judge refuses to issue the order for citation, the petition shall be dismissed at the cost of the person filing the petition. *Local Government Code § 87.016(c)*.

The person filing may not take an appeal or writ of error from the judge's decision not to issue the order for citation. *Local Government Code § 87.016(c)*.

### **If Order for Citation Granted**

If the judge grants the order for citation, the judge shall require the person filing to post security. *Local Government Code § 87.016(c)*.

The citation shall order the justice of the peace to appear and answer the petition on a date fixed by the judge. The date to appear must be at least six days after the citation is served. *Local Government Code § 87.016(d)*.

## **4. Suspension Pending Trial**

After the issuance of the order requiring citation of the justice of the peace, the district judge may temporarily suspend the justice and appoint another person to perform the duties of the office. *Local Government Code § 87.017(a)*.

### **Appointed Person Must Post a Bond Before the Justice Will Be Suspended**

The judge may not suspend the justice until the person appointed to serve executes a bond:

- with at least two sureties,
- in an amount fixed by the judge, **and**
- conditioned as required by the judge.

*Local Government Code § 87.017(b)*.

The bond shall be used to pay damages and costs to the suspended justice of the peace if grounds for removal are found to be insufficient or untrue at trial. In an action to recover on the bond it is necessary to allege and prove that the temporary appointee actively aided and instigated the filing and prosecution of the removal action. The suspended officer must also serve written notice on the temporary appointee and the appointee's bondsman, within 90 days after the date the bond is executed, stating that the officer

intends to hold them liable on the bond and stating the grounds for that liability. *Local Government Code § 87.017(b)*.

**A Justice Will Be Compensated for the Time out of Office if Removal is Not Ordered**

If the final judgment establishes the justice's right to the office, the county shall pay him or her from the general fund of the county in an amount equal to the compensation received by the temporary appointee. *Local Government Code § 87.017(c)*.

**5. Can Only Be Removed by Jury Trial**

Officers may be removed only following a trial by jury. *Local Government Code § 87.018(a); Texas Constitution Art. 5 § 24*. The only issue the jury will decide is whether the grounds for removal alleged in the petition are true. *Local Government Code § 87.018(c)*.

The county attorney shall represent the state in a proceeding for the removal of a justice of the peace. *Local Government Code § 87.018(d)*.

**6. Appeal**

Either party may appeal the final judgment to the court of appeals in the manner provided for other civil cases. *Local Government Code § 87.019(a)*.

If the justice of the peace has not been suspended from office, the justice is not required to post an appeal bond but may be required to post a bond for costs. *Local Government Code § 87.019(a)*.

An appeal of a removal action takes precedence over the ordinary business of the court. *Local Government Code § 87.019(b)*.

If the trial court judgment is not set aside or suspended, the court of appeals shall issue its mandate within 5 days after the date the court renders its judgment. *Local Government Code § 87.019(b)*.

## **D. Automatic Removal from Office**

### **1. Conviction or Deferred Adjudication for Certain Crimes**

A justice of the peace is automatically removed from office if the justice is convicted of or is granted deferred adjudication for:

- a felony, **or**
- a misdemeanor involving official misconduct.

*Government Code § 33.038.*

The court rendering judgment shall include an order removing the justice of the peace in the judgment. *Local Government Code § 87.031.*

If the justice of the peace appeals the judgment, the appeal supersedes the order of removal unless the court that renders the judgment finds it is in the public interest to suspend the justice pending the appeal. *Local Government Code § 87.032.*

### **2. Violation of Nepotism Laws**

An individual who violates the laws regarding nepotism shall be removed from the individual's position. Removal must be made in accordance with any removal provisions in the Constitution if applicable. If the Constitution does not govern the removal, the removal is governed by Section 573.081, Government Code. *Government Code § 573.081(a).*

Removal from a position shall be made immediately and summarily if a criminal conviction against the appointee for a violation of the nepotism laws becomes final. *Government Code § 573.081(b).*

## Chapter 7: Additional Resources

### A. Confidentiality of a Justice's Home Address

The county registrar is required to omit a state judge's home address from the registration list when they receive an application to become registered to vote from a state judge. A justice of the peace is considered a state judge for this purpose. This protection extends to the judge's spouse, minor children, and any adult children living at the residence. *Election Code § 13.0021.*

Under Section 25.02 of the Tax Code, home address information for justices of the peace are confidential and available only for the official use of the appraisal district, the state, the comptroller, taxing units, and political subdivisions. This protection extends to the judge's spouse, minor children, and any adult children living at the residence. It is the responsibility of the Office of Court Administration to notify the appraisal district that a justice's information needs to be restricted. *Tax Code § 25.02; 25.025.*

The requirement that a voter's registered residence match a document such as their driver's license does not apply to certain individuals including state judges (including justices of the peace), in order to preserve the judge's privacy and security. *Election Code § 15.054.* Additionally, upon notification from OCA of a person's status as a judge, or spouse or adult child living with the judge, the county registrar must make the voter registration address associated with them confidential. *Election Code § 15.0215(b).*

Similarly, the address used on a handgun license of a state judge or their spouse or adult child living at home may be the courthouse where the judge sits rather than the residence address. *Government Code § 411.179.*

#### *How Does a Justice Know if Their Information Has Been Blocked?*

Confidentiality of a justice's address is automatic, but you can contact your county registrar and the Office of Court Administration to make sure it has actually been done.

## B. Judicial Officer License to Carry a Handgun

An active judicial officer, including a current justice of the peace, can apply for a license to carry a handgun under Section 411.201 of the Government Code. The application and proficiency requirements under this section are different from those for non-judicial officers wishing to obtain a license to carry.

A retired judicial officer may also apply for a license to carry a handgun under Section 411.201, but only if they:

- have not been convicted of a felony,
- have not, in the five years preceding the date of application, been convicted of a Class A or Class B misdemeanor or equivalent offense,
- are not charged with the commission of a Class A or Class B misdemeanor or equivalent offense or of a felony under an information or indictment,
- are not a chemically dependent person; **and**
- are not a person of unsound mind.

*Government Code § 411.201(c).*

### What the Judicial Officer Must Submit to DPS

A judicial officer applicant must submit to the Department of Public Safety:

- a completed application, including all required affidavits, on a form provided by DPS.
- one or more photographs of the applicant that meet the requirements,
- two complete sets of legible and classifiable fingerprints of the applicant, including one set taken by a person employed by a law enforcement agency who is appropriately trained in recording fingerprints,
- evidence of handgun proficiency (see below),
- a non-refundable application and license fee of \$25, **and**
- if the applicant is a **retired** judicial officer, a form executed by the applicant that authorizes the department to make an inquiry into any noncriminal history records that are necessary to determine the applicant's eligibility.

*Government Code § 411.201(d).*

### *Judicial Officer*

A judicial officer includes both active and retired judicial officers.

### **Proficiency Requirements**

A judicial officer applying for a license to carry must satisfy the handgun proficiency requirements of Section 411.188, except that an **active** judicial officer is not required to take a minimum number of classroom hours as part of the proficiency course.

Additionally, proficiency instruction only has to include instruction on handgun use, proficiency, safety, and proper storage practices for handguns, with an emphasis on storage practices that eliminate the possibility of accidental injury to a child. *Government Code § 411.201(f)*.

An applicant still has to receive range instruction and must demonstrate the applicant's ability to safely and proficiently use a handgun. *Government Code § 411.188(a)*.

### **Alternative Option for Active Judicial Officers**

**Active** judicial officers also have an alternative way to meet the proficiency requirement by obtaining "from a handgun proficiency instructor approved by the Texas Commission on Law Enforcement . . . a sworn statement that indicates that the person, during the 12-month period preceding the date of the person's application to the department, demonstrated to the instructor proficiency in the use of handguns." *Government Code § 411.1882*.

## **C. Assistance with Mental Health Issues, Substance Use, and Stress**

### **1. Getting Help**

The Texas Lawyer's Assistance Program (TLAP) is a program available to both lawyers and judges that helps with wellness, stress and anxiety, depression and bipolar, suicide prevention, substance use, and cognitive decline. The program provides multiple services, including a 24-hour hotline. Judges can call the TLAP Hotline at 800-343-8527 or 512-427-1453. Judges can also call the Judges' Line at 800-219-6474 or go to the website at [www.tlaphelps.org](http://www.tlaphelps.org). The identity of the caller can remain confidential.



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## 2. For Yourself or For Another Needing Help

Judges calling for themselves can receive coaching and education about practical, immediate, and long-term solutions and options. If a judge calls about an impaired lawyer or judge, in order to fulfill their ethical obligation to report, the impaired lawyer or judge will not get in any trouble and the fact their name has been given to TLAP will not be reported or made public in any way. TLAP staff and volunteer lawyers or judges will merely contact the impaired lawyer or judge to offer help and/or educate on available services.

## 3. Services

TLAP Services Include:

- 24/7 confidential phone support,
- referrals to recommend counselors, therapists, psychologists, psychiatrists, and treatment programs based on geographic location,
- support from local peers,
- funding for treatment,
- after-care support, **and**
- psycho-educational programs.

## D. Intimate Partner Violence Resources

Family Justice Center Alliance:

- [www.familyjusticecenter.org](http://www.familyjusticecenter.org)

National Center for Domestic and Sexual Violence:

- [www.ncdsv.org](http://www.ncdsv.org)

National Domestic Violence Hotline:

- [www.ndvh.org](http://www.ndvh.org)
- (800) 799-SAFE (7233)

Office of Court Administration Domestic Violence Resource Program

- [www.txcourts.gov/dvrp](http://www.txcourts.gov/dvrp)



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**Office on Violence Against Women of U.S. Department of Justice:**

- [www.ojp.usdoj.gov/vawo](http://www.ojp.usdoj.gov/vawo)

**Texas Council on Family Violence:**

- [www.tcfv.org](http://www.tcfv.org)

**E. Helpful Contact Information**

TJCTC has a document that lists several organizations' contact information that may be useful for courts. This information is often for court use only and should not be shared with the public. If you would like a copy of this document, please contact April Williams at TJCTC and ask for the "Helpful Contact Information" document. April's email address is [adw167@txstate.edu](mailto:adw167@txstate.edu). If April is unavailable, call TJCTC and press 1 for a legal question, and the Legal Department will assist you.

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