
Procedural Fairness: Equal Access to Justice

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Funded by a Grant from the Texas Court of Criminal Appeals

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Resources

- Texas Justice Court Training Center: <https://www.tjctc.org/>
 - Deskbooks, SRL page, Self-paced modules, Forms, etc.
 - Officeholding Deskbook includes information on the Texas Code of Judicial Conduct.
- Office of Court Administration: <https://www.txcourts.gov/oca>
 - Many resources and publications.
 - Rules, including TRCP, Texas Rules of Evidence, and Texas Code of Judicial Conduct: <https://www.txcourts.gov/rules-forms/rules-standards/>
- Texas Law Help: <https://texaslawhelp.org/>
- Texas Constitution and Statutes: <https://statutes.capitol.texas.gov/>

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Agenda

- What is Procedural Fairness/Justice and Why is it Important?
- The Role of the Clerk
- Effective Communication
- Technology
- Scenarios: What Would You Do?
- Takeaways

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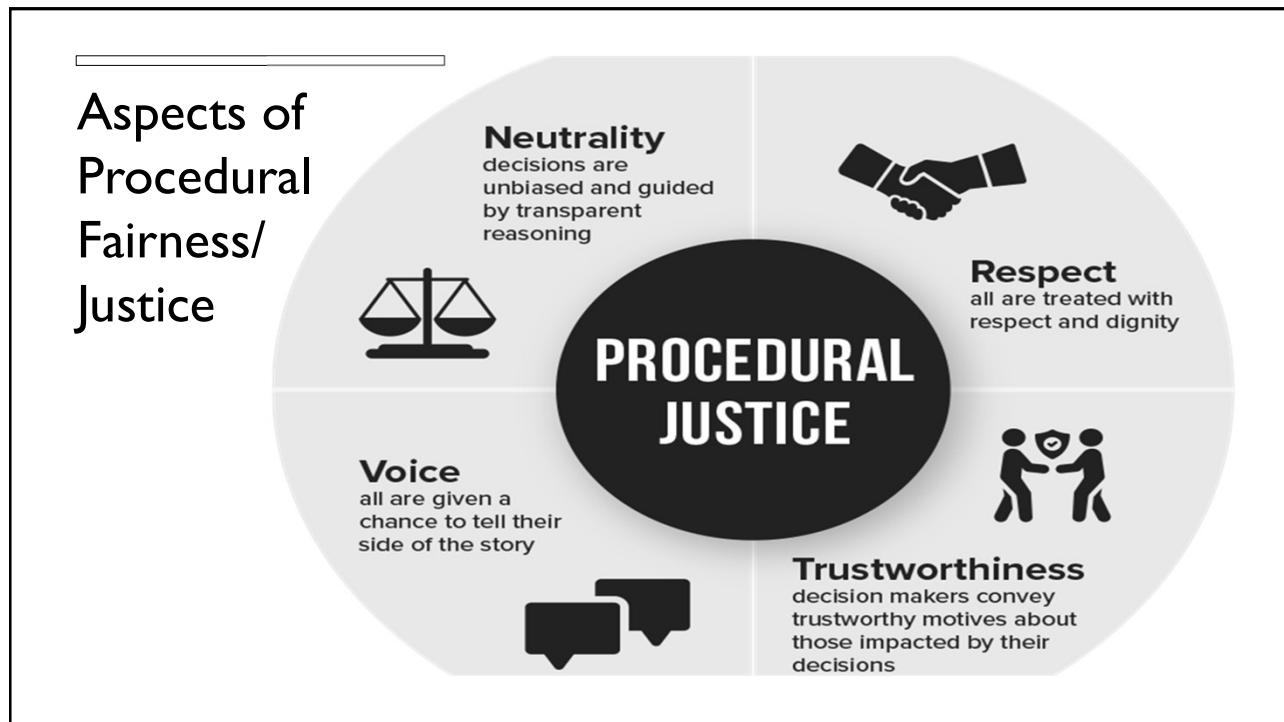
What is Procedural Fairness/Justice and Why is it Important?

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Procedural Fairness/Justice

- Discuss:
 - What is your definition of procedural fairness/justice?
 - Why do you think it is important?

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Question

- If you were coming to **your** court for the first time, what might be confusing or difficult? What could limit your access to justice?

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The Role of the Clerk

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Setting the Tone

- You are an extension of the judge.
- Three C's: Consistent, Competent, Conscious
- Ensuring practices, procedures, forms, etc. are clear and fair for all parties.
- Actual vs. perceived fairness and impartiality.
 - Decorations/affiliations.
 - Professionalism.
 - Demeanor in and out of the courtroom.
- Keeping organized and getting through cases efficiently.

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Disability Accessibility Resources (1 of 2)

- National Center for State Courts' Needs of Persons with Disabilities page: <https://www.ncsc.org/courthouseplanning/needs-of-persons-with-disabilities>
- National Center for State Courts' Behavioral Health and State Courts page: <https://www.ncsc.org/behavioralhealth>
- OCA's Guide for Addressing the Needs of Persons with Mental Illness in the Court System: <https://www.txcourts.gov/media/1441120/guide-for-addressing-the-needs-of-persons-with-mental-illness-in-the-court-system.pdf>
- Judicial Commission on Mental Health: <https://texasjcmh.gov/>

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Disability Accessibility Resources (2 of 2)

- Disability Justice website: <https://disabilityjustice.org/justice-denied/elusive-and-inconsistent/>
- The Arc's Criminal Justice page: https://thearc.org/our-initiatives/criminal-justice/#what_arc_doing
- DOJ Civil Rights Division's *Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act*: <https://archive.ada.gov/cjta.pdf>
- Web Content Accessibility Guidelines: <https://www.w3.org/WAI/>
- Microsoft Office Accessibility Information: <https://bit.ly/46cYgZa>

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Unconscious Bias

TYPES OF UNCONSCIOUS BIAS



Affinity Bias

Feeling a connection to those similar to us



Perception Bias

Stereotypes and assumptions about different groups



Halo Effect

Projecting positive qualities onto people without actually knowing them



Confirmation Bias

Looking to confirm our own opinions and pre-existing ideas.

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Effective Communication

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Communicating with Parties

- Clear notices, signage, and instructions.
- Properly trained court personnel.
- No ex parte communications.
- Literacy barriers?
- Language barriers?
 - See TJCTC's *Interpreters & Spanish Legal Terminology* self-paced module: <https://www.tjctc.org/onlinelearning/selfpacedmodules.html>
- Legal information/customer service vs. legal advice.
 - See OCA's *Legal Information vs. Legal Advice* publication: <https://www.txcourts.gov/media/1220087/legalinformationvslegaladviceguidelines.pdf>

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Active Listening

- WAIT: Why Am I Talking?
- Are you just waiting for your turn to talk?
- *Really* listen.
- Repeat back what you've heard to make sure you've understood.
- Don't make assumptions/auto-fill.

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Discussion Question

- Discuss at your tables:
 - What is an uncomfortable encounter you have had at the window or in court and how did you handle it?
 - Have you ever had an interaction or observed an interaction at the window or in court that was not handled well? How could it have been handled better?

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Technology

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Virtual Appearance – TRCP 500.10(a),(b)

- **Participant Method of Appearance:** A judge may allow or require a participant to appear at a court proceeding by videoconference, teleconference, or other available electronic means.
- **Judge Method of Appearance; Location:** A judge may appear at a court proceeding by videoconference, teleconference, or other available electronic means. However, even if appearing electronically, a judge must conduct the court proceeding from the judge’s office at times prescribed by the commissioner’s court, as provided by statute.

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Virtual Appearance – TRCP 500.10(c)

- **Factors:** In determining whether to allow or require electronic participation, the judge should consider factors such as:
 1. case type;
 2. the number of parties and witnesses;
 3. the type of evidence to be submitted, if any;
 4. technological restrictions such as lack of access or proficiency;
 5. travel restrictions such as lack of transportation, distance, or inability to take off work;
 6. whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or accommodations for a person with a disability;
 7. any previous abuse of a method of appearance; and
 8. any agreement or objection by the parties.

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Virtual Appearance – TRCP 500.10(d)

- **Notice:** If the judge allows or requires a participant to appear electronically, the judge must provide reasonable notice of the electronic participation and include the notice in the papers of the case. The notice must contain the information needed for participants to participate in the proceeding, including:
 - instructions for joining the proceeding electronically,
 - the court’s designated contact information, and
 - instructions for submitting evidence to be considered in the proceeding.

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Virtual Appearance – TRCP 500.10(e)

- **Open Courts:** If the judge conducts a court proceeding at the judge’s office in which all other participants appear electronically, then the judge must:
 - provide reasonable notice to the public of how to observe the court proceeding; and
 - provide the public the opportunity to observe the court proceeding, unless the judge has determined that the proceeding must be closed to protect an overriding interest, considered all less-restrictive alternatives to closure, and made findings in a written order adequate to support closure.

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Local Rules, Forms, and Standing Orders – TRCP 3a

- Local rules, forms, and standing orders must not conflict with other law or rules.
- Local rules, forms, and standing orders are not effective unless published on OCA's website.
- OCA website with information, instructions, and where the rules/forms/orders are posted and can be viewed:
<https://www.txcourts.gov/rules-forms/local-rules-forms-and-standing-orders/>

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Court Resources for the Public

- Look at your website regularly.
- Is everything up to date? Portraying the right image? How do you make changes?
- Is your court progressing with advances in technology?

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Discussion: Technology in Your Court

- Who is the most “tech savvy” in your court?
- Have you helped your court improve its technology? How?
- How have things changed since Covid?
- How do you make sure virtual appearance options are consistent and all necessary information is provided?
- What are good ideas for virtual hearing policies and procedures? What do yours look like?

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Scenarios: What Would You Do?

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Scenario #1

- You make a mistake and forget to issue and send out a citation on an eviction case. The defendant doesn't learn about the case until the constable arrives to serve the writ of possession.
- What do you do? What do you not do?
- Have you ever seen a mistake handled in a way that made it worse?

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Scenario #2

- You're at a BBQ and someone brings up a case that was in your court recently and was in the news. They ask your opinion about the case and the people involved.
- What can and can't you say? What's a good way to deal with this?

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Scenario #3

- A sovereign citizen is at the counter in your court. They are filming you and insisting that you dismiss their case because the court does not have jurisdiction over them and you are aiding and abetting the court in violating their rights.
- How should you handle this? What should you say? What should you not do/say?

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Scenario #4

- A lawyer files a motion in your court which is denied by the judge. They call the court, demand to speak to the judge, and say they have grounds to file a writ of mandamus and a judicial conduct complaint. Should you put them through to the judge?
- How should you handle this? What should you say? What should you not do/say?

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Scenario #5

- Your court has a criminal docket set and multiple parties, with and without attorneys are there. One of the officers there to testify is a friend of yours.
- What are some examples of what you should NOT do or say when interacting with the officer?

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Scenario #6

- A court has a policy that once a docket begins, anyone who arrives after the start time is not allowed in (whether or not their case has been called yet) because it can disrupt the proceedings.
- Are there any problems with this policy? What are the potential consequences? What other possible policies could the court have instead to address this concern?

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Takeaways

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What Stood Out?

Write on the provided “End of Class Takeaways” handout and turn in (take a picture for yourself):

- What are three things that your court already does that promote procedural fairness/justice?
- What are three things that you can take away from this class to improve how things are done in your court?

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