



Duties & Responsibilities: Mitigating Liability

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Agenda

- Court System
- Constitutional & Statutory Duties
- TCOLE Requirements
- Overlapping Roles
- Putting Elections Behind Us
- Avoiding Liability

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Court System

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Texas Courts

- Constables act as an arm of the court
- Texas courts are made up of the Texas Supreme Court, the Court of Criminal Appeals, courts of appeals, business courts*, district courts, probate courts, county courts, county courts at law, justice courts, and municipal courts
- *See Handout Court Structure of Texas*

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Working with Courts

- Constables work with courts in different capacities, but mostly related to civil process and court security

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Duties

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Main Duties

- Found in Local Government Code 86.021
 1. The constable **shall** execute and return as provided by law each process, warrant, and precept that is directed to the constable and is delivered by a lawful officer (including eviction notices).
 2. The constable **shall** attend each justice court held in the precinct.

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What about other LE duties?

- Constables and their deputies are required to be licensed peace officers, so they can also perform routine law enforcement duties, like traffic enforcement.
- However, these duties **must not interfere** with the constable's ability to perform their two required duties of civil process and justice court security.

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Prohibitions – What You Can't Do

- If an officer is party to or interested in the outcome of the suit, they cannot serve any process related to that suit;
- A constable cannot retain a fee paid for serving process in the constable's official capacity other than their regular salary or compensation; and
- A constable cannot serve process outside their official capacity if that process may be served in their official capacity.

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Duty to Act in Good Faith

- This is likely the **most important duty** for a constable and their deputies to remember, because if an officer acts in good faith when executing a writ or serving other process, they will generally not be held liable for damages. *Civil Practice and Remedies Code § 7.003*

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What does it mean to “*act in good faith*”?

- An officer acts in good faith when they show that, "a reasonably prudent officer, under the same or similar circumstances, could have believed that the officer's conduct was justified based on the information the officer possessed when the conduct occurred."

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Other Statutory Duties

Duty of
Successor in
Office

Duty to
Deliver Money
Collected

Duty Related
to Seized
Property

Duty to
Endorse Writ

Duty to Return
Writ Properly

Duty to Levy
and Sell

Duty to Hold
Proper Sale

***See Handout**

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Discussion – Successor in Office

- How did you (or should you) handle it when you come into office, and it is a mess (no organization or processes, things weren't handled in a timely manner, etc)?

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Quiz 1

A constable must endorse a writ with
_____ when they receive it.

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Quiz 2

A constable has _____ days to correct or
amend a return from the time that they notice
an error or mistake.

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Discussion – Successor in Office

- How did you (or should you) handle it when you come into office, and it is a mess (no organization or processes, things weren't handled in a timely manner, etc)?

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TCOLE Requirements

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Keeping Your License – Req. Training

Occupations Code

- Sec. 1701.253 – School Curriculum
- Sec. 1701.351 – Continuing Education Required for Peace Officers
- Sec. 1701.354 – Continuing Education for Deputy Constables

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Required Training – What does this look like?

| Elected Constable | Deputy Constable |
|---|---|
| <ul style="list-style-type: none">• Licensed Peace Officer Requirements (per the level of your license) each 4-year training cycle/2-year unit, <i>including ALERRT training</i>• Civil Process #1415 from TJCTC each 4-year training cycle• Continuing Education for Constables #3743 through LEMIT* | <ul style="list-style-type: none">• Licensed Peace Officer Requirements (per the level of your license) each 4-year training cycle/2-year unit, <i>including ALERRT training</i>• Civil Process #3131 each 4-year training cycle |

*Newly elected constables must take Newly Elected Constable training #3742 from LEMIT within first two years as constable

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Civil Process Proficiency Certificates

- Test is administered by TJCTC.
- For more information see <https://www.tjctc.org/civil-process/certification-exam.html>

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Overlapping Roles

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Criminal Peace Officer Duties

- These duties are shared with sheriffs, police departments, and other law enforcement officers.
- An office should only exercise these duties if they are already fulfilling their civil process and court security roles.

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Sharing Civil Process & Court Security

- In many counties, constables have agreements with the sheriff to share, or each take on part of these roles.
- That is okay, but ultimately if the sheriff or other LE decides not to do the work, it could fall back on the constable's office.

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Small Office/County Tip

- You may **NEED** to work together!
- On certain shifts you may have to back up a domestic call, because you will need other LE to back you up on a Writ of Possession later
- You can't be in two places at once if there is only one of you!

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Putting Elections Behind Us

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Get Along to do the Best Job

- Now that you are in office (or your boss is), the goal is to do a good job for your county!
- Focus on the basics
- Communicate
- Back up other offices if they need it
- Remember, you can do a lot with a little if you are willing to!

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Discussion - Opponents

- What are your top tips for working with other officials who you may have campaigned against or supported their opponent?
- Did any of you come into a bad situation with your office, because you defeated an incumbent or someone who supported your opponent?

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Discussion – Good Communication

- This is key to doing a good job as a constable.
- How do you keep the lines of communication open?

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Avoiding Liability

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Judicial Immunity

- Usually, a constable is acting with judicial immunity when serving civil process, because they are acting as an “arm of the court”
- The key is to make sure you **only do what is ordered by the court** and nothing else.
- Ask for clarification if you don’t understand or are worried about a court’s order!

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Limitations on Immunity

- If you act without legal authority or fail to perform a purely ministerial act (one that you don’t have any discretion over), you can be found liable.

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Discussion – Immunity

- Can you contact your courts for clarification?
- How do you tell a judge that they might have done something incorrectly without ruffling feathers?

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Can the elected constable be liable for a deputy's actions?

- Yes
- An elected constable is generally responsible for their deputy's conduct when the deputy is acting in their official capacity in furtherance of their job duties. For this reason, the constable is permitted to require a deputy to post a bond. *Local Government Code § 86.011(c)*.

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Example 1

- If a deputy fails to endorse a writ of execution that results in a judgment creditor not collecting on their judgment when they should have, the elected constable may be liable.

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What about if a deputy goes rogue or isn't at work?

- The elected constable is not responsible for acts committed by a deputy outside the scope of their employment or unauthorized acts.

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Example 2

- If a deputy runs a red light and causes a car wreck when they are off-duty, driving a personal vehicle, the elected constable will not be liable for the deputy's negligence.
- The elected constable may also not be liable if the deputy is acting against office policy.

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Discussion – Polices & Procedures

- Do you have policies & procedures for your office?
- How did they get drafted? Do deputies have input?

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Discussion – What would you do?

- You arrive to execute a writ of possession, and a blind man opens the door. You explain that John Doe and all occupants are being removed through a writ of possession issued by the JP court.
- This man says he is Bob Smith, and produces what looks like a valid lease with the landlord/plaintiff.