

The Clerk Side of Criminal Trials

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Resources

- TJCTC Website
www.tjctc.edu
 - Deskbooks, charts, forms, self-paced modules, webinars, legal board, etc.
- Texas Constitution and Statutes Website
<https://statutes.capitol.texas.gov/>
- Texas Courts Website – Rules and Standards
<https://www.txcourts.gov/rules-forms/rules-standards/>
 - Texas Rules of Evidence, etc.
- Sample Documents in Handouts

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Agenda

- Ice Breaker – Real or Ridiculous?
- Jury Logistics (Criminal and Civil Cases)
- Criminal Trial Topics

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Disclaimer

- Much of what will be discussed and the example documents in the handouts are samples and suggestions.
- Get on the same page as your judge and figure out what they want/expect – every court is different.
- Use checklists and modify resources/examples for your own purposes. Don't reinvent the wheel!

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Ice Breaker – Real or Ridiculous?

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Real or Ridiculous #1

Prosecutor handed clerk a cell phone and told them to get certain photos off of it for the trial.

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Real or Ridiculous #2

A juror showed up wearing a shirt that read “GUILTY.”

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Real or Ridiculous #3

Defendant cross-examined themselves on the stand.

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Real or Ridiculous #4

A party arrived in court with a live goat, claiming it was their “legal assistant.”

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Real or Ridiculous #5

Prosecutor asked the clerk to hand evidence directly to the jury.

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Real or Ridiculous #6

A juror live-tweeted the trial while sitting in the box.

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Real or Ridiculous #7

A defendant attempted to call their cat as a character witness.

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Real or Ridiculous #8

Defendant handed clerk a bribe of cookies to “lose their file.”

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Jury Logistics (*Criminal and Civil Cases*)

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Getting Juror Summons Sent Out

- What is the process in your county?
 - Who do you ask/what system do you use?
 - What information do you need to provide?
 - How do you decide how many jurors should be summoned?
 - Anyone sending summons directly on their own? What is your process?
 - (In the 2023 legislative session, justice court clerks were added to the list of who can send initial juror summons. Government Code §62.013, 62.015, 62.411(a), 62.412(c))

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Last Minute Juries

- Most often going to be an issue in eviction cases, but could potentially happen in other cases as well.
- How does your court handle rounding up juries on short notice?
- Anyone going out themselves and finding jurors? What's your process?
 - (In the 2023 legislative session, justice court clerks were added to the list of who can be ordered by the judge to summon additional jurors for a panel when there aren't enough (instead of sending a constable). Government Code §62.013, 62.015, 62.411(a), 62.412(c))
- See *sample order to constable and blank jury summons in sample documents*.

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Not Enough Jurors

- ***Show of hands: Who has ever not had enough jurors?***
- Can follow same procedure as when rounding up jurors for last minute juries, and the jurors who did show up will just wait while that is happening.
- What other options are there? What does your court do?

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Consequences for Jurors Not Appearing

- Technically, a juror can be held in contempt for not appearing, but usually more work than it is worth and not great for public sentiment.
- Efforts are often unsuccessful even when made.
 - Not worth the resources to track people down if they don't respond.
 - Communications may be ignored - Harris County juror contempt scam example.
 - Public notice sent out: *SCAM ALERT – Text messages claiming to be from the District Clerk's Office and demanding payment on jury summons fine have been reported. If you receive this message, do not click on any links or provide any personal information.*
- **What does your court do?**

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Exemptions and Disqualifications

- How can jurors let the court know ahead of time? Can the clerk confirm with them if they don't have to come?
- What if they show up but tell the clerk when they arrive?
- See *sample documents in handouts.*

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Excuses

- When there is not a disqualification or an exemption, it is up to the judge to decide whether they are going to excuse someone.
- What is your process for when someone calls ahead of time? Any ability for them to do it online? What if they tell the clerk when they arrive?
- Do you have a process for rescheduling due to conflicts?
- Are there any excuses that the clerk has authority to automatically accept?
- How does your court handle jurors who do not speak or understand English?

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Giving General Information to Jurors

- Information about qualifications, exemptions, and excuses.
- General information about the process and logistics.
- **How does your court provide this information prior to and during juror service?**
- See *example documents in handouts*.

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Juror Compensation

- How does your court/county handle compensation?
- Do you have any specific duties related to making sure jurors get their payments?

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Criminal Trial Topics

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Criminal Trial Checklist

- See document at front of example documents handout – basic duties/requirements for bench and jury trials.
- Remember that this is just an example from one court – make sure you are following your court's policies and procedures.

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Which Laws/Rules Apply?

- Texas Rules of Evidence
- Code of Criminal Procedure
- Any other applicable statute for the specific case

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Helpful Information for Parties

- The Rules of Evidence must be made available for examination during court's business hours.
- **<https://www.tjctc.org/srl.html>**
 - TJCTC's for the public page – the self packets are just for civil cases, but there are also links to other resources that may be helpful as well as information on finding an attorney.
- Any information packets your courts has.
- Self-represented litigants may need more information and help regarding logistics.
- *Remember: just make sure anything provided is legal information and not legal advice!*

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Interpreters

- Resources and information on this topic are available in the Spanish Terms and Court Interpreters/Language Barriers class and in TJCTC's Interpreters self-paced module:
<https://www.tjctc.org/onlinelearning/selfpacedmodules.html>

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Written Complaint Required

- If a defendant pleads not guilty, a complaint is required before the case can go to trial.
- The officer or a prosecutor needs to be the one generating and filing the complaint with the court.
- If the court generates the complaint, they are doing something that is the prosecution's job, which is not neutral and impartial as required.

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Jury Trial Unless Waived

- The default in criminal cases is a jury trial. That means they **must** be set for a jury trial unless they waive it in writing.
- There is no fee like there is for civil cases. But if a defendant does not appear for a jury trial, the costs of empaneling the jury can then be charged against them.
- The jury must have 6 jurors, all of them must agree to reach a verdict.

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Organizing Dockets

- Organizing dockets strategically can help improve court efficiency and allow for more consistent outcomes.
- How do you organize dockets in your court?
 - How many at a time?
 - How often?
 - Any categorization?

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Representation

- A person may represent themselves or may be represented by an attorney.
- There is no option to be represented by an authorized agent/anyone not licensed to practice law.

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Discovery

- Discovery requests don't happen in every case in justice court.
- The only thing the prosecutor can request from the defendant is notice of any experts that will be testifying (both sides can request this, but it won't be common in justice court).
- The defendant usually requests things such as copies of documents or photographs.
- The state is ***not required*** to allow self-represented defendants to make copies, ***but may allow it***, or just give copies to the self-represented defendants.

Code of Criminal Procedure Art. 39.14(a) & Art. 39.14(d).

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What Types of Things Might be Asked for in Discovery?

- Dashboard camera video tapes
- Copy of a police report
- Picture taken of reported damage
- Toll road account summary
- Driving records

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Discovery Requests Go to the Prosecutor – Not to the Court

- If you receive a discovery request in a criminal case, forward the request to the prosecutor.

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When is the Court Involved in Criminal Discovery?

- The state may object to the defendant's discovery request.
 - The court must hold a hearing and decide if the items should be disclosed.
 - *Example: if the request is not relevant to the case or is something the state does not have.*
- The defendant may request a hearing if the state redacts (blacks out) anything from the documents they do provide.
 - If that happens, the court must hold a hearing and decide at the hearing if the redactions are proper.

Code of Criminal Procedure Art. 39.14(c).

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Michael Morton Act, Brady, and Exculpatory Evidence

- The state must give any “exculpatory evidence” to the defendant.
 - The defendant **does not** have to request this information.
- Exculpatory evidence is any evidence that could show the defendant is not guilty or would tend to reduce the punishment for the crime.

Brady v. Maryland, 373 U.S. 83 (1963); Code of Criminal Procedure Art. 39.14

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Pretrial Hearings

- How do these function with the prosecutor?
- Why are they helpful?
- How often do you have them?
- How does it work logistically?

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Requests for Continuances

- What are your court's procedures for requests for continuances (both in advance and same day)?
- Do you coordinate with the prosecutor(s) to avoid conflicts with trial settings in other courts? How does this work?
- What is the clerk's role?

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Parties Not Appearing for a Pre-Trial Hearing

- Depending on the circumstances, either re-set or just set for trial.
- Pre-trial hearings, while often helpful, are generally not required.
 - *For information on the rare situations in justice courts when a defendant can be required to attend a pre-trial, see Chapter 4, Section (C)(2) of TJCTC's Criminal Deskbook.*

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Prosecutor Doesn't Appear for Trial

- Three options:
 - re-set,
 - appoint a prosecutor pro tem, or
 - proceed with the case (which will result in an acquittal of the defendant).
- It is up to the judge and county policy to decide which of the three options they want to choose.
- **Note:** There is no authority to dismiss the case!
- **What is the clerk's role in making sure the judge has the info they need to decide how to proceed?**

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Defendant Doesn't Appear for Trial

- The case may not proceed without the defendant!
- Either re-set or issue a warrant and/or utilize another applicable enforcement tool depending on the circumstances (See TJCTC's *Criminal Deskbook for more information*).
- **Note:** a charge of FTA is not appropriate for failing to appear at trial unless the defendant posted an appearance bond after entering their "not guilty" plea.
- **What is the clerk's role in making sure the judge has the info they need to decide how to proceed?**

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Defendant's Attorney Doesn't Appear for Trial

- What should the court do if the defendant appears, but their attorney doesn't?

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Charging the Jury

- Jury charges (instructions to the jury about the law) are not allowed in civil cases in justice court, but they are allowed in criminal cases.
- Generally, a proposed jury charge is provided by the prosecuting attorney. There should be a copy of the jury instructions for the judge and each party, as well as for the jurors. The defendant must be allowed to review the proposed instructions and if there are objections, the judge will need to decide what the charge should say.
- *For more information and sample forms, see TJCTC's Trial Notebook and your handouts.*

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Post-Trial Paperwork and Procedures

- What is the clerk's role after the trial is over?
 - Do you draft the judgment for the judge to review?
 - Any reporting duties (DPS, OCA, county-specific, other)?

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Timing of Written Judgment

- When should the judgment be put in writing and signed by the judge?
- Are judgments given before parties leave? If no, how soon do they get them?
- What are problems that can arise if this is not done timely?
- What are best practices for this?

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