

Resolutions approved by the Texas Judicial Council
82nd Legislative Session

Appellate Courts

- (1) Appellate Court Filing Fees – p.4

Associate Judges/Specialty Courts

- (1) Associate Judges: De Novo Hearing Following a Jury Trial – p.5
- (2) Associate Judges: Exemptions and Qualifications to Carry a Firearm – p.7
- (3) Associate Judges: Form of the Record – p.8
- (4) Associate Judges: Jurisdiction of Certain Child Protection Matters – p.9
- (5) Comprehensive Associate Judge Statute – p.10

Civil Legal Services

- (1) Maintain Funding for Civil Legal Services for the Poor – p.11

Court Clerks

- (1) Eliminate Statute Permitting Bond in Lieu of Certain District Court Fees – p.13
- (2) Expunction of Court Case Records by Court Clerks – p.14

Court Costs

- (1) Allow General Law Municipalities to Use Scofflaw – p.15
- (2) Broaden Uses of Juvenile Case Manager Fund – p.16
- (3) Change Court Costs Calling for a Fraction of a Dollar – p.17
- (4) Civil Fees in Statutory County Courts with Concurrent Jurisdiction with District Courts – p.18
- (5) Consistent Definition of Conviction – p.19
- (6) Court Cost Assessment in Juvenile Tobacco Cases – p.20
- (7) Courthouse Security Fund Fee in Felony Convictions in County-Level Courts – p.21
- (8) Liability of Criminal Defendants for Witness Fees – p. 22
- (9) Mandatory Refusal to Register Motor Vehicle – p.23
- (10) New Court Cost Application to Crimes Committed between 09/01 and 12/31 – p.24
- (11) Simplify Criminal Court Costs – p.26
- (12) Wichita County and Montague County Adoption Case Filing Fees – p.27

Court Technology

- (1) Statewide Court Technology Program and Associated Fee – p.28

Criminal Justice

- (1) Assessment of Special Expense instead of Fine in Deferred Adjudication Cases – p.29
- (2) Clarify Orders of Nondisclosure – p.30

- (3) Public Access to Arrest Warrants – p.31
- (4) Remove Requirement that a Magistrate’s Order of Emergency Protection be Served on a Defendant in Open Court – p.32

Indigent Defense

- (1) Additional State Funding for Indigent Defense – p.33
- (2) Apply Fair Defense Act to Probation Revocations and Appeals Appointments – p.35
- (3) Improve Process for Creating Public Defender Offices by Local Jurisdictions – p.36
- (4) Increase the Independence of the Indigent Defense Function at the State Level – p.37
- (5) Longevity Pay for Public Defenders – p.38
- (6) Payment Process for Conflict Counsel in State Writs of Habeas Corpus Proceedings in Capital Cases – p.39
- (7) Procedures for Withdrawals of Trial Counsel and Appointment of Appellate Counsel – p.40
- (8) Repeal Indigent Representation Fund Provision – p.41
- (9) Specifically Authorize Managed Assigned Counsel Programs – p.42

Judicial Administration

- (1) Appointment of Presiding Judges by Chief Justice of the Supreme Court – p.43
- (2) Assignment of Visiting Municipal Judges – p.45
- (3) Court Organization – p.47
- (4) Expand City Secretary Reporting to OCA – p.50
- (5) Implement Supreme Court Jury Task Force Recommendations – p.51
- (6) Repeal or Amend Certain Court Data Reporting Requirements – p.53
- (7) Repeal Provision for Monthly Tracking System in Child Support Cases – p.55
- (8) Vexatious Litigants – p.56

Judicial Selection

- (1) Adopt Recommendations of the Texas Judicial Council Committee on Judicial Selection – p.58

Municipal and Justice Courts

- (1) Clarify Orders of Nondisclosure for Class C Misdemeanor Convictions of Children – p.60
- (2) Class C Misdemeanor Proceedings Without Complaint when Defendant Pleads Not Guilty – p.61
- (3) Community Service in Lieu of Alcohol Awareness Course – p.62
- (4) Compliance Dismissal Uniformity – p.63
- (5) Destination of Fine Money and Court Costs in Appeals from Municipal Court – p.64
- (6) Expand Time to Make Motion for New Trial – p.65
- (7) Guilty Pleas by Minors to Alcoholic Beverage Code Offenses – p.66

- (8) Municipal Court Venue – p.67
- (9) Municipal Judge Titles – p.68
- (10) Notice of Standard Fine and Costs – p.69
- (11) Right of Appeal from Municipal Courts of Record – p.70
- (12) Vehicle Impoundment for No Insurance Violations – p.71

Process Server Review Board

- (1) Change of Service of Process Requirements on Corporate Registered Agents – p.72
- (2) Process Server Certification Fees – p.73

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Appellate Court Filing Fees

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to revising certain statutes concerning appellate court filing fees to reflect current appellate terminology;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Sections 51.005 and 51.207 of the Texas Government Code set out the filing fees to be charged in the Supreme Court of Texas and the courts of appeals. The terminology used in the statutes is not up to date. The Supreme Court of Texas made changes to the Texas Rules of Appellate Procedure in 1997 that altered certain appellate procedures and terminology. In 1998, the Supreme Court of Texas issued an order regarding the filing fees to be charged in the Supreme Court and in the courts of appeals. While the order did not change the amount of the filing fees, the order reflected the 1997 changes to the Texas Rules of Appellate Procedure and, accordingly, uses different terminology than the Government Code provisions setting the fees.

Purpose

Sections 51.005 and 51.207 of the Texas Government Code should be amended so as to use current terminology in regard to appellate procedures and documents.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Associate Judges: De Novo Hearing Following a Jury Trial

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to a de novo hearing following jury trial;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under the provisions of the Family Code Sections 201.015(i) and 201.2042, a party to a child protection case referred to an associate judge and tried to a jury is entitled to a de novo hearing before the referring court. A party may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial.

Under the current application of Section 201.015(i), a party is in essence deprived of its right to a jury trial if the parents request a jury in the hearing before the associate judge, the jury finds parental rights should not be terminated, the associate judge's proposed order or judgment conforms to the jury verdict, then the Department of Family and Protective Services requests a de novo review and the referring court reverses the order of the associate judge. By reversing the order or proposed judgment of the associate judge that was based on the jury verdict and terminating parental rights, the referring court deprives the parents of their right to a trial by jury in a proceeding in which their parental rights were subject to termination.

Section 201.2042 of the Texas Family Code should be amended to prohibit a request for a de novo hearing from an order or judgment of the associate judge rendered following a jury trial on any issue or finding which conforms to the jury verdict. The order of the associate judge in conformity with the jury verdict should be deemed an order of the referring court. A de novo hearing would still be allowed for a recommended order or judgment of an associate judge rendered notwithstanding the jury verdict or not in conformity with the jury verdict.

Purpose

Prohibiting a de novo hearing by the referring court from an order or judgment of an associate judge rendered in conformity with a jury verdict would preserve the due process rights of the parties to child protection cases under Texas Family Code Chapter 201 Subchapter C.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Associate Judges: Exemptions and Qualifications to Carry a Firearm

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the exemptions and qualifications for an associate judge to carry a firearm;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Government Code Section 411.201(a) specifies the judicial officers who are eligible for a license issued by the Department of Public Safety to carry a concealed handgun under special requirements applicable only to judicial officers, but it does not include associate judges appointed pursuant to Chapter 201 of the Texas Family Code.

Purpose

Including associate judges appointed pursuant to Chapter 201 of the Texas Family Code in the list of active judicial officers specified by Government Code Section 411.201(a) would extend the exemptions and qualifications for carrying a firearm already provided to other elected or appointed judges in Texas.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Associate Judges: Form of the Record

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the form of the record from a hearing before an associate judge in a de novo hearing before the referring court;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under the provisions of Texas Family Code Section 201.009, a court reporter may be provided during a hearing held by an associate judge appointed under Chapter 201 of the Code, and a court reporter must be provided only when the associate judge presides over a jury trial or a contested final termination hearing. Thus, many records of hearings before associate judges are made by means such as electronic recording rather than by a court reporter. The referring court should be permitted to use the record of the associate judge's hearing in any form in which it is maintained. The current provisions of Sections 201.009(e) and 201.015(c) of the Texas Family Code appear to limit the referring court's ability to consider the record of the associate judge's hearing only if it was made by a court reporter.

Purpose

The Texas Family Code should be amended to allow a referring court to consider the record of the associate judge's hearing in any form in which it is maintained.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Associate Judges: Jurisdiction of Certain Child Protection Matters

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the jurisdiction of certain child protection matters;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Currently, child protection court associate judges appointed pursuant to Subchapter C of Chapter 201 of the Family Code have jurisdiction over matters under Chapters 262 and 263 of the Family Code. Such language is unduly restrictive. For example, the child protection courts do not have jurisdiction to preside over cases filed by Texas Family and Protective Services seeking a court order to facilitate an investigation of abuse or neglect, as such actions are governed by Chapter 261, Texas Family Code.

Purpose

Section 201.201 of the Texas Family Code should be amended to provide jurisdiction to child protection court associate judges over matters within Title 5, Subtitle E of the Texas Family Code.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Comprehensive Associate Judge Statute

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the creation of a comprehensive associate judge statute;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Chapter 54 of the Government Code creates a host of associate judge positions that for the most part are specific to particular counties. Often these associate judge positions are entitled “associate judge,” but other titles include “magistrate,” “referee,” “master,” and “hearing officer.” A sampling of these positions include the Dallas County Associate Judge, Tarrant County Criminal Law Magistrate, Harris County Juvenile Law Master, and Cameron County Criminal Law Hearing Officer. The positions are created by local legislation currently but the counties fund these positions.

The powers of these associate judges vary from position to position. An idea exists that a county would be better able to exercise local control and create the types of associate judges that the county needs if the county could choose from among various associate judge options. Consistent with that idea, the various powers contained in the individual statutes found in Chapter 54 could be combined into one statute that would authorize all counties to create associate judge positions with any of the powers currently possessed by Chapter 54 associate judges.

Purpose

Amend Chapter 54 to allow all counties to appoint associate judges with any or all of the powers currently granted to the various associate judges in Chapter 54.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Maintain Funding for Civil Legal Services for the Poor

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to maintaining funding for civil legal services for the poor;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Funds generated from Interest on Lawyers' Trust Accounts (IOLTA) are a primary source of civil legal aid funding in Texas. Due to lower interest rates because of the economic downturn, IOLTA revenues plummeted from \$20 million in 2007 to about \$5.5 million in 2009. IOLTA revenues remained flat in 2010. A legislative appropriation in the last legislative session to make up for this funding shortfall allowed legal services organizations to continue to provide services.

Legal aid organizations helped more than 100,000 low-income Texas families in 2009. Without continued funding, it can be expected that legal services attorneys will be laid off and thousands of low-income Texans will be left without needed legal representation. Steps should be taken to provide continued funding for basic civil legal services in light of the current environment in which IOLTA revenues have fallen so significantly.

Purpose

A legislative appropriation to make up for the funding shortfall of approximately \$15 million during the upcoming biennium would be ideal. In the alternative, funding for civil legal services for the poor should come from a combination of: (1) a new document recording fee on all non-judicial filings (except for motor vehicle filings and other filings for which counties do not collect fees); (2) a new court cost assessed on all convictions for Class C misdemeanors other than parking and pedestrian offenses; (3) an increase in the filing fee currently assessed in district court cases to support basic civil legal services for indigents (*see* Texas Loc. Gov't Code § 133.152); (4) payments of restitution under a court order arising from a violation of consumer protection, public health, or general welfare law; and (5) a fee paid by creditors in the mortgage

foreclosure process. The amounts of these fees should be sufficient to generate \$15 million per biennium to make up for the lost revenue from IOLTA funding.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Eliminate Statute Permitting Bond in Lieu of Certain District Clerk Fees

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to eliminating the statute permitting bond in lieu of certain district clerk fees;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 51.318 of the Government Code lists certain fees that district clerks are to charge (*e.g.*, \$8 for issuing a subpoena). Subsection (d) states that “[t]he district clerk may accept a bond as security for a fee imposed under this section.” However, the acceptance of a bond in lieu of the listed fees is not a customary practice of district clerks. Not only is the practice not customary, but it may well be a practice that never occurs.

Purpose

Section 51.318(d) of the Government Code permits a practice that is never (or at least virtually never) done. Accordingly, the section should be eliminated.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Expunction of Court Case Records by Court Clerks

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the expunction of court case records by court clerks;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Article 55.02 of the Code of Criminal Procedure details the procedure for expunctions. The statute is deficient in that no direction is provided to court clerks as to what they should do with the records of the underlying criminal court case when those records are ordered to be expunged. There is uncertainty as to whether the records should be: (1) destroyed; or (2) maintained in an area not open to inspection.

Section 5(a) of Article 55.02 addresses the court's records concerning expunction proceedings (as opposed to records of the underlying criminal case). These records are not to be destroyed. Rather, the records of the expunction proceedings are to be maintained but not be made available to the public. Unfortunately, the statute does not address the underlying court case records.

Purpose

Amend Article 55.02 to provide guidance to court clerks on what they should do with court case records that have been ordered to be expunged.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Allow General Law Municipalities to use Scofflaw

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to allowing general law municipalities to use the scofflaw (Chapter 702 of the Transportation Code);

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Pursuant to Section 702.003 of the Transportation Code, a municipality can contract with the Texas Department of Motor Vehicles or with the tax assessor-collector of the county in which the municipality is located to have the Department or the tax assessor-collector refuse to register the motor vehicle of a person who has an outstanding warrant from that municipality for failure to appear or for failure to pay a fine in a traffic case. This law is known as the “scofflaw.” The law has been effective in getting defendants to pay their courts costs and fines for traffic convictions.

This section only applies, however, to home-rule municipalities. *See* Section 702.002. The scofflaw provision does not apply to general law municipalities. There does not appear to be any reason to preclude general law cities from taking advantage of the scofflaw and entering into a contract with a county tax assessor-collector or with the Texas Department of Motor Vehicles.

Purpose

Section 702.002 of the Transportation Code limits the scofflaw to home-rule municipalities. Section 702.002 should be repealed in order to allow general law municipalities to take advantage of the scofflaw.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Broaden Uses of Juvenile Case Manager Fund

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to broadening the use of the Juvenile Case Manager Fund;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Article 102.0174 of the Code of Criminal Procedure authorizes counties and cities to create a juvenile case manager fund. The county or city may require a defendant convicted of a fine-only misdemeanor to pay a juvenile case manager fee of not more than \$5 as a cost of court. These fees go into the juvenile case manager fund maintained by the county or the city. The funds have a very limited use; they may only be used to finance the salary and benefits of a juvenile case manager. The fund would be more useful if the fund money could be used for the broader and more general purpose of handling cases involving juveniles.

Purpose

Amend Article 102.0174 to broaden the use of the juvenile case manager fund to include all activities surrounding the handling of cases involving juveniles.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Change Court Costs Calling for a Fraction of a Dollar

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to changing court costs in an amount that is a fraction of a dollar;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In the 81st Legislative Session, two new criminal court costs were created that call for fractional dollar amounts to be paid upon certain convictions. Specifically, Article 102.022 of the Code of Criminal Procedure calls for a \$0.10 court cost upon conviction of a moving violation. Additionally, Section 545.412 of the Transportation Code calls for the assessment of a \$0.15 court cost upon conviction of a child safety seat offense.

Court costs in these fractional dollar amounts cause court clerks problems. The cost of collecting and dealing with these additional court costs in fractional dollar amounts is generally greater than the revenue received from the court costs.

Purpose

Amend the relevant statutes to either eliminate the court cost or increase the court cost to an even dollar amount.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Civil Fees in Statutory County Courts with Concurrent Jurisdiction with District Courts

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to civil fees in statutory county courts with concurrent jurisdiction with district courts;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In several of the statutes in Chapter 25 which create statutory county courts, the particular statutory county court is given concurrent authority with the district court in various types of civil cases. A question often arises as to the civil filing fees that should be charged in a case filed in the statutory county court that could also have been filed in the district court. The question is whether the filing fees should be those traditionally assessed in county-level courts or those assessed in the district courts.

In the 81st Legislative Session, HB 4718 was passed which stated dictated that in such an instance the district court fees should be charged. This bill was limited, however, to Ector County. A bill that would provide similar clarification to all counties in the state would be desirable.

Purpose

Legislation should be passed that states that the filing fees to be assessed in a case in which a statutory county court has concurrent jurisdiction with the district court are the same as the filing fees that would be assessed in the district court for the same case.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Consistent Definition of Conviction

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to a consistent definition of conviction for the purpose of assessing criminal court costs;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Criminal court costs are assessed against criminal defendants upon conviction. Most statutes that call for the assessment of criminal court costs define the term “conviction.” The precise wording differs, but all definitions define “conviction” to include deferred adjudication and/or deferred disposition. A question arises in regard to the criminal court cost statutes that do not define “conviction.” The question is whether the court costs should be assessed in deferred adjudication and deferred disposition cases. Currently, the answer to this question is unclear.

Purpose

As a matter of primary importance, the statutes should be amended to define the term “conviction” for purposes of all criminal court costs. As a matter of secondary importance, the statutes should be amended so as to provide for consistent wording of the definition of “conviction” insofar as the term relates to criminal court costs.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Court Cost Assessment in Juvenile Tobacco Cases

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the assessment of court costs in juvenile tobacco cases;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

A question exists as to whether court costs should be collected in juvenile tobacco cases. Section 161.252 of the Health and Safety Code makes the possession, purchase, consumption, or receipt of cigarettes or tobacco products by an individual younger than 18 years of age a crime. The following section of the Code (Section 161.253) states that on conviction of an individual for an offense, “the court shall suspend execution of the sentence and shall require the defendant to attend a tobacco awareness course.” Upon satisfactory completion of the course, if the defendant has not previously been convicted of the offense, the court shall “discharge the defendant and dismiss the complaint or information against the defendant.” The statute goes on to say that when the defendant is discharged, he or she “is released from all penalties and disabilities resulting from the offense.” Nothing in the relevant statutes indicates whether the defendant is required to pay court costs.

The State Comptroller has opined that there is still a conviction and that court costs should still be assessed in these cases. The Comptroller has stated that “[t]he costs are due whether or not the sentence is deferred or the conviction is later expunged in some manner.” However, there is still some uncertainty as to whether court costs should be collected in these circumstances.

Purpose

Relevant statutes should be amended to clarify that court costs should be collected in juvenile tobacco cases.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Courthouse Security Fund Fee in Felony Convictions in County-Level Courts

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the courthouse security fund fee in felony convictions in county-level courts;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 102.017 of the Code of Criminal Procedure requires that a courthouse security fee be assessed upon (1) a felony conviction in district court; and (2) a misdemeanor conviction in county-level courts. The statute does not, however, call for a courthouse security fee to be assessed upon conviction of a felony in a county-level court. While felonies are generally heard in district court, there are multiple counties in which statutory county courts are given jurisdiction over some felony offenses. Assessing a courthouse security fee upon conviction in felony cases handled in statutory county courts would be consistent with the intent of the Legislature to require the assessment of such a fee in felony convictions.

Purpose

Section 102.017 should be amended to call for the assessment of a courthouse security fee upon conviction of a felony in a statutory county court.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Liability of Criminal Defendants for Witness Fees

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to ;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Article 102.002 of the Code of Criminal Procedure concerns witness fees. The statute declares that “a defendant is liable on conviction for the fees provided by this article for witnesses in the defendant’s case.” However, as noted in the recent case of *Sikalasinh v. State*, 321 S.W.3d 792 (Tex. App. – Amarillo 2010, no pet.), Article 102.002 has not provided for the assessment of any fees since the repeal of subsection (a) of the statute in 1999. Thus, the statute is nonsensical in its present form. The Seventh Court of Appeals has encouraged the Legislature to clarify this statute.

Purpose

Article 102.002 should be amended to provide for the assessment of witness fees. Alternatively, the statute should be repealed because the statute in its current form does not make sense.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Mandatory Refusal to Register Motor Vehicle

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to requiring county tax assessor-collectors and the Department of Transportation to refuse to register a motor vehicle if the owner of the vehicle owes a county money for a fine, fee, court cost, or tax that is past due;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Current law permits (but does not require) a county tax assessor-collector and the Department of Transportation to refuse to register a motor vehicle if the owner of the vehicle owes money to the county for a fine, fee, or tax that is past due. A fine, fee or tax is considered to be past due if 90 or more days have passed since the date the obligation was due. Under current law, a county tax assessor-collector may only refuse to register a motor vehicle if the owner of the vehicle owes money to the tax assessor-collector's county; if the owner of the vehicle owes money to the a different county, the tax assessor-collector may not refuse to register the vehicle.

Purpose

Sections 502.185 and 702.003 of the Transportation Code should be amended to: (1) require county tax assessor-collectors and the Department of Transportation to refuse to register a motor vehicle of the owner of the vehicle owes money to the county for a fine, fee or tax that is past due; (2) consider money that is owed to a county or a city to be past due if 60 or more days have passed since the day the obligation was due; and (3) require a tax assessor-collector to refuse to register a motor vehicle if the owner of the vehicle owes money to any county.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

New Court Cost Application to Crimes Committed between 09/01 and 12/31

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the application of new court costs to crimes committed between 09/-01 and 12/31;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Currently there is uncertainty about whether to assess new criminal court costs on offenses that are committed between September 1 and December 31 of the year in which the new court cost is created. This is because while the bills creating new court costs generally state that the new court cost is effective on September 1, Section 51.607 of the Government Code mandates that the court cost does not take effect “until the next January 1 after the law takes effect.”

Clearly, the new court cost should not be assessed on offenses committed prior to September 1. Equally clearly, the new court cost should be assessed on offenses committed on or after the following January 1. Also clear is the fact that the new court cost should not be assessed on offenses committed between September 1 and December 31 if the conviction for the offense takes place on or before December 31.

Unclear, however, is whether the new court cost should be assessed on offenses committed between September 1 and December 31 if the conviction for the offense takes place on or after January 1. There are two points of view on this question.

Point of View One is that the new court cost should not be assessed because Section 51.607 not only delays the imposition of the increased court cost upon conviction until January 1, but also delays the application of the increased court cost so that only offenses committed on or after January 1 are assessed the increased court cost.

Point of View Two is that the new court cost should be assessed because while Section 51.607 delays the imposition of the new court cost upon conviction until January 1, the statute does not delay the effective date of the statute for purposes of the relevant time period when the offense is committed.

Purpose

Section 51.607 should be amended to clarify whether those who assess court costs in criminal cases should be following Point of View One or Point of View Two.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Simplify Criminal Court Costs

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the Repaying Debts project, specifically the proposal to simplify criminal court costs;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The State's system of criminal court costs is complex. Determining the correct amount of court costs to assess upon a conviction for a particular offense involves looking at a number of different statutes and settling certain factual questions. Consequently, one cannot readily specify the amount of court costs for a particular offense. Additionally, because the total amount of court costs to be assessed in a case is the sum of a number of individual court costs described in separate statutes, the overall effect that changes in court costs would have on criminal defendants is difficult to discern.

Purpose

Statutes concerning criminal court costs should be amended to make criminal court costs for particular offenses much easier to determine without changing the total amount of funds realized from court costs. Specifically, the statutes should be amended to: (1) convert court costs that are assessed only if certain events occur into costs that are assessed in all convictions; (2) convert court costs that are assessed only upon conviction of certain offenses into fees that are assessed in all cases (or at least all felonies, all Class A and B misdemeanors, and all Class C misdemeanors); and (3) combine separate statutes that create criminal court costs into one broader statute that calls for the sum of the court costs, but continues to direct the court costs to the same destinations as is done currently.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Wichita County and Montague County Adoption Case Filing Fees

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to Wichita and Montague County adoption case filing fees;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 152.2496 of the Human Resources Code calls for the payment of a \$100 filing fee in all new adoption suits in Wichita County to fund adoption investigation services. Similarly, Section 152.1752(d) of the Human Resources Code requires the payment of a \$25 filing fee in all new adoption suits in Montague County and directs that the funds be used for adoption investigation services. The statutes make no distinction between adoptions of children and adoptions of adults. The filing fee does not make sense in cases involving the adoption of adults because when an adult is adopted, there is no investigation. The filing fee should only be charged in cases involving the adoption of children.

Purpose

The law should be amended so that the filing fee in adoption cases in Wichita County and Montague County is only charge in new suits requesting the adoption of a child. *See e.g.*, Family Code, Section 108.006 (statewide central adoption registry fee is only due in new suits requesting the adoption of a child).

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Statewide Court Technology Program and Associated Fee

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to a statewide court technology program and associated fee;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Texas courts have had electronic filing since 2003, but in the seven years since, adoption of e-filing around the state has been slow. Handling, storing, and retrieving paper court documents remains a large and rising expense to the courts. And while strong usage of e-filing would save state and local government money, the main obstacle to e-filing is cost to the filers, which may range from \$6 to \$16 per filing. The e-filing fees are especially problematic for government filers, indigent filers, criminal defendant e-filers, and self-represented litigants. Mandates for e-filing would, in effect, order parties to pay the e-filing vendors to have access to courts. At this time, a federal lawsuit is considering whether mandated fee-for-service e-filing in Montgomery County is constitutional. Some other states have solved this dilemma through a statewide court technology program fee collected with all civil case petitions.

Purpose

A statute should be passed that would create a civil filing fee and/or a criminal court cost to fund statewide e-filing without an disincentive to e-file or order parties to pay vendors to have access to the courts.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Assessment of Special Expense instead of Fine in Deferred Adjudication Cases

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to allowing for the assessment of a special expense instead of a fine in deferred adjudication cases;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The statute dealing with deferred adjudication (Code of Criminal Procedure, Article 42.12, Section 5) declares that if a criminal defendant successfully completes deferred adjudication community supervision, the judge shall dismiss the proceedings against the defendant and discharge him. The statute goes on to say that such a discharge and dismissal may not be deemed a conviction. However, the statute currently permits the judge to impose a “fine” applicable to the offense and to require the defendant to pay the fine as a term of deferred adjudication community supervision.

A fine should not be imposed in situations in which there has been no conviction. However, a “special expense” in an amount not to exceed the amount of the fine that could be imposed can be imposed. This is what is currently done in deferred disposition cases involving Class C misdemeanors (*see* Code of Criminal Procedure, Article 45.051(a)).

Purpose

Amend Article 42.12, Section 5 to allow for the imposition of a special expense in the amount of the fine that could be imposed instead of a fine in deferred adjudication cases.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Clarify Orders of Nondisclosure

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to clarifying orders of nondisclosure;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 411.081 of the Government Code concerns orders of nondisclosure. The statute is very confusing and is subject to different interpretations. The statute can be interpreted to say that an order of nondisclosure does not require court clerks to keep relevant court records confidential. But this is not the common understanding and is probably inconsistent with the intent of the legislature.

Purpose

Amend Section 411.081 to clarify that court clerks must keep confidential court records that are the subject of an order of nondisclosure.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Public Access to Arrest Warrants

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to public access to arrest warrants;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Article 15.26 of the Code of Criminal Procedure specifically deals with public access to arrest warrants. The statute clearly gives the public the right to inspect executed arrest warrants. However, the statute is unclear as to whether the public has a right to access unexecuted arrest warrants. In other words, a question exists as to whether arrest warrants are public information at all times or only upon their execution.

Purpose

Clarify the law by amending Article 15.26 to clarify that unexecuted arrest warrants are confidential (as opposed to not being required to be released).

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Remove Requirement that a Magistrate’s Order of Emergency Protection be Served on a Defendant in Open Court

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to removing the requirement that a magistrate’s order of emergency protection be served on a defendant in open court;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Pursuant to Article 17.292 of the Code of Criminal Procedure, in certain circumstances a magistrate may issue an order for emergency protection against a defendant who has made an appearance before the magistrate following the defendant’s arrest. Article 17.292(j) states that the defendant must be served a copy of the order in open court. Often, however, a defendant’s appearance before a magistrate does not take place open court. Rather, the appearance takes place in a jail or by electronic means. In such circumstances, a copy of the order cannot be served on the defendant in open court.

Purpose

While a defendant should be served with a copy of a magistrate’s order of emergency protection, there is no need that the order be served on the defendant in open court. Accordingly, Article 17.292(j) should be amended to eliminate the requirement that a copy of a magistrate’s order of emergency protection be served on the defendant in open court.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Additional State Funding for Indigent Defense

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to requesting the appropriation of additional state funding for indigent defense services;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In 2001, the Fair Defense Act was passed which for the first time provided state funding via the Task Force on Indigent Defense to assist counties improve the delivery of indigent defense services. In FY2010 total county and state expenditures were over \$194 million on indigent defense compared to the pre-Fair Defense Act total of \$91 million in FY2001. This \$103 million increase was partially offset by just over \$28 million in state grant funds, leaving an annual funding gap of approximately \$75 million. The Task Force has requested funding for two exceptional items as part of the Office of Court Administration's Legislative Appropriations Request. The first is for just under \$3 million over the biennium to restore the 5% cuts required by leadership in the base budget submission. The second item is for an additional \$65.6 million to help make counties whole for the increased expenses they have borne as a direct result of the passage of the Fair Defense Act. The funds are also needed to help counties deal with shrinking revenues and budget shortfalls, which are beginning to lead counties to reduce indigent defense funding to levels that may undermine the effectiveness and adequacy of those services.

Purpose

Fund the Task Force on Indigent Defense's two exceptional items to assure that the counties are able to provide representation at a level that is adequate to meet Constitutional and statutory requirements. If any such legislative appropriation cannot fully provide the needed funding, then the additional necessary revenue should come from a combination of General Revenue and a new document recording fee on all non-judicial filings (except for motor vehicle filings and other

filings for which counties do not collect fees) and from a new court cost assessed on all convictions for Class C misdemeanors other than parking and pedestrian offenses.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Apply Fair Defense Act to Probation Revocations and Appeals Appointments

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to applying the Fair Defense Act to attorney appointments for probation revocations and appeals;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Courts must appoint attorneys for indigent criminal defendants, for both trials and appeals. The Fair Defense Act (FDA) requires judges in each county to adopt countywide procedures for appointing attorneys for indigent defendants arrested for or charged with felonies or misdemeanors punishable by confinement. Courts are required to appoint attorneys from a public appointment list using a system of rotation, an alternative appointment program, or a public defender. While many believe the FDA system applies to attorney appointments for appeals and probation revocation hearings, some do not. Additionally, Art. 42.12, Code of Criminal Procedure, provides that a person arrested on a motion to revoke probation be brought back before the judge overseeing that probation. Particularly in rural parts of the state, that judge may not be sitting for an extended period of time, and therefore the probationer may not have the case heard, nor even receive the usual warnings expeditiously. Such warnings are usually provided by any magistrate if the arrest is for a new offense and defendants in motion to revoke cases would benefit from having those warnings provided.

Purpose

Clarify that the FDA procedures for appointing attorneys apply to appeals in criminal cases and to probation revocation hearings. Grant any magistrate the authority to give warnings to persons arrested on motions to revoke probation, such as the right to counsel; however any new authority should not include setting bond.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Improve Process for Creating Public Defender Offices by Local Jurisdictions

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to streamlining the process counties must complete to establish public defender offices and authorizing counties to create oversight boards to assist in the process;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In 2001, the Fair Defense Act was passed, which made significant changes in the way indigent defense is administered, including codifying a process to create a public defender's office that does not require special legislation and permitting the creation of regional public defender programs among counties. Under current law, the process for establishing a public defender's office has been confusing and cumbersome for counties. A county is required to solicit proposals for a public defender's office from governmental entities (i.e. itself) and non-profit corporations even if the county would like to create an office as a county department. Regional public defender programs have also struggled with the requirement that each county commissioners court retains authority over the office, which can be difficult with a large number of counties covered by one office. Current law also contains references to public defenders that fail to distinguish between attorneys working in a public defender's office and the office itself.

Purpose

Permit a county to first determine if it wants a county department or non-profit corporation to serve as public defender and only be required to solicit proposals if it selects the non-profit model for its system. A county or group of counties should be clearly authorized to appoint an oversight board to assist the county or counties to create and administer a public defender office, and the statute should suggest the types of duties that may be assigned and the types of members that may be appointed. References to public defenders should be clarified to accurately refer to a public defender office and the attorneys who work for the office.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Increase the Independence of the Indigent Defense Function at the State Level

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to increasing the independence of the indigent defense function at the state level;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The Task Force on Indigent Defense (“Task Force”) was created in 2002 with passage of SB 7, the Fair Defense Act, in 2001. The Task Force was established as a standing committee of the Texas Judicial Council whose staff are employees of the Office of Court Administration. It is composed of 13 members including five judges, four legislators, two county officials and two defense attorneys. In contrast to the Task Force’s current organizational structure, national principles on indigent defense recommend independence for the defense function. The name “task force” also implies a board of limited duration, while the Task Force on Indigent Defense’s statutory framework indicates it is a permanent body with an ongoing mission to improve indigent defense services.

Purpose

The name of the Task Force on Indigent Defense should be changed to the Texas Indigent Defense Commission. The new commission should be an independent agency within the judicial branch and no longer a committee of the Texas Judicial Council. The membership of the commission should be expanded to include two more criminal defense attorneys.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Longevity Pay for Public Defenders

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to providing longevity pay to public defenders;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The legislature authorized longevity pay for Assistant District Attorneys in 2001 and Assistant County Attorneys in 2005. After four years of service, an attorney is paid \$80.00 per month and an additional \$20.00 per month for each year of added service they accrue. Providing the same benefit for public defenders would reward and encourage long term employment in the criminal courts. Experienced attorneys are valuable assets to the public defender's offices of the state, and longevity pay would be an incentive to attorneys to stay with such offices. This would also enhance the salary equity between similarly situated prosecutors and public defenders that is lacking now even in counties where prosecutors and defenders are on the same basic pay scale.

Purpose

Legislation should be authorized and new funding provided for longevity pay for public defenders in the state. Longevity pay for public defenders will promote parity between prosecutorial and defense functions, which is a key part of national standards for well functioning defense systems. As of August 2010, there are 95 public defenders who would qualify for longevity pay with a total annual cost of \$207,360.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Payment Process for Conflict Counsel in State Writs of Habeas Corpus Proceedings in Capital Cases

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to payment of conflict counsel for in state Writs of Habeas Corpus proceedings in capital cases;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

When the new Office of Capital Writs (“OCW”) is unable to provide adequate representation in an otherwise qualifying case, such as when there is a conflict of interest or lack of resources, an attorney not affiliated with the OCW will be appointed. The amendments creating the OCW made the Fair Defense Account available to cover personnel and expenses of the OCW, as well as for compensating appointed counsel in the event of conflicts. This current structure creates an inherent conflict of interest for the OCW since the office is effectively unable to remove itself from cases in which it lacks sufficient funds to put on adequate representation, because any payments for appointed counsel will be drawn from the same budget. In cases in which the OCW has a conflict of interest, the OCW should have no further control over the case, including the responsibility for determining how and when conflict counsel is paid.

Purpose

Amend Chapter 78, Government Code, to provide compensation from funds independent of the OCW’s budget when an attorney outside the office is appointed in a state habeas proceeding. The proposal envisions a separate budget line item out of the OCW’s funds to pay the private attorneys, but does not include a recommendation for additional funding. The process of reimbursing private attorneys should mirror that used to pay counsel appointed to represent indigent inmates that the State Counsel for Offenders is unable to represent where the judge approves the voucher, the county pays the attorney and then submits a claim to comptroller’s judiciary section for reimbursement.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Procedures for Withdrawal of Trial Counsel and Appointment of Appellate Counsel

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to withdrawal of trial counsel and appointment of appellate counsel;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Code of Criminal Procedure Art. 26.04(j)(2), specifies that appointed counsel shall “represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.” The statute does not ensure that defendants whose counsel is relieved after a guilty plea or trial will have continuous representation through all critical stages of the proceedings against them by requiring timely replacement of counsel. Many jurisdictions routinely allow appointed trial counsel to withdraw after plea or trial and have a separate list of attorneys to represent defendants on appeal. This practice can result in Sixth Amendment violations if the transition from trial counsel to appellate counsel is not handled properly. Texas statute’s currently do not require trial counsel to protect a defendant’s right to file a motion for new trial or appeal before withdrawing and do not require courts to ascertain whether a defendant wishes to file a motion for new trial or appeal, and therefore needs replacement counsel, before allowing trial counsel to withdraw.

Purpose

Amend the Code of Criminal Procedure to clarify procedures that judges and defense attorneys must follow when counsel is allowed to withdraw after guilty plea or trial, in order to ensure prompt appointment of replacement counsel if the defendant wishes to pursue a motion for new trial and/or appeal.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Repeal Indigent Representation Fund Provision

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to repealing the indigent representation fund;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Statutory changes were made to streamline the payment process for indigent inmate defense by 80th Legislature and to the General Appropriations Act by the 81st Legislature. However, the legislature did not repeal the provision implementing the “indigent defense representation fund,” which was added to the statutes by the 80th Legislature via HB 1267. The “indigent defense representation fund” serves the same purpose as the Fair Defense Account established under section 71.058, Gov’t Code. Moreover, the “indigent defense representation fund” is not included in the Funds Consolidation Bill of the 80th Legislature. The “indigent defense representation fund” has never been funded, serves no purpose, and the provision implementing it should be repealed from the statutes.

Purpose

Amend Art. 26.05, Code of Criminal Procedure, to delete references to the indigent representation fund contained in Subsection (i).

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Specifically Authorize Managed Assigned Counsel Programs

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Task Force on Indigent Defense has reviewed the proposal related to providing a clear statutory framework for managed assigned counsel programs;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Lubbock County has recently established and Montgomery County is establishing managed assigned counsel programs. These are modeled on the private defender program in San Mateo, California, where the county contracts with the local bar association to manage the assigned counsel system. These types of programs involve outsourcing to a governmental or nonprofit agency, independent of the judiciary, the responsibility for screening attorneys for court-appointment eligibility, assigning lawyers to individual cases, approving attorney fee requests, and approving requests for investigative and expert assistance. Current law clearly authorizes assigned counsel programs managed by the judiciary, but is silent on how to establish a managed assigned counsel program.

Purpose

Amend Code of Criminal Procedure to better enable local jurisdictions to establish managed assigned counsel programs. This proposal includes (1) defining what a managed assigned counsel program is in the code, (2) amending art. 26.04 to allow counties to adopt local indigent defense policies that incorporate managed assigned counsel programs, and (3) amending art. 26.05 to allow for payment of attorney, investigator, and expert expenses incurred in managed assigned counsel programs. The proposal would be strictly a local option, and implementation would require the assent of both the commissioners court and the judges to implement. This type of program provides jurisdictions with another option for delivering indigent defense services and relieves judges of most of the administrative burdens of managing indigent defense.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Appointment of Presiding Judges by Chief Justice of the Supreme Court

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71 of the Texas Government Code, and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposal related to appointment of the presiding judges of the administrative judicial regions;

NOW, THEREFORE, BE IT RESOLVED that the Texas Judicial Council supports and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The state is divided into nine administrative judicial regions, with a presiding judge for each region. The presiding judges are the backbone of trial court administration in the state with duties including promulgating and implementing regional rules of administration, advising local judges on judicial management, recommending changes to the Supreme Court for the improvement of judicial administration, acting for local administrative judges in their absence, and assigning visiting judges to hold court when necessary to dispose of accumulated business in the region.

Currently, section 74.005 of the Texas Government Code provides that the Governor appoints the presiding judges for the nine administrative judicial regions. The Texas Constitution places in the Supreme Court the responsibility of ensuring that justice in Texas is efficient. Similarly, the Legislature has statutorily charged the Court, under Texas Government Code section 74.021, with “administrative control over the judicial branch and . . . the orderly and efficient administration of justice,” and section 74.006 states that the Chief Justice “shall ensure that the supreme court executes and implements the court's administrative duties and responsibilities. . . .” Further, under section 74.049 of the Texas Government Code, the Chief Justice of the Supreme Court of Texas has the obligation to perform the duties of a regional presiding judge in the absence of that judge, and under section 74.001, the Chief Justice calls and presides over the annual meeting of the regional presiding judges.

The Chief Justice currently makes appointments to the State Pension Review Board with the advice and consent of the Senate, providing a precedent for the procedure advocated here.

Purpose

Judicial independence and the coherent administration of the Judicial Branch strongly suggest that section 74.005 should be amended to provide that the Chief Justice, after consulting with the Presiding Judge of the Court of Criminal Appeals, appoint the presiding judges to the administrative judicial regions, with the advice and consent of the Senate.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Assignment of Visiting Municipal Judges

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the assignment of visiting municipal judges;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Rule 18a of the Texas Rules of Civil Procedure concerns the procedure followed by the presiding judges of the administrative judicial regions for assigning visiting judges when a judge has recused herself. The rule also concerns the procedure to be followed when a motion to recuse a judge has been made and the judge declines to recuse herself. The rule is applicable in criminal cases as well as in civil cases. *See Arnold v. State*, 853 S.W.2d 543 (Tex. Crim. App. 1993). A question exists, however, as to whether Rule 18a applies to municipal court cases and whether the presiding judges play any role in assigning visiting municipal judges. This question is made more difficult by the existence of Government Code, Section 29.012(a) which states that “[i]f the judge of a municipal court is disqualified or recused in a pending case, the judge of another municipal court located in an adjacent municipality may sit in the case.”

Purpose

Government Code Section 29.012 should be broadened in scope and amended to provide procedures that contemplate instances of recusal and disqualification with, and without, a motion by a party in municipal court proceedings. While other Texas trial courts have only one judge, municipal courts are unique in that Chapter 29 and 30 of the Government Code authorize the appointment or election of more than one judge. To fully utilize judicial resources that are in place, the law should be amended to allow another judge of the municipality, if one exists, to be assigned to the case when a motion for recusal or disqualification is filed. The amendment should also include procedures for municipal court judges who are the sole judges in the municipality. *Arnold v. State* provides that Rule 18a of the Texas Rules of Civil Procedure applies in criminal cases absent “any explicit or implicit legislative intent indicating otherwise.”

Enacting legislation that provides procedures for disqualification and recusals in municipal courts will render Rule 18a inapplicable in municipal court proceedings.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Court Organization

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to court organization;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The Texas Constitution and statutes establish a four-tiered system of state courts: district courts, constitutional county courts, statutory county courts, and justice of the peace courts. Each court was intended to have its own jurisdiction, consistent between the counties, generally based upon the severity of the civil or criminal issues in question. However, the system actually presents somewhat of a hodge-podge of courts with significant overlapping jurisdiction that differs from county to county. A court in one county may have completely different jurisdiction from the identically named court in the next county. To understand a particular court's jurisdiction, one must consult no less than six sources. First, one must look to the Texas Constitution, then to the general statutory provision for all courts on a particular level, then to the specific statutory provision that authorizes the individual court, then to statutes creating other courts in the county which may affect the jurisdiction of the court in question, then to statutes dealing with specific subject matters (e.g., the Family Code), and finally to local rules that may specify a subject matter preference for particular courts (e.g., for child protection cases). If such efforts can frustrate a licensed Texas attorney, surely the average Texan is dumbfounded. One must question whether this court system succeeds in impressing upon the minds of Texans "affection, esteem and reverence towards" the State's government. Throughout Texas' history, there have been countless attempts by the Supreme Court, the Legislature, and other interest groups to address the structural problems that have plagued Texas courts almost from their inception. Most recently were S.B. 1204 in 2007, and S.B. 992 in 2009, both by Senator Duncan.

Purpose

This resolution supports the concepts embodied in S.B. 992:

Statutory County Courts

- Establishes county court at law (CCL) civil jurisdiction at \$200,000
- Grandfathers current CCLs whose civil jurisdiction exceeds \$200,000

- Directs study of these courts to determine whether maintaining CCL (with limited civil jurisdiction) or converting to district court (while retaining or dropping current county court jurisdiction) is preferable over long term
- Directs study to consider feasibility, efficiency, and cost of action according to needs of individual counties
- Limits the jurisdiction of newly created CCLs to \$200,000
- Provides uniform definitions of types of cases (criminal, family, juvenile, and mental health) to make generally applicable to all CCLs
- Reorganizes into one location most administrative provisions applicable to particular courts currently scattered throughout Government Code
 - Provides for prohibition of private practice for CCLs; general provisions on court personnel, terms of court, etc; that CCLs do not have general supervisory control or appellate review of the commissioners court; and that practice in CCL is that prescribed by law for such

General Provisions for District Courts

- Reorganizes various administrative provisions in Government Code to make generally applicable to all district courts

Associate Judges

- Reduces various provisions authorizing appointment of subordinate judicial officers to four categories and reclassifies as “associate judges” (AJ): criminal law AJs; civil AJs; statutory probate court AJs; and AJs for juvenile matters
- Creates uniform provisions for powers and authority, permissible judicial action, procedures for de novo review, and right of appeal
- Establishes uniform provisions on appointment, termination, compensation, qualifications, method or order of referral, and judicial immunity

Court Administration

- Creates Judicial Commission on Additional Resources (JCAR), composed of Supreme Court Chief Justice and nine presiding judges (PJ), to provide additional resources to courts for specific cases that require special judicial attention
 - Request initiated by court or parties. Decision by court, then submitted to PJ, ultimately to JCAR
 - Not subject to review by appeal or mandamus
 - JCAR determines need, from rules created by Supreme Court, with following considerations:
 - Numerosity of parties; other related actions pending in other courts; numerosity of pretrial motions; numerosity of witnesses; substantial documentary evidence; potential length of trial, etc
 - Additional resources include assignment of active or retired judge; additional legal, administrative, or clerical personnel; specialized CLE; special accommodations/furnishings for parties; information and communication technology; and any other resources as necessary
- Permits each PJ to hire up to three staff attorneys; 27 total statewide
- Moves authority to appoint nine PJs from Governor to Chief Justice (with advice and consent of Senate)

Grant Programs

- Requires Office of Court Administration (OCA) to develop grant program for counties in court system enhancements
 - Charges JCAR with awarding grants

- Requires Judicial Commission on Youth, Families, and Children to develop grant program to improve safety or permanency outcomes, enhance due process, and increase timeliness of resolution of child protection cases

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Expand City Secretary Reporting to OCA

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to expanding reporting by city secretaries to the Office of Court Administration (OCA);

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Current law requires the secretary of a Type A general-law municipality to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court of the municipality. The secretary must notify the judicial council within 30 days after the date of the person's election or appointment. The Judicial Council is thus the official keeper of this information.

There is value in keeping this information not only just for Type A general-law municipalities, but for all municipalities.

Purpose

Amend the Local Government Code to expand the reporting requirement contained in Section 22.073 so as to make it applicable to all cities.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Implement Supreme Court Jury Task Force Recommendations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code and

WHEREAS, the Judicial Council Legislative Committee reviews Judicial Branch legislative proposals and has reviewed the proposals related to the recommendations of the Supreme Court Task Force on Jury Assembly and Administration;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact, statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The Supreme Court Task Force on Jury Assembly and Administration was formed in 2006. The Task Force was charged with reviewing the Texas statutes and rules concerning the summoning of jurors, particularly Government Code Sections 62.001 – 62.501 and Texas Rules of Civil Procedure 216 – 236. The Task Force was comprised of 29 members including lawyers, judges, law professors, lay persons, and legislators. Key Task Force recommendations include (1) expressly authorizing the Secretary of State to compile a master source list of jurors available for each county to summon; (2) directing each county to adopt a jury administration plan that must be adopted by the Supreme Court (or the Court’s designee); (3) repealing Sections 62.001 – 62.018 and Section 62.021 that deal with jury administration; (4) amending the existing qualifications for jury service and exemptions from jury service; (5) clarifying and consolidating statutory penalties for those who fail to respond to a jury summons; (6) providing funding for the Secretary of State to improve the accuracy of juror lists, for counties to obtain software, for the training of jury assembly room managers, and the Supreme Court’s supervision of jury plan process; (7) granting the Supreme Court express rulemaking authority to accomplish needed reforms; and (8) granting the Supreme Court express authority to ensure that counties prepare and adopt written jury plans.

Purpose

Enact legislation consistent with the report of the Supreme Court Task Force on Jury Assembly and Administration.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Repeal or Amend Certain Court Data Reporting Requirements

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to repealing or amending certain court data reporting requirements;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 72.085 of the Government Code requires the Court of Criminal Appeals to report four separate measures of court activity to the Office of Court Administration (OCA). Two of the measures (involving capital punishment, applications for writs of habeas corpus, and petitions for discretionary review) are already being reported to OCA. The two other measures (relating to the average disposal times for cases involving the same matters as listed in the foregoing sentence) are of little utility to the Court of Criminal Appeals or to anyone else.

Section 72.086 of the Government Code requires the Supreme Court to report certain measures of court activity to OCA. Several of the measures (*e.g.*, number of cases filed with the court) are already reported to OCA. The remaining measures (*e.g.*, average number of days from the date of oral argument to issuance of a signed opinion) are of little utility to the Supreme Court or to anyone else.

Additionally, a rider to Senate Bill 1 during the 79th Legislature requires each district judge to provide an annual report indicating the judge's clearance rate to OCA. (A clearance rate is calculated by dividing the total number of cases disposed by the total number of cases added to the docket.) There has never been any compliance with this requirement.

Purpose

Amend the relevant Government Code and other provisions to eliminate these reporting requirements.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Repeal Provision for Monthly Tracking System in Child Support Cases

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to repealing a provision for a monthly tracking system in child support cases;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 71.035 of the Government Code requires the Texas Judicial Council to implement a monthly tracking system to ensure accountability for counties and courts that participate in the statewide integrated system for child support and medical support enforcement established under Section 231.0011, Family Code. Currently, there are only five or six counties involved in the integrated system and the reporting envisioned by the statute does not currently occur. The Attorney General's Office does not believe there is any need for the information mentioned in the statute to be reported to the Judicial Council in light of the fact that many similar statistics are already reported. The provision is obsolete.

Purpose

That portion of Section 71.035 imposing the above-described reporting requirement should be repealed.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Vexatious Litigants

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to vexatious litigants;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

In 1997 the Legislature enacted a new chapter of the Civil Practice and Remedies Code – Chapter 11 - to protect defendants from vexatious litigants. (See H.B. 3087 by Hartnett/Harris.) Section 11.104 CPRC requires court clerks to provide the Office of Court Administration (OCA) with copies of any orders declaring a person to be a vexatious litigant and prohibiting that person from filing any new litigation in a court of this state. In turn, OCA is directed to maintain a list of vexatious litigants subject to pre-filing orders. OCA maintains this list on its website, see <http://www.courts.state.tx.us/oca/vexatiouslitigants.asp>. The number of litigants listed grew slowly but has grown quite lengthy, with 100 litigants listed for 108 cause numbers as of Oct. 8, 2010. The list has the following number of cause numbers per year:

2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998
9	15	23	10	9	8	6	7	5	6	3	4	3

A question has arisen as to whether OCA should place the name of a vexatious litigant on the list where the case in which the person is found to be a vexatious litigant is on appeal. OCA has adopted the practice of listing the litigant but noting that the case is on appeal. Appellate court clerks have also asked for clarification of their duties when a vexatious litigant files an appeal or other claim, and the appellate courts seek clarification of any right of appeal for vexatious litigants. Finally, OCA seeks to update the list in a timely manner by permitting it to be maintained on a website, and by requiring that clerks provide pre-filing orders to OCA within 30 days.

Purpose

The bill would amend Chapter 11 of the Civil Practices & Remedies Code to:

- provide for the right of appeal by a vexatious litigant of the prefiling order, and a right of appeal by writ of mandamus (which means the decision stands unless it was an abuse of discretion) of a decision by a local administrative judge to disallow a new filing by a person subject to a prefiling order;
- provide that appellate court clerks should refuse to allow filing of any case other than an appeal of the case that finds the litigant is vexatious;
- require clerks to forward prefiling orders to OCA within 30 days; and
- permit OCA to maintain the list on the Internet and, upon request, place the name of such a person on its list of vexatious litigants with an accompanying notation that the case is on appeal.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Adopt Recommendations of the Texas Judicial Council Commission on Judicial Selection

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to adopting the recommendations of the Texas Judicial Council Commission on Judicial Selection;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The Judicial Council has considered potential changes related to the judicial selection process in light of *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), and *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009). *Citizens United* addresses a First Amendment challenge to a federal statute that was amended to prohibit corporations and unions from using funds to make independent expenditures for speech defined as an “electioneering communication” or for speech expressly advocating the election or defeat of a candidate. The Texas Ethics Commission applied *Citizens United* to the Texas campaign finance statute in Ethics Advisory Opinion No. 489 issued on April 21, 2010 and concluded: “It is clear that under *Citizens United*, sections 253.094 and 253.002 of the Election Code cannot be enforced to prohibit direct campaign expenditures by corporations or labor organizations.” *Id.*

“Furthermore, based on *Citizens United*, section 253.002 of the Elections Code cannot be enforced to prohibit direct campaign expenditures by any other person.” *Id.* *Caperton* focuses on the circumstances under which permissible political speech directed at a judicial election can require recusal of an elected judge under the Fourteenth Amendment’s Due Process Clause. The Court stated, “We conclude that there is a serious risk of actual bias — based on objective and reasonable perceptions — when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent.” *Id.* at 2263-64. “The inquiry centers on the contribution’s relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election.” *Id.* at 2264. Texas judges now sit at the uneasy intersection of *Citizens United* and *Caperton*. Corporations, labor organizations, and individuals cannot be prohibited from making direct campaign expenditures in connection with the partisan election process used to select Texas judges. But these same expenditures can

result in recusal — or a due process violation if recusal does not occur — based on criteria that are imprecise at best.

This dilemma invites continued dialogue regarding potential alternatives to partisan judicial elections, such as appointment followed by retention elections. The Council would support a system of "Appointment, Partisan Election, Retention Election" in which:

- All current judges and justices are grandfathered, meaning they will face a nonpartisan retention election at their next regularly scheduled election; and
- The new system is triggered on a vacancy. The Governor appoints for the remainder of the vacated term. At the election for a new term, the judge or justice faces a partisan election as currently provided under the Election Code. Upon successful election, that judge or justice will face a nonpartisan retention election thereafter.

At a minimum, there is a basis for pursuing incremental modifications related to the Texas selection process that (1) could be implemented within a framework of continuing partisan judicial elections; (2) address the perceptions upon which the *Caperton* majority based its holding; and (3) bolster public confidence in an elected judiciary.

Purpose

Legislation (and, as necessary, constitutional amendments) should be pursued that would:

- Eliminate straight ticket voting in judicial elections.
- Adjust terms in Texas to six years for district courts and eight years for appellate courts.
- Allow appointed judges to run for a full term in the first election after appointment before undertaking a second election.
- Supplement the requirements for holding judicial office.

If there is a determination that additional legislative action is warranted in light of *Caperton* to address specific recusal issues arising from contributions in connection with judicial campaigns, an appropriate response would be legislation creating a presumption against the recusal of an elected judge who is in compliance with existing campaign contribution limits and reporting requirements, including those under the Texas Election Code and the Judicial Campaign Fairness Act. This approach would avoid conflicts with existing recusal rules, and with existing statutes applicable to judicial elections, while providing a mechanism to address extraordinary circumstances along the lines of those focused upon by the *Caperton* majority.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Clarify Orders of Nondisclosure for Class C Misdemeanor Convictions of Children

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the clarification of orders of nondisclosure for Class C misdemeanor convictions of children;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 411.081(f-1) of the Government Code requires that on conviction of a child for a fine-only offense, the convicting court immediately issue an order of nondisclosure. There are many uncertain aspects to this law. It is unclear whether the statute applies to deferred dispositions and other non-convictions. Also unclear is whether the statute applies to traffic offenses.

There are also concerns about the issuance of the order being automatic. The statute could be amended to condition the issuance of the order on the payment of court costs and any assessed fine. Additionally, there is a concern that the statute calls for issuance of the order to DPS and for DPS to then return the order to the issuing court. This is a cumbersome procedure that could be improved by not involving DPS at all.

Purpose

Section 411.081(f-1) should be amended to address unclear issues, automatic issuance, and the requirements that the convicting court report to DPS.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Class C Misdemeanor Proceedings Without Complaint when Defendant Pleads Not Guilty

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to courts conducting Class C misdemeanor proceedings without a complaint having been filed in situations in which the defendant has pleaded not guilty;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

When a person is charged with the commission of a Class C misdemeanor by means of a written notice (*i.e.*, citation), the written notice serves as a complaint to which the person may enter a plea. If the person pleads not guilty, a formal complaint must be filed in order for the court to have jurisdiction. *See Schinzing v. State*, 234 S.W.3d 208, 210 (Tex. App.-Waco, no pet.). If a complaint has not been filed, there is no formal charging instrument on file in the case and the court has no jurisdiction to conduct any further proceedings.

Despite this clear law, numerous municipal courts and justice courts continue to attempt to exercise jurisdiction in cases in which the defendant has pleaded not guilty and no complaint has been filed. For example, numerous courts will hold pre-trial hearings in such cases. Often, courts rely on a provision in Article 45.018(b) of the Code of Criminal Procedure that states that “[a] defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint.” Some courts maintain that they are not conducting proceedings under a complaint and that therefore they have jurisdiction. This is erroneous reasoning.

Purpose

Amend Article 45.018(b) to eliminate the words “under the complaint” in order to clarify that courts have no jurisdiction to hear Class C misdemeanor cases in situations in which the defendant has pleaded not guilty and no formal complaint has been filed.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Community Service in Lieu of Alcohol Awareness Class

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to requiring the performance of community service in lieu of taking an alcohol awareness class;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under current law, a minor who is convicted of (or placed on deferred adjudication for) public intoxication or an age-based alcohol offense (*e.g.*, possession of alcohol by a minor), is required to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse (TCADA). In some areas of the state, there are no approved alcohol awareness programs. TCADA has not yet licensed any online alcohol awareness programs. Thus, some minors currently must travel long distances to attend alcohol awareness programs. There is currently no provision in the law to allow a court to order a minor who resides a long distance from the physical site of an alcohol awareness program to perform community service in lieu of attending a program. Interestingly, individuals younger than 18 who commit an age-based tobacco offense (*e.g.*, possession of a tobacco product by a minor), are generally required to attend a tobacco awareness program, but are permitted to perform community service in lieu of attending a program if the defendant resides in a rural area of the state in which a tobacco awareness program is not readily available. (*See* Section 161.252(c), Health & Safety Code.) A similar provision in the Alcoholic Beverage Code would be desirable.

Purpose

Section 106.115 of the Alcoholic Beverage Code should be amended to permit a minor to perform community service in lieu of attending an alcohol awareness class if the minor resides in an area of the state in which such a class is not readily available.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Compliance Dismissal Uniformity

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the uniformity of compliance dismissals;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

A number of laws permit certain Class C misdemeanor charges to be dismissed upon proof of compliance. For example, a defendant who is charged with the offense of driving with an expired motor vehicle registration is entitled to have the charge dismissed if he or she: (1) remedies the defect (i.e., obtains a current vehicle registration sticker) before the later of the defendant's first court appearance date or the 20th working day after the date of the offense; and (2) pays an administrative fee not to exceed \$20. See Tex. Transportation Code, Sec. 502.407. There are many similar offenses that allow for these "compliance dismissals." See e.g., Tex. Transp. Code, Section 548.605 (expired inspection sticker). The time within which a defect must be remedied and the amount of the administrative fee varies from offense to offense. Court clerks have difficulty dealing with compliance dismissals because of the varying time periods within which a defect must be remedied and the varying administrative fee amounts. If time periods and administrative fee amounts were uniform from offense to offense, then the task of court clerks would be easier and errors would be reduced. According to OCA statistics, there were 437,845 compliance dismissals in municipal courts in fiscal year 2009. (There is no report on the number of compliance dismissals in justice courts.)

Purpose

Amend relevant sections of the Transportation Code to standardize: (1) the time period within which a defect must be remedied; and (2) the amount of the administrative fee.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Destination of Fines and Court Costs in Appeals from Municipal Courts

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the destination of fines and court costs in appeals from municipal courts;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Article 44.281 of the Code of Criminal Procedure directs that in misdemeanor cases “affirmed” on appeal from municipal court, the fine of the municipal court is to be directed to the city. A technical reading of the statute indicates that the fine is directed to the city only in appeals from municipal courts of record. This is because appeals from non-record municipal courts are not “affirmed” – rather, there is a de novo trial and a brand new judgment. The intent of the statute, however, most likely was to direct all such fines to the city.

Additionally, there is some confusion as to the proper court costs to assess in these appeals from municipal courts of record. One view is that court costs assessed against an appellant following an affirmance by a county-level court should be the court costs that were originally assessed in the municipal court of record. Another view is that the court costs should be those that would be assessed by the county-level court in an exercise of its original jurisdiction.

Purpose

Article 44.281 should be amended to clarify the destination of fine money and court costs in appeals from both municipal courts of record and non-record municipal courts.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Expand Time to Make Motion for New Trial

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to expanding the time to make motions for new trial in justice and municipal courts;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Under current law, a defendant in a criminal case in justice or municipal court has only one day after the rendition of judgment to make a motion for new trial. *See* Tex. Code Crim. Proc., Art. 45.037. This period of time is unreasonably short and results in many defendants missing the opportunity to make a motion for new trial. By comparison, in civil cases in justice court, a party has five days after the rendition of judgment to make a motion for new trial. *See* Tex. R. Civ. P. 569. Also by comparison, in criminal cases in county and district courts, the defendant has 30 days to file a motion for new trial. *See* Tex. R. App. P. 21.4.

Purpose

Amend Article 45.037 of the Code of Criminal Procedure to permit a defendant in a criminal case in justice or municipal court to make a motion for new trial within five days after the rendition of judgment.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Guilty Pleas by Minors to Alcoholic Beverage Code Offenses

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to guilty pleas by minors to Alcoholic Beverage Code offenses;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Section 106.10 of the Alcoholic Beverage Code states that no minor may plead guilty to an age-related alcohol offense “except in open court before a judge.” (For purposes of the Alcoholic Beverage Code, a minor is a person under the age of 21.) This provision results in many age-related alcohol cases being unresolved because the out-of-county or out-of-state defendants do not come back to the county in which the offense was alleged to have occurred to enter a guilty plea.

Purpose

Section 106.10 should be amended to permit minors from outside the county in which the offense is alleged to have occurred to enter a guilty plea in age-related alcohol cases without appearing in open court before a judge.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Municipal Court Venue

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to municipal court venue;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Blankenship v. State, 170 S.W.3d 676 (Tex. App. – Austin 2005) dealt with a venue issue that arose because of the wording of art. 45.019, Code of Criminal Procedure (CCP), which sets out the required contents of a complaint in a criminal case.

In *Blankenship*, the City of Austin charged the defendant with violations of several building-related ordinances on property that was located in the city's extraterritorial jurisdiction (ETJ). Under art. 45.019(c) of the CCP, a complaint filed in municipal court must allege that the offense was committed in the territorial limits of the municipality in which the complaint was made. The city's complaint did conform to this requirement, even though the offense actually occurred outside the city's territorial limits. As a result, the prosecution was faced with a variance between the venue alleged and the venue proven. In this case, the court found the error to be harmless, but noted that the state was burdened with this problem until a legislative revision addresses it.

The wording of art. 45.019 puts cities in a bind. They are authorized to enforce certain ordinances in their ETJ but are required to (falsely) state in any complaint that the offense occurred within the city limits.

Purpose

Amend art. 45.019(c) CCP to allow a complaint filed in municipal court to allege either that: (1) the offense was committed in the territorial limits of the municipality in which the complaint is made or (2) the offense was committed in the extraterritorial jurisdiction of the municipality in which the complaint is made.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Municipal Judge Titles

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to municipal judge titles;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Chapters 29 and 30 of the Government Code refer to a number of different titles relating to municipal judges such as municipal judge, presiding municipal judge, associate municipal judge, alternate municipal judge, and temporary municipal judge. The differences between these different types of municipal judges should be clarified. Particularly, clarification is needed as to: (1) the difference between an alternate judge and a temporary judge; (2) the duration of office of a temporary municipal judge; and (3) the number of judges a municipality may have at any one time.

Purpose

Appropriate amendments should be made to the Government Code to clarify points surrounding the different types of municipal judges.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Notice of Standard Fine and Costs

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to notice of standard fines and costs;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

A defendant charged with a Class C misdemeanor may mail a plea of guilty or nolo contendere to the relevant justice or municipal court. If the plea is not accompanied by payment, current law requires the court to notify the defendant of the standard amount of the fine and court costs in the case. Such notification must be made by certified mail. *See* Tex. Code Crim. Proc., Art. 27.14. Sending such notices by certified mail entails considerable time and expense. Notice by regular mail or e-mail should be sufficient.

Purpose

Amend Article 27.14 of the Code of Criminal Procedure to allow courts to notify defendants (who plead guilty or nolo contendere to Class C misdemeanor charges by mail and who do not also send payment) of the standard amount of the fine and court costs in the case by means of regular mail or e-mail.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Right of Appeal from Municipal Courts of Record

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to the right of appeal from municipal courts of record;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Alexander v. State, 240 S.W.3d 72 (Tex.App.—Austin 2007, no pet.), held that a person who is convicted in a municipal court of record and fined \$100 or less cannot appeal past the county court level – even if the issue to be appealed is a constitutional challenge to the ordinance or statute on which the conviction is based. This is in contrast to a person who is convicted in a municipal court that is not a court of record who can appeal past the county court level (*i.e.*, to the court of appeals) if he or she is fined \$100 or less and the issue to be appealed is a challenge to the constitutionality of the ordinance or statute on which the conviction is based.

The court questioned the result as a matter of policy and said, “[w]e invite the legislature to revisit the issue and amend section 30.00027(a) [of the Government Code] to permit appeals of constitutional issues without regard to the amount of the fine.”

Purpose

Amend Section 30.00027(a) to permit appeals of constitutional issues from municipal courts of record without regard to the amount of the fine.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Vehicle Impoundment for No Insurance Violations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to vehicle impoundment for no insurance violations;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

Current Law requires courts to order the sheriff to impound the motor vehicle of a defendant who is twice convicted of a no-insurance violation (failure to maintain financial responsibility). *See* Tex. Transp. Code, Section 601.261. Many courts are reluctant to order vehicle impoundment and would like to be able to pursue other means of encouraging compliance. Making vehicle impoundment optional would give judges more options in second no-insurance cases. Additionally, some municipal judges are reluctant to order the sheriff to perform the impoundment, but would be comfortable ordering the city police chief to perform the impoundment.

Purpose

Amend Sections 601.261 and 601.267 to make vehicle impoundment optional and to permit municipal courts to order the city's police chief to perform any impoundments that are ordered.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Change of Service of Process Requirements on Corporate Registered Agents

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to a change of service of process requirements on corporate registered agents;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The primary purpose of a registered agent is to allow for process to be served on a corporation. A registered agent may itself be an organization. Tex. Bus. Org. Code § 5.201(b)(2)(B). The case of *Reed Elsevier, Inc. v. Carrollton-Farmers Branch Indep. Sch. Dist.*, 180 S.W.3d 903 (Tex. App.-Dallas 2005, pet. denied) reaffirmed that process must be delivered to a person who is a registered agent, president, or vice president. Often, however, corporate registered agents have no person present at the registered office who is a registered agent, president, or vice president. Therefore, a process server often cannot serve process on a corporation because there is no registered agent, president, or vice president present at the registered office.

The practice of corporate registered agents failing to staff the registered office with an authorized person to be served is contrary to Tex. Bus. Org. Code § 5.201(c)(1):

(c) The registered office:

- (1) must be located at a street address where process may be personally served on the entity's registered agent (emphasis added).

Purpose

Amend current statutes to authorize service of process on a corporate registered agent by delivering process to any employee of the registered agent at the registered office.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Process Server Certification Fees

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Texas Judicial Council has reviewed the proposal related to process server certification fees;

NOW THEREFORE, BE IT RESOLVED, that the Texas Judicial Council supports, and recommends that the Texas Legislature enact statutory changes in keeping with the following statement of the Background and Purpose of such legislation:

Background

The Process Server Review Board (PSRB) has been established by an order of the Supreme Court of Texas. One of the main duties of the PSRB is to consider applications for the certification and recertification of process servers in Texas. Despite the fact that the State incurs costs in considering these applications, applicants have never had to pay any application fee upon applying for certification or recertification. The assessment of an application fee would be appropriate.

Purpose

Legislation should be passed that would authorize the PSRB to recommend to the Supreme Court of Texas the fees to be charged for process server certification and renewal of such certification. The legislation would require the Supreme Court to approve the recommended fees before the fees could be collected. The Office of Court Administration should be directed to collect the fees and the fees should be deposited in the State's general fund.

Honorable Wallace B. Jefferson
Chief Justice, Supreme Court of Texas
Chairman, Texas Judicial Council