



Auditing the JP

Judge Suzan Thompson

Justice of the Peace Account



- 112.052 - Local Government Code
- If a justice of the peace does not pursue the collection of a judgment for a criminal action, the justice SHALL be charged for the fine or judgment rendered.
- A judge must use due diligence to collect all fines and costs.

Authority of County Auditor



- 112.006 - Local Government Code
- County Auditor has general oversight of the books and records of a county, district or state officer authorized to receive or collect money intended for the use of the county or that belongs to the county.
- County Auditor SHALL see to the strict enforcement of the law governing county finances.



112.007 - LGC

- County Auditor SHALL keep a general set of records to show all ... indebtedness of the county...
- If a criminal judgment is rendered and not collected, it becomes a debt to the county.

TEAMWORK



Report to Commissioners

- 114.044 - Any county official who collects or handles any money for the use of the county SHALL make a full report at each regular term to commissioner's court on all fines imposed and collected, all judgments rendered and collected for the use of the county and this report SHALL be filed in the county clerk's office.



103.005 LGC

- This report must be in writing and under the oath of the officer.
- Under oath means "SWORN TO"
- If no money has been collected since the last report, then it is required for that officer to report that fact to the commissioner's court, under oath.

TEAMWORK



118.801 LGC

- An officer who, in bad faith, demands and receives a higher fee than authorized or a fee that is not authorized is liable to the aggrieved person for 4 times the amount unlawfully demanded and received.
- If demanded and received in good faith, then only the difference in the lawful amount is to be returned to the person.



118.801 LGC

- The demand for and receipt of a fee authorized by the legislature that is later determined by a court of competent jurisdiction to be unlawful is considered to be a good faith action by the officer.
- Bad faith includes a demand when the officer knows the fee is not authorized by law.
- They could be entitled to attorney fees, interest, or costs of court also.



Did you know?...

- A justice of the peace cannot dismiss a case without a motion from the prosecutor except for specific statutes.
- This does not exclude a judge from finding a defendant “not guilty” at the conclusion of a trial **IN WHICH THE PROSECUTOR** is present.
- No justice of the peace may proceed to trial without a prosecutor under any circumstances.



Did you know?

- If a trial has been set and the prosecutor is not in attendance, the judge has no option but to find the defendant “not guilty” due to the fact that the judge may not act as the prosecutor.
- i.e. - may not ask questions of the state’s witnesses nor the defendant’s witnesses.



Fees to Look For!

- 45.0511 (f) (1) Code of Criminal Procedure
- Require a defendant to pay an administrative fee set by the court not more than \$10 to take a driving safety course.
- There is no refund of the fee regardless if the defendant takes the course or not.



Fees

- CCP - 45.0511 (c) (1)
- \$10 fee if the court takes the responsibility of obtaining the defendant's driving record from the Texas Department of Public Safety.
- This is a certified copy, not one that is obtained from the sheriff's office or police department.
- This fee goes to the State Comptroller without any deductions going to the county - who then remits the fees to DPS.



Fees

- 548.605 Texas Transportation Code
- Administrative fee of not more than \$10 for expired MVI if remedied within 10 working days and
- The MVI has not been expired for more than 60 days.
- The court may dismiss even if it has been expired more than 60 days.
(optional)



Fees

- 502.407 - TTC
- May charge a \$10 fee if expired registration is remedied within 10 working days and dismiss the charge.
- 521.026 - TTC
- \$10 fee may be charged for expired driver's license if remedied within 10 working days.
- There is no 60 day limitation on the above charges.



Fees

- 106.12- Texas Alcoholic Beverage Code
- Expungment of conviction of a minor.
- Not more than one conviction upon the age of 21 may apply to the court to have the conviction erased or expunged. Can only have one of these.
- The court SHALL charge an applicant fee of \$30 for each application for expungment to defray the cost of notifying state agencies of orders of expungment.



Fees

- 161.255 Health and Safety Code
- Permits a fee of \$30 for the expungement of a conviction for a tobacco offense.
- The fee is used to defray the costs of notifying the state agencies of the expungement.
- This is a county retained fee.



Fees

- 45.055 Code of Criminal Procedure
- \$30 Shall be required for an application for expungment for offenses of failure to attend school on or after the child's 18th birthday.
- Only one expungment for this offense.

TEAMWORK



Fees

- 45.052 CCP Teen Court Program
- If a child requests a case to be referred to a Teen Court Program, the court **MAY** charge a \$10 fee to cover the cost to the teen court for performing its duties under this article.
- This fee goes to the Teen Court Program
- There is no refund of this fee to the child, regardless whether the child completes the program or not.



Did you know?

- 673.002 - Health and Safety Code
- An autopsy shall be ordered on a child 12 months or younger if the cause cannot be determined.
- The state SHALL reimburse a county \$500 for the cost of the autopsy if the primary cause of death is SIDS.


TEAMWORK



Voucher

- Copies of a voucher required are available from the Texas Department of Health
- 1100 W. 49th Austin, Texas 78756-3199
- 1-888-963-7111
- 512-458-7111

TEAMWORK



Enforcement by Mandamus

- 71.035 (b) Texas Government Code
- Requires each judge to report information to the civil and criminal business transacted by the court as required by the Texas Judicial Council.
- 171.1 and 171.2 of the Texas Administrative Code requires submission of court activity reports each month by no later than 20 days following the end of the month reported.

71.035 - Mandamus



- If the official does not supply the information within a reasonable time after the request, he is presumed to have willfully refused the request.
- The duty to supply information may be enforced by a writ of mandamus in any trial court other than a district court.
- The attorney general SHALL file and prosecute an action for mandamus on behalf of the council if requested to do so in writing by the council. AG may refuse if he certifies in writing it is without merit.



County Commissioners

- County Commissioners adopt procedures to implement in the justice of the peace office.
- This should be done in order to make the justices accountable.
- This protects the judges and clerks and should be “sold” as such as opposed to getting controversy, outrage, etc.



Show me the fees!

- Red flag alert!
- If absolutely no \$10 fees are being remitted to the county.
- There will not always be a \$10 fee paid in all probability. There should be consistency, however.
- i.e. - if a defendant appears and the judge waives the fee (allowable by law) for whatever reason, judge should be signing off on this. Just a note on the case jacket in order to protect all involved.



Red Flag Alerts

- Periodic reversals for cash transactions.
- Original receipt for \$100; reversed; re-entered for \$50; (on same day)
- It is quite simple to put an explanation on the receipt. i.e. - wrong amount, see different case number
- I strongly suggest that the judge sign off on all reversals or someone in authority, such as the chief clerk.



Red Flag Alert

- If that is not possible, perhaps in the smaller counties, a quick email or phone call to the auditor's office with an explanation.
- It is almost impossible to prevent reversals totally, however, if reversals seem to continue to pop up quite frequently, this should be considered a red flag alert, particularly if the reversal is by the same person more so than others.



Red Flag Alert

- Another suggestion is to have two clerks sign off on the reversal.
- Kind of like a “witness” to the reversal.
- Theft is not totally preventable in this manner, but perhaps a safe mode with two people involved in it.

TEAMWORK



Prevention?

- Digging in desk drawers - what are you looking for?
- Read access only to docket system in the judge's office.
- Contact DPS for a list of all citations written and filed in specific courts in your county.
- With read access, could determine if the case has been entered in the system.



Prevention?

- No cash accepted -
- This is a problem in that a person has a right to pay with U.S. currency.
- Refusing that right could actually cause problems.
- If defendant is arrested for not paying, but had offered cash for payment, could be construed as being unlawful imprisonment.



Prevention?

- Money orders or cashier's checks
- Not foolproof either however, could implement a procedure of Xeroxing a copy of each money order and put the copy in the file for future reference.
- Also, let the defendant fill out the money order, not the clerk.

TEAMWORK



Prevention?

- Be aware of money trends -
- Obviously deposits will be larger around the 1st of the month and the 15th of the month.
- What is the average total of money for that JP office for the year?
- Divide by 12 months - divide by days of the month
- Is that office keeping a steady average?



Prevention?

- Average cases per day - use the same equation.
- Example: My money will be more on Monday as a general rule because the clerks work 4 10's
- Monday, we have Friday, Saturday and Monday mail.

TEAMWORK



Averages

- What is the average amount of money per case?
- Example: each traffic case has a minimum of \$94 court costs - average would have to be above \$94

TEAMWORK



Averages

- Red flag alert!
- A lot of dismissals and no fees collected.
- What is the average dismissals or deferrals and what is the average conviction rate?
- I have a 95% conviction rate.

TEAMWORK



Mistakes

- I think the worst mistakes made in our reporting system to the auditor was when we quite doing a report called “Account of fees due”.
- This report showed specific dispositions and dates of dispositions.
- This is “key” in our dismissals and deferrals.
- The cases sometimes get lost in the shuffle with no accounting for them.



Red flag?

- Case is pending longer than 90 days, depending on the size of the court.
- No warrant issued.
- Look for: correspondence, events of the case and settings.
- Is the case dormant?
- Any notices for show cause sent?
- Has a plea been entered in the case at all?



What a case should have

- Each and every case should have:
- Appearance date - (at the bottom of the ticket or also called a "setting date" in the computer system.
- If a plea of nolo or guilty: should at least paid fine and court costs or
- Due date (setting date) for community service and number of hours
- Request for a driving safety course
- Request for a payment plan



What a Case should Have

- If no plea has been entered at all:
- A docket call notice or show cause notice sent with a specific date to appear
- Has a warrant been issued? (event of case)
- Docket call notice checklist:
- How much postage and envelopes if the office spending?
- Look at the judge's calendar - should have docket call - can't have docket call or show cause without the judge.



What a case should have

- If these things are not happening, court may not be “working” the cases.
- How many pending cases are in the file?
- Ask for a report on pending cases for a specific period of time.
- Remember, if a judge has been in office for some time, a full report of pending cases could be very lengthy.
- Ask for a report of money owed to the court. Keep in mind the dates of the report. This could be a big number. Use averages to answer any questions.



Calendars

- Look at the clerk's calendar or one of the office calendars
- It will say things like, "docket call", "hearings", "jury trial", "show cause hearings"

TEAMWORK



What is Conviction Rate?

- If a court's average conviction rate is 50 or 60 or below - RED FLAG!
- Cases are not being worked properly
- All DPS officers keep a record of outstanding warrants from local troopers
- Ask for a copy!
- I have a "warrant drawer file" and also a "warrant card" file with all warrants issued and outstanding from my court.



Government Code 112.052

- States that a court **SHALL** issue a warrant for unpaid fines and costs.
- If not, the judge could be held personally liable for the fines and fees assessed for the judgment.

TEAMWORK



Exercise Your Authority

- Always ask for everything in writing and copy the request to commissioner's court.
- Go one step further - send a copy of the request to each specific commissioner and judge individually.
- A lot of times, these requests get passed to the side but with each one going to specific commissioners, someone is going to see it.
- Each commissioner will pay attention, if that is their specific judge.



Prevention

- Adopt a policy book and allow judges to review and make suggestions.
- Stick to your game plan - don't allow a certain procedure to get pushed to the side if you think it is important.
- Have commissioner's court adopt the policy handbook to be implemented in the justice court.



Prevention

- Get rid of those checkbooks!!!
- Have judges deposit directly into the county treasury. This is a simple procedure and treasurer's love it.
- Out of county service for constables are simple to implement - clerk's simply have the Plaintiff give a cashier's check payable directly to the county serving the citation. A lot of attorneys will simply want the citation themselves to obtain service. In actuality, the statute states that the citation is to be given to the Plaintiff for service - nothing about the court sending it for service.



Forms

- Office of Court Administration
- Can check this report online yourself to see an overview of the month's reporting for each court.
- I give this report to commissioner's court, auditor, county clerk, and district judge for filing. (per statute requirements)



Forms

- Restitution for hot check merchants
- See form in your handout
- This is given to the auditor and one to the treasurer.
- Judge signs off on it and the county remits the restitution to the proper merchant.
- This is a check and balance system and trust me, it works!



Forms

- Texas Parks and Wildlife
- 85% remittance of fines
- See attached form
- This is used in the same manner of the hot check restitution. The check is mailed to the game warden via the treasurer. So far, no problems at all.
- (My office loves it!)



You, the Auditor

- Sometimes you just have to sell the product:
- “As your auditor, I am here to protect you, not to harass you.”