



Quarterly Report May 2015

GREETINGS FROM THE TRAINING CENTER

There are many changes for the Training Center on the horizon- starting with our newsletter format! We hope you will find this format more readable and organized. We always appreciate feedback and new ideas, so feel free to email us (bt16@txstate.edu) with your suggestions on how to make this newsletter more usable for your office.

The other big change for the Training Center is that we will be moving office locations at the end of May. Our new address is 1701 Directors Blvd., Suite 530 in Austin, TX 78744. All mailed communication will need to be sent to our new address starting June 1st. Our phone and fax numbers will remain the same.

The 84th Legislative Regular Session of the Texas Legislature is set to end on June 1 and it looks like there will be significant changes for constables and justice courts. The Training Center will begin holding Legislative Update Seminars starting in mid-July in 8 locations held throughout the state:

- Horseshoe Bay– July 20th
- San Antonio– July 27th
- Houston– July 31st
- Tyler– August 4th
- Corpus Christi– August 10th
- Lubbock– August 21st
- South Padre Island– August 24th
- North Texas– TBD

Registration will open soon. We hope to see many of you in class!

Until next time,
The Training Center Staff



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ALCOHOL AWARENESS COURSES

By Rob Daniel, Program Attorney



Alcohol abuse remains a serious health problem in Texas. The most recent “Substance Abuse Trends in Texas” report reveals that 6.5% of all Texans are alcohol-dependent or alcohol abusers. That’s over 1.7 million people! Additionally, the Centers for Disease Control reports that from 2003-2012, the national rate of DWI fatalities for persons under age 21 was 1.3 deaths per 100,000 persons, but the rate in Texas was 2.1 deaths per 100,000 persons, 61.5% higher than the national rate. The overall DWI rate in Texas remains troubling as well: DWI fatalities in Texas constituted 10.34% of nationwide DWI fatalities in 2013, even though the population of Texas constitutes just 8.45% of the U.S. population.

In addition to loss of life (1,089 Texans died in alcohol-intoxication-related crashes in 2013), the misuse of alcohol costs our communities money. An oft-cited report from the Automobile Association of America released in 2000 estimated that DWI incidents cost the United States \$114.3 billion in that year alone. High rates of alcohol abuse may also result in increased crime (think about the number of assault cases you have magisterated which involved alcohol) and an increased need for public treatment options (which are funded by taxpayer money).

“Ensuring that minor defendants receive beneficial education regarding alcohol abuse also means that we can make a positive impact in the lives of persons living in our communities.”

ALCOHOL ABUSE

6.5% of Texans are alcohol-dependent or alcohol abusers.

From 2003-2012, the rate of DWI fatalities in Texas was 61.5% higher than the national average.

1,089 Texans died in alcohol-intoxication-related crashes in 2013.

In 2000, DWI incidents cost the U.S. \$114.3 billion.

Justice courts have an opportunity to mitigate the negative effects of alcohol abuse and alcohol dependency on their communities by properly processing alcohol cases involving minors. By providing education, counseling, and other needed services through the criminal justice system, justices of the peace have the ability to intervene positively in the lives of young people who do not understand the full extent of the risks posed by their alcohol use and/or abuse.

Because it’s important to provide education that will lead to improved decision-making on the part of the defendant in the future, state law often requires trial courts to order minor defendants to complete an alcohol awareness course. In this article, we’ll discuss when such orders must be issued, as well as some recent changes to the law in this area.

If a minor is adjudged guilty of Public Intoxication, DUI-Minor, Purchase of Alcohol by a Minor, Attempt to Purchase Alcohol by a Minor, Consumption of Alcohol By a Minor, Possession of Alcohol by a Minor, or Misrepresentation of Age by a Minor, an alcohol awareness course is likely to be coming down the pike. A justice court must always order a defendant charged with one of these offenses to complete an alcohol awareness course if the court defers disposition in accordance with Article 45.051 of the Code of Criminal Procedure. (See Sec. 106.115(a), Alcoholic Beverage Code.) TJCTC recommends creating a written order whenever a defendant is placed on deferred disposition. When the offense is an alcohol offense involving a minor defendant, the alcohol awareness course requirements may be included in the court’s order deferring disposition. Violation of the court’s order to complete the alcohol awareness course may then be addressed under Article 45.051.

Additionally, if a defendant is finally convicted of one of the above-listed offenses for the first time then the justice court must order the defendant to complete an alcohol awareness course. (See Sec. 106.115(a), Alcoholic Beverage Code.) In this situation, TJCTC recommends issuing a separate written order requiring the defendant to complete the course. The defendant must complete the course within 90 days. (See Sec. 106.115(c), Alcoholic Beverage Code.) If the defendant provides proof that he or she has completed the course

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ALCOHOL AWARENESS COURSES...CONT. FROM PAGE 2

within the prescribed time period, the court may reward the defendant by “reduc[ing] the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.” *Id.* However, if the defendant fails to provide proof of completion within the 90 day period, TJCTC recommends holding a show-cause hearing. If the defendant presents good cause for not completing the alcohol awareness course, the court may extend the period in which the defendant may complete the course by up to 90 days. *Id.* If the defendant fails to present good cause for not completing the alcohol awareness course, the court shall order DPS to suspend the defendant’s driver’s license, permit, or privilege for “a period not to exceed six months.” (See Sec. 106.115(d), Alcoholic Beverage Code.)

If the defendant is finally convicted of one of the offenses listed above but has also been previously convicted of a listed offense, then the court doesn’t have to order the defendant to complete an alcohol awareness course. (However, we think it would still be a good idea!) If a justice court does require a defendant to complete an alcohol awareness course in this situation, follow the same procedures as above, except that the driver’s license/permit/privilege suspension period in the event that the defendant fails to complete the course should be extended to “a period not to exceed one year.” (See Sec. 106.115(d), Alcoholic Beverage Code.)

May a defendant complete the alcohol awareness course ordered by the court over the Internet? Before 2013, the answer to this question was “no.” However, a statutory change made during the 83rd Legislative Session allowed minor defendants to complete any “drug and alcohol driving awareness program approved by the Texas Education Agency” in order to satisfy the alcohol awareness course requirement, and TEA has approved online varieties of such courses. (Additionally, a minor defendant who lives in a county with less than 75,000 residents may complete an online alcohol awareness course approved by the Department of State Health Services. However, we are currently unaware of any online alcohol awareness courses with DSHS approval.)

What if the defendant lives in Crane, Texas, where Internet access isn’t widespread and a live alcohol awareness course isn’t available on a regular basis? The legislature has created a special dispensation for rural residents of the state. If the defendant “resides in a county with a population of 75,000 or less and access to an alcohol awareness program is not readily available in the county,” then the defendant may replace the alcohol awareness course with eight hours of community service. (See Sec. 106.115(b-1).) (Please note that this community service is completely separate from any community service ordered pursuant to Section 106.071(d).) The community service must be “approved by the Department of State Health Services,” but the department will summarily approve any community service program upon the request of a justice court. (For a list of already-approved community service options, please email Rob Daniel at rd48@txstate.edu.)

Please remember that the Legislature created the alcohol awareness course requirement in order to improve the overall health and economy of our state. For justices of the peace, ensuring that minor defendants receive beneficial education regarding alcohol abuse also means that we can make a positive impact in the lives of persons living in our communities.

SUMMER WEBINARS

FREE OF CHARGE!

Thursday, May 14th

Residential Evictions

Tuesday, June 23rd

Tenants’ Remedies

Wednesday, July 8th

Texas’ Changing Demographics:
Impact on Your Court

Wednesday, August 12th

Inquest Procedure Review

Tuesday, August 25th

Fees and Costs in Civil and
Criminal Cases

THE EXPIRATION OF THE PROTECTING TENANTS' AT FORECLOSURE ACT

By Bronson Tucker, Program Attorney

For the better part of a decade, the Training Center's instruction in eviction cases included the Protecting Tenants at Foreclosure Act (PTFA), a federal law that provided additional protections to tenants of individuals who get foreclosed upon. The two biggest protections were that, unless the purchaser at the foreclosure sale planned on making the property their primary residence, the tenant was entitled to finish out their lease under the existing terms, of course paying the agreed-upon rent to the new owner instead of the old foreclosed-upon owner. Additionally, even if the purchaser was going to use the property as their primary residence, the previous tenant was entitled to a 90 day notice to vacate. In practice, these protections generally led to a negotiation between purchaser and tenant for a "cash for keys" exchange, where the purchaser paid off the tenant to depart early, and everyone got what they wanted. However, the PTFA expired on December 31, 2014. While a Connecticut Senator has filed a bill to permanently re-enact it, there currently are no federal protections provided. That raises two major questions for tenants of property that has been foreclosed upon in Texas: Does their lease survive the foreclosure, and what notices are they entitled to?

Before we get into those questions, make sure you understand that we are not talking about situations where an owner who resides in the property gets foreclosed upon. At that point, they are a tenant at sufferance and entitled to a 3 day notice to vacate, just as they were under the PTFA. Instead, we are talking about tenants of the foreclosed-upon owners, who very often will have no idea that the property they are using as their home has been foreclosed upon. Note that the PTFA did not apply to fraudulent or deceptive agreements where I rent my house to my brother for \$5/month in order to remain in the property for an extended period of time.



Does a Texas lease survive after foreclosure?

If you are interested, a long history on Texas caselaw on this point is found in *Twelve Oaks Tower I, LTD. v. Premier Allergy Inc.*, 938 S.W.2d 102 at 108 (Tex.App.—Houston[14th] 1996) . If you are not interested , as I suspect many would not be, the short answer is no, unless both parties want it to. The Texas Supreme Court in a 2013 opinion stated “[g]enerally, a valid foreclosure of an owner’s interest in property terminates any agreement through which the owner has leased the property to another.” *Coinmach Corp. v. Aspenwood Apartment Complex*, 417 S.W.3d 909 (Tex. 2013). There have been some exceptions made when a lease specifically provides that the lease would survive a foreclosure, but it is rare that a lease explicitly states that the lease would survive.

So what happens upon foreclosure? The lease is terminated, and the tenant will either become a full-fledged tenant (they enter into a new agreement with the new owner), a tenant at will (they remain in possession with the consent of the new owner) or a tenant at sufferance (they remain in possession without the consent of the new owner). The outcome depends on the conduct of the parties. Certainly if the landlord and tenant enter into a new written agreement, that is clear enough. If not, however, one must look at things like demands for possession, acceptance of rent, etc., to see if the tenant is one at will or at sufferance. In the *Coinmach* case, the Supreme Court said “[i]f the tenant remains in possession and continues to pay rent, and the landlord, having knowledge of the tenant’s possession, continues to accept the rent without objection to the continued possession, the tenant is a tenant at will and the terms of the prior lease will continue to govern the new arrangement absent an agreement to the contrary.” Since the new owner’s behavior is ratifying the old lease, it would then continue. On the other hand, if the new owner’s behavior does not ratify the old lease, then a tenancy at sufferance would be created, which could be terminated by the landlord with a notice to vacate and demand for possession.

It is important to note that the Supreme Court uses “tenant at will” in a context slightly different than its normal usage. Here they mean a tenant by consent of the landlord, whereas normally a tenant at will is one who has a relationship with the landlord that either can terminate at will. Instead, if a landlord continues to accept rent without complaint, they have agreed that the previous lease is in effect. *Twelve Oaks Tower* at 110.
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What notices are these tenants entitled to?

If the parties agree to continue the old lease, its terms would govern its termination, so the tenant would be entitled to a three day notice upon breach, unless otherwise provided in the lease. If the lease continued is a month-to-month lease, then a notice of termination of the lease with at least 30 days' notice would be required, followed by a 3 day notice to vacate and demand for possession if the tenant failed to surrender possession, as we have discussed in prior editions of this Newsletter. If the landlord does not wish to continue with the current tenant, and therefore a tenancy at sufferance exists, the Property Code provides that the tenant receives 30 days' notice to vacate. *Property Code 24.005(b)*. Courts have held that a tenant at sufferance who maintains possession during this 30 day timeframe may be liable to the landlord for trespass damages, but limited to unpaid rents, lost profits or damage to the property itself.

We hope this discussion has been helpful in making the transition to the post-PTFA world. We will monitor the situation to see if Congress reinstates PTFA or passes similar legislation. We will also notify you if the Texas Legislature passes legislation providing additional protection to tenants living in foreclosed-upon properties.

ETHICS UPDATE

By the TJCTC Legal Department

The following is a summary of some recent decisions by the State Commission on Judicial Conduct.



A justice of the peace was given a Public Reprimand and Order of Additional Education for a multitude of issues in civil cases. The judge issued a criminal summons to enforce their civil orders, entered a civil judgment despite no petition ever being filed or citation being served, and told a person they could not appeal the judge's decision. Additionally, the judge failed to create written judgments in cases, presided over a case that was outside of the judge's jurisdiction, and was advancing the interests of a personal friend.

It is critical that judges follow the procedures laid out in the Rules of Civil Procedure and treat each litigant equally. If you feel pressured to 'help out' a family friend, you should immediately recuse yourself.

Another justice of the peace was given a Public Reprimand and Order of Additional Education for intervening in a dispute between two parties despite no case being filed in their court. The judge telephoned a party after an *ex parte* discussion with the other side and advised them to pay to "avoid court fees." A petition regarding the matters discussed with the justice of the peace was filed in that judge's court, and the judge correctly recused themselves to avoid any further violations of the Code of Judicial Conduct.

It is absolutely inappropriate to listen to *ex parte* communications about a case and then intervene in the case, especially with nothing pending in the court. The judge's role is a neutral arbiter, which is impossible to maintain when the judge is hearing *ex parte* information and taking sides.

Finally, a district judge received a Public Admonition and Order of Additional Education for infractions relating to the judge's Facebook account, which listed them as the Judge, and the specific court, and as a public figure. The judge made online comments about a pending case and linked to media accounts that sensationalized the case. Ultimately that case had to be transferred and a mistrial was granted. The judge also posted about a pending case "bless the poor child victims," and in another case mentioned dealing with a "very challenging defendant." The Commission found these postings cast doubt on the judge's impartiality and cast public discredit on the judiciary due to media coverage of the mistrial due to the judge's postings.

We certainly are in an age of prevalent social media outlets. However, as a judge, you should always be extremely cautious about what you post and that it doesn't impact pending cases or call into question your impartiality or credibility.

SHORT ON TIME AND MONEY: FTAs AND THE TIME PAYMENT FEE REVISITED

By Thea Whalen, Program Attorney

We know that you appreciate our webinars because it gives you the opportunity to have a couple hours devoted to one topic and the ability to ask questions in real time. For us as instructors, it helps us note issues that we need to make sure are being highlighted. That happened for us during a recent webinar on deferred disposition and the driving safety course when the questions were dominated by two areas: failure to appear and the time payment fee. We want to take this opportunity to review these topics with you.

Time Payment Fee

The Time Payment Fee is, to put it simply, a late fee. When a criminal defendant is convicted and ordered to pay court costs and a fine, they must do so before the 31st day after judgment or be assessed an additional \$25.00 'late payment fee.'

When reading the Local Government Code, at first it appears that the word 'convicted' means just that – a judgment of conviction.

“A person **convicted** of an offense shall pay, in addition to all other costs, a fee of \$25 if the person:
(1) has been convicted of a felony or misdemeanor; and
(2) pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution” Local Government Code 133.103 [emphasis added].

“The Time Payment Fee is, to put it simply, a late fee.”

However, when you read further in the code, other sections give a more complete explanation of how the Time Payment fee works with convictions. Sections 133.003 and 133.101 of the Local Government Code added definitions that when read in total, mean a Time Payment Fee would apply to a deferred disposition or driving safety course.

Sec. 133.003 CRIMINAL FEES.

This chapter applies to the following criminal fees: ... (2) the time payment fee imposed under Section 133.103; ...

Sec. 133.101 MEANING OF CONVICTION.

In this subchapter, a person is considered to have been convicted in a case if:

... (2) the person receives ... deferred disposition; ...

Because the code notes that criminal fees include the time payment fee and the word 'conviction' includes a deferred disposition, a defendant who pays criminal fees or court costs (because there would be no fine in a deferred disposition or driving safety course) after the 31st day of the deferred or DSC order must be assessed an additional \$25.00 Time Payment Fee.

with the statement above. We also all agreed that there could only be one Time Payment Fee on a case, because there can only be one conviction per case. For example if a defendant were placed on deferred, failed to timely pay their court costs and were assessed the Time Payment Fee, they could not be assessed a second Time Payment Fee if they were to fail to complete their deferred, were convicted and still failed to timely pay their court costs or fines.

FTA

A Failure to Appear charge (or a Violation of Promise to Appear charge if the offense is a Rules of the Road offense charged by citation) can only be filed when a person has previously been released from state custody and fails to appear for a pending charge in accordance with the terms of his or her release.

When a Failure to Appear or other charge is filed by a complaint and the defendant wasn't ever 'in custody' for
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that offense, the defendant has not been released from custody, and so a FTA charge could not occur.

A Failure to Appear is also not the proper remedy for a defendant who does not appear at a show cause for a deferred disposition or DSC. The appropriate outcome is a conviction on the underlying offense, not an FTA charge.



When a court sets a case for a pretrial conference between the defendant and the prosecutor, the defendant's appearance is not generally required, and the defendant commits no offense by failing to appear at a pretrial conference. However, when a justice court sets a case for a pretrial hearing to specifically address one of the issues listed in Article 28.01 of the Penal Code (reproduced below), the defendant's presence is required. Therefore, a person who is summoned to appear at such a pretrial hearing in accordance with the terms of his or her release but fails to appear commits the offense of Failure to Appear.

Article 28.01. PRE-TRIAL.

...The pre-trial hearing shall be to determine any of the following matters:

- (1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;
- (2) Pleadings of the defendant;
- (3) Special pleas, if any;
- (4) Exceptions to the form or substance of the indictment or information;
- (5) Motions for continuance either by the State or defendant...
- (6) Motions to suppress evidence...
- (7) Motions for change of venue by the State or the defendant...
- (8) Discovery;
- (9) Entrapment; and
- (10) Motion for appointment of interpreter.

As you can see, these are issues that are rarely set in Justice Court and if the pretrial hearing is not specifically set for one of these reasons, a defendant who does not attend cannot have a fail to appear charge filed against them.

If a defendant has been placed on deferred or DSC and fails to timely comply, a show cause hearing must be set. However, the remedy if the defendant fails to appear at that show cause is not filing an FTA – it is convicting the defendant of the offense.

Another confusing aspect of a defendant who fails to appear is assessing the OMNI \$30.00 administrative fee. Program Attorney Rob Daniel created the [TJCTC Reporting Requirements Guide](#) that can be easily located on the Training Center website under the 'Traffic and Safety Initiative' tab in the 'Forms and Manuals' section. The issue that came up frequently in the recent webinar surrounding was the correct time to assess the \$30.00 administrative fee for failing to appear in a criminal case. That fee ONLY applies to the time a defendant actually fails to appear NOT to any subsequent FTA or VPTA charge filed by the Court. In other words, if a defendant has a speeding citation and fails to respond to plea, that person would be reported to OMNI and have the \$30.00 fee assessed. If the court chose to file a complaint for VPTA, no additional \$30.00 fee would be assessed on that charge. (Unless the person also subsequently failed to appear in the VPTA case and was reported to OMNI for the subsequent failure to appear.)

Remember this \$30.00 OMNI fee is for failing to appear. There is a separate administrative OMNI fee that can be assessed upon failing to satisfy a judgment. Again, I direct you to the Reporting Guide as an excellent resource explaining this distinction.

We hope this clears up some of the confusion on these issues. We know your courts handle a huge volume of cases that cover multiple topics, so these details can be hard to keep straight. As always, any additional questions or comments can be made to our legal department via our website question board or by calling the Training Center at 512-347-9927.



A BRIEF GUIDE TO TOW HEARINGS

By Rob Daniel, Program Attorney

If you've driven around Texas' major cities recently, you may have noticed that it has become more difficult to park your car for free. As land values in cities like Austin and Dallas have skyrocketed, some public parking lots have turned into private developments. While most Texans have responded to the shrinking number of free parking spaces by

paying a fee to park downtown or by taking public transit, a handful of Texans roll the dice by illicitly parking in private lots.

Whether a vehicle may be towed from a private lot without the owner's or operator's consent depends on several factors. When a person believes that his or her vehicle has been towed illegally, the person may file a request for a tow hearing in a justice court. The issue of whether the parking facility and the tow truck operator followed the legal procedures for a "nonconsent tow" then becomes an issue for the justice court to decide.

A person may also file a request for a tow hearing with a justice court if the person feels that his or her vehicle was towed legally but that the charges assessed by the towing company or the vehicle storage facility to which the vehicle was towed are too high. The issue of whether the towing company's or vehicle storage facility's fees exceeded the fees permitted by Texas law then becomes an issue that must be decided by the justice court.

At some tow hearings, the justice court will have to determine both the issue of whether the towing company legally towed the vehicle and the issue of whether the towing company overcharged the person whose vehicle it towed.

Before a justice court may explore any of these issues, a hearing request must be filed with a justice court. The request may be filed in any justice court in the county from which the vehicle was towed. (See Sec. 2308.453, Occupations Code.)

(Please keep in mind that all Texas counties are required to adopt rules for the administrative transfer of cases pending in justice courts from one precinct to another. (See Sec. 15.0821, Civil Practice and Remedies Code.) Some counties have adopted administrative rules requiring all tow hearing cases to be transferred to a single precinct. Other counties have adopted administrative rules requiring tow hearing cases to be transferred to the precinct from which the vehicle was towed. Because a tow hearing may occur in any justice court in the county from which the vehicle was towed, it is TJCTC's opinion that both sets of administrative rules described above are permissible.)

Generally, a request for a tow hearing must be filed "before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility...excluding Saturdays, Sundays, and legal holidays." (See Sec. 2308.456, Occupations Code.) However, if a towing company or vehicle storage facility fails to provide a notice of statutory rights to the person whose vehicle was towed (required by law when the person pays the towing company or vehicle storage facility) then there is no deadline for submitting the hearing request. (See Secs. 2308.454 & 2308.456, Occupations Code.) Additionally, the 14 day time period "does not begin until the date on which the towing company or vehicle storage facility provides to the vehicle owner or operator the information necessary for the vehicle owner or operator to complete" the hearing request. (See Sec. 2308.456, Occupations Code.) Therefore, TJCTC recommends responding to any tow hearing request by setting the case for a hearing, even if the request occurs more than 14 days after the tow. The justice court may determine whether the 14 day deadline applies to the requestor (and if so, whether the requestor met the deadline) at the hearing.

Regardless of when the request is filed, the "filing fee" for a tow hearing request is \$20.00. (See Sec. 2308.457, Occupations Code.) Additionally, both the statute authorizing the \$6.00 indigent services fee and the statute authorizing the \$10.00 electronic filing fee state that these fees apply to any "proceeding
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TOW HEARINGS...CONT. FROM PAGE 8

requiring a filing fee.” (See Sec. 51.851 Government Code & Sec. 133.153, Local Government Code.) Because a tow hearing is a proceeding which requires a \$20.00 filing fee, it’s our opinion is that both the \$6.00 indigent services fee and the \$10.00 electronic filing fee should be collected when a person files a request for a tow hearing. Therefore, a justice court should collect \$36.00 total when a request for a tow hearing is filed.

A hearing request must include the following items: 1) the name, address, and telephone number of the owner or operator of the vehicle; 2) the location from which the vehicle was removed or in which the vehicle was booted; 3) the date when the vehicle was removed or booted; 4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal or booting; 5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed; 6) the name, address, and telephone number of the towing company that removed the vehicle or of the booting company that installed a boot on the vehicle; 7) a copy of any receipt or notification that the owner or operator received from the towing company, the booting company, or the vehicle storage facility; and 8) one or more photographs that show the location and text of any sign posted at the facility restricting parking of vehicles (or a statement that no sign restricting parking was posted at the parking facility). (See Sec. 2308.456, Occupations Code.) However, the Occupations Code provides no specific remedy if the requestor fails to include certain required information in the hearing request.

A tow hearing must be held within 21 days of the justice court’s receipt of the hearing request. (See Sec. 2308.458, Occupations Code.) Additionally, Texas law requires the justice court to notify all relevant parties of the hearing. Specifically, a justice court must serve the following parties with notice of the date, time, and place of the hearing in accordance with Rule 21a of the Texas Rules of Civil Procedure: 1) the person who requested the hearing; 2) the parking facility owner or law enforcement agency that authorized the removal of the vehicle; 3) the towing company; and 4) the vehicle storage facility in which the vehicle was placed. (See Sec. 2308.458, Occupations Code.)

As discussed above, a justice court must determine one or both of the following issues at the hearing: 1) whether the towing company legally removed the vehicle; and 2) whether the towing company or vehicle storage facility overcharged the person whose vehicle was towed.

Generally, in order to legally remove an unauthorized vehicle from a private parking facility without the consent of the vehicle’s owner or operator, a parking facility operator must have previously: 1) posted signs prohibiting unauthorized vehicles, in accordance with Chapter 2308, Subchapter G of the Occupations Code; 2) provided notice to the owner or operator of the vehicle’s impending removal in accordance with Chapter 2308 of the Occupations Code; or 3) determined that the vehicle is parked in violation of Section 2308.251 or 2308.253 of the Occupations Code (which deal mainly with vehicles blocking parking lot entrances, other vehicles in the parking lot, fire lanes, etc.). If you receive a request for a tow hearing, TJCTC strongly recommends reviewing Section 2308.251 through Section 2308.257 of the Occupations Code prior to the hearing date.

In order to determine whether a towing company or vehicle storage facility overcharged a person whose vehicle was towed, the justice court must first determine the maximum amount of fees that may be charged legally. In most counties, that means referring to the rates for nonconsent tows set by the Texas Department of

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Dear Judges, Clerks, and Constables:

We are aware that several of you are awaiting answers to questions that you have posted to TJCTC’s legal questions board. Between FMLA leave for two of our attorneys, the 84th Legislative Session, seminars, conferences, grant applications, and other duties, we have not had much time to dedicate to answering board questions over the past few months. We apologize for the delay, and we thank you for your patience. We assure you that we will answer your questions as soon as we possibly can.

If you need a legal question answered immediately, please telephone the TJCTC office at 512-347-9927.

Thank you,
TJCTC Attorneys

TOW HEARINGS...CONT. FROM PAGE 9

Licensing and Regulation. (See Sec. 2308.0575, Occupations Code & <http://www.tdlr.texas.gov/towing/towingfaq.htm#towfee>.) However, counties or municipalities have the legal authority to set their own towing rates, as long as those rates are lower than the rates set by TDLR. (See Sec. 2308.202, Occupations Code.) Once a court has located the applicable fee schedule, it's easy to compare the maximum allowable fees to the fees charged by the tow company or vehicle storage facility.

A justice court must issue a judgment following a tow hearing and must make written findings of fact and conclusions of law. (TJCTC is not entirely sure why written findings of fact are necessary, since an appeal results in a trial *de novo* in the county court, but we recommend creating all required documents and placing them in the court file following each and every tow hearing.) A justice court's judgment may include: 1) court costs and attorney's fees, awarded to the prevailing party; 2) the reasonable cost of required photographs submitted with the hearing request; 3) an amount equal to the amount that the towing charge and associated parking fees exceeded fees; and 4) reimbursement of fees paid for vehicle towing and storage. (See Sec. 2308.458, Occupations Code.)

The parties may take post-judgment actions following the issuance of the justice court's judgment. First, either party may appeal to county court pursuant to "the rules of procedure applicable to civil cases in justice court." (See Sec. 2308.459, Occupations Code.) However, "no appeal bond may be required by the court." *Id.* (Although Rule 506.1 of the Texas Rules of Civil Procedure requires the appellant to file a bond, make a cash deposit, or file a sworn statement of inability to pay costs in order to appeal a case to county court, it's our opinion that a party may appeal a judgment in a tow hearing case by filing a notice of appeal with the justice court.) Second, the judgment creditor may seek to enforce the judgment through the use of post-judgment remedies. (See Sec. 2308.460, Occupations Code.) Therefore, a judgment creditor in a tow hearing case may file an application for a writ of execution, an application for a writ of garnishment, an abstract of judgment, etc. TJCTC recommends processing these applications as you would in civil cases.

If you're seeking additional resources regarding tow hearing cases, please take a look at the "Tow Hearing Flowchart" on TJCTC's website.

Also, please note that a handful of bills which would amend Chapter 2308 of the Occupations Code have been filed at the Texas Legislature this session. TJCTC will cover any changes to this area of Texas law at our Legislative Update Seminars this summer.

TEXAS JUSTICE COURT TRAINING CENTER

Funded by a Grant from the COURT
OF CRIMINAL APPEALS

In Association with Texas State
University and the Justices of the
Peace and Constables Association of
Texas, Inc.

"The mission of the Texas Justice
Court Training Center is to provide
quality education opportunities for
justices of the peace, constables and
court personnel, insuring the credi-
bility of, and confidence in, the
justice courts enabling them to
better serve the people of The State
of Texas."

DWI BOND CONDITION SCHEMATIC PROGRAM

The Texas Justice Court Training Center's bond schematic program assists Texas counties in creating consistent conditions of bond in all DWI cases. TJCTC works with all stakeholders (including all criminal magistrates, prosecutors, and probation departments) in participating counties to establish a system for setting, monitoring, and enforcing appropriate conditions of bond. If you are interested in having your county participate in this program, please contact Rob Daniel at 512-347-9927.