

# THE BRIEF

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Information for Texas Municipalities about Texas Municipal Courts (January 2020)

## Regarding the Appointment of Municipal Judges: THREE BASIC ISSUES

Unlike in some states, municipal courts in Texas are part of the state judicial system. Municipal judges constitute the largest segment of the Texas judiciary. Once a Texas city passes the requisite ordinance activating the court, the municipality becomes the local host of a state court.

Because most cities activate the municipal court upon incorporation of the municipality, by the time most mayors and city council members take office, the decision whether to host a municipal court has been made. However, for most city councils, questions regarding appointment of municipal judges remain.

Historically, Texas has long favored the election of judges. State law, however, allows Texas cities to choose whether to elect or appoint municipal judges. Most cities have opted to appoint, rather than elect municipal judges. The appointment of judges can be thought of as an indirect election. The people elect the city council who in turn acts as the people's representative in choosing who shall serve on the municipal court. Thus, city council members bear great responsibility to the public in making judicial appointments.

Although it may be intentional, state law gives zero direction to city hall on how to make such appointments. In recent years, nearly every aspect of the criminal justice system, including municipal courts and the appointment process of judges has been the subject of public scrutiny. An increasing number of city council members have become aware of how important it is to understand different aspects of the appointment process.

This is the first in a series of installments of *The Brief* aimed at providing decision-makers at city hall information and food for thought about the appointment of municipal judges. Because appointed municipal judges adjudicate the greatest number of criminal cases in Texas and have more contact with the public than other judges in Texas, the dearth of literature on appointment is surprising. Accordingly, this installment focuses on three basic aspects: (1) selection; (2) term of office; and (3) removal.

### Selection

Separate statutory authorization for the selection of municipal judges exists for home-rule cities and for general-law cities. Under home-rule, state law provides that the judge may be selected in the manner prescribed by the city

charter. The selection may be by election or by appointment.

Pursuant to Section 29.004(b) of the Government Code, the mayor in a general-law city is ex officio judge of the municipal court unless the city provides by ordinance for the appointment or election of a municipal judge. In that capacity, the mayor exercises both the authority of mayor and judge without violating restrictions on dual office holding.

If a general-law city adopts an ordinance authorizing an election, the judge shall be elected in the same manner and for the same length of term as the mayor. If instead an ordinance authorizes appointment of a municipal judge, the mayor immediately ceases to function as ex officio judge on the enactment of the ordinance. The first elected or appointed judge serves until the expiration of the mayor's term. If changing from the elective to the appointive method of selection, a new judge may not be appointed until after the incumbent's term has expired.

While a few general-law cities still utilize the law allowing the mayor to act as the ex officio judge, the constitutionality of Section 29.004(b) is disputable. (See, *Ward v. Village of Monroeville*, 409 U.S. 57 (1972), holding that a mayor presiding over a trial violated the Due Process Clause of the 14th Amendment because the mayor's executive responsibilities for village finances created a possible temptation.)

## **Term of Office**

A municipal judge's term of office is two years unless the municipality provides for a longer term as authorized by the Texas Constitution. While most municipal judges in Texas have two-year terms of office, some have a four-year term. Municipal judges are encouraged to keep on file a current copy of their oath of office and to know their appointment date. It is important that someone at city hall do the same.

In instances where a judge resigns or dies during a term of office, it is the responsibility of the governing body to fill the vacancy for the remainder of the unexpired term. It is important for Texas cities to maintain records specifying a judge's term of office. Who in your city is responsible for monitoring the municipal judge's term of office?

Particularly in instances where a city council does not intend to reappoint a judge, time is of the essence. Section 29.005 of the Government Code states that a municipal judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the appointing authority, continue to serve for another term of office beginning on the date the previous term of office expired.

## **Removal**

Regardless if written agreements are utilized to specify compensation, benefits, and expectations, it is important for city officials to distinguish municipal judges from contract employees and at-will employees. Texas appellate courts have held that municipal judges are not employees. Regardless if a municipal judge is elected or appointed, the judge is a public official entitled to a definite term of office. Respecting a judge's term of office is of paramount

importance to promoting public confidence and judicial independence.

Because municipal judges are not “hired” (they are either appointed or elected), a municipal judge cannot be “fired.” Like other public officials, however, municipal judges may be removed from office. Grounds for removal may be located in the ordinance or special statute creating a court of record. Texas case law states that in home-rule municipalities, judges may be removed pursuant to the terms of the city charter. Texas case law also states that state law creating municipal courts preempts any provisions in a city charter regarding selection of judges. Thus, a charter provision or ordinance governing removal of a municipal judge that contradicts the Texas constitution or state law is invalid.

Under Texas law, a municipal judge may be removed from office by the city’s governing body for incompetence, corruption, misconduct, or malfeasance in office. A municipal judge may also be removed from office by the Supreme Court of Texas through formal proceedings initiated by the State Commission on Judicial Conduct upon a finding of judicial misconduct.

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*The Brief* is a periodic briefing for Texas mayors, city council members, and other local officials highlighting issues and increasing awareness and understanding of municipal courts in the Lone Star State. *The Brief* is part of TMCEC’s public information and education campaign, *Councils, Courts, and Cities (C3)*. For more information about TMCEC, visit: [www.tmcec.com](http://www.tmcec.com). Follow C3 on Twitter @C3ofTexas.

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