



Ethics and the Proactive Prosecutor

Presented by Elisabeth Kaylor
Assistant City Attorney, Arlington



Learning Objectives

- By the end of the session, participants will be able to:
- 1) Describe the differences and similarities between the types of municipal prosecutors in Texas;
- 2) Identify common situations, both ethical and work-related, that confront all types of municipal prosecutors;
- 3) Discuss methods of assuring cases are successful in municipal court, allowing for prosecutor to effectively represent their client;
- 4) Explain ways prosecutors can deal with situations proactively in court, and why this approach may be beneficial

The Many Types of Prosecutors in Municipal Court

- Full-time prosecutor: this is their job, and that's it. Many large cities (Dallas, Houston)
- City attorney/prosecutor: advise the city in all legal aspects, also serve as the municipal court prosecutor (Trophy Club)





The Many Types of Prosecutors in Municipal Court

- Contracted prosecutors: may be a contract with the county (Huntsville), may be a private attorney/firm that contracts with a city for services
- Volunteer (non-paid)



How do these different types of prosecutors affect prosecution?

- Differences in our schedules
- Differences in how we “juggle” assignments
- Different people to “answer” to
- Different priorities
- Differences in payment



Scenario #1

■ Attorney works for Firm who has a contract with City to prosecute Class C misdemeanors and City Code violations in the municipal court. Attorney is assigned to prosecute Mr. Smith in a jury trial for running a red signal. Mr. Smith is the CEO of a corporation for which Firm provides general business consulting. Firm provides legal services in many different areas of law. Attorney's primary area of practice for Firm is Family Law and has never met with Mr. Smith, nor done any work providing business consulting for Corporation. Is it a violation of the Texas Disciplinary Rules of Conduct to prosecute Mr. Smith?



- No.
- ***TDRPC*** 1.06, General Conflict of Interest Rules
- ***TDRPC*** 1.12, Representing an Entity



Compensation \$\$\$

- This will vary depending on the type of prosecutor you are.
- Hourly
- Per Trip
- Salaried
- Should this affect the quantity and quality of your work? Your productivity?



Scenario #2

- You are a contract prosecutor for the City of Shimmering Lake, Texas, who is paid per court appearance. You have a court setting for an assault case involving a victim, a witness, and a police officer who investigated the offense and wrote the citation. On the day of trial, you are informed the police officer will not be available, but the other witnesses will be in attendance. Do you proceed to court, or ask for a reset for the case?

Scenario #3

- Attorney works for Firm who has a contract with City to prosecute its Class C misdemeanors and City Code violations in the City Municipal Court and is paid per hour. Attorney is assigned a case where Defendant has committed one City Code violation involving his property and it is now up to code. Is it a violation of TDRPC for Attorney to prosecute the case by billing many hours as opposed to attempting to resolve the case before trial and billing fewer hours?





- **Yes.**
- ***TDRPC 3.02 Minimizing the Burdens and Delays of Litigation***
- ***TDRPC 1.04 Fees***

Other Compensation Issues

- Prosecutor choosing to drop charges rather than work many hours when he is paid by the job, not by the hour.





Despite the Different Types...

- Unifying factor is CCP 45.201:
- *It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done.*

Prosecutor Ethical Rules

- ***TDRPC***, Section 3.09, Special Rules Pertaining to Prosecutors
 - Prosecute only when there is Probable Cause
 - Don't force Accused to Waive their Rights
 - Discovery: turn over exculpatory evidence
 - Control your staff (don't let them say anything you can't say)





Scenario #4

- You are a full-time prosecutor in Blue Sky, Texas. Your officer has informed you he no longer remembers anything about the speeding ticket set for trial. He, however, shows up for trial. The defendant does not. Do you dismiss the ticket or ask that a warrant be issued for the defendant's failure to appear?

Scenario #5

Prosecutor is ready for a trial against Defendant for running a red signal. Officer is the only witness. When the judge calls the case, Defendant is not present and has thus failed to appear. Prosecutor would normally request that a warrant be issued for Defendant's arrest and that he be required to post a bond to get a new setting for his trial. However, Officer (who has just completed 25 years with the City Police) will be retiring next month. If Prosecutor requests that a warrant be issued, it will take weeks if not months for the warrant to go into effect. Also, processing the warrant will take the time and effort of City staff members. If Defendant posts a bond after the warrant is issued to get a new trial setting, the State would be unable to proceed since Officer (the only witness) has retired. However, if a warrant is issued and Defendant gets arrested, he may choose to pay the fine and be done with it.

Should the Defendant have to show up to "win"?



Other Ethical Issues that Face Prosecutors

- CDL Masking
- DSC Masking
- *Pro se* defendants, trial technique
- FTA Issues
- Relationships with Judges (fraternizing)



Are you overwhelmed yet??





Being Proactive

- You represent: The City and the State
- What do you do to effectively represent your client?
 - Show up prepared for court
 - Anticipate problems (new laws, ordinances, case law, defense attorney “tricks”)
 - Stay in touch with issues
 - Be accountable as a prosecutor
 - Make improvements to the process



Scenario #6

- You are a full-time prosecutor working for Muddy Shores, Texas. You are trying a speeding ticket from 2006. The officer states he will not be able to recognize the Defendant since so much time has elapsed, but he did take a DL at the stop, and the number is written on the citation. Is it ethical to allow the officer to pull the DL photo from DPS, and refresh his memory from the photo?



Why is it Good to be Proactive?

- It's always better to be prepared
- Good public impression/PR
- Build better jurors
- Good relationship with court
- More successful cases
- Better foundation for future prosecutors



Proactive vs. Reactive

- No prosecutor can be proactive at all times;
- Nor should a prosecutor be reactive (just deal with problems as they arise);
- Ideally, a prosecutor should be both
 - Be prepared, but also be able to think on your feet



Who To Call For Help?

- State Bar
- TMCEC
 - Hotline
 - Listserv
- Call your city attorney
- Another attorney contact (networking)