

Mental Health in the Criminal Justice System; Ethical Considerations

Texas Judicial Commission on Mental Health

2021 Summit

Judge Brent A. Carr

Tarrant County

Where the West Begins



- Founded: 1849
- Namesake: Gen. Edward H. Tarrant
- Population: 2,110,640
- 3rd largest county in Texas
- 15th largest county in U.S.

Tarrant County Where the West Begins



Tarrant County Mental Health Diversion Program



Presentation Focus

- Attorneys; Competent and Diligent Representation
- Judges, Ethics, and Specialty Courts

My Background

- Raised in central Florida.
- Artillery Officer, United States Marine Corps.
- Graduate, South Texas College of Law, 1983.
- Assistant District Attorney, Tarrant County, 1983 – 1991.
- Judge Tarrant County Criminal Court 9, 1991 – Present.

Programs

- Mental Health Diversion Program, December 2003.
(Presiding Judge)
- Veterans Treatment Court, February 2010.
(Presiding Judge)
- Reaching Independence Through Self-Empowerment (RISE), April 2011. (Former Presiding Judge, Current Supervising Judge)
- Enhanced Mental Health Services, July 2015
(Supervising Judge)

Why Are You Here?

1. You are a professional.
2. You are a responsible person.
3. This is the only thing on the agenda.
4. You did not want to miss the continental breakfast.
5. You seek insight into the bowels of the legal profession.
6. You are a lawyer who needs ethics hours and.....

Why Are You Here?

Every active State Bar of Texas member must complete a minimum of 15 hours of accredited CLE during each MCLE compliance year.

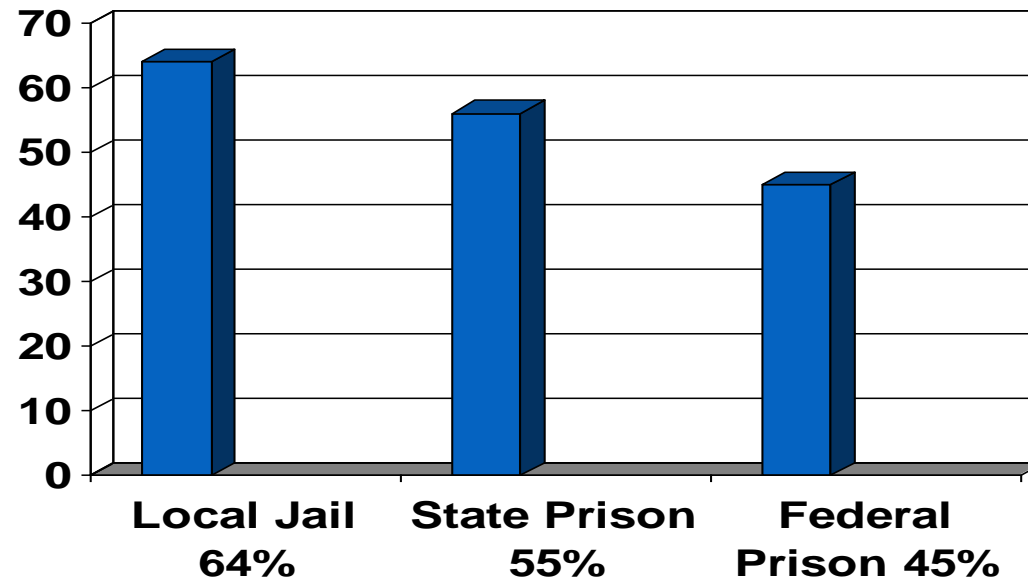
- 3 of these hours must be in legal ethics/legal professional responsibility
- Only one of these three hours may be by self study. (1)

Landscape



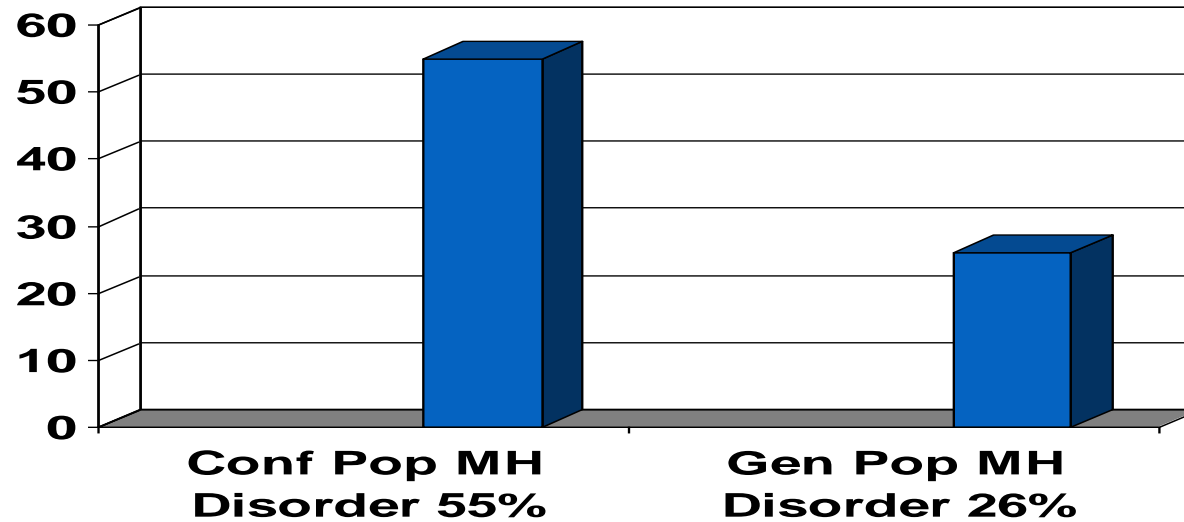
Scope of Mental Illness in Criminal Justice System

Confinement Population With Mental Health Disorder (2)



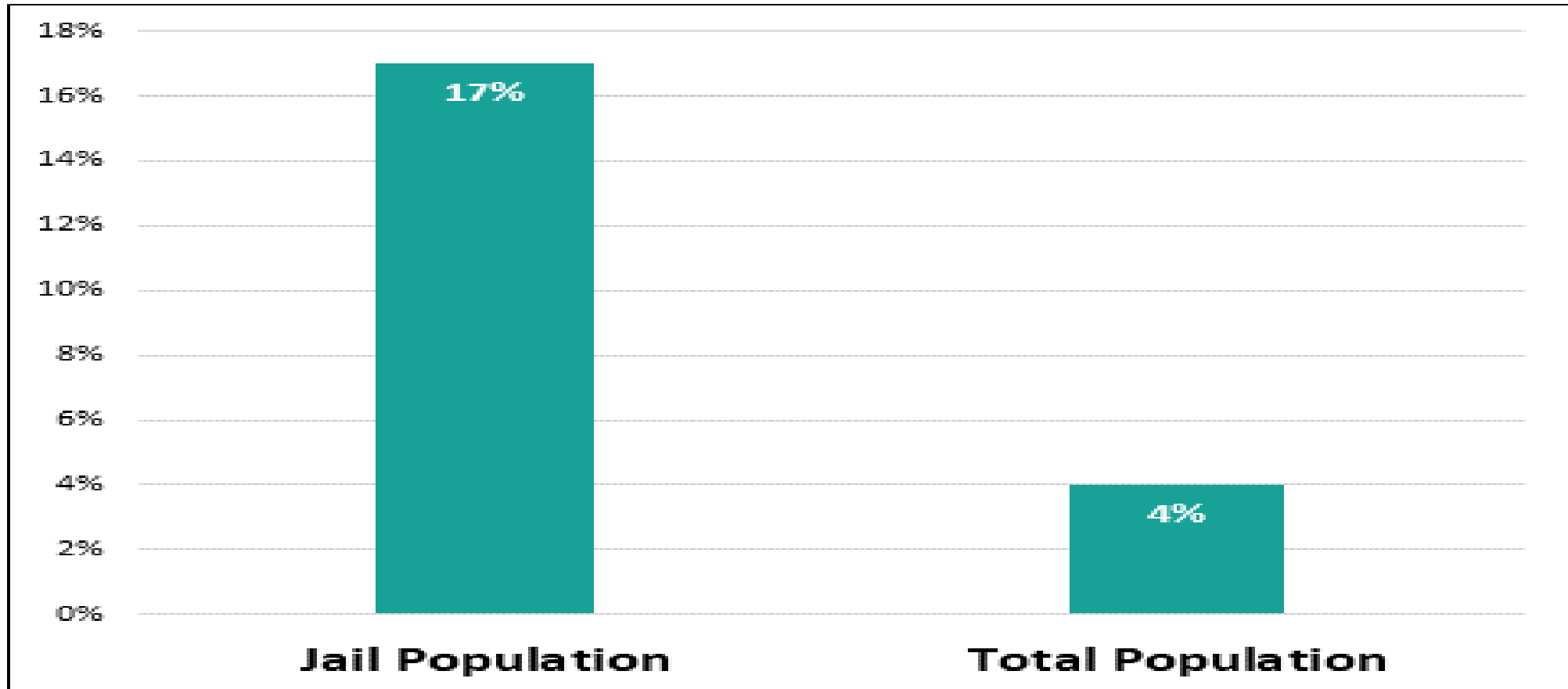
Scope of Mental Illness in Criminal Justice System

Confinement Population With Mental Health Disorder (2)



Scope of Mental Illness in Criminal Justice System

Rate of Serious Mental Illness (3) & (4)



Impact of Mental Illness on Local Justice System Cost ⁽⁵⁾

- Tarrant County daily cost per inmate: \$85.00
- Yearly per person cost: \$31,025.00
- 9/28/2021 Tarrant County inmate population: 4,300
- Daily cost for inmate population: \$365,500.00
- Annual cost for inmate population: \$133,407,500

Part I

Texas Disciplinary Rules of Professional Conduct



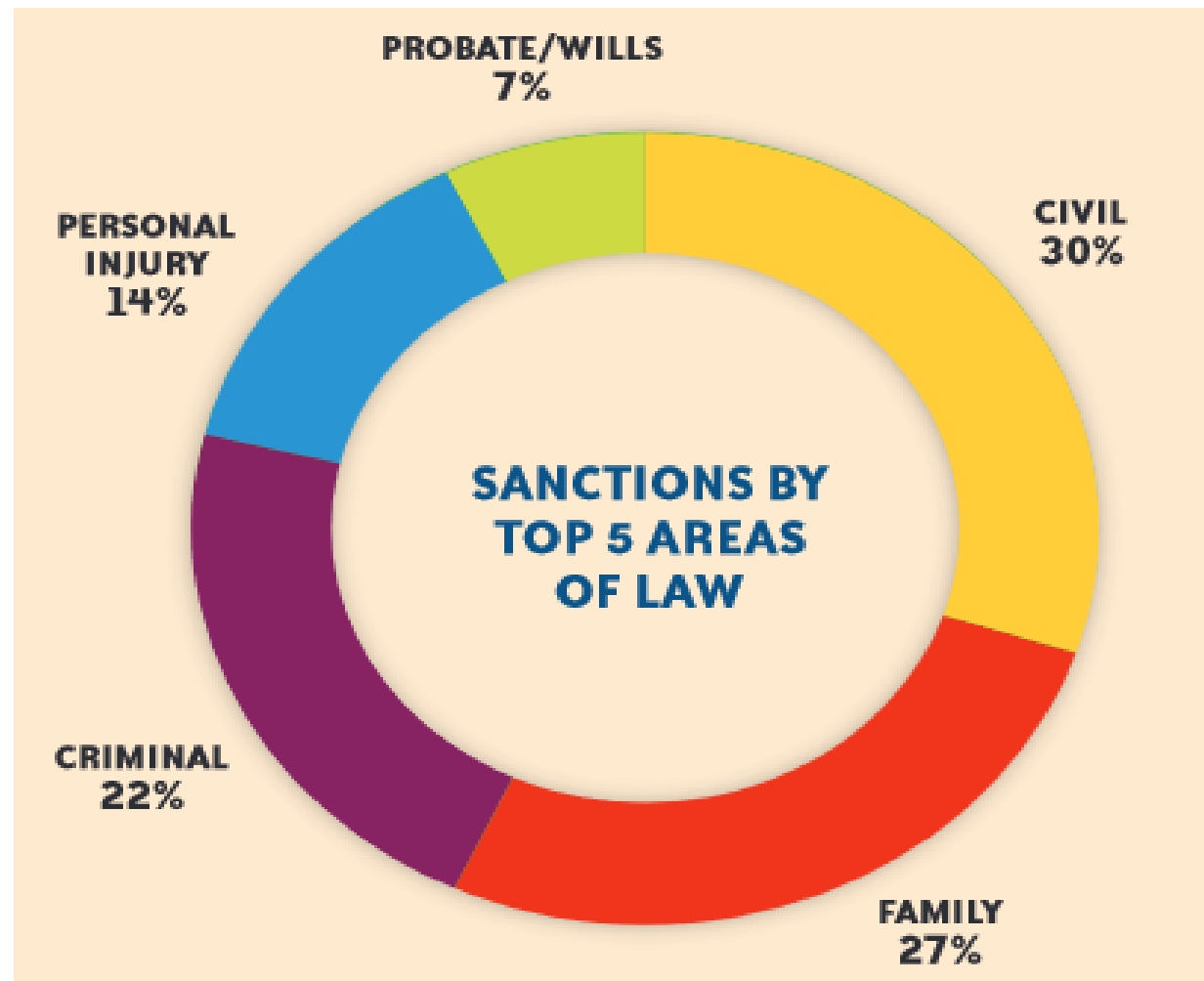
Part I

Texas Disciplinary Rules of Professional Conduct ⁽⁶⁾

- Grievance: a written accusation accusing an attorney of professional misconduct.
- Complaint: a formal accusation of professional misconduct based upon a finding of “just cause” to believe professional misconduct has occurred, after review of a grievance by the office of the Chief Disciplinary Counsel.

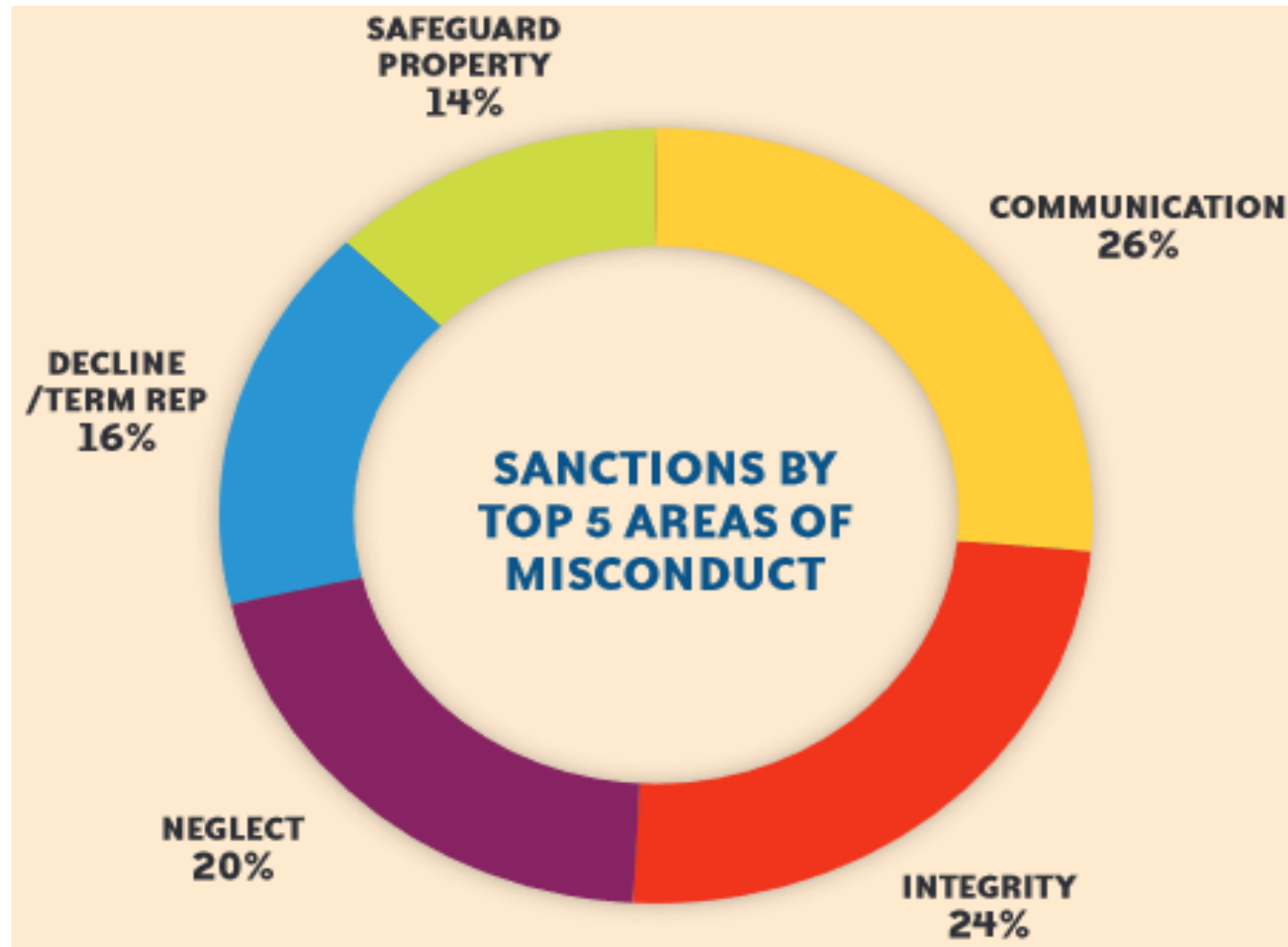
Part I

Texas Disciplinary Rules of Professional Conduct (6)



Part I

Texas Disciplinary Rules of Professional Conduct (6)



Part I

Texas Disciplinary Rules of Professional Conduct ⁽⁶⁾

Commission for Lawyer Discipline Annual Report, 2019 – 2020

- Number of grievances filed: 7,505
- Number of grievances resulting in formal complaint: 2,202
- Summary Dismissals: 1,705

Part I

Texas Disciplinary Rules of Professional Conduct (6)

2019 – 2020 Total Disciplinary Actions:

Disbarments 21

Resignations in Lieu of Discipline 9

Suspensions 142

Public Reprimands 39

Private Reprimands 106

Grievance Referral Program 86

Part I

Texas Disciplinary Rules of Professional Conduct

Texas Code of Criminal Procedure, Art. 46B.003(b).

“A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.”

Part I

Texas Disciplinary Rules of Professional Conduct

"**Mental illness**" means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

Texas Health & Safety Code Sec. 573.001(14).

Part I

Texas Disciplinary Rules of Professional Conduct (7)

An **intellectual or developmental disability**, also called IDD, includes many severe, chronic conditions that are due to mental and/or physical impairments. IDD can begin at any time, up to 22 years of age. It usually lasts throughout a person's lifetime. People who have IDD have problems with major life activities such as:

Language

Mobility

Learning

Self-help

Independent living

Part I

Texas Disciplinary Rules of Professional Conduct (8)

Traumatic Brain Injury (TBI).

A form of acquired brain injury, occurs when a sudden trauma causes damage to the brain. TBI can result when the head suddenly and violently hits an object or when an object pierces the skull and enters brain tissue. Symptoms of a TBI can be mild, moderate, or severe, depending on the extent of the damage to the brain.

Part I

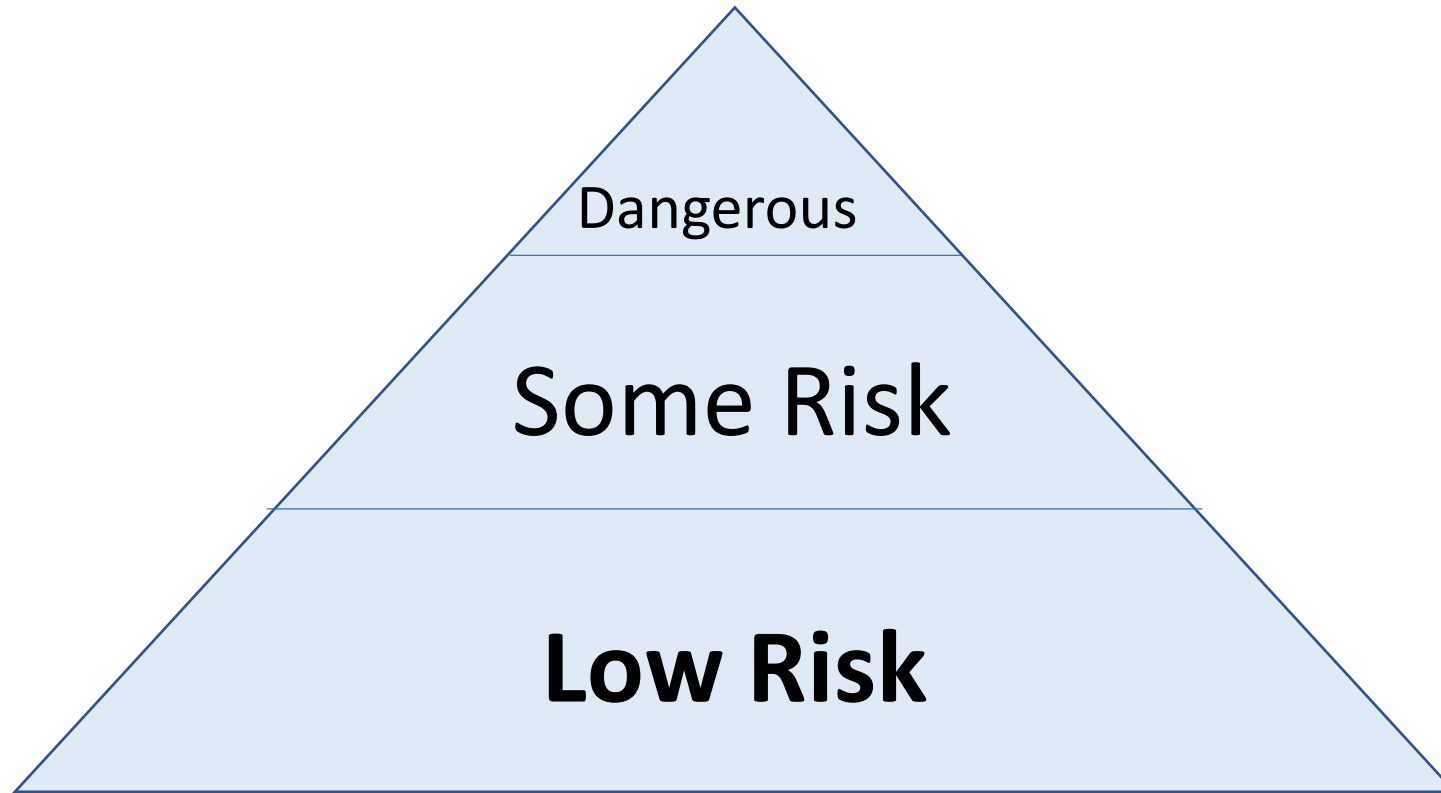
Texas Disciplinary Rules of Professional Conduct

- Mental impairments are disorders of the brain caused by biological, environmental factors or a combination of these factors. They cannot be overcome through "will power" and are generally not related to a person's "character or intelligence."
- Overwhelming number of mentally impaired persons are neither a criminal nor dangerous.
- A few are costly and / or dangerous.

Part I

Texas Disciplinary Rules of Professional Conduct

Public Safety Threat



Part I

Texas Disciplinary Rules of Professional Conduct (9)

Preamble: A Lawyer's Responsibilities

Representative

Advisor

Advocate

Negotiator

Intermediary

Evaluator

Part I

Texas Disciplinary Rules of Professional Conduct

Without official title, in addition to traditional roles,
the Criminal Defense Attorney often acts as:

Guardian

Conservator

Social Worker

Protector

Gateway to Wrap Around Services

Part I

Texas Disciplinary Rules of Professional Conduct

Rule 1.01: Competent and Diligent Representation

Given the prevalence of mental impairment among criminal defendants, it could be argued that all attorneys (judges, prosecutors and defense counsel) should have some minimal amount of required mental health training.

Not suggesting that persons with mental impairment should not be held accountable for their actions, however mental health information should be taken into account far more often than it is.

Part I

Texas Disciplinary Rules of Professional Conduct

Competent Representation



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Part I

Texas Disciplinary Rules of Professional Conduct

Competent Representation; Sources of Information

1. Were mental health peace officers or professionals present at the scene? (TCOLE Mental Health Officer Certification)
2. Does the police report suggest a mental impairment?
3. Texas Commission on Law Enforcement required screening form for Suicide and Medical/Mental/Developmental Impairments to be completed on all persons admitted to jail.

Part I

Texas Disciplinary Rules of Professional Conduct

Competent Representation; Sources of Information

4. Local Mental Health Authority. Client Assignment and Registration System (CARE).
5. Mental Health Treatment Providers. (Waivers, subpoenas)
6. Written report required by Art. 16.22(a)(1)(B), Tex. Code Crim. Pro. relating to early identification of defendants suspected of having mental illness or intellectual disability.
7. Family, friends, coworkers, witnesses, etc.

Part I

Texas Disciplinary Rules of Professional Conduct

Competent Representation; Sources of Information

- Request information from mental health care providers.
- Always a good idea to get a release of information signed by defendant or guardian.
 - Sample form: <https://www.caring.com/forms/hipaa-release-form/free-hipaa-release-form.pdf>
- Subpoena.

Part I

Texas Disciplinary Rules of Professional Conduct

Competent Representation; Knowledge

Law

Education

Relationships

Resources

Opportunities

Education

Education

Education

Part I

Texas Disciplinary Rules of Professional Conduct

Competent Representation; Procedure

Code Crim. Pro. Art. 16.22 early identification requirements.

- Is the jail or municipality utilizing the early identification process?
- Is the written report being delivered to the court and parties?
- Is the treatment plan included in bond conditions or supervision plan?

Part I

Texas Disciplinary Rules of Professional Conduct

Competent Representation; Procedure

Code Crim. Pro. Art. 16.22 early identification requirements.

- Are appropriate defendants being referred to a mental health court if available?
- Are nonviolent offenders referred to court with probate jurisdiction for court ordered outpatient mental health services?

Part I

Texas Disciplinary Rules of Professional Conduct

Competent Representation; Procedure

Code Crim. Pro. Art. 17.032, Release on Bond Certain Mentally Impaired Defendants.

- No current or past conviction for a violent offense.
- 16.22 report determines defendant is competent and recommends treatment.
- Services are available.
- Shall release defendant on personal bond unless good cause shown.
- If ordered, defendant shall submit to services.

Part I

Texas Disciplinary Rules of Professional Conduct

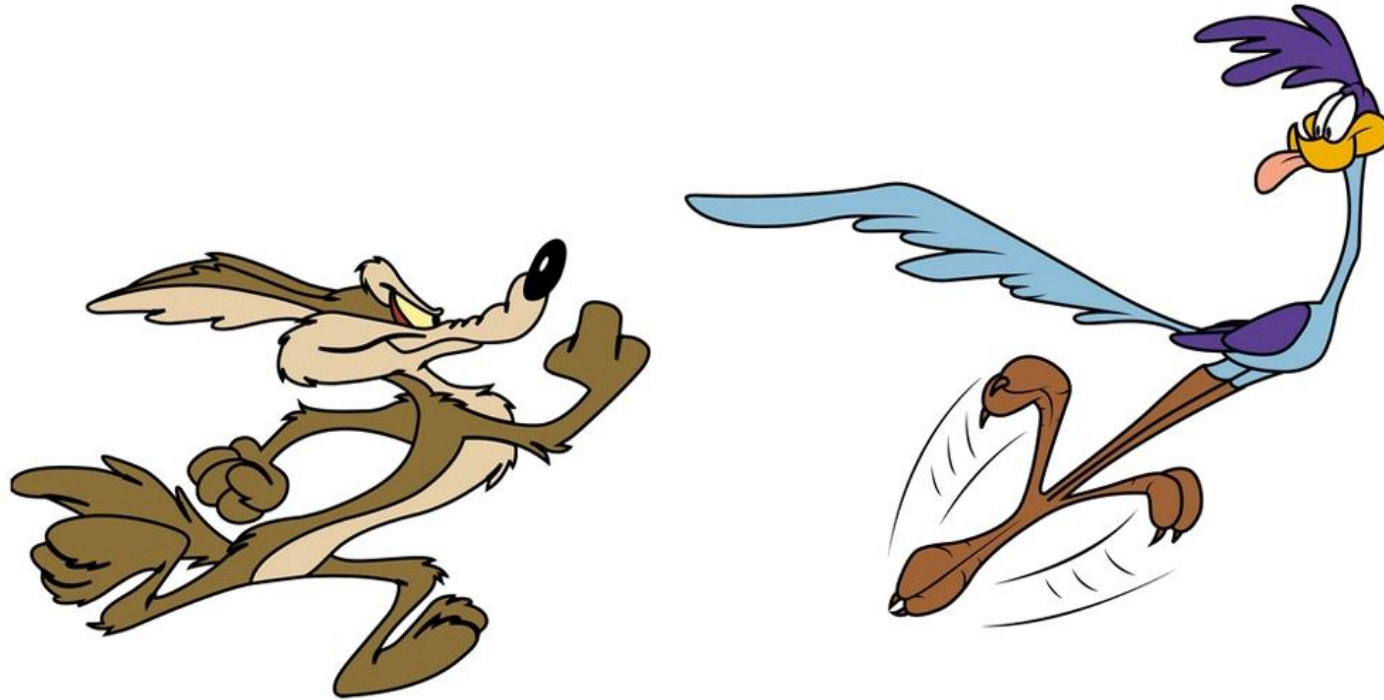
Competent Representation; Procedure
Incompetency, Code Crim. Pro. Art. 46B.0711.
Release on bail for Class B Misdemeanors.

- Not a danger to community.
- May be safely treated on an outpatient basis.
- Shall release defendant on bail.
- Order participation in outpatient competency program subject to other conditions in this Article.
- Consider 16.22(c)(5) release of defendant to court with probate jurisdiction.

Part I

Texas Disciplinary Rules of Professional Conduct

Diligent Representation



Part I

Texas Disciplinary Rules of Professional Conduct

- See sources of information above.
- Sometimes you have go keep digging.
- Past findings of incompetence,
no order finding competence restored.
- Past report of incompetence and
unlikely to be restored.



Part I

Texas Disciplinary Rules of Professional Conduct

Diligent Representation

- If defendant has a past history of commitment or serious mental illness resulting in a finding of incompetence, before criminal proceedings may resume there must be a judicial finding that competence has been restored. Tex. Code Crim. Pro. Art. 46B.084.
- Several files of past cases may require review. Like this defendant:

SEL	CASE	DISP	OFFENSE	W	OFF-DT	FIL-DT	DIS-DT	DOCKET-NR	AGCY	CT	D-CT
—	0672463	PRRK	POSS PROHIBITED		100897	102497	062599	0672463	12	CC10	CC10
—	0734099	MISD	POSS MARIHUANA U		061299	061499	062599	0734099	09	CC10	CC10
—	0829603	MISD	THEFT 50-500		112601	123101	042502	0829603	14	CC10	D213
—	0961675	PRRK	ASLT-PUB SERV-BI		010205	010605	042309	0961675D	12	D213	D213
—	0961676	PLBR	CRIM MISCHIEF 50		010205	010605	031105	0961676	12	CCC1	CCC1
—	0971714	DM08	ASSAULT-BODILY I		032505	032905	113005	0971714	12	CC10	CC10
—	0972037	DM03	BURGLARY OF A HA		031805	033005	113005	0972037D	12	D213	D213
—	1083341	MISD	CRIMINAL TRESPAS		091107	091407	091907		12	CCC4	CCC4
—	1084902	FELC	ROBBERY		092107	092607	042309	1084902D	12	D213	D213
—	1196530	MISD	POSS MARIHUANA U		041310	041510	042010		12	CC10	CC10
—	1196536	MISD	CRIMINAL TRESPAS		041310	041510	042010		12	CC10	CC10
—	1198215	MISD	POSS MARIHUANA U		042810	043010	050710		12	CC10	CC10
—	1202920	MISD	CRIMINAL MISCH 5		060910	061210	070110		12	CCC4	CCC4
—	1218461	MISD	CRIMINAL TRESPAS		102510	102710	120910		12	CCC6	CCC6

SEL	CASE	DISP	OFFENSE	W	OFF-DT	FIL-DT	DIS-DT	DOCKET-NR	AGCY	CT	D-CT
___	1235791	SJFC	THEFT 1500-20,00		040711	040911	041511	1235791W	72	CDC2	CDC2
___	1269806	MISD	CRIMINAL TRESPAS		013112	020312	020912		12	CCC4	CCC4
___	1284958	MISD	CRIMINAL TRESPAS		060712	060812	061512		12	CC10	CC10
___	1290335	MISD	CRIMINAL TRESPAS		072112	072312	080312		12	CCC6	CCC6
___	1294097	MISD	ASSAULT-BODILY I		082012	082212	082412		12	CC10	CC10
___	1294098	MISD	RESIST ARR/SEARC		082012	082212	082412		12	CC10	CC10
___	1294099	MISD	CRIMINAL TRESPAS		082012	082212	082412		12	CC10	CC10
___	1299373	MISD	CRIMINAL TRESPAS		100312	100512	110712		12	CCC8	CCC8
___	1305936	MISD	CRIMINAL TRESPAS		112412	112912	120712		48	CCC2	CCC2
___	1307728	MISD	CRIMINAL TRESPAS		121312	121512	011813		48	CCC4	CCC4
___	1312272	MISD	CRIMINAL TRESPAS		012313	012513	020613		48	CCC7	CCC7
___	1312276	MISD	POSS MARIHUANA U		012313	012513	020613		48	CCC7	CCC7
___	1315303	MISD	CRIMINAL TRESPAS		021813	021913	022813		12	CC10	CC10
___	1319358	MISD	CRIMINAL TRESPAS		031913	032113	032813		12	CCC9	CCC9

SEL	CASE	DISP	OFFENSE	W	OFF-DT	FIL-DT	DIS-DT	DOCKET-NR	AGCY	CT	D-CT
___	1322520	MISD	CRIMINAL TRESPAS		041313	041613	050113			48	CCC8 CCC8
___	1325765	MISD	CRIMINAL TRESPAS		050713	050813	051713			12	CCC9 CCC9
___	1328921	MISD	CRIMINAL TRESPAS		053113	060313	061413			12	CCC6 CCC6
___	1332225	MISD	CRIMINAL TRESPAS		062713	062813	070213			12	CC10 CC10
___	1336432	MISD	CRIMINAL TRESPAS		073113	080213	082313			12	CCC6 CCC6
___	1340058	MISD	CRIMINAL TRESPAS		082913	083113	091113			12	CCC7 CCC7
___	1342906	MISD	CRIMINAL TRESPAS		092413	092513	100413			12	CCC2 CCC2
___	1344884	MISD	CRIMINAL TRESPAS		100913	101013	103113	1344884		12	CCC4 CCC4
___	1347750	MISD	CRIMINAL TRESPAS		110213	110413	111413			12	CCC2 CCC2
___	1350600	MISD	CRIMINAL TRESPAS		112713	113013	121313			48	CCC9 CCC9
___	1352816	MISD	CRIMINAL TRESPAS		121813	121913	010314			12	CCC9 CCC9
___	1354946	MISD	CRIMINAL TRESPAS		010814	011014	011714			12	CCC6 CCC6
___	1356235	MISD	CRIMINAL TRESPAS		012014	012214	013114			12	CCC2 CCC2
___	1359793	MISD	CRIMINAL TRESPAS		021814	022014	022714			12	CCC1 CCC1

SEL	CASE	DISP	OFFENSE	W	OFF-DT	FIL-DT	DIS-DT	DOCKET-NR	AGCY	CT	D-CT
___	1362594	MISD	CRIMINAL TRESPAS		031214	031314	032114		12	CC10	CC10
___	1364539	MISD	CRIMINAL TRESPAS		033014	040114	041614		48	CCC7	CCC7
___	1367053	MISD	CRIMINAL TRESPAS		041714	042114	050214		12	CCC9	CCC9
___	1369776	MISD	CRIMINAL TRESPAS		051314	051414	052214		12	CCC2	CCC2
___	1372817	MISD	CRIMINAL TRESPAS		060514	060614	072414		12	CCC9	CCC9
___	1379312	MISD	POSS MARIHUANA U		072914	073014	080814		12	CCC6	CCC6
___	1379399	MISD	CRIMINAL TRESPAS		072914	073014	080814		12	CCC6	CCC6
___	1382538	MISD	CRIMINAL TRESPAS		082314	082514	091114		12	CCC1	CCC1
___	1384834	MISD	CRIMINAL TRESPAS		091214	091414	100114		12	CCC3	CCC3
___	1387569	MISD	CRIMINAL TRESPAS		100314	100714	103014		48	CCC4	CCC4
___	1391112	MISD	CRIMINAL TRESPAS		110314	110514	111414		12	CCC9	CCC9
___	1393835	MISD	CRIMINAL TRESPAS		112514	112914	121214		12	CCC2	CCC2
___	1397693	MISD	CRIMINAL TRESPAS		010315	010715	011615		12	CCC4	CCC4
___	1400212	MISD	CRIMINAL TRESPAS		012415	012715	012915		48	CC10	CC10

SEL	CASE	DISP	OFFENSE	W	OFF-DT	FIL-DT	DIS-DT	DOCKET-NR	AGCY	CT	D-CT
___	1401540	MISD	CRIMINAL TRESPAS		020115	020415	021215		48	CCC4	CCC4
___	1403617	MISD	CRIMINAL TRESPAS		021715	021915	030315		48	CCC3	CCC3
___	1403619	MISD	RESIST ARR/SEARC		021715	021915	030315		48	CCC3	CCC3
___	1405423	MISD	CRIMINAL TRESPAS		030615	030815	032715		12	CCC9	CCC9
___	1408371	MISD	CRIMINAL TRESPAS		032815	033115	040815		48	CCC7	CCC7
___	1410320	MISD	CRIMINAL TRESPAS		041115	041415	041715		48	CCC6	CCC6
___	1411094	MISD	CRIMINAL TRESPAS		041815	042015	042415		48	CC10	CC10
___	1412745	MISD	CRIMINAL TRESPAS		050215	050415	052715		48	CCC8	CCC8
___	1416032	MISD	CRIMINAL TRESPAS		052915	053015	070115		12	CCC9	CCC1
___	1421762	MISD	CRIMINAL TRESPAS		071415	071715	082615		00	CCC9	CCC6
___	1427181	MISD	CRIMINAL TRESPAS		082815	090115	091715		48	CCC7	CCC7
___	1432669	MISD	CRIMINAL TRESPAS		101615	102015	102315		00	CCC2	CCC2
___	1433653	MISD	CRIMINAL TRESPAS		102615	102815	033116		48	CCC9	CCC9
___	1454445	MISD	CRIMINAL TRESPAS		043016	050316	061516		00	CCC7	CCC7

SEL	CASE	DISP	OFFENSE	W	OFF-DT	FIL-DT	DIS-DT	DOCKET-NR	AGCY	CT	D-CT
___	1461981	MISD	CRIMINAL TRESPAS		070416	070616	071316		12	CCC9	CCC6
___	1467085	MISD	INDECENT EXPOSUR		081416	081716	121416		12	CCC9	CCC8
___	1485054	MISD	CRIMINAL TRESPAS		012917	013017	032917		12	CCC9	CCC1
___	1493188	MISD	CRIMINAL TRESPAS		040417	040517	052417		12	CCC9	CCC3
___	1500996	PDIS	CRIMINAL TRESPAS		053017	060817	071918		00	CCC9	CCC9
___	1550175	DM08	CRIMINAL TRESPAS		062018	062218	121918		12	CCC9	CCC8
___	1581358		CRIMINAL TRESPAS		020119	020519		1581358	12	CCC9	CC10

Part I

Texas Disciplinary Rules of Professional Conduct

Ethical Considerations

1. Defendant does not want to admit mental impairment, he / she wants case resolved.

Texas Disciplinary Rules of Professional Conduct (TDRPC), Rule 1.16. Clients with Diminished Capacity.

- Maintain normal client-lawyer relationship with a diminished capacity client as far as reasonably possible. TDRPC 1.16(a).
- Client-lawyer relationship assumes client is capable of making sound decisions. Comment 1.

Part I

Texas Disciplinary Rules of Professional Conduct

Ethical Considerations

- May take reasonably necessary protective action to prevent substantial physical, financial, or **other** harm. TDRPC 1.16(b).
- May disclose confidential information to extent reasonably necessary to protect client's interests. TDRPC 1.16(c).
- But when its is all said and done, mentally impaired clients are entitled to make poor decisions if legally competent.

Part I

Texas Disciplinary Rules of Professional Conduct

Ethical Considerations

2. Having suspected incompetent defendants sign documents – bad idea.
3. Mental health expert's report per 46B.025 finds defendant incompetent, defense attorney agrees with finding and intends to sign agreed order of incompetence knowing its against defendant's wishes and will keep defendant in custody for a substantial period.
4. Securing release of an impaired defendant who may harm himself.

Part I

Texas Disciplinary Rules of Professional Conduct

Ethical Considerations

5. Attorney suspects defendant incompetent, but believes case is weak and may result in dismissal. Without services defendant may likely reoffend. If found incompetent, may result in months of confinement.
6. Sharing mental health information with family members.
7. Place mental health information in court's file under seal.
8. Prosecutors must turn over mitigating mental health information.

Part I

Texas Disciplinary Rules of Professional Conduct

Ethical Considerations

9. Objective of public safety is paramount.

10. Follow the law.

11. We are attorneys not diagnosticians or therapists.

12. Anecdotes are not science.

Part I

Texas Disciplinary Rules of Professional Conduct

Top Areas of Grievances

Rule 1.01(b).

- A lawyer shall not neglect a legal matter.
- Fail to carry out obligation owed to a client.
- Neglect means inattentiveness, conscience disregard for duty to client.

Part I

Texas Disciplinary Rules of Professional Conduct

Top Areas of Grievances

Rule 1.03 Communication.

- Keep the client reasonably informed and promptly comply with reasonable requests for information.
- Provide a reasonable explanation of the matter and allow client to make informed decisions.
 - Impairment does not mean a client cannot make decisions.
 - Throughout rules, lawyers are encouraged to maintain a normal relationship with client as much as possible.
 - All clients are to be treated with attention and respect.

Part I

Texas Disciplinary Rules of Professional Conduct

Ethical Considerations

My Recommendation

Because of the increasing complexity of cases involving mentally impaired defendants.

Every district attorney's office and every public defender's office should have a "go to" person or section that specializes in mental health.

Rural jurisdictions should develop a relationship with a trusted agency that can provide advice on these matters when they arise or there should be a regional agency that can advise or assist in these matters.

Ethical Concerns Specialty Courts

Govt. Code, Chap. 125, Mental Health Court Programs,
Sec. 125.001(a)(2)

“the use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants . . .”

Adversarial v. Collaborative.

Part I

Texas Disciplinary Rules of Professional Conduct Ethical Considerations - Specialty Courts

- Specialty courts are not universally accepted.
- Unless a person is to be discharged from the treatment court, prosecutor and defense attorney must agree on appropriate responses to poor participant conduct based on objective data.
- Therapy is not punishment.
- Admissions to specialty courts should be primarily based on objective criteria.
- Collaboration is not an abdication of advocacy.

Part I

Texas Disciplinary Rules of Professional Conduct

Ethical Considerations - Specialty Courts



Part II

Texas Code of Judicial Conduct



judge www.fotosearch.com

Part II

Texas Code of Judicial Conduct

Four Areas of Concern for Specialty Courts

1. Collaborative nature of decision making.
2. Close relationship between participants and team members.
3. Direct contact between the judge and participants.
4. Boundaries with community partners and resources.

Part II: Texas Code of Judicial Conduct

Canon 1: Upholding the Integrity and Independence of the Judiciary

- Conduct that compromises or appears to compromise integrity and independence of a judge undermines public trust.
- Judicial independence is a core principle.
- In some eyes key components of specialty courts may blur the lines.

Part II: Texas Code of Judicial Conduct

Canon 1: Upholding the Integrity and Independence of the Judiciary

Components Of Specialty Courts May Appear To Clash With Traditional Judicial Independence

Drug Court Key Component 6: A coordinated strategy governs drug court responses to participants' compliance.

- Judge makes final decision especially on adjudicative facts and consequences related to violations. May not delegate.
- Team recommendation subject to change based upon input from participant.

Part II: Texas Code of Judicial Conduct

Canon 1: Upholding the Integrity and Independence of the Judiciary

Components Of Specialty Courts May Appear To Clash With Traditional Judicial Independence

Drug Court Key Component 10: Forging partnerships among drug court, public agencies and community based organizations....

- Specialty courts and law enforcement.
- Specialty court team members.
- Specialty courts and community based organizations.

Part II: Texas Code of Judicial Conduct

Canon 2: Avoiding Impropriety and the Appearance of Impropriety

Tex. Govt. Code, Chap. 125. Mental Health Court Programs

(a) In this chapter, "mental health court program" means a program that has the following essential characteristics: . . .

(5) ongoing judicial interaction with program participants....

- Interaction with the judge is a keystone of specialty court model.
- Can be seen as abandonment of traditional objective detachment.
- It is not disengagement but impartiality that is required.

Part II: Texas Code of Judicial Conduct
Canon 2: Avoiding Impropriety and the Appearance of Impropriety

1. A judge shall comply with the law.
2. Shall not let relationships influence conduct of judgement.
3. Shall not lend prestige to advance private interests.
4. Shall not allow others to convey impression they can influence the judge.

Part II: Texas Code of Judicial Conduct

Canon 3: Performing Judicial Duties Impartially and Diligently

Canon 3.B.(1). Adjudicative Responsibilities.

When to Consider Disqualification and Recusal.

Presiding over case of person removed from the program.

- Voluntary participant withdrawal.
- Forced participant removal can raise significant issues.
- Subjective motives of judge irrelevant.
- Avoid both impropriety and appearance of impropriety.

Part II: Texas Code of Judicial Conduct

Canon 3: Performing Judicial Duties Impartially and Diligently

Canon 3.B.(2). Maintain professional competence....

- Judges (and attorneys) are neither therapists nor treatment providers.
- If you are going to assume the role of a specialty court judge, education is imperative.
- Canon 3.B.(5 – 7). Performance of duties without bias or prejudice.
 - Education.
 - Program statistics.
 - Outside evaluation.

Part II: Texas Code of Judicial Conduct

Canon 3: Performing Judicial Duties Impartially and Diligently

Canon 3.B.(8). Ex Parte Communications



Part II: Texas Code of Judicial Conduct

Canon 3: Performing Judicial Duties Impartially and Diligently

- First Drug Court established in 1989, Miami, Florida. (10)
- First Drug Court in Texas?
- 2001 Texas Legislature mandated Drug Courts for all counties with a population exceeding 550,000. (11)
- Canon 3.B(8): A judge shall not initiate, permit, or consider ex parte communications....
- Canon 3.B(8) offered an exception in subsection 3.B(8)(e), for ex parte communications expressly authorized by law.

Part II: Texas Code of Judicial Conduct

Canon 3: Performing Judicial Duties Impartially and Diligently

- Drug court statute requires a coordinated strategy to govern participant compliance (Govt. Code Sec. 123.001(a)(6)).
- This provision is not found in Mental Health Court statute (Govt. Code Sec. 125.001).
- However, ongoing judicial interaction, non-adversarial approach and development of partnerships are required.
- Expressly authorized? You be the judge.





Part II: Texas Code of Judicial Conduct Canon 3: Performing Judicial Duties Impartially and Diligently

May 28, 2021 the code was amended to add the following comment:

It is not a violation of Canon 3B(8) for a judge presiding in a statutory specialty court, as defined in Texas Government Code section 121.001, to initiate, permit, or consider any ex parte communications in a matter pending in that court.

Part II: Texas Code of Judicial Conduct

Canon 3: Performing Judicial Duties Impartially and Diligently

There Are Still Limits Imposed by the Canon 3.B.(8) comment.

- The comment is limited to programs established by Tex. Govt. Code Sec. 121.001.

“DEFINITION. In this subtitle, "specialty court" means a court established under this subtitle or former law.”

- Sec. 121.002 requires:
 1. Written notice to Office of Court Administration,
 2. Resolution establishing program from appropriate authority,
 3. Copy of strategic plan,
 4. Compliance with best practices,
 5. Reports required by certain state agencies.

Part II: Texas Code of Judicial Conduct

Canon 3: Performing Judicial Duties Impartially and Diligently

Canon 3.B.(10). Public comment suggesting judge's probable decision on a particular case.

- With immediate team staff at pre-docket meeting involved in compliance discussion – yes.
- Resource providers – most likely no.
 - May seek input on how certain courses of action may effect participant.
 - Not at public functions for both individual participant or certain groups of participants.
 - General program guidelines and requirements – yes.

Part II: Texas Code of Judicial Conduct

Canon 3: Performing Judicial Duties Impartially and Diligently

Canon 3.8(B)(11) Disclosure unrelated to judicial duties of nonpublic information acquired in a judicial capacity.

- Diagnostic information,
- Treatment information,
- Physical health information,
- Sensitive personal information.

Part II: Texas Code of Judicial Conduct

Canon 3: Performing Judicial Duties Impartially and Diligently

Canon 3.B.(11) Disclosure unrelated to judicial duties of nonpublic information acquired in a judicial capacity.

- Training for jurisdictions seeking to establish a mental health court.
 - My review of law and confirmation with experts satisfies me that the visiting team may attend pre-docket staffings.
 - Use of numbers and redactions
 - No copy of my docket leaves the courtroom with visitors.
- The public hearing should focus on compliance facts.
- Specialty court colloquy is an art form.
- Participants say the darndest things.

Part II: Texas Code of Judicial Conduct Canon 4: Extra-Judicial Activities

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or
- (2) interfere with the proper performance of judicial duties.

Part II: Texas Code of Judicial Conduct

Canon 4: Extra Judicial Activities

- Attendance at events.
 - Picnics, bowling, softball, similar events with participants.
 - Law enforcement events.
- If the entire specialty court team is present, attendance may be more likely appropriate.
- Cameo appearances.

Part II: Texas Code of Judicial Conduct

Canon 4: Extra Judicial Activities

- Consumption of alcohol.
- Inappropriate relationships or contact with participants.
- Sometimes appropriate or inappropriate relationships with staff.
- Serving on boards of organizations that serve your specialty court.
- Direct Fundraising – NO.

Part II: Texas Code of Judicial Conduct

Canon 4: Extra Judicial Activities

Funding

- Juror Compensation.
- Nonprofit corporation.
- Grant funding.
- Payment of defense attorneys.
- County funding.
- Unsolicited significant donations should be referred to the county.



QUESTIONS?

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References

1. https://www.texasbar.com/AM/Template.cfm?Section=Definition_of_MCLE_Credit&Template=/CM/HTMLDisplay.cfm&ContentID=49945
2. <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>
3. <http://www.treatmentadvocacycenter.org/storage/documents/backgrounders/how%20many%20individuals%20with%20serious%20mental%20illness%20are%20in%20jails%20and%20prisons%20final.pdf>
4. [http://www.nami.org/Learn-More/Mental- Health-By-the-Numbers](http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers)
5. Tarrant County Court Administration and Sheriff's Office
6. https://www.texasbar.com/AM/Template.cfm?Section=Grievance_and_Ethics_Information1&Template=/CM/ContentDisplay.cfm&ContentID=41986

References

7. <https://www.hhs.texas.gov/services/disability/intellectual-or-developmental-disabilities-idd-long-term-care>
8. <https://www.ncbi.nlm.nih.gov/books/NBK542588/>
9. <https://www.texasbar.com/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=27271>
10. https://en.wikipedia.org/wiki/Drug_courts_in_the_United_States
11. https://www.tdcj.texas.gov/documents/cjad/CJAD_Texas_Drug_Courts_Fact_Sheet.pdf

Resources

1. National Association of Drug Court Professionals, Drug Court Benchbook.
https://www.ndci.org/sites/default/files/nadcp/14146_NDCI_Benchbook_v6.pdf
2. Texas Association of Specialty Courts. <http://www.tasctx.org/>
3. Texas Ethics Commission. <https://www.ethics.state.tx.us/>
4. Texas State Commission on Judicial Conduct.
<http://www.scjc.texas.gov/>
5. The State Bar of Texas. <https://www.texasbar.com/>

Notices and Disclaimers

1. Although considerable research has been conducted on mental health specialty courts, in my view the “**drug court model**” is still the primary source of inspiration for specialty courts in general.
2. I come from a comparably well resourced urban county with a strong commitment to collaboration and problem solving.
3. All materials cited or used are intended for educational purposes only.