

Scenario 1 – Angry in Arkansas

An angry defendant calls you. Last year, he missed 2 appearance dates. He was placed in the Failure to Appear/Omnibase system that holds the renewal of his license. He has since moved to Arkansas, and he can't get his license there either. He owes \$500, and he would like to be put on a payment plan. You approve of the payment plan, but you will not release the omnihold until his judgment is paid in full. Is this how it should work under the law?

- Sec. 706.005. CLEARANCE NOTICE TO DEPARTMENT. (a) A political subdivision shall immediately notify the department that there is no cause to continue to deny renewal of a person's driver's license based on the person's previous failure to appear or failure to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002(a), on payment of a fee as provided by Section 706.006 and:
 - (1) the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
 - (2) the dismissal of the charge for which the warrant of arrest was issued or judgment arose;
 - (3) the posting of bond or the giving of other security to reinstate the charge for which the warrant was issued;
 - (4) the payment or discharge of the fine and cost owed on an outstanding judgment of the court; or
 - (5) other suitable arrangement to pay the fine and cost within the court's discretion.
- (b) The department may not continue to deny the renewal of the person's driver's license under this chapter after the department receives notice:
 - (1) under Subsection (a);
 - (2) that the person was acquitted of the charge on which the person failed to appear; or
 - (3) from the political subdivision that the failure to appear report or court order to pay a fine or cost relating to the person:
 - (A) was sent to the department in error; or

(B) has been destroyed in accordance with the political subdivision's records retention policy.

Notes:

Scenario 2 – Omni Discharge

A defendant was convicted. she satisfied her judgment through community service, due to you finding her indigent. Does this satisfaction through community service apply to omni charges, as well?

Does the contract dictate?

Does the city have to eat \$6?

What about the bond and the warrants?

- Sec. 706.006. PAYMENT OF ADMINISTRATIVE FEE. (a) A person who fails to appear for a complaint or citation for an offense described by Section 706.002(a) shall be required to pay an administrative fee of \$30 for each complaint or citation reported to the department under this chapter, unless the person is acquitted of the charges for which the person failed to appear. The person shall pay the fee when:
 - (1) the court enters judgment on the underlying offense reported to the department;
 - (2) the underlying offense is dismissed; or
 - (3) bond or other security is posted to reinstate the charge for which the warrant was issued.
- (b) A person who fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner the court orders shall be required to pay an administrative fee of \$30.
- (c) The department may deny renewal of the driver's license of a person who does not pay a fee due under this section until the fee is paid. The fee required by this section is in addition to any other fee required by law.

Notes:

Scenario 3 – The Phantom DWLI

A defendant was cited for DWLI. The defendant swears that he doesn't know why the license is suspended. The license is definitely suspended in the DPS system. The defendant decides to pay in order to avoid warrants and more charges. Later, the defendant is informed by DPS that the suspension was in error. Now the defendant has a conviction and surcharges due to the conviction. DPS says they will not reverse the surcharges until it gets notified by the court. Does the court have any options available?

Can the court reverse the conviction?

Send in a correction notice without changing the conviction?

Notes:

Scenario Four – Payment by Mail

A defendant is cited with a moving violation. The amount listed on the ticket as acceptable to the court for someone who wants to pay is \$197.10. The defendant sends in \$125. If you receive this amount, can you interpret it as a nolo contendere plea, convict them, and the issue a capias pro fine?

Can you convict them and accept the lower amount as full payment?

Can you only convict with the full acceptable amount as listed on the ticket?

What if the case is already in warrant status?

Does the ability to pay by mail expire after appearance date?

Art. 27.14. PLEA OF GUILTY OR NOLO CONTENDERE IN MISDEMEANOR.

(c) In a misdemeanor case for which the maximum possible punishment is by fine only, payment of a fine or **an amount accepted by the court** constitutes a finding of guilty in open

court as though a plea of nolo contendere had been entered by the defendant and constitutes a waiver of a jury trial in writing.

Notes:

Scenario Five – The Reluctant Recuser

A person is cited for theft. The person is also the judge's tenant. The judge says before lunch that he is going to recuse himself after lunch, but had not done so yet. During lunch, the defendant came in to plea no contest. Can the court accept the plea? Are there any recusal or disqualification concerns?

Notes:

Scenario Six – Roadside Justice

You receive a call from a court software company pitching a module for your system that allows police officers to process payments on their electronic ticket writers when issuing citations.

The salesman said that this is not the officers processing fines, but it is akin to taking bail.

Is there any authority for officers to take bail when issuing a citation?

In limited circumstances, it is possible for the police to set bail, although the limitation on the police authority is vague in the statute. Under Article 17.033, C.C.P., if a magistrate has not determined whether probable cause exists, an arrested person must be released on bond not to exceed \$5,000 for a misdemeanor or \$10,000 for a felony not later than the 24th hour after a misdemeanor arrest or, alternatively, the 48th hour after a felony arrest. Additionally, if the person is unable to obtain a surety for the bond or to deposit money in the amount of the bond, the person must be released on personal bond. It should be noted that this procedure is triggered

not by a finding of “no probable cause” (upon which the person would be released without bond), but by an absence of a determination by a magistrate altogether. If the magistrate is not and had not been present, then the release on bond could arguably be carried out by police or by a jailer. Article 17.025, C.C.P., specifically empowers a licensed jailer to take bail and discharge arrested persons as officers are so authorized under Chapter 17.

Articles 17.20, 17.21, and 17.22, C.C.P., all address officers taking bail, but only Article 17.22 (dealing with felony cases when court is not in session) further states that a sheriff, peace officer, or jailer may take bail in such amount as such officer may consider reasonable if no amount has been fixed by the court or magistrate.

Article 45.044, CCP: If the defendant has posted a cash bond and has signed a conditional plea of nolo contendere and waiver of jury trial, the judge may forfeit the bond for fine and court costs when the defendant fails to appear.

Notes:

Scenario Seven – Scary Situation

Your city administrator hands you a printout from your court management software. This report can only be generated by someone with “master” access. You ask if the judge or a clerk gave it to her. She chuckled and said she has access to see and manipulate everything (and so does the chief of police)

What concerns do you have about this?

What should you do about this?

Notes:

Scenario Eight – Lifting Warrants

A person has arrest warrants out for two different charges. The person is pulled over and the officer tells them about the warrant, but decides not to arrest. The next day the person comes into the court and wants to get the warrants lifted. The warrants have an amount listed on them for \$800. The man only has \$500 but offers it to the clerk to see if it is enough to lift the warrant. The clerk calls the police to see if they need to arrest the person. They decline to arrest the man. The clerk is worried that the man will leave without being taken into custody and without paying anything, so the clerk takes the \$500 and gives the man a receipt for a cash bond, and lifts the warrant. Should this have been done?

What should the clerk have done?

Notes:

Scenario Nine – Magistration Waiver Revisited

The magistration waiver concerns live on. See the following:

RQ-1085-GA

<http://www.texasattorneygeneral.gov/opinions/opinions/50abbott/rq/2012/pdf/RQ1085GA.pdf>

Received: Friday, September 28, 2012

Re: Whether an arrested person may waive the requirement that he or she be taken before a magistrate and admonished in accordance with article 15.17, Code of Criminal Procedure

Requestor: The Honorable Pete P. Gallego
Chair, Committee on Criminal Jurisprudence
Texas House of Representatives

Notes: