

CHAPTER 12 OATHS AND CEREMONIES

Complaints (a/k/a the Charging Instrument)

1. Complaints Filed in Municipal Court

Caution: The term “complaint” has historically been a source of confusion in Texas criminal law (especially in the context of criminal procedure). The term describes the formal charging instrument to try Class C misdemeanors. Unfortunately, it is also the term used to describe what is commonly known as the sworn affidavit for a warrant under Chapter 15, C.C.P. Do not confuse the two different applications of the term. For a detailed discussion of the different meanings of the term “complaint,” see “Complaints, Complaints, Complaints: Don’t Let the Language of the Law Confuse You,” *The Recorder* (July 2004). Checklist 12-1 relates to the term as used to refer to the charging instrument under Chapter 45/45A, C.C.P. Checklist 12-2 relates to the term as it refers to the affidavit for the issuance of a warrant.

In *Naff v. State*, 946 S.W.2d 529 (Tex. App.—Fort Worth 1997, no writ), the court held that a person swearing to a complaint in municipal court may do so based on information contained in the citation. In this case, the defendant argued that the complaint filed against him in municipal court was invalid because it was sworn to by the municipal prosecutor’s secretary. The secretary did not have firsthand knowledge of the events in question. She swore to the complaint based upon the information contained in the citation written by the police officer. The court stated that there is no requirement that the person swearing to the complaint do so based on firsthand knowledge.

Checklist 12-1	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Affiant reviews complaint. <input type="checkbox"/> 2. Affiant and person administering oath both raise their right hands. <input type="checkbox"/> 3. Oath is administered. <input type="checkbox"/> a. The following persons have authority to administer this oath: 	<p>The requisites of the complaint are found in Article 45.019 /45A.101, C.C.P.</p> <p>“Affiant” - a person who signs an affidavit and swears to its truth.</p> <p>“Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?”</p>

- (1) Any officer authorized to administer oaths;
 - (2) Municipal judge or retired municipal judge;
 - (3) Municipal court clerk or deputy court clerk;
 - (4) City secretary; and
 - (5) City attorney or deputy city attorney.
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- 4. Affiant signs complaint.
 - 5. Person administering oath signs jurat.
 - 6. Judge or clerk places municipal court seal on complaint. The impression of the seal can either be attached manually or it may be created electronically.
 - 7. If a notary public administered the oath, notary seal is also required to be placed on the complaint.

Art. 45.019(d)/45A.101(d),
C.C.P. ,
Sec.602.002, G.C.

Art. 45.019(e)/45A.101(e),
C.C.P.

“Jurat”- the certificate of an officer that a written instrument was sworn to by the individual who signed it.

All municipal courts must have a court seal, which must be included on all papers issued out of the court except subpoenas.
Art. 45.012(g)/45A.052, C.C.P.

For municipal courts of record, the seal must include the phrase: “Municipal Court of/in _____, Texas.” Sec. 30.000125, G.C.

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Complaints (a/k/a the Probable Cause Affidavit)

2. Complaints Accepted by a Magistrate as Sworn Affidavit for Arrest Warrant

The affidavit made before the magistrate is called a “complaint” if it charges the commission of an offense. Art. 15.04, C.C.P. The complaint must contain the name or a reasonable description of the accused, a statement that the accused has committed or that the affiant has good reason to believe and does believe that the accused has committed some offense, and the time and place the offense was committed. Art. 15.05, C.C.P. It must also be signed by the affiant.

Checklist 12-2	Script/Notes
<p><input type="checkbox"/> 1. Affiant reviews complaint.</p>	<p>The requisites of the complaint are found in Article 15.05, C.C.P.</p>
<p><input type="checkbox"/> 2. Affiant and person administering oath both raise their right hands.</p>	<p>“Affiant” - a person who signs an affidavit and swears to its truth.</p> <p>An affiant may appear before a magistrate, for the purposes of making oath, either in person or through an electronic broadcast system. Art. 15.03(c), C.C.P. See Checklist 2-1 on arrest warrants.</p>
<p><input type="checkbox"/> 3. Oath is administered.</p>	<p>“Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?”</p>
<p><input type="checkbox"/> a. The following persons have authority to administer this oath:</p> <ul style="list-style-type: none"> <input type="checkbox"/> (1) Magistrate; <input type="checkbox"/> (2) District Attorney; and <input type="checkbox"/> (3) County Attorney. 	<p>Art. 15.04, C.C.P.</p>
<p><input type="checkbox"/> 4. Affiant signs complaint.</p>	<p>Art. 15.05, C.C.P.</p>

- ❑ 5. Person administering oath signs jurat.

“Jurat”- the certificate of an officer that a written instrument was sworn to by the individual who signed it.

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3. Other Affidavits

One frequently administered oath involves the defendant being placed on DSC. (See Checklist 5-2.) This procedure should be followed for that affidavit or any other oath or affidavit requested or required by the court.

Checklist 12-3	Script/ Notes
<p><input type="checkbox"/> 1. Affiant reviews affidavit.</p> <p><input type="checkbox"/> 2. Defendant and person administering the oath both raise their right hands.</p> <p><input type="checkbox"/> 3. Oath is administered.</p> <p><input type="checkbox"/> a. This oath may be administered by any person authorized to administer oaths in Texas. Persons with the authority to administer an oath most commonly seen in municipal court include the following:</p> <ul style="list-style-type: none"> (1) Municipal judge, retired municipal judge, or clerk; (2) Municipal judge or retired judge of a court of record; (3) Municipal court clerk of a court of record; (4) Notary public; and (5) Peace officer may administer an oath when engaged in performance of duties and oath pertains to duties. 	<p>“Affiant” - a person who signs an affidavit and swears to its truth.</p> <p>“Do you solemnly swear (or affirm) that the information contained in this affidavit is true and correct (so help you God)?” “Do you and each of you solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror (so help you God)?”</p> <p>Sec. 602.002, G.C., contains a full list of all persons who may administer an oath in Texas. Note: The ability of municipal judges and clerks to administer oaths to appointed and elected officials is detailed in Checklist 12-7.</p>

- 4. Defendant signs affidavit.
- 5. Person administering oath signs jurat.
- 6. Court seal is impressed, stamped, or electronically imprinted on document.
- 7. If a notary public administers oath, notary public seal required to be placed on affidavit.

“Jurat”- the certificate of an officer that a written instrument was sworn to by the individual who signed it.

Art. 45.012(g)/45A.052, C.C.P.

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4. Oaths Administered During Trial — Jurors and Witnesses

Checklist 12-4	Script/Notes
<p><input type="checkbox"/> 1. Jury:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Summon jurors. (Jurors are required to answer questions about their qualifications; this is called voir dire.) <input type="checkbox"/> b. Ask prospective jurors to raise their right hands. <input type="checkbox"/> c. Person administering the oath raises right hand. <input type="checkbox"/> d. Oath is administered by the court or under its direction. <input type="checkbox"/> e. Voir dire is completed and six persons are selected to hear the case. <input type="checkbox"/> f. Ask jurors to raise their right hands. <input type="checkbox"/> g. Judge (or other person administering oath) raises right hand. <input type="checkbox"/> h. Oath is administered by the court or under its direction. <p><input type="checkbox"/> 2. Witnesses:</p>	<p>Art. 35.02, C.C.P.</p> <p>For further procedures in jury trials, see Chapter 7 in this book.</p> <p>“Do you and each of you solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror (so help you God)?” Arts. 35.22 and 45.030/45A.159, C.C.P.</p> <p>“Do you and each of you solemnly swear that, in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence (so help you God)?”</p>

- a. Before testifying, each witness shall be required to declare that he or she will testify truthfully by oath or affirmation in a form calculated to awaken the witness's conscience and impress on the witness the duty to do so.
- b. Both the judge (or other person administering oath) and witness should raise their right hands.
- c. Oath is administered.

- d. Invoke "The Rule."

Rule 603, T.R.E.

"Do you solemnly swear or affirm that the testimony that you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth (so help you God)?"

At the request of either party, or the court, witnesses may be excluded from the courtroom so that they cannot hear the testimony of other witnesses. This is commonly called "The Rule." If "The Rule" is invoked, all witnesses should be sworn before being directed to wait outside the courtroom. Rule 614, T.R.E.

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5. Interpreters

For a complete discussion of interpreters for non-English speaking defendants and witnesses as well as those who are deaf or hard of hearing, see Chapter 4 of *Municipal Courts and the Texas Judicial System*.

Although there is no statutory requirement that the oath be taken in writing, signed, or filed in the court's record, it is recommended to ensure some documentation that the oath requirement has been met. It is especially recommended in non-record courts where there is no transcript.

Checklist 12-5	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Interpreter for foreign language: <ul style="list-style-type: none"> <input type="checkbox"/> a. Interpreter raises right hand. <input type="checkbox"/> b. Judge (or other person administering oath) raises right hand. <input type="checkbox"/> c. Oath is administered by the court or under its direction. <input type="checkbox"/> 2. Interpreter for deaf or hard of hearing: <ul style="list-style-type: none"> <input type="checkbox"/> a. Interpreter raises right hand. <input type="checkbox"/> b. Judge (or other person administering oath) raises right hand. 	<p>Art. 38.30, C.C.P., and Rule 604, T.R.E.</p> <p>“Do you solemnly swear or affirm that you will truly and correctly interpret for the court, jury, attorneys, defendant, and the person being examined all of the proceedings (and deliberations of the jury) in this case into the language that the witness (or the accused) understands and you will repeat the statements made by said witness (or said accused) into the English language to the best of your skill and judgment (so help you God)?”</p> <p>See <i>TMCEC 2024 Forms Book</i>: Oath for Language Interpreter.</p> <p>Art. 38.31, C.C.P., and Rule 604, T.R.E.</p>

- ❑ c. Oath is administered by the court or under its direction.

“Do you solemnly swear or affirm that you will make a true interpretation to the person being examined (or the person accused, or the juror), who is deaf, of all the proceedings in the case in a language that he/she understands, and that you will repeat said deaf person’s statements, questions, and answers to questions to counsel, the court, or the jury, in the English language, to the best of your skill and judgment (so help you God)?”

See *TMCEC 2024 Forms Book*: Oath for Interpreter for Deaf or Hard of Hearing Juror, Defendant, or Witness.

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6. Court Reporters

An official court reporter must take the oath of office required of other officers of this state. In addition to the official oath, each official court reporter must sign an oath administered by the district clerk.

Checklist 12-6	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Court reporter raises right hand. <input type="checkbox"/> 2. Person administering the oath raises right hand. <input type="checkbox"/> 3. Oath administered by the clerk. 	<p>Sec. 52.045, G.C.</p> <p>“I, _____, do solemnly swear (or affirm) that I will well and truly keep a correct and impartial record of the evidence offered in the case, the objections and the exceptions made by the parties to the case, and the rulings and remarks made by the court in determining the admissibility of testimony presented in the case (so help me God).”</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 4. The court reporter files these oaths with the papers of the court. <input type="checkbox"/> 5. Court reporter signs the oath. <input type="checkbox"/> 6. Person administering the oath signs jurat. <input type="checkbox"/> 7. If notary public administered the oath, notary seal is also required to be placed on the oath. 	<p>“Jurat”- the certificate of an officer that a written instrument was sworn to by the individual who signed it.</p>

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7. Appointed and Elected Officials

All appointed or elected officials are required to subscribe to an anti-bribery statement before taking an oath of office. Municipal judges should take and file an oath before each term of office, even if they continue to serve another term as an operation of Section 29.005 of the Government Code. See “When the Acts of a Judge May Be Void: A Look at the Constitutional Oath Requirement in Light of Section 29.005 of the Texas Government Code,” *The Recorder* (May 2013).

Checklist 12-7	Notes
<p><input type="checkbox"/> 1. All elected and appointed officials, including judges, court clerks, and court reporters, must:</p> <p style="margin-left: 40px;"><input type="checkbox"/> a. Swear to an anti-bribery statement; and</p> <p style="margin-left: 40px;"><input type="checkbox"/> b. File it with the city secretary or clerk of the court.</p> <p><input type="checkbox"/> 2. Both the official and person administering oath raise their right hands.</p> <p><input type="checkbox"/> 3. Oath is administered.</p> <p style="margin-left: 40px;"><input type="checkbox"/> a. The following municipal court personnel have authority to administer this oath:</p> <p style="margin-left: 80px;">(1) Municipal judge or retired municipal judge;</p>	<p>Art. XVI, Sec. 1, Tex. Const. See <i>TMCEC 2024 Forms Book: Anti-Bribery Oath of Appointed/Elected Officer</i>.</p> <p>An amendment to the Texas Constitution effective January 1, 2002 altered the previous requirement of this section that the oath be sent to the Texas Secretary of State.</p> <p>“I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be (so help me God).”</p> <p>See Section 602.002, G.C., for a complete list of authorized persons.</p>

- (2) Municipal court clerk; and
 - (3) Notary public.
4. Appointed official signs statement.
- a. Person administering oath signs jurat.
 - b. If notary public administers oath, notary’s seal is placed on oath.
5. Oath of office
- a. Both the appointed official and the person administering the oath raise their right hands.
 - b. Oath is administered.
 - c. The following municipal court personnel have authority to administer an oath to an appointed or elected official:
 - (1) Municipal judge or retired municipal judge;
 - (2) Municipal court clerk; and
 - (3) Notary public.

“Jurat”- the certificate of an officer that a written instrument was sworn to by the individual who signed it.

Art. XVI, Sec. 1, Tex. Const.
See *TMCEC 2024 Forms Book*:
Oath of Office.

“I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State (so help me God).”

The oath of office should be administered at the beginning of each new term of office for a clerk or judge.

See Section 602.002, G.C., for a complete list of authorized persons.

- ☐ d. Appointed official signs oath.
 - (1) Person administering oath signs jurat.
 - (2) If notary public administers oath, notary's seal is placed on oath.

- ☐ 6. File the oath of office with the city secretary or the person responsible for maintaining the official records of the office.

The city secretary must notify the Texas Judicial Council of the name of each person who is elected or appointed as, or who vacates the office of mayor, municipal judge, or clerk of a municipal court within 30 days after the election, appointment, or vacancy. Sec. 29.013(a), G.C.

See *TMCEC 2024 Forms Book: Report of Change or Vacancy in Judge/Clerk/Mayor Position*.

A copy of the reporting form can also be found here: <https://www.txcourts.gov/judicial-directory/directory-updates/>.