



**PROSECUTOR
FORMS**

PROSECUTOR FORMS

Table of Contents

Prosecutor's Admonishment	279
Waiver of Right to be Prosecuted by Complaint	280
Sentence Recommendation in Exchange for Waiver of Appeal	281
Motion for Recusal/Disqualification of Judge	282
Motion for Continuance	283
Motion and Order to Dismiss	284
Writ of Procedendo: Joint Application.....	285
Writ of Procedendo: State Application	286

PROSECUTOR'S ADMONISHMENT

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ **COUNTY, TEXAS**

PROSECUTOR'S ADMONISHMENT TO THE DEFENDANT

Be it known that, _____, the Defendant, has been charged by the State with the offense(s) of _____.

On this the _____ day of _____, 20____, the prosecutor comes to admonish the defendant as to the prosecutor's role in this case and the prosecutor's conference, and to inform the defendant of the defendant's rights.

The prosecutor is the attorney for the State of Texas. If your case goes to trial, the prosecutor will present the State's evidence against you. The prosecutor can recommend that the charges against you be dismissed if the evidence shows that no crime was committed or that you have a legal defense to the charges.

You are not required to discuss your case with the prosecutor.

AT THE PROSECUTOR'S CONFERENCE:

- 1) You can discuss whether you are pleading guilty, not guilty, or no contest to the charge(s) against you;
- 2) You can explain your side of the story if you wish to do so;
- 3) The prosecutor can explain various sentencing options including deferred disposition, driving safety courses, community service, jail credit for time served, and payment plans; and
- 4) The prosecutor can explain trial procedures in the _____ Municipal Court if you should desire a trial.

SUMMARY OF YOUR RIGHTS:

- 1) You have the right to remain silent;
- 2) If you choose to speak, anything you say may be used against you;
- 3) You have the right to end the conference at any time;
- 4) You have the right to hire an attorney to represent you and provide you with legal advice;
- 5) You have the right to a trial by jury or by the judge;
- 6) You have the right to refuse a plea bargain if one is offered to you; and
- 7) You cannot be penalized in any way for exercising any of your rights.

ACKNOWLEDGMENT

I acknowledge that I have been made aware of my rights as a defendant, my rights have been fully explained to me, and I understand my rights. I have also been told of the nature of the prosecutor's conference. Having been informed of my rights, I knowingly and voluntarily agree / decline (circle one) to discuss my case with the prosecutor.

Signed this the _____ day of _____, 20____.

Defendant's Signature

Address

City, State

Zip Code

Telephone Number

WAIVER OF RIGHT TO BE PROSECUTED BY COMPLAINT (Art. 27.14(d), C.C.P.)

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ COUNTY, TEXAS

DEFENDANT’S WAIVER OF RIGHT TO BE PROSECUTED BY COMPLAINT

NOW COMES DEFENDANT, _____, joined by the State of Texas and files this Waiver of Rights to be prosecuted by Complaint. The Defendant waives the right to a sworn complaint that complies with Articles 45.018 and 45.019, Code of Criminal Procedure, and files this waiver pursuant to Article 27.14(d), Code of Criminal Procedure. The Defendant acknowledges the receipt of notice of the charge against the defendant by receipt of the citation in this cause. Further, the Defendant waives any right to timely notice under Article 45.018(b), Code of Criminal Procedure.

Respectfully submitted,

Defendant

Attorney for Defendant

AGREED:

Prosecuting Attorney

APPROVED BY THE COURT:

Judge Presiding

City of _____

_____ County, Texas

DATE: _____

(municipal court seal)

SENTENCE RECOMMENDATION IN EXCHANGE FOR WAIVER OF APPEAL

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ COUNTY, TEXAS

DEFENDANT'S WAIVER OF RIGHT TO APPEAL

Now Comes the Defendant in the above entitled and numbered cause:

As denoted by my initials, I understand the following:

- The Court is not required to follow the sentence recommendation set forth below.
- I will be allowed to withdraw my plea if the Court does not follow the sentence recommendation made pursuant to this agreement.
- If the punishment given to me does not exceed the punishment recommended by the State, I may not appeal, without the permission of the Court.
- The following sentence recommendation does not include court costs, which are non-negotiable.
- In the event that the Court grants the State's request for deferred disposition, failure to comply with the orders of the Court may result in a final conviction and the imposition of the fine.
- In exchange for the State's sentence recommendation, I am knowingly, intelligently, and freely agreeing to waive my right to appeal.
- I agree to the following sentence recommendation.

Now Comes the State of Texas in the above entitled and numbered cause:

Upon the acceptance and approval by the Court of the Defendant's waivers and plea, the State, in exchange for the Defendant's agreed plea - open plea of guilty or no contest, recommends the following (check all that apply):

- A fine in the amount of \$ _____, excluding court costs;
- Restitution in the amount of \$ _____ to the victim, namely, _____ (insert name of victim); and/or
- Any other sanction authorized by law, specifically _____.

Alternatively, the State recommends that the Court:

- Defer disposition in this matter without entering an adjudication of guilt and place the Defendant on probation for a period of _____ days (not to exceed 180 days);
- Order the following conditions of deferred disposition:

_____.

Defendant

City Attorney/Deputy City Attorney

The Court after explaining the Defendant's right to appeal finds that the Defendant understands the consequences of waiving the right to appeal and that such waiver was made voluntarily, knowingly, and intelligently. Accordingly, said waiver is accepted by this Court and ORDERED filed of record in the minutes of this case.

Date
(municipal court seal)

Judge Presiding

Editor's Note: For further reference, see *The Recorder*, "Waiver of Right to Appeal in Local Trial Courts of Limited Jurisdiction," Vol. 12, No. 4 (May 2003).

MOTION FOR DISQUALIFICATION/RECUSAL OF JUDGE (Sec. 29.052, G.C.)

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ COUNTY, TEXAS

STATE'S MOTION FOR RECUSAL/DISQUALIFICATION

Comes now the State of Texas, by and through _____, the attorney for the State, and files this Motion for Recusal / Disqualification based on the following grounds:

- the judge is related to a party by affinity or consanguinity within the third degree, as determined under Chapter 573, Government Code
- the judge served as counsel in this case
- the judge has an interest in the outcome of this case or may be an injured party in this case
- other: _____.

I.

The State alleges these grounds for recusal/disqualification based on personal knowledge that is supported by admissible evidence or based on the specifically states grounds for belief of the allegations, said grounds being: _____

II.

This motion is filed at least 10 days before the date of the scheduled hearing or trial, or at the earliest practicable time before the beginning of the trial or other hearing as the judge was assigned to this case 10 or fewer days before the scheduled hearing or trial.

III.

Wherefore, premises considered, the State prays that this Honorable Court grant said motion and that another judge be assigned to preside over this cause.

Respectfully submitted,

(Name)

(Position)

State Bar Card Number: _____

I hereby certify that a true and correct copy of this State's Motion for Recusal/Disqualification was delivered to (the Defendant) (Counsel for the Defendant), on this the _____ day of _____, 20__.

(Name)

(Position)

State Bar Card Number: _____

MOTION FOR CONTINUANCE (Ch. 29, C.C.P.)

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ COUNTY, TEXAS

STATE'S MOTION FOR CONTINUANCE

To the Honorable Judge of Said Court:

Comes now the State of Texas, by and through _____, the attorney for the State, and moves the Court to continue this cause from its present setting. In support thereof, the State would respectfully show unto the Court the following:

I.

(State reasons for continuance.)

II.

This motion is not sought for delay, but so that justice may be served. The State has used due diligence and will proceed with prosecution at such time as the Court directs. Further, this motion has been (agreed to)(not agreed to) by (the Defendant)(Counsel for the Defense).

III.

Wherefore, premises considered, the State prays that this Honorable Court grant said motion and that this cause be continued to another date.

Respectfully submitted,

(Name)

(Position)

State Bar Card Number: _____

I hereby certify that a true and correct copy of this State's Motion for Continuance was delivered to (the Defendant) (Counsel for the Defendant), on this the _____ day of _____, 20__.

(Name)

(Position)

State Bar Card Number: _____

ORDER

On this the _____ day of _____, 20__, came on to be considered the State's Motion for Continuance. The Court having considered said motion is of the opinion that the State's Motion for Continuance should be (granted)(denied). This cause is hereby continued until the _____ day of _____, 20__.

Signed this the _____ day of _____, 20__.

(municipal court seal)

Judge Presiding

MOTION AND ORDER TO DISMISS (Art. 32.02, C.C.P.)

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF _____

§

_____ COUNTY, TEXAS

STATE'S MOTION TO DISMISS

Now comes the State of Texas, and moves the Court to dismiss the above entitled and numbered criminal action, for the reason that (*set out the reasons for dismissal*):

- The evidence, at this time, is insufficient;*
- The complaining witness has requested dismissal;
- The case has been refiled as Cause Number _____;
- The Defendant was instead convicted in Cause Number _____;
- The Defendant is unapprehended, and the passage of time makes successful prosecution unlikely;
- The Defendant is deceased;
- The Defendant has a valid affirmative defense to prosecution: _____;
- The Defendant has remedied the defect or nuisance that is the subject of this offense;
- It is in the interest of justice; and/or
- Other: _____.

(Deputy) City Attorney

State Bar Card Number: _____

ORDER TO DISMISS

On this the _____ day of _____, 20____, came on to be heard the above and foregoing Motion to Dismiss by the Attorney for the State who moved the Court to dismiss this cause.

The Court, having duly considered said motion, determines that said cause should be dismissed. with prejudice

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that this cause be, and the same is, hereby dismissed. A copy of this order shall be delivered to the Defendant.

SIGNED AND ENTERED this _____ day of _____, 20____.

(municipal court seal)

Judge Presiding

***Editor's Note:** DPS cannot continue to deny the renewal of a person's driver's license under Chapter 706, T.C. (OmniBase) after receiving notice that the charge on which the person failed to appear was dismissed with prejudice by motion of the appropriate prosecuting attorney for lack of evidence (clearance notice is required upon such a dismissal). Likewise, a person may not be required to pay an administrative fee (\$30) after such a dismissal. See, Sections 706.005 and 706.006, T.C.

WRIT OF PROCEDENDO: JOINT APPLICATION

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE COUNTY COURT OF

VS.

§

_____ **COUNTY, TEXAS**

§

AGREED APPLICATION FOR WRIT OF PROCEDENDO

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the undersigned Defendant and the State of Texas in applying for a Writ of Procedendo.

This application stems from the appeal of a conviction in the Municipal Court of _____, Docket No. _____. Pursuant to a judgment in said cause, dated _____, 20____, the Defendant was convicted of the offense of _____ and ordered to pay fine and costs in the amount of \$ _____. Thereafter, the Defendant appealed to this Honorable Court.

The Defendant now requests to abate and dismiss said appeal.

The State has no objection to dismissing the appeal and requests with the Defendant that the above styled and numbered cause be dismissed and remanded to the Municipal Court of _____, _____ County, Texas, for the entry of a final judgment.

Wherefore, the undersigned parties now pray that this Application for a Writ of Procedendo be granted.

Respectfully submitted,

Defendant Pro Se

Prosecuting Attorney

Defense Counsel

ORDER

On this the ____ day of _____, 20____, the Court considered and granted the Application for the Writ of Procedendo.

IT IS HEREBY ORDERED that the appeal in the above styled and numbered cause be abated, dismissed, and remanded to the Municipal Court of _____, _____ County, Texas, as a final judgment.

SIGNED this ____ day of _____, 20____.

WRIT OF PROCEDENDO: STATE APPLICATION

CAUSE NUMBER: _____

STATE OF TEXAS

§

IN THE COUNTY COURT OF

VS.

§

_____ COUNTY, TEXAS

§

STATE'S APPLICATION FOR WRIT OF PROCEDENDO

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the State of Texas in applying for a Writ of Procedendo.

This application stems from the appeal of a conviction in the Municipal Court of _____, Docket No. _____. Pursuant to a judgment in said cause, dated _____ (date, month, and year), the Defendant was convicted of the offense of _____ and ordered to pay fine and costs in the amount of \$ _____. Thereafter, the Defendant appealed to this Honorable Court.

The State now request that the Defendant's appeal be abated and dismissed for the following reason:

The Defendant's appellate bond is defective and invalid [*Minchew v. State*, 366 S.W.2d 942 (Tex. Crim. App. 1963)].

The Defendant's appeal bond was not timely filed (Art. 45.0426, C.C.P.).

The State has no objection to dismissing the appeal and requests with the Defendant.

Wherefore, the State now prays that this Application for a Writ of Procedendo be granted and that the above styled and numbered cause be dismissed and remanded to the Municipal Court of _____, _____ County, Texas, for the entry of a final judgment.

Respectfully submitted,

Prosecuting Attorney

ORDER

On this the ____ day of _____, 20 __, the Court considered and granted the Application for the Writ of Procedendo.

IT IS HEREBY ORDERED that the appeal in the above styled and numbered cause be abated, dismissed, and remanded to the Municipal Court of _____, _____ County, Texas, as a final judgment.

SIGNED this ____ day of _____, 20__.