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# Trial Process and Procedure

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## INTRODUCTION

The American criminal justice system is based on an adversarial process. This means that the prosecution and defense are opposing sides with different goals. The theory of this process is that the judge or jury will be able to determine the truth when the opposing sides each present their best arguments and show the weaknesses in the other's case. In a bench trial, the judge considers each side's evidence and is the finder of fact (the finder of fact determines if the facts have been proven in the case). Likewise, in a jury trial, the jury weighs evidence offered by each side and is the ultimate finder of fact.

The adversarial process, however, is sometimes criticized as focusing on victory for either side instead of emphasizing the truth of what occurred or the facts of a specific case. Supporters of the system believe that approaching the same set of facts from totally different perspectives uncovers the most accurate truth. To this end, lawyers are bound by their professional ethics to present the facts truthfully.

This chapter provides an overview of trials in municipal courts. It also examines defendants' rights in the trial process and issues that may arise either at trial or during preparation for trial. This includes formal pre-trial hearings, court reporters, language access, and different kinds of contempt sanctions for misconduct in the court.

## PART 1
## RIGHTS OF THE ACCUSED

Defendants appearing in municipal courts generally have the same rights and guarantees afforded any person accused of a crime at any level of the criminal judicial system. These rights, such as the right to due process, are provided under the U.S. Constitution and the Texas Constitution. Specific procedures within these constitutional bounds are generally found in Chapter 45/45A of the Code of Criminal Procedure (Justice and Municipal Courts). Chapter 45/45A primarily outlines criminal procedure in both municipal and justice courts; but clerks should also be aware that if Chapter 45/45A does not provide a rule of procedure, the court will apply general provisions found elsewhere in the Code of Criminal Procedure. Rights and responsibilities within the court may also be found in other codes or even prior judicial decisions in case law. Consequently, there is a large body of law with which every court practitioner should be familiar.

In all criminal prosecutions, defendants have the right to:

- a speedy public trial by an impartial jury;
- demand to know the nature and cause of the accusation;
- receive a copy of the charging instrument (complaint);
- represent themselves (as a *pro se* defendant);
- retain and be represented by an attorney;
- confront and be confronted by witnesses against them (the defendant can also cross-examine any State witness);
- compel witnesses to come to court and testify on their behalf (by subpoena);
- testify on their own behalf; and
- not be compelled to testify against themselves (and the decision not to testify may not be considered in determining innocence or guilt).

## A. Jury Trial

The right to a trial by jury is one of the fundamental rights afforded to those charged with criminal offenses in the United States. The right is specifically enumerated in the 6th Amendment of the U.S. Constitution, Article I, Section 10 of the Texas Constitution, and the Code of Criminal Procedure. Article I, Section 15 of the Texas Constitution further extends the right to all criminal cases in Texas, including misdemeanors punishable by fine only. It is such an important right in Texas that a defendant starts off with the right to a jury trial and must waive it in writing to proceed without a jury. Art. 45.025/45A.155, C.C.P. If the defendant does not waive the trial by jury, then the court is required to proceed with the jury trial. Art. 45.027(a)/45A.156(a), C.C.P.

**Art. 45.027(a)/45A.156(a), C.C.P.**

Six qualified persons shall be selected to serve as jurors in the case.

Jury trials have roots in the English common law. Formerly, trials were sometimes used as tools of oppression or a means to eliminate political enemies through false criminal charges. The determination of guilt or innocence by a jury places the decision into the hands of the defendant's peers, rather than a single person who may be influenced by other interests. As observed by the U.S. Supreme Court, "Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence." *Duncan v. Louisiana*, 391 U.S. 145 (1968).

Six qualified jurors are required for misdemeanors tried in municipal courts. Arts. 33.01 and 45.027/45A.156(a), C.C.P. The selected individuals must be residents of the municipality for which the court is established. Sec. 62.501, G.C.

## B. Speedy Trial

The right to a speedy trial can be found in the Sixth amendment to the U.S. Constitution and has been explored in several cases at both the state and federal level. In addition, Article I, Section 10 of the Texas Constitution includes the guarantee that any accused shall have the right to a speedy trial. This is also codified in Article 1.05 of the Code of Criminal Procedure. The law does not provide a clearly defined rule to determine whether the right to a speedy trial has been violated; and the right does not detail a specific number of days or months. *Barker v. Wingo*, 407 U.S. 514, 523 (1972). When a speedy trial issue is raised by the defendant, the judge must consider the individual circumstances on a case-by-case basis.

***Barker v. Wingo, 407 U.S. 514, 527 (1972)***

It is impossible to pinpoint a precise time when the right must be asserted or waived … a defendant has no duty to bring himself to trial; the State has that duty.

It is the responsibility of the State, as well as the court, to make sure that there is a speedy resolution to cases on the docket. In *Chapman v. Evans,* 744 S.W.2d 133 (Tex. Crim. App. 1988), the Court of Criminal Appeals stated: "The primary burden is on the prosecution and the courts to ensure that defendants are speedily brought to trial… Both the trial court and prosecution are under a positive duty to prevent unreasonable delay… [O]ver crowded trial dockets alone cannot justify the diminution of the criminal defendant's right to a speedy trial." Consequently, it is important for courts to address

issues that may affect the speedy resolution of cases, such as proper docketing or excessive continuances, to ensure that the right to a speedy trial is not violated.

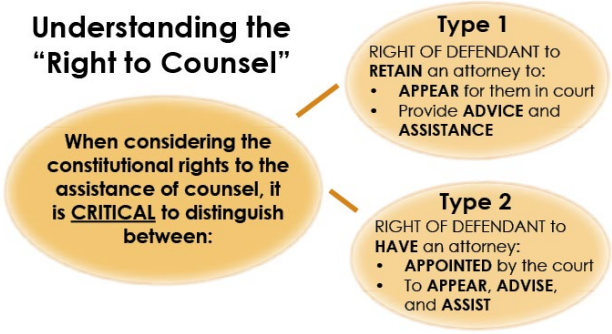
## C. Right to Counsel

**Art. I, Sec. 10, Texas Constitution**

The accused shall have the right of being heard by himself or counsel.

A defendant in a municipal court facing criminal charges has the right to be represented by counsel, just as he or she would in any other criminal court. Article I, Section 10, Texas Constitution; Article 1.051(a), C.C.P. This is an important right, even when the defendant is facing a fine-only offense, as an attorney will have legal knowledge and experience in court that the defendant does not. An unrepresented individual may find himself or herself facing serious consequences in a municipal court, including prohibitions on the possession of firearms, convictions for crimes of moral turpitude, and suspensions of the privilege to operate a vehicle.

The right to counsel means that a defendant may be represented by a licensed attorney. A defendant always has the right to represent himself or herself *pro se*, but the right to counsel does not mean that non-attorney family members or others may represent the defendant. As discussed in Chapter 2, individuals that are not licensed Texas attorneys may not represent another person in court. In discussing the right to be represented by an actual, currently-licensed Texas attorney, the Texas Court of Criminal Appeals has said, "It has been uniformly recognized that a layman masquerading as an attorney—that is, one who has never been a licensed attorney in any jurisdiction—can never be considered 'counsel' under the Sixth Amendment regardless of the skill exercised by the layman." *Cantu v. State*, 930 S.W.2d 594, 596 (Tex. Crim. App 1996).




When attempting to understand the right to counsel, it is important to differentiate between the right to retain an attorney and the right to have an attorney appointed. Every person has the right to retain, or pay for, an attorney to represent that person in a criminal proceeding. This is true whether the person is charged with a misdemeanor punishable by fine only or a felony punishable by imprisonment. Not everyone, however, is required to have an attorney appointed by the court to represent that person. An appointed attorney is typically not paid by the person that the attorney is defending; rather, the attorney is provided by the State within parameters established by the law when the person cannot afford an attorney. The Texas Court of Criminal Appeals and the U.S. Supreme Court have both opined when a court appointed attorney is required. In short, the Supreme Court has said that "actual imprisonment [is] the line defining the constitutional right to the appointment of counsel." *Scott v. Illinois*, 440 U.S. 367 (1979). This has been interpreted by the courts to mean that the defendant is charged with a criminal offense that carries a sentence of imprisonment.

The criminal offenses over which municipal courts have jurisdiction can only result in the imposition of a fine, not a sentence resulting in imprisonment. Consequently, although a person has the right to retain an attorney in a municipal court, that person does not generally have the right to a court-appointed attorney in a municipal court.

**Interest of Justice Exception**

An important exception to this rule is found in the Code of Criminal Procedure. An indigent defendant is entitled to have a court appointed attorney in a criminal proceeding, including in a municipal court, if the court concludes that the interests of justice require representation. Art. 1.051(c), C.C.P. To date, the Texas Court of Criminal Appeals has not defined exactly what "interests of justice" means, specifically not in regard to municipal court appointments. This means that, without further guidance, it will be up to the judge to determine the circumstances that may warrant the appointment of counsel in a municipal court case.

## D. Subpoena

The defense and prosecution are both entitled to subpoena witnesses necessary to the trial of their respective cases in court. Art. 1.05, C.C.P. A subpoena is a writ issued to a person or persons summoning them to appear as a witness in the trial of the case. Art. 24.01, C.C.P. Typically, the witness in a municipal court case will be the police officer that issued the citation. This person is usually called by the prosecutor as a witness. It is important to remember, however, that the defendant may also have witnesses so courts will need to have a process in place to subpoena these individuals.

## E. Public Trial

Defendants in municipal courts have a right to a public trial. This right is guaranteed by the U.S. Constitution in the Sixth Amendment; in the Texas Constitution in Article I, Section 10; and by Articles 1.05 and 1.24 of the Code of Criminal Procedure. Article 1.24 of the Code of Criminal Procedure further provides that the "proceedings" in all criminal courts are public. This right intersects with the public's First Amendment right of access to the courts. Although the right does not carry with it a right to a private trial, closures of trials or proceedings may be justified under narrow circumstances articulated by case law.

## F. Appeal

Defendants who are found guilty of any offense have the right to appeal their case. Art. 44.02, C.C.P. In municipal courts of non-record, the appeal is a trial *de novo*, meaning that the defendant gets a new trial as if the trial in the municipal court never occurred. In municipal courts of record, the appeal is based on the transcript of the trial and the appellate court determines whether any error occurred during the trial. The municipal court case is appealed to the county court.

True or False

1. Defendants have the right to a jury trial in a municipal court. ____
2. Municipal court defendants have a right to a copy of the complaint. ____
3. Defendants may represent themselves at trial. ____
4. Defendants must request a jury trial if they want one. ____
5. Defendants in municipal courts have a constitutional right to a speedy trial. ____

6. The right to a speedy trial is violated if a municipal court case is not set for trial within 90 days. ____
7. A trial court's delay in hearing a case because of a backlog of cases set for trial cannot be used to justify denying a defendant's right to a speedy trial. ____
8. An indigent defendant in a municipal court always has the right to have a court-appointed attorney. ____
9. An indigent defendant may be entitled to a court appointed attorney in a municipal court if the judge concludes it is in the interests of justice. ____
10. Defendants have the right to either a public or private trial. ____
11. Defendants convicted of a city ordinance violation do not have the right to an appeal. ____

## PART 2
## CLERK'S ROLE IN TRIAL PROCESS

The clerk's role in the trial process includes providing information to defendants about court procedures, managing administrative processes on the day of trial, scheduling trials, issuing subpoenas, and summonsing the jury. Since preparing for a trial includes many technical procedures, knowledge of the trial process will help clerks assist the judge.

### A. Posting the Court Docket

The court must post, in a designated public place in the courthouse, notice of a criminal court docket setting. Article 17.085 of the Code of Criminal Procedure provides that the clerk shall post the docket "as soon as the court notifies the clerk of the setting." This posting is not required when the court provides online internet access to the court's criminal case records.

### B. Information to Defendants

Many defendants in municipal courts represent themselves with little or no knowledge of criminal law or procedure. This lack of knowledge may present an issue with court access. A court clerk is not an attorney and does not represent any court participant, but the clerk can provide certain information in such a situation. Legal information may include things like court dockets, local court rules, and due dates. As always, the court clerk should not apply the facts to the law or provide advice on how to proceed.

A common practice is for court clerks to work with their presiding judge to develop written information for defendants requesting trials. The following information could be considered for inclusion:

- Pleas
- Pre-Trial Procedures
- Rights
- Continuances
- Bench or Jury Trial
- Motions for New Trial
- Fines and Court Costs

- Driving Safety Courses
- Deferred Disposition
- Appeals
- Juveniles

## C. Preparation

Clerks should establish procedures for preparing for trials. These may include:

- When a citation is filed, prepare a sworn complaint unless the defendant and prosecutor agree in writing to go to trial on the citation and file the agreement with the court. Art. 27.14(d), C.C.P. Although the prosecutor is responsible for the legal accuracy of the wording on complaints, clerks generally prepare and process them.
- Review the complaint for clerical errors and check to be sure that the complaint is properly sworn to and the court seal is affixed.
- Provide a copy of the complaint to the defendant if the defendant does not waive his or her right to notice.
- Give the case file to the prosecutor.
- Ideally, at least two weeks before the trial date, prepare a trial docket and post it in the clerk's office and the police department; send a copy to the prosecutor and to each defendant or attorney.
- Issue subpoenas if they have not already been issued.
- Summon jurors at least three to four weeks before a trial.
- If it is a jury trial, make certain that the court has enough jury handbooks for the jurors to read before the trial.
- If interpreters are needed, make sure that they will be available.
- Review trial forms and make sure they are proper and available to the judge.

## D. Management

Whether the trials are bench or jury, the clerk is responsible for coordinating the movement of the people in the court facility. The following is a list of suggestions to help clerks provide guidance to court participants.

- Provide signs throughout the court facility to enable participants to navigate.
- Provide signs or pamphlets about the rules of the court that should include information about proper dress, tobacco, cell phones, courtroom decorum, and the prohibition of carrying firearms and other weapons into the court facility (If the court is in a shared city building, talk to the city attorney about signage related to firearms).
- If possible, have a clerk act as information officer to direct people.
- Wear nametags so that the court participants know who to ask for assistance.
- Make sure that the court has made all required reasonable accommodations for those with mobility, visual, hearing, or other impairments.
- If the court does not have a pay telephone, the court may want to make a telephone available for court participants to use.

- Since some court participants might need a letter to present to a work supervisor, have forms available for either the judge or clerk to sign.

## E. Trial Scheduling

Trial dockets are a listing of cases set for a particular date. These dockets usually include defendants' names, docket numbers, bonds posted with the court, attorneys' information, and any other items that courts find helpful to manage trials.

To establish trial dates, courts might want to address the following criteria:

- volume of cases scheduled for trial;
- number of defendants who want to plead guilty or no contest, but are requesting to see the judge before the fine is set;
- type of trial (jury trial or bench trial) or hearing requested (such as an indigence hearing);
- whether the defendant is an adult or juvenile;
- type of case (e.g., city ordinance violation, penal code offense, traffic violation);
- peace officers' work schedules (as most complaining witnesses are city police officers, clerks should consider their work schedules in setting trial dates);
- availability of judges and prosecutors; and
- age of victim (Unless extraordinary circumstances require otherwise, the trial of a criminal action in which the alleged victim is younger than 14 years of age shall be given preference over other matters before the court, whether civil or criminal. Art. 32A.01, C.C.P.).

### 1. Predetermined Scheduling

Predetermined scheduling provides a specific day and time for the defendant to appear. Courts using this method have docket call (calling the names of defendants scheduled for trial on that docket) at the beginning of the court session. Those pleading not guilty are rescheduled for a trial at a later date. Those pleading guilty or no contest might pay a fine, request to take a driving safety course, request that the judge grant deferred disposition, or appeal the conviction.

A problem with this type of scheduling is that the court never knows how many defendants will appear on their assigned date. Also, if all the defendants scheduled do appear, defendants may have to wait a long time for their case to be called. The advantage of this system is that a judge is available to see the defendants when they appear.

#### a. Peace Officer Citation

The citation provides an appearance date for the defendant to appear before the court. If a court uses predetermined scheduling, the citation provides a specific date and time for the defendant to appear. At this first appearance, sometimes referred to as an arraignment, the court identifies the defendant, explains the charge filed against the defendant, advises of certain rights under the law, and takes a plea.

#### b. Citizen Complaint

The case may be scheduled for an arraignment on a specific date and time following review of the complaint by the prosecutor. The judge issues a summons or a warrant to notify the defendant of

the charges. Sometimes, clerks send a courtesy notice to the defendant telling the person that charges have been filed and that a preliminary hearing is scheduled. When the defendant appears, he or she may plead guilty, nolo contendere, or not guilty. If the plea is not guilty, the court may schedule a pre-trial hearing or trial.

Clerks should work with the prosecutor, police department, and code enforcement to establish procedures for processing citizen complaints.

### 2. Assignment by Court Clerk

The scheduling method of assignment by court clerk places the responsibility on the defendant to obtain a court date. The written notice to appear (citation) just notifies the defendant to appear within a certain number of days or by a specific date without providing a specific time to appear. The defendant, then, is responsible for contacting the court to set up a specific appearance date or trial date. Courts usually have established schedules for pre-trials, bench trials, and jury trials. When the defendant contacts the court, whether by mail or personal appearance, the clerk should provide a procedures pamphlet to the defendant or explain court procedures.

When the court places the responsibility on the defendant to establish a court date, the volume of persons appearing at the court and the number of telephone calls increase. However, the court maintains better control over the trial dockets because the court talks with the defendants before scheduling a hearing or trial. Only those defendants who specifically request a trial are set on the trial docket. The number of defendants set on each docket is controlled by the court clerk.

## F. Subpoenas

A subpoena is a writ issued to a person or persons giving an order to appear as a witness. Art. 24.01, C.C.P. Both the defense and prosecution are entitled to subpoena witnesses necessary to the presentation of their respective cases in court. Art. 1.05, C.C.P.

Judges, court clerks, and deputy court clerks have the authority to issue subpoenas, and defendants are entitled to request their issuance to compel the attendance of witnesses in court. Arts. 24.01(d) and 24.03(a), C.C.P. The clerk shall sign the subpoena and indicate on it the date that it was issued, but it need not be under court seal. Arts. 24.01(d) and 45.012(g)/45A.052(c), C.C.P.

Although applications for subpoenas in district courts must be in writing and sworn, the Code of Criminal Procedure is silent on whether the application for subpoenas issued out of municipal courts must be in writing. Art. 24.03, C.C.P.

Regardless of whether the municipal court asks for the request for subpoena to be in writing or presented orally, the following information is necessary before a subpoena can be issued:

- the name of each witness desired; and
- the location or address of each witness.

### 1. Types of Subpoenas

#### a. For Out-of-County Witnesses

The Code of Criminal Procedure has specific provisions regarding applications for subpoenas for out-of-county witnesses in felony and misdemeanor cases that include confinement as part of the punishment. The code is silent, however, regarding whether a defendant charged with a fine-only misdemeanor is entitled to a subpoena for an out-of-county witness or the enforcement of such a subpoena. Nevertheless, municipal court defendants are entitled to a type of compulsory process compelling the attendance of witnesses. Art. 1.05, C.C.P. Municipal courts are not prohibited from

issuing a subpoena for any witness regardless of where the witness resides, but the court may not be able to enforce the subpoena if the witness resides outside the county.

### b. For Child Witnesses

When a witness is younger than 18 years of age, the court may issue a subpoena directing a person having custody, care, or control of the child to produce the child in court. Art. 24.011, C.C.P.

### c. Subpoena Duces Tecum

A subpoena duces tecum is a subpoena that directs a witness to bring with him or her any instrument of writing or other tangible thing desired as evidence. Art. 24.02, C.C.P. In other jurisdictions this may be called a subpoena for the production of evidence. The subpoena should give a reasonably accurate description of the document or item desired, such as the date, title, substance, or subject. A typical example of an item requested by a subpoena duces tecum would be the actual drug paraphernalia used in the commission of an alleged Possession of Drug Paraphernalia offense. The police department will have care and custody of the evidence, so the prosecutor would need to request that the officer bring it on the day of trial.

**Subpoena Duces Tecum**

Latin term meaning "under penalty you will bring with you." A command from the court for a witness to appear and bring books, papers, or other tangible items as evidence.

## 2. Service of the Subpoena

A subpoena can be served by reading it to the witness, delivering a copy to the witness, electronically transmitting a copy of the subpoena with acknowledgment of receipt requested to the last known electronic address of the witness, or by mailing the subpoena certified with return receipt requested to the last known address of the witness. A subpoena may not be mailed if the applicant requests in writing that the subpoena not be served by certified mail, or the witness is set to appear within seven business days after the date the subpoena would be mailed. Art. 24.04(a), C.C.P.

The person serving the subpoena must be at least 18 years of age or a peace officer and may not be involved in the proceedings for which the appearance is sought. Art. 24.01(b), C.C.P.

A court can compel a peace officer to serve a subpoena. A court may not compel a person who is at least 18 and who is not a peace officer to serve the subpoena unless the person agrees in writing to accept that duty. If the person neglects or refuses to serve or return the subpoena, the court may fine him or her not less than $10 or more than $200 for contempt at the court's discretion. Arts. 2.16/2A.055 and 24.01(c), C.C.P.

The person serving the subpoena must show the time and manner of service, if served. If he or she fails to serve the subpoena, the person's return must state the reason for not serving it, the diligence used to find the witness, and any information regarding the whereabouts of the witness. Arts. 24.04 and 24.17, C.C.P.

### 3. Refusal to Obey Subpoena

If a witness refuses to obey a subpoena in a misdemeanor case, the court may fine the witness up to $100. Art. 24.05, C.C.P.

The defendant or State may request a writ of attachment, issued by a clerk of a court under seal, commanding a peace officer to bring the witness before the court immediately or on a day named in the order. The court can postpone a case for the writ to be served. Art. 24.11, C.C.P.

The procedures for assessing a fine include the following:

- After a fine is entered against a witness for failure to appear, the judgment is conditional. Art. 24.07, C.C.P.
- The witness is given an opportunity at a hearing to present a reason for disobeying the subpoena. If the judge is not satisfied with the excuse given by the witness, the court may collect the fine as other fines in misdemeanor cases or remit the fine altogether. Arts. 24.08 and 24.09, C.C.P.
- When a fine is entered against a witness and the witness appears and testifies, the judge has the discretion to reduce the fine or remit it altogether. The witness, however, is still required to pay all the costs accrued because of his or her failure to appear. Art. 24.10, C.C.P.

### 4. Bail for the Witness

The court may require a witness to post bail in an amount set by the judge. If the witness is unable to post bail, the court must release the witness without security. Art. 24.24, C.C.P.

12. What is the role of the clerk in the trial process? _____

_____

_____

True or False

13. A clerk may give legal advice to defendants who represent themselves. ____

14. List procedures that a clerk might want to consider when preparing for trials. _____

_____

_____

15. When may the court proceed to trial using the citation as the charging instrument? _____

_____

16. List criteria that you use to establish trial dates. _____

_____

17. List disadvantages of using a predetermined scheduling system. _____

_____

_____

18. List advantages of using a predetermined scheduling system. _____

_____

_____

19. Why should the police department or the code enforcement officer investigate a citizen's complaint? _____

_____

20. What is the clerk's role in handling citizen complaints? _____

_____

21. When a court uses the assignment by court clerk method of scheduling cases, who is responsible for obtaining a trial date? _____

22. List the main disadvantage of using the assignment by court clerk method for controlling the docket. _____

_____

23. List the main advantage of using the assignment by court clerk method for controlling the trial docket. _____

_____

24. What is a subpoena? _____

_____

25. Who is entitled to a subpoena? _____

26. Who has authority to issue a subpoena? _____

True or False

27. Courts are required to issue subpoenas when requested by either the State or the defense. ____

28. The request for a municipal court subpoena must be in writing. ____

29. A person requesting a subpoena may request in writing that the subpoena not be mailed. ____

30. A subpoena is not valid unless the municipal court seal is impressed on it. ____

31. To bring in a child witness, who would the court subpoena? _____

32. If a person is younger than 18 years of age, is the court required to subpoena the parent to bring him or her to court to testify? _____

33. What is a subpoena duces tecum? _____

_____

34. What type of description must the subpoena give of an item requested to be brought to trial?

_____

True or False

35. The clerk may serve a subpoena by sending it in the regular mail. ____

36. If a subpoena has been requested within seven business days of the trial, it may not be served by mail. ____

37. A peace officer may be compelled to serve a subpoena. ____

38. If a peace officer is unable to serve the subpoena, he or she must state the diligence used in attempting to locate the witness. ____

39. Only the defense may request a writ of attachment. ____

40. Witnesses who fail to appear after being served with a subpoena may be fined up to $100. ____

41. Judges do not have discretion to reduce the fine or remit the fine if the witness subpoenaed eventually appears and testifies. ____

42. When a witness is required to post bail, the clerk who issued the subpoena may set the bail. ____

## PART 3
## PRE-TRIAL

The term "pre-trial hearing" often confuses both pro se defendants and new court clerks. The term sounds as if it is a formal adversarial proceeding; however, the pre-trial hearing may typically result in an informal conference between the prosecutor and defendant or defense attorney. One of the parties may have formal pre-trial motions that need to be heard at a pre-trial hearing, but the law allows for several preliminary matters to be addressed at the pre-trial hearing. The court may set any criminal case for a pre-trial before it is set for trial and direct both parties to be present. Art. 28.01, Sec. 1, C.C.P. In practice, the pre-trial hearings allow the prosecutor and defense counsel or the pro se defendant to discuss the case, negotiate a plea agreement, or file motions. Pre-trial hearings also provide an effective means of caseflow management by potentially disposing of issues that do not relate to the merits of the case and assuring in advance that other times set for disposition of uncontested cases will not be taken up by other matters.

**Pre-trial Hearing**

A court setting to address preliminary matters, including plea discussions, prior to the trial of an offense. The court may set any criminal case for a pre-trial hearing under 28.01, C.C.P.

Important procedural considerations when establishing local rules covering pre-trials include:

- setting deadlines for notifying parties of the pre-trial hearing;
- handling motions, which may include date stamping the motion when it is filed and noting the cause number of the case on the motion; and
- filing the motion with the case.

### A. Notice

Section 3 of Article 28.01 of the Code of Criminal Procedure provides that notice of a pre-trial hearing is sufficient if given:

- in open court in the presence of the defendant or his or her attorney;
- by personal service upon the defendant or his or her attorney;
- by mail to the defendant at least six days prior to the date set for hearing; or
- if the defendant has no attorney, by mail addressed to the defendant at the address shown on the bond; if the bond shows no address, sent to one of the sureties on the bond.

If the envelope containing the notice is properly addressed, stamped, and mailed, the State is not required to show that it was received.

## B. Pre-Trial Issues

Recall that Article 28.01 of the Code of Criminal Procedure is not mandatory. The court may, but is not required to, set a criminal case for a pre-trial hearing. Accordingly, some courts require every case set for a jury trial to go to a pre-trial first; other courts require a pre-trial depending on the circumstances of the case; and others do not hold pre-trial hearings. Courts that use the pre-trial process do so to resolve issues relating to the case but not concerning the merits of the case. The pre-trial hearing is to address preliminary matters relevant to the trial of the case. The court should not use the pre-trial process as a tool to thwart a defendant's effort at obtaining a trial.

The Code of Criminal Procedure sets out general procedures for defendants accused of committing criminal offenses that are appearing in court for the first time. This process, sometimes called an "arraignment" in municipal courts, is meant to establish the identity of the defendant, explain certain rights to the defendant, and obtain a plea. If the defendant refuses to enter a plea, then the court must enter a plea of not guilty. Arts. 27.16 and 45.024/45A.152, C.C.P. A plea of not guilty means that the defendant is contesting the case. On this plea, the court may set the case for a pre-trial hearing or for an actual trial.

There is no formal mechanism for arraignment in municipal courts. A formal arraignment process is required elsewhere in the code under Article 26.01 for all felonies and for misdemeanors where the sentence involves possible incarceration, but Chapter 45/45A is silent on the matter for municipal courts. To this end, prior to a pre-trial hearing, the judge will need to provide some manner of arraignment for the defendant to advise him or her of important rights and determine the plea.

The pre-trial hearing can handle the following matters:

- exceptions to the form or substance of the indictment or information, which initiates proceedings in county and district court (defendants in municipal courts may file a motion that says there is a problem with the form or substance of the complaint);
- motions for continuance;
- motions to suppress evidence, or to keep evidence from being introduced;
- discovery (defendants are entitled to know before trial what certain evidence may be presented by the prosecutor);
- entrapment (when law enforcement officers induce a person to commit a crime not contemplated by the person solely to institute a criminal prosecution against the person);
- motion for appointment of an interpreter; and
- election of whether the jury or judge decides punishment on a finding of guilt in a jury trial.

**Practice Note**

A good practice is to consider *where* the prosecutor is sitting when he or she meets with the defendant during the plea discussion portion of a pre-trial setting, which should occur outside the presence of the judge prior to any hearing before the court. This is often an issue in smaller courts, where space may be limited in the location that serves as the courtroom. It is an important consideration. Plea discussions between the prosecutor and defendant often include statements and evidence that would not be admissible as evidence should the case proceed to trial.

## C. Pre-Trial Motions

The court may, but does not have to, require all motions to be on file at least seven days prior to the date of the pre-trial hearing, provided that the defendant has sufficient notice of such hearing to allow him or her not less than 10 days in which to raise or file such preliminary matters. Art. 28.01, Sec. 2, C.C.P. A common pre-trial motion will be a motion for discovery. This is a motion filed by the defendant or defense attorney asking for certain material evidence in the case.

43. How can pre-trial hearings be an effective means of caseflow management? _____

_____

44. List methods of giving notice of a pre-trial hearing to a defendant's attorney. _____

_____

45. List ways in which the defendant is notified of a pre-trial hearing._____

_____

46. If a defendant refuses to plead, what must the court do? _____

_____

True or False

47. The law requires a pre-trial hearing to be set in every criminal case. ____

48. The court may require defendants to file all motions at least seven days before the pre-trial hearing date. ____

# PART 4
# CONTINUANCES

A continuance is a postponement of a hearing, trial, or other proceeding to a subsequent day or time. Although the court clerk may accept a written continuance and process the document, only judges may grant or deny continuances.

Article 29.03 of the Code of Criminal Procedure requires requests for continuances to be in writing but does not state a time during which the parties must submit their motions for continuance to the court. Motions must be sworn to by a person having personal knowledge of the facts relied on for the continuance. Art. 29.08, C.C.P. To help courts manage continuances, courts should establish a policy requiring a certain number of days before trial that a motion for continuance can be submitted to the court. Once the court establishes the policy, the clerk should provide a copy of

the policy to defendants, defense attorneys, and prosecutors. Look to Articles 29.04 to 29.07 for specific procedural rules on motions for continuance.

Upon receipt of a motion for continuance, the clerk should give it to the judge to make a decision. After the judge decides whether to grant the motion, the clerk notifies the prosecutor and the defendant of the decision.

If the judge grants a continuance, the court clerk should show the case as continued on the trial docket. The case is then reset, and a new notice is sent to the defendant and prosecutor. The clerk should also enter this information on the case file or jacket.

## A. By Operation of Law

Article 29.01 of the Code of Criminal Procedure provides for continuances by operation of law, meaning the judge does not have the discretion to deny the motion. These are for the following reasons:

- a defendant has not been arrested;
- a corporation or association has not been served with the summons; or
- there is not sufficient time for trial at that term of court.

## B. By Agreement in Open Court

The court may continue a criminal action by consent and agreement of both the defense and prosecutor in open court, only for as long as is necessary. Art. 29.02, C.C.P.

## C. By Sufficient Cause Shown

The prosecutor or the defendant may request a continuance for cause. The request must be in writing, but it does not have to be in the form of a sworn affidavit. It must fully state the reason for the motion. The judge then determines if the motion contains sufficient cause to grant a continuance for as long as is necessary. Art. 29.03, C.C.P.

A continuance for cause is the most common type of continuance. Since the granting or denying of a continuance requires a decision, a judge may not delegate this duty to a clerk.

## D. Religious Holy Days

A defendant, defense attorney, prosecutor, or juror may request a continuance for a religious holy day. Arts. 29.011 and 29.012, C.C.P. Religious holy day means a day on which the tenets of a religious organization prohibit its members from participating in secular activities, such as court proceedings. Religious organization is defined in Section 11.20 of the Tax Code.

A person seeking the continuance must file with the court an affidavit stating:

- the grounds for the continuance; and
- that the person holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.

An affidavit filed under this law is proof of the facts stated and need not be corroborated. When a clerk receives this affidavit, the clerk presents it to the judge and notifies the other participants in the trial of the continuance.

## E. Legislative Continuances

Legislative continuances apply to members and members-elect of the Texas Legislature. A legislative member or member-elect who is either a party or legal counsel for a party may delay

any case set for trial until 30 days after the date on which the Legislature adjourns. The legislator requesting a continuance should file an affidavit with the court stating the grounds for the continuance and his or her intent to participate actively in the preparation or presentation of the case. If the attorney for a party to any criminal case is a member or member-elect of the Legislature who was employed on or after the 15th day before the date on which the suit is set for trial, the continuance is discretionary with the court. Otherwise, the continuance is mandatory. Secs. 30.003(b) and (c-1), Civil Practice and Remedies Code.

49. List reasons why a court would continue a case without a motion._____

_____

50. Who may request a continuance in open court? _____

51. How long can a continuance last? _____

52. Who may request a continuance when the trial date falls on a religious holiday?_____

_____

53. In what form must a request for a continuance for a religious holiday be made? _____

_____

54. What information must be in the request for the continuance for a religious holiday? _____

_____

55. What is the role of the clerk when he or she receives a request for a continuance? _____

_____

True or False

56. A motion for continuance for cause may be requested by telephone. ____

57. A clerk may not grant a motion for a continuance. ____

58. If a defendant calls and wants to reset the case, the clerk has authority to reset the case. ____

## PART 5
## PROSPECTIVE JURORS AND JURY SELECTION

If a defendant pleads not guilty and does not waive a trial by jury, the judge is required to issue a writ commanding the proper officer (usually the court clerk) to summon a venire (a list of prospective jurors summoned to serve for a particular term of court). The court should develop a written policy that details the procedures for jury selection, preparing the jury candidate list, summoning the prospective jurors, etc.

### A. Prospective Jurors

In municipal courts, six qualified persons from the venire are selected to serve as jurors. Art. 45.027/45A.156(a), C.C.P. In municipal courts of record, ordinances, rules, and procedures concerning a trial by a jury, including the summoning of jurors, must substantially conform to Chapter 45/45A of the Code of Criminal Procedure. Sec. 30.00013(a), G.C. The presiding judge, the municipal court clerk, or the court administrator, as determined by ordinance, shall supervise the selection of persons for jury service. Sec. 30.00013(b), G.C.

Article 45.027(a)/45A.156(a) of the Code of Criminal Procedure requires the judge to issue a writ of venire, sometimes called a *venire facias*, commanding the proper officer (in a municipal court, it is usually the court clerk) to summon a venire from which six qualified persons shall be selected to serve as jurors in the case. Typically, clerks summon prospective jurors approximately three to four weeks prior to the date of the trial. Jurors may be selected from tax rolls, utility rolls, voter registration rolls, or in any other nondiscriminatory manner. State law requires that a prospective juror live within the city. Sec. 62.501, G.C. A minimum of 30 persons is often summoned so that there is an adequate number of qualified persons after exemptions, excuses, and challenges. Courts are prohibited from summoning prospective jurors to appear for jury service on the date of the general election for state and county officers. Sec. 62.0125, G.C. All prospective jurors must remain in attendance until discharged by the court. Art. 45.027(b)/45A.156(b), C.C.P.

**Venire**

Latin term meaning "to come." The panel summoned by the court from among whom jurors in a particular case are chosen.

Courts usually notify prospective jurors by mail. The notice typically includes the date, time, and location at which prospective jurors are to report for jury duty. To help clerks better manage the jury selection process, the notice should state the qualifications and exemptions for jury duty. A juror questionnaire (or juror information sheet) should be included (either with the notice or separately). This is a request for certain personal information that will aid the defense and prosecution in selecting jurors. Prospective jurors can either mail in this information, or they can bring it in with them on the day of the trial.

## 1. Qualifications

### a. Required

Sections 62.102-62.105, 62.501, and 62.1031 of the Government Code provide qualifications for prospective jurors. A potential juror must:

- be at least 18 years of age;
- be a resident of this state and the county in which the person is to serve as a juror (in municipal courts, they must also be a resident of the city);
- be a qualified voter in the state and applicable county, but does not have to be registered to vote;
- not have been convicted of misdemeanor theft or a felony;
- not be under indictment or other legal accusation for misdemeanor theft or a felony;
- be of sound mind and good moral character;
- not be a witness in the case;
- not have served on the grand jury that issued the indictment (for felonies);
- not have served on the jury in a former trial of the same case;
- not have a bias or prejudice, either in favor of or against the defendant or the State;
- not have already formed an opinion or conclusion as to the guilt or innocence of the defendant which would influence the finding of a verdict in the case;
- be able to read and write;

- not have served as a petit juror for six days during the preceding three months in the county court or the preceding six months in the district court;
- not be interested, directly or indirectly, in the subject matter of the case; and
- not be related by consanguinity or affinity within the third degree to a party in the case (Chapter 573, G.C.).

### b. Deaf or Hard of Hearing Jurors

People who are deaf or hard of hearing are still qualified to be prospective jurors. Deaf or hard of hearing means having a hearing impairment, regardless of whether the individual also has a speech impairment that inhibits the individual's comprehension of an examination, or proceeding, or communication with others. Sec. 62.1041(f), G.C. Courts are required to make reasonable accommodations for a deaf or hard of hearing individual in accordance with the Americans with Disabilities Act. Sec. 62.1041(c). This may include a qualified interpreter for deaf or hearing-impaired jurors or an auxiliary aid or service for a municipal court proceeding. Sec. 62.1041(e).

### c. Legal Blindness

Section 62.104 of the Government Code addresses the issue of whether a legally blind person is qualified to sit as a juror in a civil case. The statute defines legally blind as having not more than 20/200 of visual acuity in the better eye with correcting lenses; or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends (to extend under or be opposite to) an angle no greater than 20 degrees. The statute does not disqualify a person who is legally blind to sit as a juror in a criminal case.

## 2. Exemptions

### a. Legal Exemptions

Section 62.106 of the Government Code provides for juror exemptions. The potential juror may (but does not have to) claim an exemption if he or she:

- has legal custody of a child or children under the age of 12 years and the jury service would cause the child or children to be left without adequate supervision;
- is a student of a public or private secondary school;
- is enrolled in an institution of higher education;
- is an officer or employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- is a primary caretaker of a person who is unable to care for himself/herself;
- is a member of the U.S. military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence;
- has served on a petit jury in the county in the last 24-month period preceding the currently scheduled day of service, unless the county uses a jury plan under Section 106.011 of the Government Code and the period authorized under Section 62.011(b)(6) of the Government Code exceeds two years (in a county with a population of at least 200,000); or
- has served as a petit juror (the ordinary jury for the trial of a civil or criminal action) in the county during the three-year period preceding the date the person is to appear for

jury service (note this only applies in a county with a population of at least 250,000 where the jury wheel has not been reconstituted after the date the person served as a petit juror. See, Sec. 62.001, G.C.).

### b. Permanent Exemption

A person who is at least 75 years of age may file for permanent exemption from jury duty. The court clerk shall promptly have a copy of the exemption delivered to the voter registrar of the county. Secs. 62.107(c) and 62.108(a), (c) and (d), G.C. The voter registrar is required to maintain a current register of persons who claim and are entitled to a permanent exemption. The name of a person on the register may not be used in preparing the record of names from which a jury is selected.

### c. Excuse of Juror for Religious Holy Day

If a prospective juror is required to appear at a court proceeding on a religious holy day observed by the prospective juror, the court or the court's designee shall release the prospective juror from jury service entirely or until another day of the term.

The prospective juror must file an affidavit stating the grounds for the release and that the juror holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the release from jury duty is sought.

"Religious organization" is defined in Section 11.20 of the Tax Code.

### d. Providing False Information

If a person answering a jury summons knowingly provides false information in a request for an exemption or excuse from jury service, he or she is subject to a contempt action punishable by a fine of not less than $100 or more than $1,000. Sec. 62.0141. G.C.

### e. Establishing a Postponement

Section 62.0142 of the Government Code lets prospective jurors request a postponement of the initial appearance for jury service by contacting the clerk of the court in person, in writing, or by telephone before the date on which the person is summoned to appear. The clerk is required to grant the postponement if:

- the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and
- the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

The clerk may approve a subsequent request for postponement only for an extreme emergency that could not have been anticipated, such as a death in the person's family, sudden serious illness suffered by the person, or a natural disaster or national emergency in which the person is personally involved.

### f. Establishing an Exemption

A person may establish an exemption from jury service without appearing in person by filing a signed statement of his or her exemption with the clerk of the court before the date on which he or she is summoned to appear. Art. 35.04, C.C.P. and Sec. 62.107, G.C.

## B. Nonresidents

A jury summons must include a notice that a person claiming a disqualification or exemption based on a lack of citizenship or residence in the county will no longer be eligible to vote if they fail to provide proof of citizenship. Sec. 62.0142, G.C.

Clerks must maintain a list of names and addresses of persons who are excused or disqualified from jury service because they reside outside the county. On the third business day of each month, the clerk must send to the voter registrar of the county a copy of the list of persons excused or disqualified in the previous month because the persons do not reside in the county. The voter registrar must add these persons to the county's suspended voter list. Sec. 62.114, G.C.

## C. Personal Information of Prospective Jurors

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who may serve or does serve as a juror is confidential. Because this information is confidential, it may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel. A party in the trial or a bona fide member of the news media, however, may apply to the court and, on a showing of good cause, the court must permit disclosure of the information sought. Art. 35.29, C.C.P.

The personal information that courts might request from prospective jurors may include the following:

- home address;
- home telephone number;
- social security number;
- driver's license number;
- occupation;
- employer;
- length of employment;
- previous employer;
- former occupation, if retired;
- spouse's name and occupation;
- whether the juror has ever been involved in a lawsuit; and
- when and where the person has previously served as a juror.

## D. Juror Compensation

Municipal courts are not required to pay jurors unless the municipality provides for reimbursement for expenses to the person in an amount determined by the municipality. Sec. 61.001(c), G.C. This is different in district courts, county courts, or justice courts. Section 61.001 of the Government Code provides that each grand juror or petit juror in a civil or criminal case in a district court, county court, county court at law, or justice court is entitled to receive reimbursement for travel and other expenses, not less than $6 for the first day or fraction of the first day, and $40 for each day or part of each day served as a juror thereafter.

The Government Code further directs those courts to provide a form letter that, when voluntarily signed by the prospective juror, directs the treasurer to donate or pay all of the prospective juror's

reimbursement for jury service to certain funds and programs. Because municipal courts are not required to pay jurors, no form exists for municipal courts to report juror donations and there is no means for municipal courts to do so.

## E. Jury Selection

On the day of the trial, the prospective jurors summoned to appear arrive at the courtroom so that jury selection may begin.

When prospective jurors arrive for jury service, the clerk should provide a copy of the Texas Uniform Jury Handbook (a one-page, two-sided brochure) developed by the State Bar of Texas for courts to provide to jurors. The jurors should read the handbook before the trial begins, and then the court may collect them to hand out to other jury panels. Chapter 23, G.C. Courts that do not have the handbook can call the State Bar at 512.463.1463 for free copies or download a copy at TMCEC's website at www.tmcec.com/Resources/Pamphlets.

The clerk should have copies of the jury list and juror information sheets for the judge, prosecutor, and defendant. When jury selection is over, the clerk should collect the juror information sheets. The defendant and prosecutor should not be allowed to remove them from the courtroom because the information is confidential. Art. 35.29, C.C.P.

### 1. Challenge to the Array

The prosecution and the defense may challenge the array (membership) of the jury panel. A challenge may be that the officer summoning the jury willfully summoned prejudiced or biased persons. Art. 35.07, C.C.P. A party must make the challenge in writing, distinctly stating the grounds for such a challenge, supported by a sworn affidavit from the defendant or a credible person. A judge shall hear the evidence and decide, without delay, whether to sustain the challenge. The judge must hear the challenge to the array prior to questioning jurors regarding their qualifications. Art. 35.06, C.C.P.

If a challenge is made and sustained, the judge will order a new jury panel to be summoned by someone other than the person who summoned the original panel. Since court clerks are the ones who usually summon prospective jurors, they should develop a procedure for random selection. Art. 35.08, C.C.P.

### 2. Jury Shuffle

A jury shuffle is required when either the prosecution or defense objects to the order that jurors are seated and makes a request to change the order of the jurors' names. When a request is made, the judge will have the clerk shuffle the list of jurors. A computer can randomly change the order of the venire. If the court does not have a computer, the clerk should write the names of the jury panel on separate pieces of paper or cards and place them in a receptacle so that they may be mixed and drawn randomly. Regardless of how the names are shuffled, the names are recorded in the order that they are drawn or selected. The prospective jurors are then seated in the order selected. A copy of the new jury list is given to the prosecutor, the defendant, and the judge. Only one shuffle is allowed under the law. Art. 35.11, C.C.P.

### 3. Voir Dire

Voir Dire is the process in which the prosecution and defense question and select jurors to hear the case. The term in French means "to speak the truth." It is the screening phase of the jury trial where prospective jurors, the venire, are placed under oath and asked questions by both the

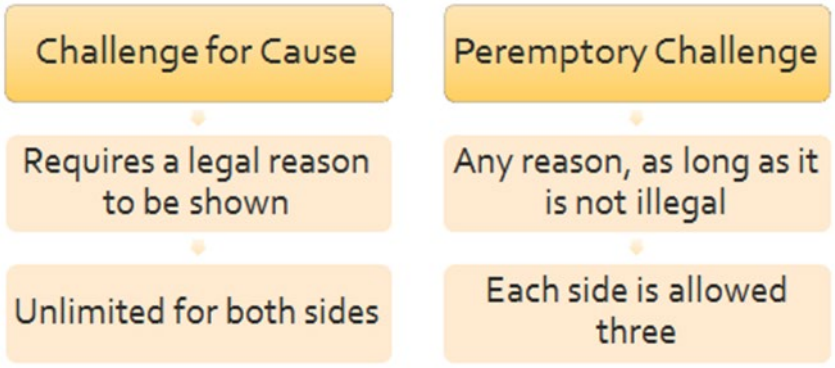
prosecution and defense. Arts. 35.02, C.C.P. The judge may direct this process. Art. 35.17, C.C.P. Typically, each side will have a set amount of time to conduct individual questioning. Although objections to certain questions are possible, the process otherwise permits each side the chance to ask questions without interruption from the other side.

A person is disqualified to serve as a petit juror in a particular case if he or she:

- is a witness in the case;
- is interested, directly or indirectly, in the subject matter of the case;
- is related by consanguinity or affinity within the third degree, as determined under Chapter 573 of the Government Code, to a party in the case;
- has a bias or prejudice in favor of or against a party in the case; or
- has served as a petit juror in a former trial of the same case or in another case involving the same questions of fact.

### 4. Challenges and Striking Jurors

After questioning the prospective jurors, both the prosecution and defense may request the removal of prospective jurors through a formal act called a challenge. A challenge seeks to question some aspect of a particular juror's qualifications or ability to serve on the jury. A successful challenge results in the juror being removed from the list of potential jurors. This process is called a strike. The law provides for two types of challenges, each with its own legal requirements: (1) a challenge for cause and (2) a peremptory challenge.




A challenge for cause is a challenge to a particular juror that requires a legal reason to be shown. The Code of Criminal Procedure outlines several reasons that would render a juror incapable or unfit to serve on the jury. Reasons could include that the juror has a bias or prejudice in favor of or against the defendant, that the juror previously served on a jury in the same case, or that the juror has already decided on the guilt or innocence of the defendant. The list of potential challenges for cause is found in Article 35.16 of the Code of Criminal Procedure. The prosecution and defense have unlimited challenges for cause.

A peremptory challenge may be made by either side for any lawful reason. Art. 35.14, C.C.P. An illegal reason would be that one side exercised the peremptory strike to exclude jurors of a certain race. Art. 35.261, C.C.P. In this case, the other side may make a *Batson* Challenge, objecting to the peremptory challenge as targeting a certain race. *Batson v. Kentucky*, 476 U.S. 79 (1986). The prosecution and defense are each allowed only three peremptory challenges in a municipal court trial proceeding. Art. 45.029/45A.159(a), C.C.P. Once those three are used, the only challenges possible are valid challenges for cause.

### 5. The Jury

After voir dire and all challenges are considered and ruled on, the prosecution and defense submit their lists of challenges to the court clerk, who compiles them and then writes or prints the names of the remaining jurors. The names are listed in the order in which they were seated. Then the clerk gives a copy of the list to the prosecution, the defense, and the judge and calls the first six names on the list that were not struck. Art. 35.26, C.C.P. These six persons form the municipal court jury.

### 6. Pick-Up Jury

If, after challenges, strikes, or legal exemptions, there are an insufficient number of jurors in attendance, the judge shall order the proper officer, usually a peace officer, to summon a sufficient number of qualified persons to form a new jury panel. Art. 45.028/45A.156(d), C.C.P. This is often called a pick-up jury or sometimes a special venire. It is possible that these so-called "bystander jurors" could simply be individuals gathered near the courthouse. This process is generally different in county or district courts, but municipal courts follow the specific rule permitting pick-up juries found in Chapter 45/45A of the Code of Criminal Procedure. *Cantu v. Samples*, 581 S.W.2d 195 (Tex. App.—San Antonio 1979, no writ); *cited with approval* in *Huynh v. State*, 901 S.W.2d 480, 482 (Tex. Crim. App. 1995).

**Practice Note**

To avoid a pick-up jury and to better manage the court and court participants' time, a suggested practice is that the clerk summon at least 30 persons for each jury trial. This number will vary depending on court volume, population, and how many trials are scheduled, but a minimum number is an important consideration. By the time some of the prospective jurors have claimed legal exemptions and others have been removed for cause or by peremptory strikes, the court should still have enough jurors to hear the case.

## F. Failure to Appear for Jury Service

Any person summoned for jury duty who fails to attend may be fined not more than $100 for contempt. Art. 45.027/45A.156(c), C.C.P. Any person who is charged with this type of contempt is entitled to notice and a hearing before the court.

59. What is a venire? _____

60. How many jurors are selected to hear cases in municipal courts? _____

True or False

61. The judge is required to issue a writ of venire when a defendant does not waive his or her right to a jury trial. ____

62. Jurors may be selected only from city tax rolls. ____

63. When a person does not reside within a city, he or she may not serve as a juror in municipal court. ____

64. A person who is not registered to vote may not serve on a jury. ____

65. A person who is accused of or has been convicted of misdemeanor theft may not be a juror. ____

66. A person must be able to read and write to be a juror. ____
67. A juror must be unbiased. ____
68. A person who has legal custody of a child under the age of 12 is automatically exempt from jury duty. ____
69. A person who is a full-time student may claim an exemption from jury duty. ____
70. A person who is legally blind is prohibited by law from being a juror in a criminal case. ____
71. An employee of the Texas Legislature may be eligible for an exemption from jury duty. ____
72. A person who cares for a person who is unable to care for himself or herself is automatically exempt from jury duty. ____
73. The judge may reschedule a prospective juror's jury service for medical and hardship reasons. ____
74. Persons who are over 75 years of age may request a permanent exemption from jury duty. ____
75. The municipal court clerk is required to file a person's request for a permanent exemption with the voter registrar of the county. ____
76. A person who is over 75 years of age may not be summoned to sit as a juror even if he or she does not request a permanent exemption. ____
77. Municipal courts are not required to pay persons who serve as jurors in their courts. ____
78. List information that the court may want to require from jurors. _____
_____
79. How can a juror request an exemption? _____
80. When may a clerk grant a juror's request to postpone jury service? _____
_____
81. What is the penalty for providing false information in a request for an exemption or excuse from jury service?_____
82. What must a clerk do if a person claims an exemption from jury service based on lack of residence? _____
83. Since personal information about jurors is confidential, how should clerks handle paperwork containing this information? _____
84. Under what circumstances may personal information about jurors be released? _____
_____
85. What is the maximum penalty that may be assessed when a juror fails to appear in municipal court? _____
86. When a juror fails to appear, with what offense can he or she be charged? _____
_____
87. Who may challenge the membership of the jury? _____
88. Who may ask the court for a jury shuffle? _____
89. Describe how the prospective jurors may be shuffled. _____

_____

90. After the jury is shuffled, what should the clerk do with the new list of names? _____

_____

91. When a judge sustains the challenge to the array, what does the judge do? _____

_____

True or False

92. Voir dire is a process where jurors may be removed if they have preconceived opinions about a case. ____

93. Only the defense may ask the court to remove a juror because the juror has already decided that the defendant is guilty. ____

94. Removing a juror during voir dire is called removal for cause. ____

95. What happens when either the prosecution or defense strikes a juror? _____

_____

96. How many jurors may the prosecution and defense remove without cause? _____

97. How are the six persons selected for the jury? _____

_____

98. Why would a court have to order additional jurors to be summoned for a trial? _____

_____

99. Who usually summons a pick-up jury? _____

## PART 6
## TRIALS

Jurisdiction refers to a court's legal authority to hear certain actions. A municipal judge may try cases over which he or she has jurisdiction in accordance with the Code of Criminal Procedure and Rules of Evidence. Art. 4.15, C.C.P.

### A. Defendant's Appearance

An adult defendant in a municipal court may appear by his or her attorney. With the consent of the prosecutor, the trial may proceed without the defendant being in court personally if his counsel is present. Art. 33.04, C.C.P. However, if a defendant is not represented by an attorney and fails to appear, the court may not try the case in the defendant's absence.

A plea of not guilty may be made orally by the defendant or by his or her counsel in open court. If the defendant refuses to plead, a plea of not guilty shall be entered for him or her by the court. Arts. 27.16(a) and 45.024/45A.152, C.C.P.

### B. Right to Jury Trial

Defendants in municipal courts, like defendants in all other courts with criminal jurisdiction, have the right to a jury trial. However, defendants may waive that right and request that a judge hear and decide the case. Arts. 1.05, 1.14, and 45.025/45A.155, C.C.P.

## C. "The Rule"

One of the cornerstones of the American criminal justice system is that court proceedings and trials are open to the public. This is reflected in the Code of Criminal Procedure. Art. 1.24, C.C.P. The exception to this is when Rule 614 of the Texas Rules of Evidence is invoked by the defense, prosecution, or the court. Rule 614 is commonly known as "The Rule" and is typically invoked as a preliminary matter at the start of trial. Essentially, The Rule requires that witnesses who are not parties be excluded from hearing other testimony. This is intended to prevent witness testimony from being materially affected if the witness hears other testimony in the same trial. Art. 36.03, C.C.P.

**Rule 614, T.R.E.**

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own.

Witnesses should be required to wait outside the courtroom while other witnesses are testifying. The witnesses may not discuss the case among themselves; and when called by the bailiff, enter the courtroom to deliver their testimony. One important exception to this rule, however, allows the victim to remain in the courtroom if the court finds that the victim's testimony would not be materially affected by his or her presence. Art. 36.03, C.C.P.

## D. Day of Trial

The overall process for jury trials and trials before the judge (bench trials) is similar, but local practices may differ from court to court. The biggest difference is that in a jury trial, the jury is the trier of the facts and makes the decision of whether a defendant is guilty or not guilty. The jury can also decide punishment if the defendant elects for the jury to do so before the trial begins. Arts. 45.036/45A.166 and 37.01, Sec. 2(b)(2), C.C.P. In a bench trial, the judge hears the evidence, makes a decision of guilty or not guilty, and if guilty, decides the punishment.

### 1. Opening Announcement

The bailiff or court clerk should enter the courtroom before the judge and request that all persons stand. When the judge enters the courtroom, all court participants should stand during the opening announcement.

The opening announcement may include the following:

- All present give attention — "All rise!"
- The exact name of the court and municipality — "The Municipal Court of the City of_____ is now in session."
- The name of the judge presiding — "The Honorable _____, Judge presiding."

After the judge sits, the bailiff or clerk should direct that all others be seated.

### 2. Explanation of Rights, Options, and Court Proceedings

After the announcement that court is in session, the judge typically explains the defendant's rights, options, and court procedures.

At this time, some defendants might decide not to proceed to trial. Some may request to change their plea and take a driving safety course or ask the judge to grant deferred disposition. After the introductory statement by the judge and the processing of defendants who change their mind about having a trial, the court may proceed with trials. This is where pre-trial hearings are effective to

keep a jury from being summoned when the defendant might change his or her plea upon talking to the judge.

### 3. Jury Selection in Jury Trials

Before a jury trial begins, the clerk should have already provided the defense, prosecutor, and judge with the personal information that the court requested from potential jurors. At the conclusion of voir dire or at the conclusion of the trial, the clerk should collect the juror information sheets and file them with the case.

After the announcement that court is in session, the judge may make an introductory statement to the jurors about court proceedings. The judge calls cases set for jury trials and asks both the defendant and the State if they are ready to proceed. Then the judge reviews qualifications and exemptions with the jurors. If any prospective juror wishes to claim an exemption or explain to the judge why he or she is not qualified, he or she may do so at this time.

### 4. The Trial

In both the jury trial and the trial before the judge, the judge calls the defendant to identify the defendant and ask for a plea. Next, the prosecutor reads the complaint.

- After opening statements from the prosecutor and the defense, the prosecutor presents the State's case by calling witnesses to testify against the defendant.
- After each prosecution witness finishes testifying, the defense is given the opportunity to cross-examine the witness. Cross-examining means that the defendant may ask the witness questions about his or her testimony or other facts relevant to the case. Cross-examination must be in the form of questions only, and the defendant is not allowed to argue with the witness.
- After the prosecution presents its case-in-chief (presenting its evidence to establish the elements of the offense and the defendant's guilt), the defendant may make an opening statement, if it was reserved until this point, and present his or her case by calling witnesses.
- The prosecutor may cross-examine the witnesses called by the defense.
- The defendant may testify on his or her own behalf, but he or she cannot be compelled to testify. If the defendant does not testify, the defendant's silence cannot be used against him or her. However, if the defendant testifies, the State may cross-examine the defendant.
- Both sides may put on rebuttal evidence. Rebuttal evidence is evidence that either side may present to dispute the other side's evidence.
- In a jury trial, the judge reads a charge to the jury before closing arguments, which is a statement about the law that applies to the case. Many judges prepare the charge in advance and give a copy of it to the prosecutor and defense to review. Other judges require the parties to prepare the court's charge for the court's review.
- Finally, the defense and prosecution can present a closing argument on behalf of their case. The closing arguments may be based only on the testimony presented during the trial. The State has the right to present the first and last argument.

For step-by-step checklists to conduct a jury trial, see the TMCEC *Bench Book*, available online at www.tmcec.com/resources/books or in hard copy.

## E. Bench Trial

Usually, several cases are set on non-jury trial dockets. After an introductory statement by the judge, the judge may call or instruct the bailiff or clerk to call the names of defendants scheduled for trial on that docket. This process is commonly called a docket call. If a defendant does not answer, the judge may ask the clerk or bailiff to step outside the courtroom and call the name of the defendant. This procedure is required when a defendant has a bond filed with the court.

When a defendant fails to appear and a bond is filed with a case, after the clerk or bailiff completes the docket call, he or she should swear to an affidavit indicating that the name was called and file the affidavit with the case. This affidavit may be used later as probable cause for issuing a warrant for failure to appear or for bond forfeiture.

In a trial before the judge, the judge hears the evidence and decides whether the defendant is guilty or not guilty based solely upon the evidence presented at trial. If the defendant is guilty, the judge renders a judgment of guilty and assesses punishment according to the penalty allowed for the offense. In some instances, based on the circumstances of the case, the judge may exercise his or her discretion to place the defendant on deferred disposition. Art. 45.051(a)/45A.302(a), C.C.P. If the judge finds that the defendant is not guilty, the judge enters a judgment of not guilty, dismisses the case, and releases the defendant without any liability.

## F. Jury Trial

The decision of the jury is called the verdict. When the case is submitted to the jury, the jury retires in the charge of the bailiff or a court officer to deliberate the case. Broadcasting, recording, or photographing a jury while the jury is deliberating is prohibited. Art. 36.215, C.C.P. If a court has security cameras in the room in which the jury is deliberating, the cameras will have to be turned off.

Municipal court jurors are kept together until they agree on a verdict, are discharged, or the court recesses. Art. 45.034/45A.164, C.C.P. The decision of the jury must only be based on evidence properly admitted during the trial, including the testimony of witnesses and physical evidence such as video recordings. No person is permitted to converse with a juror about the case except with permission of and in the presence of the court. Art. 36.22, C.C.P. If the jury has any questions, they must be addressed to the judge in writing. Then, in the presence of the attorneys, the judge may answer proper questions. The bailiff typically receives written messages from the jury and provides the message directly to the judge.

The jury returns to the courtroom to announce its verdict in open court. The common practice is for the judge to have the jury foreperson stand and read the verdict to the court. After a verdict is announced, the judge renders the judgment. Art. 45.036/45A.166, C.C.P. If the defendant elected that the jury make the decision of punishment, after a finding of guilt, the jury also assesses the punishment. Punishment may be a fine amount within the range established by law. Unlike the judge, a jury cannot order deferred disposition as a possible punishment. If the jury finds the defendant guilty and the defendant did not elect that the jury decide the punishment, the judge decides punishment. If the jury finds the defendant not guilty, the judge enters a finding of not guilty, dismisses the case, and releases the defendant from all liability.

If a jury fails to agree to a verdict after being kept together for a reasonable amount of time, then a mistrial occurs. The case may be tried again as soon as practicable. Art. 45.035/45A.165, C.C.P.

**Practice Note**

A suggested practice is for the court to have policies and procedures in place regarding the possession and use of cell phones, tablets, or other wireless devices in the courtroom and in the jury deliberation room. The widespread use of technology has created many legal and ethical issues in court. Chief among these: jurors researching cases online or discussing deliberations on social media.

## G. Judgment

The judgment is the written decision of the court, signed by the judge, showing the conviction or acquittal of the defendant. Without a written judgment, convictions and later collateral consequences resulting from the trial and conviction are simply unenforceable. There are two statutes that govern judgments in municipal courts. The general statute is found in Article 42.01 of the Code of Criminal Procedure. This statute applies to criminal cases at all levels of courts, so there may be some requirements that do not directly pertain to municipal courts. The second statute, specific for municipal and justice courts, is found in Article 45.041/45A.251-45A.253 of the Code of Criminal Procedure (Note: Effective January 1, 2025, Article 45.041 becomes three different statutes in new Chapter 45A). It is important for courts to apply the requirements of both the general and specific statutes in a judgment.

***Ex parte Barstow*, 331 S.W.2d 937 (Tex. Crim. App. 1960)**

The capias was void and the defendant was discharged from custody when the only judgment in the case was a docket entry.

### 1. Not Guilty

If a defendant is found not guilty by either the jury or the judge, the court discharges the defendant without any liability. The defendant does not have to pay any costs. Upon acquittal of a defendant, the trial court is required to advise the defendant of the right to have all records of the case expunged. Art. 55.02, Sec.1/55A.201(b), C.C.P.

### 2. Guilty

When a defendant is found guilty in either a jury trial or a trial before the judge, the defendant will be ordered to pay the fine and costs. Art. 45.041(a)/45A.251(a), C.C.P. If the defendant is unable to pay the fine and costs as determined by the judge, then the judge is required to allow the defendant to pay in intervals. Art. 45.041(b-2)/45A.253(a), C.C.P. There are other alternatives to payment as well, which are explored in detail in the next chapter. The defendant has the right to appeal the judgment of the court or the verdict of the jury or file a motion for a new trial.

**Verdict**

The final decision on the trial of a criminal case: either guilty or not guilty.

The judge must also consider any time that the defendant may have served in jail. The judge must credit the defendant for any time served in jail on that charge from the time the defendant was arrested until conviction. Arts. 42.03 and 45.041(c)/45A.251(d), C.C.P. The pre-conviction jail-time credit is not less than $150 for each period of time served as specified by the court in the

judgment of the case. "Period of time" is defined as not less than eight hours or more than 24 hours. Art. 45.048/45A.262, C.C.P. (The credit amount of $150 per period served applies to a defendant who is placed in jail for failure to pay.) In addition to pre-conviction jail-time credit, the judge must credit the defendant $150 each day for any time the defendant was confined in jail or prison while serving a sentence for another offense if the confinement occurred after the commission of the misdemeanor for which the defendant is now being sentenced. Art. 45.041(c-1)/45A.251(e), C.C.P. Note that this credit is required for time served as part of a sentence. Jail credit is not required for time spent in jail for a Class C misdemeanor because a defendant can never be sentenced to jail for a Class C misdemeanor. It is important that courts review judgment forms to be certain that the forms accurately reflect what was ordered by the judge. In this case, the judgment must contain the required information regarding the "period of time" to be specified for jail credit.

### a. Affirmative Findings

A finding is a legal determination based on certain facts in the case. The court is required to enter an affirmative finding in the judgment if the court makes this determination. In municipal courts, common affirmative findings involve a Finding of Family Violence in Title 5 offenses under Section 42.013 of the Code of Criminal Procedure and a Finding of Motor Fuel Theft under Section 42.019 of the Code of Criminal Procedure.

**Finding of Family Violence**

If the court determines that the offense involved family violence, the court shall make an affirmative finding and enter it in the judgment.

If the court makes an affirmative finding, it is important that it is documented in the judgment. There may be serious legal consequences for the defendant, and it is important to document the finding correctly. An affirmative finding of family violence in an assault case, for example, could prevent the defendant from ever possessing firearms. In addition, the judgment could be used by prosecutors to enhance later offenses to higher criminal charges.

### b. Reporting Certain Convictions

If the offense for which the defendant is convicted is a traffic violation, an Alcoholic Beverage Code violation under Chapter 106, the Penal Code violation of theft of gasoline, or disposition of an assault involving family violence, the clerk is required to send a report to the Department of Public Safety. Secs. 543.201-543.206, T.C., Art. 42.019, C.C.P., Art. 66.252(g), C.C.P.

**Practice Note**

The TMCEC website is a good resource for municipal court forms. To avoid "re-inventing the wheel," courts can use or alter forms created by TMCEC attorneys. These include various judgment forms. Forms are available in Word and PDF format in the online *Forms Book* at http://tmcec.com/resources/books/forms_book/.

### c. Appearance Required

The court cannot enter a guilty verdict or any judgment at trial if the defendant does not ever appear. The person must be afforded the opportunity to enter a plea in person, by mail, or through an attorney. As the Court of Criminal Appeals has observed, "no one, unless properly authorized,

has a right to deny one charged with an offense his day in court by entering a plea of guilty for him." *Cramer v. State*, 109 S.W.3d 1054 (Tex. Crim. App. 1937). As mentioned above, a person's attorney may appear on that person's behalf and would be considered a "properly authorized" representative.

If the defendant enters a plea of guilty or no contest, or the defendant has appeared and been found guilty at trial, then the judgment and sentence may be rendered in the defendant's absence. Art. 42.14(a), C.C.P.

## H. Defendant's Failure to Appear

The term "failure to appear" has become a term of art within municipal courts, and it is commonly associated with the criminal offense Bail Jumping and Failure to Appear, found in Section 38.10 of the Penal Code. Defendants who have been in custody and fail to appear for trial, regardless of whether it is a jury trial or a trial before the judge, can be charged with the offense, which is a Class C misdemeanor. It is a completely new criminal case, and only the prosecutor can make the decision to charge the offense. After the prosecutor makes the decision, clerks process this charge by preparing the complaint. Like other complaints, any credible person acquainted with the facts (including the clerk) may be the affiant.

If a defendant has a bond filed with the court and fails to appear, the prosecutor can request that the court forfeit the bond. The forfeiture process is initiated by a judgment nisi (a temporary order that will become final unless the defendant or surety shows good cause why the judgment should be set aside). If a cash bond is filed with the court and the defendant has also signed a conditional plea of nolo contendere, the court can forfeit the bond for the fine and costs.

If the defendant did not waive a jury trial and fails to appear for the trial, the judge may order a defendant to pay a reimbursement fee for the costs incurred for impaneling the jury; however, the court may release the defendant from the obligation for good cause. The court should conduct some type of show cause hearing before releasing a particular party from these expenses. The court may enforce an order to pay by contempt as provided in Section 21.002(c) of the Government Code. Art. 45.026/45A.157(c), C.C.P. Clerks perform an analysis of the costs of summoning a jury. Items to include in the analysis are:

- the clerk's time to select jurors and prepare and mail jury summonses;
- the costs of jury summonses and envelopes;
- the costs of postage or a peace officer's costs if a peace officer summoned the jury; and
- any other applicable costs.

100. In what ways may a defendant appear and enter a plea? _____

True or False

101. Defendants who fail to appear may still be tried and found guilty in their absence. ____

102. If a defendant refuses to plead, the court must enter a not guilty plea for him or her. ____

103. Trials in municipal courts are not open to the public. ____

104. Municipal courts may exclude city council members from attending trials. ____

105. Municipal courts may not exclude the news media from attending trials. ____

106. Witnesses may be excluded from trial only when "The Rule" is invoked. ____

107. Victims must always be excluded when "The Rule" is invoked. ____

108. What should clerks do with the juror information sheets? _____

_____

True or False

109. If the defendant fails to appear for a jury trial, the judge may order him or her to pay a reimbursement fee for the costs of impaneling the jury. ____

110. At trial, the prosecution presents its evidence first. ____

111. The defense does not have a right to cross-examine the prosecution's witnesses. ____

112. The defendant cannot be compelled to testify. ____

113. The charge to the jury is given after both the defense and prosecution have concluded their evidence. ____

114. A jury charge is a statement of the law that applies in the case being tried. ____

115. If a trial is before the judge, the judge makes the finding as to whether the defendant is guilty or not guilty. ____

116. Clerks may influence a judge's decision about a particular case if the defendant was difficult to handle. ____

117. What is a judgment? _____

_____

118. Which two statutes contain the requirements of a valid judgment? _____

_____

True or False

119. During deliberation, if a juror has a question, the defense or prosecution may answer the question. ____

120. When can a mistrial be declared in a jury trial? _____

_____

121. After a mistrial has been declared, when can the court conduct another trial? _____

_____

122. What is a verdict? _____

_____

True or False

123. When a defendant is found not guilty, he or she must still pay court costs. ____

124. When a defendant is found guilty, he or she may request a new trial or appeal the case. ____

125. List three offense types in which the clerk must report convictions to the Department of Public Safety: _____

_____

True or False

126. The judge is required to enter in the judgment the period of time for jail credit. ____

127. Municipal courts must grant jail-time credit in the amount of at least $150 for each day that a defendant has spent in jail before conviction. ____

## PART 7
## NEW TRIAL

### A. Non-Record Municipal Court

**Art. 45.037/45A.201, C.C.P. New Trial**

In a non-record court, a motion for new trial must be made within five days after the rendition of judgment and sentence, and not afterward.

A new trial means that the case will be tried again in the convicting court. The new trial can only be granted if the judge decides that good cause has been shown that justice was not done in the first trial. Art. 45.038(a)/45A.201(b), C.C.P. If the new trial is granted, then a new trial will be held in the same municipal court that conducted the first trial. It is important to note that a new trial follows a different procedure from an appeal, and the two legal mechanisms should not be confused. Appeals are discussed in Chapter 7 of this study guide.

A motion for a new trial in a non-record court must be made within five days after the rendition of judgment and sentence and not afterward. Art. 45.037/45A.201, C.C.P. Regardless of the outcome in the first trial or the new trial, the State is not entitled to a new trial of its own. Art. 45.040/45A.201(f), C.C.P. Additionally, not more than one new trial may be granted to the defendant in the same case. Art. 45.039/45A.201(e), C.C.P. If the motion for new trial is denied, the defendant has the right to an appeal instead.

When a clerk of a non-record municipal court receives a motion for new trial, the clerk should notify the judge immediately. The judge must decide whether to grant or deny the motion not later than the 10th day after the date the judgment was entered. If a motion for new trial is not granted before the 11th day after the date that the judgment was entered, the motion is considered denied. Art. 45.038/45A.201(c), C.C.P. As soon as the judge decides, the clerk should immediately notify the defendant of the decision.

According to the mailbox rule, a document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk and the clerk receives the document not later than the 10th working day after the date the document is required to be filed with the clerk. Art. 45.013/45A.054, C.C.P. If a motion is mailed to the court and received according to the time limits in the mailbox rule, the document is timely filed.

## B. Municipal Court of Record

> **30.00014(c), G.C.**
>
> In a court of record, a written motion for new trial must be filed not later than the 10th day after the date on which judgment is rendered.

Municipal courts of record are governed by different, more specific statutes than their non-record counterparts. In a court of record, the motion for new trial not only has additional requirements, but also additional steps to process the motion. These requirements are generally found in the Government Code. A written motion for new trial, with legal briefs attached, must be filed with the municipal court clerk not later than the 10th day after the date on which judgment was rendered. The motion must set forth the points of error in the first trial of which the appellant complains. Sec. 30.00014(c), G.C. The defense may amend the motion for new trial by leave of the court at any time before action on the motion is taken, but not later than the 20th day after the date on which the original or amended motion is filed. The court may, for good cause, extend the time for filing or amending, but the extension may not exceed 90 days from the original filing deadline. If the court does not act on the motion before the expiration of 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.

In a court of record, the judge decides, from the briefs submitted with the written motion for new trial, whether to grant a new trial. The court may grant a new trial any time before the record of the case is filed with the appellate court for an appeal. Sec. 30.00022, G.C.

Like the timelines in a court of non-record, the mailbox rule will also apply. The document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first-class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk; and the clerk receives the document not later than the 10th working day after the date the document is required to be filed with the clerk. Art. 45.013/45A.054, C.C.P.

True or False

128. Defendants in non-record municipal courts have two days from the date of judgment to request a new trial. ____

129. When is the State entitled to a new trial? _____

_____

130. How does the mailbox rule affect how a motion for new trial is filed?_____

_____

131. What is the last day that a judge may rule on a motion for new trial?_____

_____

132. What happens if a court does not receive a motion for new trial by the deadline for the judge to rule on the motion?_____

## PART 8
## COURT INTERPRETERS

The rules governing court interpreters can be found in Chapter 38 of the Code of Criminal Procedure, Chapter 57 of the Government Code, and Chapter 157 of the Government Code. This section will provide an overview of these rules. As always, clerks should consult with their city attorney when specific questions arise.

### A. Appointment of an Interpreter

Article 38.30 of the Code of Criminal Procedure authorizes an interpreter to be sworn in to interpret for a defendant or witness who does not understand the English language. If a defendant or witness is hard of hearing or deaf, the court must appoint a qualified interpreter. Art. 38.31, C.C.P. Courts must reasonably accommodate jurors who are hard of hearing or deaf. Sec. 62.1041, G.C. All interpreters must be sworn before performing interpretation. Tex. R. Evid. 604.

Chapter 57 of the Government Code provides for a certification program for court interpreters for the deaf and hard of hearing. Chapter 157 of the Government Code provides for a licensing program for court interpreters for individuals who can hear, but do not comprehend or communicate in English.

**Certified court interpreter** means "an individual who is a qualified interpreter as defined in Article 38.31 of the Code of Criminal Procedure or Section 21.003 of the Civil Practice and Remedies Code or is qualified in accordance with the communication access realtime translation services eligibility requirements established by the Office of Deaf and Hard of Hearing Services of the Health and Human Services Commission to interpret court proceedings for a hearing-impaired individual." Sec. 57.001(1), G.C.

**Licensed court interpreter** means an individual licensed under Chapter 157 of the Government Code by the Judicial Branch Certification Commission to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English. Sec. 157.001(2), G.C.

Generally, a court must appoint an interpreter that holds a license that includes the appropriate designation and indicates that the interpreter is permitted to interpret in that court. Sec. 57.002(b-1), G.C. Interpreters appointed for a person who is hard of hearing or deaf must be certified regardless of the population of a county. There are exceptions for spoken language interpreters, however, depending on the size of the county. In a county with less than 50,000, a court may appoint a spoken language interpreter who is not licensed, provided that the required qualifications (see below) are met. Sec. 57.002(c), G.C. In a county with more than 50,000, a court may appoint a spoken language interpreter who is not certified or licensed if the required qualifications below are met, and:

(1) the language necessary in the proceeding is a language other than Spanish; and

(2) the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.

#### 1. Required Qualifications

All interpreters, in addition to being licensed or certified, must meet the following qualifications:

- must be qualified by the court as an expert under the Texas Rules of Evidence;

- must be at least 18 years of age; and
- may not be a party to the proceeding.

### 2. Court Proceedings

Under Section 57.001(7) of the Government Code, court proceedings include an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution. This is not an exhaustive list.

Attorney General John Cornyn, in Tex. Atty. Gen. Op. JC-0584 (2002), addressed whether a clerk receiving a plea from a non-English speaking defendant in the clerk's office constitutes a court proceeding meriting a licensed court interpreter. The opinion states that a criminal proceeding includes all possible steps in an action from its commencement to its execution. The commencement of the action includes a clerk receiving (processing) a plea from a defendant. A court clerk who assists a defendant in filing a plea by conversing in a language other than English does not necessarily violate the law. If, however, the clerk does not speak the language of the defendant and must have another clerk interpret, the interpreter must be licensed.

## B. Telephone Interpreters

A qualified telephone interpreter may be sworn to interpret for the person in any criminal proceeding before a judge or magistrate if:

- an interpreter is not available to appear in person at the proceeding; or
- the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang.

"Qualified telephone interpreter" is defined as a telephone service that employs:

- licensed court interpreters as defined by Section 157.001 of the Government Code; or
- federally certified court interpreters.

## C. Violation of Interpreter Rules

### 1. For Deaf or Hard of Hearing Individuals

A person may not interpret for a deaf or hard of hearing individual at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds an appropriate certificate. Sec. 57.026, G.C. A person commits a Class A misdemeanor if the person violates that rule and is also subject to administrative penalties. Sec. 57.027, G.C.

### 2. For Individuals Who Do Not Comprehend or Communicate in English

A person may not advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license. Sec. 157.106, G.C. A person commits a Class A misdemeanor if the person violates that rule and is also subject to administrative penalties as provided by Chapter 153. Sec. 157.107, G.C.

**Practice Note**

The Judicial Branch Certification Commission (JBCC) maintains a website and provides comprehensive information at www.txcourts.gov/jbcc.aspx. The Office of Court Administration (OCA) also maintains a website with important online interpreter resources at www.txcourts.gov/programs-services/interpretation-

translation/. For questions regarding deaf and hard of hearing individuals, the Texas Health and Human Services maintains a website with resources at hhs.texas.gov/services/disability/deaf-hard-hearing.

True or False

133. Defendants who do not speak English are required to bring an interpreter with them to translate court proceedings. ____

134. A family member or friend can be a language interpreter as long as he or she knows both English and Spanish. ____

135. Courts are required to appoint interpreters for witnesses who do not speak English. ____

136. An interpreter for a defendant who is hard of hearing must be a certified interpreter. ____

137. A court that is in a city under 50,000 in population does not have to appoint licensed or certified interpreters if certain requirements are met. ____

138. When is a municipal court located in a county with a population of at least 50,000 not required to appoint a licensed court interpreter for a non-English speaking defendant? ____

_____

139. When may a court use a qualified telephone interpreter? _____

_____

140. What are courts required to do if a juror is deaf or hard of hearing? _____

_____

141. Who is responsible for paying the costs of services for a deaf or hard of hearing juror?____

_____

142. What is the penalty for interpreting without being licensed by the State? _____

_____

## PART 9
## COURT REPORTERS

Only courts of record are required to provide court reporters to preserve a record of cases tried before the court. The court reporter must meet the qualifications provided by law for official court reporters. Sec. 30.00010(a), G.C. An official court reporter must take the oath of office required of other elected or appointed officers of this state. In addition to the official oath, each official court reporter must sign an oath administered by the district clerk. Sec. 52.045, G.C.

The court reporter may use written notes, transcribing equipment, video or audio recording equipment, or a combination of these methods to record the proceedings in the court. The reporter shall keep the record for the 20-day period beginning after the last day of the proceeding, trial, denial of motion for new trial, or until any appeal is final, whichever occurs last. Sec. 30.00010(b), G.C. The court reporter is not required to record testimony unless the judge or one of the parties requests a record. Sec. 30.00010(c), G.C.

Instead of providing a court reporter, the governing body may provide for the proceedings to be recorded by a good quality electronic recording device. If the governing body authorizes the

electronic recording, the court reporter is not required to be present to certify the statement of facts. The recording shall be kept for the 20-day period beginning the day after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last. If a case is appealed, the proceedings shall be transcribed from the recording by an official court reporter. Sec. 30.00010(d), G.C.

Section 52.047(a) of the Government Code requires official court reporters to furnish a transcript to a person requesting a transcript not later than the 120th day after:

- the application for the transcript is received by the court reporter; and
- the transcript fee is paid or the person establishes indigence.

True or False

143. Official court reporters are required to take an oath of office just like an elected or appointed official. ____

144. Court reporters must keep their records of a trial for a 20-day period beginning the last day of the trial or motion for new trial is denied or until an appeal is final. ____

145. Courts of record must have a court reporter instead of a recording device. ____

## PART 10
## CONTEMPT

Municipal judges have the power to hold people in contempt of court. Sec. 21.002, G.C. The contempt power is vested in courts so that the proceedings will be conducted with dignity and in an expeditious manner to see that justice is done. There is no statutory definition of contempt, but common law establishes it as conduct that tends to impede the judicial process by disrespectful or uncooperative behavior in open court or through the unexcused failure to comply with clear court orders.

### A. Direct and Indirect Contempt

Contempt is either direct or indirect. Direct contempt is an act that occurs in the judge's presence and under circumstances that require the judge to act immediately to quell a disruption, violence, disrespect, or physical abuse. Indirect contempt occurs outside the court's presence and includes such acts as failure to comply with a valid court order, failure to appear in court, attorneys appearing late for trial, or filing offensive papers in the court. If a person is charged with indirect contempt, the person has a right to notice of the charge and a trial or hearing in open court, as well as the right to counsel.

### B. Civil and Criminal Contempt

Contempt may be civil or criminal. Civil contempt includes willfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings, obstruct justice, are directed against the dignity of the court, or bring the court into disrepute.

## C. Penalties

### 1. General Penalty

Contempt in municipal courts is punishable by up to three days confinement in jail and a monetary sanction of up to $100. Sec. 21.002(c), G.C. Due to the possibility of incarceration, and the potential deprivation of a person's liberty, contempt should not be invoked lightly. As the Supreme Court of Texas has pointed out, the "proceedings in contempt cases should conform as nearly as practicable to those in criminal cases in order that due process rights are protected." *Ex parte Sanchez*, 703 S.W.2d 955, 957 (Tex. 1986).

### 2. Failure to Execute Summons, Subpoena, or Attachment

The failure of a sheriff or an officer to execute a summons, subpoena, or attachment may constitute contempt with a sanction of $10-200. Art. 2.16/2A.055, C.C.P.

### 3. Failure to Appear for Jury Duty

A potential juror's failure to appear for jury duty in a municipal court can constitute contempt with a maximum sanction of $100. Art. 45.027(c)/45A.156(c), C.C.P.

### 4. Failure to Appear Pursuant to a Witness Subpoena

A witness who fails to respond or appear pursuant to a subpoena can be held in contempt with a maximum sanction of $100. Art. 24.05, C.C.P.

146. What is the purpose of contempt power? _____

_____

147. Name the kinds of contempt and define them. _____

_____

_____

_____

_____

148. What is the general penalty for contempt in municipal courts? _____

_____

149. What is the penalty for contempt by an officer's failure to execute process? _____

_____

150. What is the penalty for failure to appear for jury duty in municipal court? _____

_____

151. What is the penalty for a witness's failure to appear pursuant to a subpoena? _____

_____

## ANSWERS TO QUESTIONS

**PART 1**

1. True.
2. True.
3. True.
4. False (Defendants have the right to a jury trial, meaning they automatically get a jury trial and must waive that right if they do not want one).
5. True.
6. False (The law does not provide a specific number of days or months. It is up to the judge to decide, based on the individual case).
7. True.
8. False.
9. True.
10. False.
11. False.

**PART 2**

12. The clerk's role in the trial process includes providing information to defendants, managing administrative processes, scheduling cases for trial, issuing subpoenas, and summonsing the jury.
13. False.
14. Preparatory procedures may include:
    - Complaint prepared;
    - Complaint reviewed for typing errors, dates, properly sworn, and court seal affixed;
    - Copy provided to defendant;
    - Prosecutor has file or copy of file to prepare case for trial;
    - Trial docket typed and posted;
    - Subpoenas issued;
    - Jury summonsed;
    - Juror handbooks available;
    - Interpreters notified to be available, if needed; and
    - All trial forms reviewed and made available to the judge.
15. The court may go to trial on a citation when the defense and prosecution agree in writing to go to trial on the citation and file the agreement with the court.
16. Each clerk will have a different answer for this question, but it may include such issues as peace officer's days and times off and on duty, availability of judge and prosecutor, type of case, type of trial (bench or jury), whether the individual is a juvenile or adult, etc.
17. The disadvantages of a predetermined scheduling system are: (1) it is difficult for the court to manage the trial docket because the court never knows how many defendants will actually

appear at that particular date and time; and (2) defendants may have to wait a long time for their cases to be called.

18. The advantages of a predetermined scheduling system are: (1) it provides a definite date and time for defendants to appear when they are issued a citation; and (2) a judge will be available when the defendant appears.
19. To determine if an offense has occurred.
20. The clerk's role is to establish procedures to coordinate the processing of citizen complaints with the police department, prosecutor, code enforcement, etc.
21. The defendant.
22. The disadvantage of using the assignment by court clerk method is that it causes the clerk's office to handle more telephone calls and foot traffic.
23. The assignment by the court clerk method helps clerks to have better management control over the dockets because the court talks with the defendants before scheduling a hearing or trial. Only defendants who specifically request a trial are set on the trial docket. The number of defendants set on each docket is controlled by the court clerk.
24. It is a writ issued to a person or persons giving an order to appear as a witness.
25. Both the defense and the prosecution.
26. The judge, the court clerk, and the deputy clerk.
27. True.
28. False (the Code of Criminal Procedure contains no such requirement for fine-only misdemeanor cases).
29. True.
30. False.
31. The court may subpoena a person having custody, care, or control of the child to produce the child in court.
32. No.
33. It is a subpoena that directs a witness to bring with him or her any instrument of writing or other tangible thing desired as evidence.
34. The subpoena should give a reasonably accurate description of the document or item desired as evidence.
35. False (a clerk may not serve a subpoena and a mailed subpoena must be sent certified mail return receipt requested).
36. True.
37. True.
38. True.
39. False (the State can also request a writ of attachment).
40. True.
41. False.
42. False (the judge sets bail).

**PART 3**

43. Pre-trials help courts in caseflow management by:
    (1) handling the defendant's challenges to the charges filed;
    (2) disposing of issues that do not relate to the merits of the case; or
    (3) assuring in advance that other times set for disposition of uncontested cases will not be taken up by other matters.

Clerks may be able to list other ways that conducting pre-trials help manage their trial dockets.

44. A defendant's attorney may be notified of a pre-trial hearing in one of the following ways:
    (1) in open court;
    (2) by personal service on the attorney; or
    (3) by mail at least six days prior to the date set for the hearing.
45. Defendants may be notified of a pre-trial hearing in one of the following ways:
    (1) in open court;
    (2) by personal service on the defendant;
    (3) by mail at least six days prior to the date set for hearing; or
    (4) if the defendant has no attorney, by mail addressed to the defendant at the address shown on the bond; if the bond shows no address, it should be sent to one of the sureties on the bond.
46. The court must enter a plea of not guilty.
47. False.
48. True.

**PART 4**

49. The reasons that a court would continue a case without a motion are:
    (1) the defendant has not been arrested;
    (2) a corporation or association has not been served with the summons; and
    (3) there is not sufficient time for trial at that term of court.
50. The defense and the prosecution may by agreement request a continuance in open court.
51. A continuance may be only for as long as is necessary.
52. A defendant, defense attorney, prosecutor, or juror.
53. The request must be made by an affidavit.
54. The request must state the grounds for the continuance and that the party holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.
55. When a clerk receives a request for a continuance, the clerk should present it to the judge and notify the prosecutor or the defense, whichever the case may be, of the continuance.
56. False (motions must be in writing and sworn).
57. True.
58. False.

**PART 5**

59. A list of prospective jurors to be summoned to serve for a particular term of the court.
60. Six.
61. True.
62. False.
63. True.
64. False.
65. True.
66. True.
67. True.
68. False (it is an exception but must be claimed first).
69. True.
70. False (the statutes only contemplate a civil case).
71. True.
72. False (it is an exception but must be claimed first).
73. True.
74. True.
75. True.
76. False (it must be requested).
77. True.
78. The court may want to require the following information from jurors:
    - home address;
    - home telephone number;
    - social security number;
    - driver's license number;
    - occupation;
    - employer;
    - length of employment;
    - previous employer;
    - former occupation, if retired;
    - spouse's name and occupation;
    - whether the juror has ever been involved in a lawsuit; and
    - when and where the person has previously served as juror.
79. A prospective juror may establish an exemption without appearing in person by filing a signed statement of the grounds for the exemption with the clerk of the court at any time before the date of trial.
80. The clerk is required to grant the postponement of jury service if:

- the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and
- the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

81. If a person answering a jury summons knowingly provides false information in a request for an exemption or excuse from jury service, he or she is subject to a contempt action punishable by a fine of not less than $100 nor more than $1,000.

82. Clerks must maintain a list of names and addresses of persons who are excused or disqualified from jury service because of nonresidence in the county. On the third business day of each month, the clerk must send to the voter registrar of the county a copy of the list of persons excused or disqualified in the previous month because the persons do not reside in the county. The voter registrar must add these persons to the county's suspended voter list.

83. Clerks should make sure that this information is not available to the public. It may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel, except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror.

84. On a showing of good cause, the court shall permit disclosure of the information sought on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror.

85. $100.

86. Contempt.

87. The prosecutor, the defendant, or the defendant's attorney may challenge the membership of the jury.

88. Either the prosecutor or the defendant or defendant's attorney may demand a jury shuffle.

89. If the court is computerized, the court may have the computer shuffle and randomly select the names. If the court does not have a computer, the clerk should place the names of the jury panel in a receptacle, which should be shaken to mix up the names.

90. Regardless of how the names are shuffled, the names are recorded in the order that they are drawn or selected by the computer. The prospective jurors are then seated in the order selected. A copy of this new list is then given to the prosecution, defense, and judge.

91. The judge orders a new jury panel to be summoned. The judge must order someone other than the person who summoned the original panel to summon the new panel.

92. True.

93. False.

94. True.

95. The juror is removed. The prosecutor or defendant does not have to state a reason for asking the court to remove the juror.

96. Each side may remove three jurors without assigning a reason to the request for removal. A juror may be removed for any reason, except for an illegal one, such as race. This is called a peremptory strike.

97. After voir dire and peremptory challenges, both the prosecutor and defendant give their lists to the court clerk who writes or prints the first names on the lists that have not been struck by either party. Then the clerk gives a copy of the list to the prosecutor, defendant, and judge.
98. If the court does not have enough jurors to hear the case, the court would order a pick-up jury.
99. Usually, a peace officer is ordered to summons a pick-up jury.

**PART 6**

100. A defendant may enter a plea in person, by mail, or through an attorney.
101. False.
102. True.
103. False.
104. False.
105. True.
106. True.
107. False.
108. The clerk should give a copy of the juror information sheets to the prosecutor, defendant, and judge. At the conclusion of the trial, the clerk should collect them and file them with the case.
109. True.
110. True.
111. False.
112. True.
113. True.
114. True.
115. True.
116. False.
117. The judgment is the decision of the judge.
118. Chapter 42.01 is the general statute and the specific statute is 45.041/45A.251-45A.253. (Note: Effective January 1, 2025, Article 45.041 becomes three different statutes in new Chapter 45A).
119. False.
120. If a jury fails to agree on a verdict after being kept together for a reasonable amount of time.
121. Another trial may be conducted as soon as practicable.
122. A verdict is the final decision on the trial of a criminal case: either guilty or not guilty.
123. False.
124. True.
125. Three offense types: traffic violations, an Alcoholic Beverage Code violation under Chapter 106, or the Penal Code violation of theft of gasoline.
126. True.
127. False (the court must credit not less than $150 for a period of time that is specified in the judgment−the "period of time" can be from eight hours to 24 hours).

**PART 7**

128. False (the law provides for five days).
129. The State is never entitled to a new trial in municipal court.
130. Under the mailbox rule, a document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk and the clerk receives the document not later than the 10th day after the date the document is required to be filed with the clerk.
131. The judge must rule on a motion for new trial not later than the 10th day after the date that the judgment was entered.
132. The motion is overruled by operation of law.

**PART 8**

133. False (the court is required to provide a licensed interpreter).
134. False (if the court is in a county with a population of more than 50,000, the court must appoint a licensed interpreter; if the city is located in a county of less than 50,000, the court must qualify the interpreter under the Rules of Evidence).
135. True.
136. True.
137. False (only a city located in a *county* that has a population of less than 50,000 may appoint an interpreter that is not licensed, and the interpreter must be qualified under the Texas Rules of Evidence).
138. A court in a county with population of at least 50,000 may appoint a spoken language interpreter who is not certified or licensed if:
    - the language necessary in the proceeding is a language other than Spanish; and
    - the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.
139. A qualified telephone interpreter may be sworn to interpret for the person in any criminal proceeding before a judge or magistrate if:
    - an interpreter is not available to appear in person before the court; or
    - the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang.

    "Qualified telephone interpreter" is defined as a telephone service that employs:
    - licensed court interpreters as defined by Section 157.001 of the Government Code; or
    - federally certified court interpreters.
140. Provide an interpreter or some type of auxiliary aid.
141. The court.
142. Class A misdemeanor.

**PART 9**

143. True.

144. True.

145. False.

**PART 10**

146. Contempt power is given to the courts so that the proceedings will be conducted with dignity and in an expeditious manner so that justice may be done.

147. Direct contempt means an act that occurs in the judge's presence and under circumstances that require the judge to act immediately to quell disruption, violence, disrespect, or physical abuse. Indirect contempt is an act that occurs outside the court's presence and includes such acts as failure to comply with a valid court order, failure to appear in court, attorney being late for trial, or filing offensive papers with the court. If a person is charged with indirect contempt, the person has a right to notice of the charge, a right to a trial or hearing in open court, and the right to counsel. Civil contempt includes willfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings, obstruct justice, are directed against the dignity of the court, or bring the court into disrepute.

148. A fine not to exceed $100 and/or three days in jail.

149. A fine of $10 to $200.

150. A fine of not more than $100.

151. A fine not to exceed $100.