

**But I'm Innocent-
I WANT TO APPEAL**

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**All Defendants have a right to
appeal their convictions**

CCP Art. 44.02

(even if we don't want them to)

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Appeal Process - Trial

<u>COURT OF RECORD</u>	<u>NON-RECORD COURT</u>
<ul style="list-style-type: none"> <input type="checkbox"/> Appeal based solely on errors made by trial court. <ul style="list-style-type: none"> ■ CCP Art. 45.042(b) <input type="checkbox"/> Defendant cannot prevail on appeal if no trial. <input type="checkbox"/> Written Judgment must be rendered. <ul style="list-style-type: none"> ■ CCP Art. 45.041(d) 	<ul style="list-style-type: none"> <input type="checkbox"/> Defendant can plead guilty or no contest. <ul style="list-style-type: none"> ■ CCP Art.27.14(b) <input type="checkbox"/> No trial required <input type="checkbox"/> Defendant can appeal <i>even if</i> D.S.C. or terms of Def. Disp. not completed <input type="checkbox"/> Written Judgment must be rendered. <ul style="list-style-type: none"> ■ CCP Art. 45.041(d)

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Appeal Process - Motions

COURT OF RECORD

NON-RECORD COURT

- Motion for new trial is required within 10 days of date of judgment
 - Gov C. §30.00014(c)
- Notice of Appeal required within 10 days after motion for new trial overruled
 - Gov C. §30.00014(d)

- Motion for new trial not required
- Notice of Appeal not required

Appeal Process - Bond

COURT OF RECORD

NON-RECORD COURT

- Bond is the greater of double the amount of fine + costs or \$100
 - Gov C. §30.00015(b)
- Bond can be cash, surety or personal bond (if approved)
 - Court cannot require cash bond

- Bond is at least twice the amount of the fine + costs but never <\$50
 - CCP Art. 45.0425(a)
- Bond can be cash, surety or personal bond (if approved)
 - Court cannot require cash bond

Appeal Process - Bond

COURT OF RECORD

NON-RECORD COURT

- Bond must be filed on or before 10th day after motion for new trial is overruled
 - Gov C. §30.00015(a)

- Bond must be filed on or before 10th day after judgment if defendant appeared in open court
 - CCP Art. 45.0426(a)
- If plea is delivered or mailed to court, defendant has up to 31 days after receiving notice of fine and bond to file it
 - CCP Art.27.14(b)

Appeal Process - Bond

COURT OF RECORD NON-RECORD COURT

- Mail box rule **does not** apply to an appeal bond mailed to the court
- Mail box rule **does** apply to appeal bonds mailed to the court
 - CCP Art. 45.013

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Appeal Process – Bond Sufficiency

COURT OF RECORD NON-RECORD COURT

- Judge must approve sufficiency of the sureties on the bond and the record
- Judge must approve sufficiency of the sureties on the bond

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Appeal Process - Record

COURT OF RECORD NON-RECORD COURT

- Defendant has 60 days to complete the record and file it with the municipal clerk
 - Gov C. §30.00020(a)
- “The Record” includes the clerk’s record, the reporter’s record and a variety of other required material
 - Gov C. §30.00020(a)
- No reporter’s record or clerk’s record is required

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Appeal Process – Record

COURT OF RECORD

- Defendant must pay a \$25 fee for preparation of clerk's record
 - Gov C. §30.00014(f)
- Defendant must pay the actual cost of reporter's record
 - Gov C. §30.00014(g)

NON-RECORD COURT

- Defendant does *not* pay a fee
- Defendant does not pay any fee since there is no clerk or reporter's record

Appeal Process – Record

COURT OF RECORD

- The clerk shall promptly send the record to the clerk of the appellate court after the municipal judge approves it
 - Gov C. §30.00020(c)

NON-RECORD COURTS

- The clerk makes copies of case file records and sends originals to the appellate court as soon as possible
- Clerk keeps copies for municipal court records

Appeal Process – Timeliness

COURT OF RECORD

- Prosecution *may* brief the appellate court that the time deadlines were not met by the defendant
 - Gov C. §30.00021(c)

NON-RECORD COURTS

- If appeal bond not timely filed by defendant the appellate court *shall* remand the case to the municipal court
 - CCP Art. 45.0426(b)

Appeal Process – Withdrawal

COURT OF RECORD NON-RECORD COURT

- Defendant may make a motion to withdraw appeal
 - Gov C. §30.00022
- Defendant may *not* make a motion to withdraw appeal

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Appeal Process – Disposition

COURT OF RECORD NON-RECORD COURT

- If judgment upheld, court is notified
 - Gov C. §30.00025(a)
- Municipal court can forfeit bond, issue capias pro fine, or take other appropriate remedies
 - Gov C. §30.00025(b)
- If defendant is convicted in the trial de novo, the appellate court collects the fine + costs and keeps the fine
- Filing of appeal bond ceases further proceedings in municipal court
 - CCP Art. 45.043

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Appeal Process – New Trial

COURT OF RECORD NON-RECORD COURT

- If the appellate court grants a new trial, the case is sent back to the municipal court to be re-tried
 - Gov C. §30.00026
- The appellate court conducts a trial de novo
- Municipal court never conducts a new trial

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Appeal Process – Writ of Procedendo

- Definition – a writ from an appellate court which has the effect of handing back jurisdiction to the originating court to proceed to judgment. It gives back jurisdiction to the trial court that was transferred for a time when the case was sent up on appeal.

Appeal Process – Writ of Procedendo

COURT OF RECORD NON-RECORD COURT

- It is applicable to a court of record
- Applicable, generally used when court does not accept jurisdiction because appeal bond filed passed time deadline

Appeal Process –The Less-than- Perfect(ed) Appeal

- How do you deal with it?
- Whose responsibility is it?
- OCA-Legal Information v. Legal Advice
 - Guidelines and Instructions for Clerks Dealing with Pro Se Defendants
 - www.courts.state.tx.us/pubs/LegalInformationVSLegalAdviceGuidelines.pdf

Appeal Process-Discussion Questions

- You are the clerk in a non-record court and you receive an appeal bond on the 11th day after the date of judgment. It was personally delivered and not mailed.
- What options does the court have?
- What should ultimately happen?

What if the appeal bond was mailed?

Appeal Process-Discussion Questions

- You are the clerk in a non-record court and you receive an appeal bond after a defendant has paid the fine.
- What options does the court have?
- What should ultimately happen?

Appeal Process-Discussion

Questions

- You are the clerk in a non-record court and you receive cash but no bond paperwork for an appeal.

- What options does the court have?
- What should ultimately happen?

Appeal Process-Discussion

Questions

- You are the clerk of a Municipal Court of Record. A defendant is found guilty in a trial. Judgment is rendered in open court and the defendant stands up and yells, "I'm going to appeal, you *&\$%#". Within 10 days, you receive a threatening letter stating among other things, "I'm going to appeal." Nothing else is done for a year, a warrant is issued and you receive another letter stating, "This shouldn't be in warrant, I appealed it."
