

NEW TRIALS AND APPEALS

CHAPTER 10

NEW TRIALS AND APPEALS

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CHAPTER 10 NEW TRIALS AND APPEALS

1. Motion for New Trial and Appeal in Non-record Municipal Court

Checklist 10-1	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. All defendants have a right to appeal their convictions. <input type="checkbox"/> 2. Defendants are not required to go to trial. <input type="checkbox"/> 3. Defendant pleads guilty or nolo contendere. Judgment is entered. <input type="checkbox"/> 4. Not later than 10 days after the date of judgment: <ul style="list-style-type: none"> <input type="checkbox"/> a. A motion for new trial may be granted whenever the judge, for good cause shown, believes that justice has not been served. <input type="checkbox"/> b. A defendant has five days after the rendition of judgment and sentence to file a motion for new trial. <input type="checkbox"/> c. A defendant may only receive one new trial. <input type="checkbox"/> d. The court must hold a second trial as soon as practicable. <input type="checkbox"/> e. In no case is the State entitled to a new trial. <input type="checkbox"/> 5. Defendant may give notice of appeal (but is not required to do so). <input type="checkbox"/> 6. Appearance before the judge who tried the case – no later than 10 days from date of judgment to file appeal bond. <ul style="list-style-type: none"> <input type="checkbox"/> a. Mailbox Rule – If defendant mails the bond on or before the due date and the court 	<p>Art. 44.02, C.C.P. See <i>TMCEC The Municipal Judges Book</i>: Chapters 1 and 4.</p> <p>Art. 45.038, C.C.P.</p> <p>Art. 45.037, C.C.P.</p> <p>See Article 45.013, C.C.P., for an increase in the amount of time to file the motion for new trial. If the defendant mails the motion for new trial on or before the due date and the clerk receives the motion not later than 10 days after the due date, the motion is timely filed. Do not count Saturday, Sunday, or legal holidays.</p> <p>Since the judge must rule on the motion by the 10th calendar day after judgment, the motion, if filed by mail, may be overruled by operation of law.</p> <p>Art. 45.039, C.C.P.</p> <p>Art. 45.039, C.C.P.</p> <p>Art. 45.040, C.C.P.</p> <p>Art. 45.0426(c), C.C.P.</p> <p>Art. 45.0426(a), C.C.P.</p> <p>Courts should keep the defendant’s postmarked envelope. Art. 45.013,</p>

<p>receives it within 10 working days from the due date, the bond is properly filed.</p>	<p>C.C.P.</p>
<p><input type="checkbox"/> b. If appeal bond is not timely, the municipal court must still send it to the appellate court.</p>	<p>Art. 45.0426(b), C.C.P.</p>
<p><input type="checkbox"/> 7. Appearance by mail or delivery in person to the court: Court must either personally deliver notice of the amount of fine and appeal bond or notify the defendant by certified mail, return receipt requested. Defendant has up to 31 days from the date of receiving the notice to file an appeal bond.</p>	<p>Art. 27.14(b), C.C.P.</p>
<p><input type="checkbox"/> a. Mailbox Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed.</p>	<p>Courts should keep the defendant’s postmarked envelope. Art. 45.013, C.C.P.</p>
<p><input type="checkbox"/> b. If appeal bond is not timely, the municipal court must still send it to the appellate court.</p>	<p>Art. 45.0426(b), C.C.P.</p>
<p><input type="checkbox"/> 8. Appeal appearance bond must be at least two times the amount of the fine and court costs, but in no case less than \$50.</p>	<p>Art. 45.0425(a), C.C.P.</p>
<p><input type="checkbox"/> 9. Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond.</p>	<p>Arts. 17.38, 44.20, C.C.P.</p>
<p><input type="checkbox"/> a. Conditions of the appeal bond – Must recite that the defendant has been convicted and has appealed and that the defendant will make a personal appearance before the court to which the appeal is taken instanter, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the appealed case before the appellate court.</p>	<p>Art. 45.0425(b), C.C.P. See <i>TMCEC Forms Book</i>: Cash Appeal Bond; Surety Appeal Bond; and Personal Appeal Bond.</p>
<p><input type="checkbox"/> 10. If bond is filed after time deadline, the appellate court shall remand (send back) the case to the municipal court to collect the judgment.</p>	<p>Art. 45.0426(b), C.C.P.</p>
<p><input type="checkbox"/> 11. If bond is defective in form or substance, the appellate court may allow the defendant to file a new bond.</p>	<p>Art. 44.15, C.C.P.</p>
<p><input type="checkbox"/> 12. When court receives bond, clerk should date stamp day received.</p>	<p>Art. 45.0426(a), C.C.P.</p>
<p><input type="checkbox"/> a. Bond perfects (completes) appeal.</p>	<p>Art. 44.04(e), C.C.P.</p>

- 13. Give bond to judge to make a determination if the surety is sufficient.
- 14. Clerk makes copies of all original papers in case file.
- 15. Clerk sends all the original papers and attaches the bond with a certified transcript to the appellate court (usually county court).
- 16. Case is tried de novo in county court.
- 17. If defendant is convicted in appellate court, appellate court collects fine and deposits it in the county treasury.
- 18. Defendant may not withdraw appeal.

Art. 44.18, C.C.P.

See *TMCEC Forms Book: Certified Transcript of Proceedings (Court of Non-Record)*.

Trial de novo means a whole new trial as if no earlier trial had occurred.
Arts. 44.17 and 45.042(b), C.C.P.

CHAPTER 10 NEW TRIALS AND APPEALS

2. Motion for New Trial and Appeal in Municipal Court of Record

Checklist 10-2	Script/Notes
<input type="checkbox"/> 1. All defendants have a right to appeal their convictions.	Art. 44.02, C.C.P. Sec. 30.00014(a), G.C.
<input type="checkbox"/> 2. Defendant must go to trial in order to seek appeal in a municipal court of record.	Sec. 30.00014(b), G.C.
<input type="checkbox"/> 3. Judgment is entered (conviction).	Art. 45.041, C.C.P.
<input type="checkbox"/> 4. Defendant makes a written motion for a new trial not later than the 10 th day after date on which judgment is rendered. <ul style="list-style-type: none"> <input type="checkbox"/> a. The motion may be amended with permission of the court not later than the 20th day after the date on which the original motion is filed. <input type="checkbox"/> b. The court may extend the time for filing or amending not to exceed 90 days from the original filing deadline. <input type="checkbox"/> c. If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law. 	Sec. 30.00014(c), G.C.
<input type="checkbox"/> 5. If the motion for new trial is denied, and if the defendant wants to appeal, the defendant must give notice of the appeal not later than the 10 th day after the date on which the motion for new trial was overruled. <ul style="list-style-type: none"> <input type="checkbox"/> a. The notice of appeal may be given orally in open court, if the defendant requested a hearing on the motion for new trial. 	Sec. 30.00014(d), G.C.
<ul style="list-style-type: none"> <input type="checkbox"/> b. The trial court or the clerk must note on the copies of the notice of appeal and the trial court’s certification of the defendant’s right to appeal, the case number and the date when each is filed. The clerk must then immediately send one copy of each to the clerk of the appropriate appellate court and, if the defendant is the appellant, one copy of each to the State’s attorney. <input type="checkbox"/> c. If there is no hearing on the motion for new 	Rule 25.2(e), Rules of Appellate Procedure

trial, the notice of appeal must be in writing and must be filed with the court not later than the 10th day after the motion for new trial is overruled. The court may extend the time period not to exceed 90 days from the original filing deadline.

- 6. The appeal bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled.

Sec. 30.00015(a), G.C.

- 7. The appeal bond must be for \$100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater.

Sec. 30.00015(b), G.C.

 - a. Appeal bond must state that the defendant was convicted in the case and has appealed and be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.

Sec. 30.00015(c), G.C.
See *TMCEC Forms Book*: Cash Appeal Bond; Surety Appeal Bond; and Personal Appeal Bond.
 - b. Judge determines whether the surety is sufficient.

- 8. Defendant must pay a \$25 clerk's record preparation fee required to be established by ordinance. This fee will be refunded to the defendant if the case is reversed and dismissed on appeal.

Sec. 30.00014(f), G.C.

- 9. Defendant must pay the cost for an actual transcript of the proceedings.

Sec. 30.00014(g), G.C.

- 10. Defendant must pay for a reporter's record.

Sec. 30.00019(b), G.C.

- 11. Record on appeal: Must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

Sec. 30.00016, G.C.
Art. 44.33, C.C.P.
Rule 534.1-35.3, Rules of Appellate Procedure

 - a. The clerk's record must conform to provisions in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

Sec. 30.00017, G.C.
See *TMCEC Forms Book*: Checklist for Record on Appeal (Court of Record).
See Checklist 10-3.

Rules 33.1 and 33.2, Rules of Appellate Procedure
 - b. The bills of exception must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure.

Sec. 30.00018, G.C.
A bill of exception is a formal statement in writing of the objections or exceptions taken by a party during

	<p>trial to the decisions, rulings, or instructions of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and signed by the judge.</p>
<p><input type="checkbox"/> c. The reporter’s record must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. The defendant must pay for the reporter’s record.</p>	<p>Sec. 30.00019, G.C. Art. 44.33, C.C.P. Rules 34.6, 35.2, and 35.3, Rules of Appellate Procedure</p>
<p><input type="checkbox"/> d. Transfer of the record – Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file the reporter’s record, a written description of material to be included in the clerk’s record, and any material to be included in the clerk’s record that is not in the custody of the clerk.</p>	<p>Sec. 30.00020(a), G.C.</p>
<p><input type="checkbox"/> (1) On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the appellate court.</p>	<p>Sec. 30.00020(b), G.C.</p>
<p><input type="checkbox"/> (2) After the judge approves the record, the clerk shall promptly send the record to the appellate court clerk for filing.</p>	<p>Sec. 30.00020(c), G.C.</p>
<p><input type="checkbox"/> (3) The appellate court determines appeal from the municipal court of record conviction on the basis of the errors that are set forth in the appellant’s motion for new trial and that are presented in the transcript and statement of facts.</p>	<p>Sec. 30.00014(b), G.C.</p>
<p><input type="checkbox"/> 12. Withdrawal of appeal</p> <p><input type="checkbox"/> a. Defendant may submit a written motion to withdraw appeal.</p>	<p>Art. 44.15, C.C.P.</p>
<p><input type="checkbox"/> 13. If bond is defective in form or substance, the appellate court may allow the defendant to file a new bond.</p>	
<p><input type="checkbox"/> 14. Disposition on appeal – Appellate court may:</p> <p><input type="checkbox"/> a. Affirm the judgment of the municipal court of record;</p> <p><input type="checkbox"/> (1) If the judgment is affirmed, the fine</p>	<p>Art. 44.281, C.C.P.</p>

imposed on appeal and the costs imposed on appeal shall be collected from the defendant by the municipal court, and the fine of the municipal court when collected shall be paid into the municipal treasury.

- (2) The court may enforce the judgment by:
 - (a) Forfeiting the defendant's bond;
 - (b) Issuing a writ of *capias* for the defendant;
 - (c) Abstracting the judgment;
 - (d) The municipal court may order a refund of the defendant's costs; or
 - (e) The municipal court may conduct an indigency hearing.
- b. Reverse and remand for a new trial;
 - (1) If appellate court grants a new trial, it is as if the municipal court of record granted the new trial. The new trial is conducted by the municipal court of record.
- c. Reverse and dismiss the case; or
 - (1) If appellate court reverses and dismisses the case, the court must refund the \$25 transcription preparation fee to the defendant.
- d. Reform and correct the judgment.

Sec. 30.00025(b)(1)-(5), G.C.

See Checklist 2-2.
See *TMCEC Forms Book: Capias* (Chapter 43).

See *TMCEC Forms Book: Abstract of Judgment*.

See Checklist 8-3.

Sec. 30.00026, G.C.

CHAPTER 10 NEW TRIALS AND APPEALS

3. Transcript in a Municipal Court of Record

Checklist 10-3	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. The clerk’s record may include the following: <ul style="list-style-type: none"> <input type="checkbox"/> a. The complaint; <input type="checkbox"/> b. Certified copy of the docket; <input type="checkbox"/> c. The jury charge and the verdict in a jury trial; <input type="checkbox"/> d. The judgment; <input type="checkbox"/> e. The motion for a new trial, if any; <input type="checkbox"/> f. The notice of appeal; <input type="checkbox"/> g. Written motions and pleas; <input type="checkbox"/> h. Written orders of the court; and <input type="checkbox"/> i. Any bills of exception filed with the court. <input type="checkbox"/> 2. Reporter’s record may include: <ul style="list-style-type: none"> <input type="checkbox"/> a. Any portions of the proceedings may be included if either party requests them; <input type="checkbox"/> b. Either party may include bills of exception made orally on the record; <input type="checkbox"/> c. A statement of facts may be in the form of: <ul style="list-style-type: none"> <input type="checkbox"/> (1) A partial transcription and the agreed statement of facts of the case; <input type="checkbox"/> (2) A brief reporter’s record of the case proven at trial as agreed to by the parties; or <input type="checkbox"/> (3) A transcript of all or part of the proceedings shown by the notes to have occurred before, during, or after the trial, if requested by the defendant. 	<p>Art. 33.07, C.C.P.</p> <p>Art. 44.18, C.C.P.</p>