

OATHS AND CEREMONIES

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CHAPTER 12 OATHS AND CEREMONIES

Complaints (a/k/a the Charging Instrument)

1. Complaints Filed in Municipal Court

Caution: The term “complaint” has historically been a source of confusion in Texas criminal law (especially in the context of criminal procedure). The term is used to describe the formal charging instrument used to try Class C misdemeanors. Unfortunately, it is also the term used to describe what is commonly known as the sworn affidavit for a warrant. Do not confuse the two different applications of the term. For a detailed discussion of the different meanings of the term “complaint,” see “Complaints, Complaints, Complaints: Don’t Let the Language of the Law Confuse You,” *The Recorder* 13:6 (July 2004). Checklist 12-1 relates to the term as used to refer to the charging instrument. Checklist 12-2 relates to the term as it refers to the affidavit for the issuance of a warrant.

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

Checklist 12-1	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Affiant reviews complaint. “Affiant”- person swearing to an affidavit; must be a credible person worthy of belief. <input type="checkbox"/> 2. Affiant and person administering oath both raise their right hand. <input type="checkbox"/> 3. Oath is administered. <ul style="list-style-type: none"> <input type="checkbox"/> a. The following persons have authority to administer this oath: <ul style="list-style-type: none"> i. Any officer authorized to administer oaths; ii. Municipal judge or retired municipal judge; iii. Municipal court clerk; iv. Deputy court clerk; v. City secretary; vi. City attorney; and vii. Deputy city attorney. <input type="checkbox"/> 4. Affiant signs complaint. 	<p>Art. 45.019, C.C.P.</p> <p>“Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?”</p> <p>Art. 45.019(d) and (e), C.C.P.</p>

- 5. Person administering oath signs jurat.
- 6. Judge or clerk places municipal court seal on complaint. The impression of theseal can either be attached manually or it may be created electronically.
- 7. If a notary public administered oath, notary seal is also required to be placed on the complaint.

“Jurat”- Certificate of person before whom writing was sworn.

All municipal courts are required to place seal on all documents issued out of the court except subpoenas. Art. 45.012(g), C.C.P.

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Complaints (a/k/a the Charging Instrument)

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

The term “complaint” has historically been a source of confusion in Texas criminal law (especially in the context of criminal procedure). The term is used to describe what is commonly known as the sworn affidavit for a warrant. Unfortunately, the term is also used to describe the formal charging instrument used to try Class C misdemeanors. Do not confuse the two different applications of the term. For a detailed discussion of the confusion regarding the term “complaint,” see “Complaints, Complaints, Complaints: Don’t Let the Language of the Law Confuse You,” *The Recorder* 13:6 (July 2004). Checklist 12-2 relates to the term as it refers to the affidavit for the issuance of a warrant.

Checklist 12-2	Script/Notes
<input type="checkbox"/> 1. Affiant reviews complaint.	“Affiant” - person swearing to an affidavit; must be a credible person worthy of belief.
<input type="checkbox"/> 2. Affiant and person administering oath both raise their right hand.	
<input type="checkbox"/> 3. Oath is administered.	“Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?”
<input type="checkbox"/> 4. Affiant signs complaint.	
<input type="checkbox"/> 5. Person administering oath signs jurat.	“Jurat” - certificate of person before whom writing was sworn.
<input type="checkbox"/> 6. If a notary public administers oath, notary seal is required to be placed on the complaint.	

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3. Other Affidavits

One frequently administered oath involves the defendant placed on DSC. (See Checklist 5-3.) This procedure should be followed for that affidavit or any other requested or required by the court.

Checklist 12-3	Script/ Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Affiant (defendant) reviews affidavit. <input type="checkbox"/> 2. Defendant and person administering oath both raise their right hand. <input type="checkbox"/> 3. Oath is administered. <ul style="list-style-type: none"> <input type="checkbox"/> a. The following persons have authority to administer this oath: <ul style="list-style-type: none"> (1) Municipal judge, retired municipal judge, or clerk; (2) Municipal judge or retired judge of a court of record; (3) Municipal court clerk of a court of record; (4) Notary public; and (5) Peace officer may administer an oath when engaged in performance of duties and oath pertains to duties. <input type="checkbox"/> 4. Defendant signs affidavit. <input type="checkbox"/> 5. Person administering oath signs jurat. <input type="checkbox"/> 6. Court seal is impressed, stamped, or electronically imprinted on document. <input type="checkbox"/> 7. If a notary public administers oath, notary public seal required to be placed on affidavit. 	<p>“Do you solemnly swear (or affirm) that the information contained in this affidavit is true and correct (so help you God)?”</p> <p>Sec. 602.002, G.C. Note: The ability of municipal judges and clerks to administer oaths to appointed and elected officials is detailed in Checklist 12-7.</p> <p>“Jurat” - certificate of person before whom writing was sworn.</p> <p>Art. 45.012(g), C.C.P.</p>

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4. Oaths Administered During Trial — Jurors and Witnesses

Checklist 12-4	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Jury <ul style="list-style-type: none"> <input type="checkbox"/> a. Summon jurors. (Jurors are required to answer questions about their qualifications; this is called voir dire.) <input type="checkbox"/> b. Ask prospective jurors to raise right hand. <input type="checkbox"/> c. Person administering oath raises right hand. <input type="checkbox"/> d. Oath is administered by the court or under its direction. <input type="checkbox"/> e. Voir dire is completed and six persons are selected to hear the case. <input type="checkbox"/> f. Ask jurors to raise right hand. <input type="checkbox"/> g. Judge (or other person administering oath) raises right hand. <input type="checkbox"/> h. Oath is administered by the court or under its direction. 	<p>Art. 35.02, C.C.P.</p> <p>For further procedures in jury trials, see Chapter 7 in this book.</p> <p>“You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror (so help you God).”</p> <p>Arts. 35.22 and 45.030, C.C.P.</p> <p>“You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence (so help you God).”</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 2. Witnesses <ul style="list-style-type: none"> <input type="checkbox"/> a. Before testifying, each witness shall be required to declare that he or she will testify truthfully by oath or affirmation in a form calculated to awaken the witness’s conscience and impress on the witness the duty to do so. <input type="checkbox"/> b. Both the judge (or other person administering oath) and witness should raise their right hand. 	<p>Rule 603, T.R.E.</p>

c. Oath is administered.

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

d. Invoke “The Rule.”

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

e. Both the judge (or other person directed by the court to administer oath) and witness should raise their right hand.

f. Oath is administered.

“All those of you who may be witnesses in this case who are now in the courtroom, please stand and raise your right hand.”

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

See Checklist 7-1(4) for exceptions to “The Rule.”

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5. Interpreters

For a complete discussion of language and deaf and hearing-impaired interpreters, see Chapter 4 of *TMCEC The Municipal Judges Book*.

Checklist 12-5	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Interpreter for foreign language: <ul style="list-style-type: none"> <input type="checkbox"/> a. Interpreter raises right hand. <input type="checkbox"/> b. Judge (or other person administering oath) raises right hand. <input type="checkbox"/> c. Oath is administered by the court or under its direction. 	<p>Art. 38.30, C.C.P., and Rule 604, T.R.E.</p> <p>“Do you solemnly swear or affirm that you will truly and correctly interpret for the court, jury, attorneys, defendant, and the person being examined all of the proceedings in this case into the language that the witness (or the accused) understands and you will repeat the statements made by said witness (or said accused) into the English language to the best of your skill and judgment (so help you God)?” See <i>TMCEC Forms Book</i>: Oath for Language Interpreter.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 2. Interpreter for deaf or hearing-impaired: <ul style="list-style-type: none"> <input type="checkbox"/> a. Interpreter raises right hand. <input type="checkbox"/> b. Judge (or other person administering oath) raises right hand. <input type="checkbox"/> c. Oath is administered by the court or under its direction. 	<p>Art. 38.31, C.C.P., and Rule 604, T.R.E.</p> <p>“Do you solemnly swear or affirm that you will make a true interpretation to the person being examined (or the person accused, or the juror), who is deaf, of all the proceedings in the case in a language that he/she understand, and that you will repeat said deaf person’s answers to questions to counsel, court, or jury, in the English language, to the best of your skill and judgment (so help you God)?” See <i>TMCEC Forms Book</i>: Oath for Interpreter for Deaf or Hard of Hearing Juror, Defendant, or Witness.</p>

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6. Court Reporter

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

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

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7. Appointed and Elected Officials

All appointed or elected officials are required to subscribe to an anti-bribery statement before taking an oath of office. The anti-bribery statement must be made before taking the oath or affirmation of office.

Checklist 12-7	Notes
<p><input type="checkbox"/> 1. All elected and appointed officials, including judges, court clerks, and court reporters, must:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Swear to an anti-bribery statement; and <input type="checkbox"/> b. File it with the city secretary or clerk of the court. <p><input type="checkbox"/> 2. Both official and person administering oath raise their right hand.</p> <p><input type="checkbox"/> 3. Oath is administered.</p> <p><input type="checkbox"/> a. The following municipal court personnel have authority to administer this oath:</p> <ul style="list-style-type: none"> (1) Municipal judge or retired municipal judge; (2) Municipal court clerk; and (3) Notary public. <p><input type="checkbox"/> 4. Appointed official signs statement.</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Person administering oath signs jurat. <input type="checkbox"/> b. If notary public administers oath, notary’s seal is placed on oath. 	<p>Art. XVI, Sec. 1, Tex. Const. See <i>TMCEC Forms Book: Anti-Bribery Oath of Appointed/Elected Officer</i>.</p> <p>An amendment to the Texas Constitution effective January 1, 2002 altered the previous requirement of this section that the oath be sent to the Texas Secretary of State.</p> <p>“I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be (so help me God).”</p> <p>See Section 602.002, G.C., for a complete list of authorized persons.</p> <p>“Jurat”- certificate of person before whom writing was sworn.</p>

- 5. Oath of office
 - a. Both appointed official and person administering oath raise their right hand.
 - b. Oath is administered.

 - c. The following municipal court personnel have authority to administer an oath to an appointed or elected official:
 - (1) Municipal judge or retired municipal judge;
 - (2) Municipal court clerk; and
 - (3) Notary public.
 - d. Appointed official signs oath.
 - (1) Person administering oath signs jurat. “Jurat”- certificate of person before whom writing was sworn.
 - (2) If notary public administers oath, notary’s seal is placed on oath.

- 6. File oath of office with city secretary.

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

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

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

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

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

A copy of the reporting form can be found here:
<http://www.courts.state.tx.us/oca/pdf/MunicipalCourtPersonnelForm.pdf>.

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