

## CHAPTER 10 NEW TRIALS AND APPEALS

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

Unlike in Municipal Courts of Record, motions for new trial are not a prerequisite to an appeal. Motions for new trial can still be filed in non-record courts, however, and courts should respond to them appropriately. Keep in mind the following regarding motions for new trial:

Checklist 10-1	Script/Notes
<input type="checkbox"/> 1. A defendant has five days after the rendition of judgment and sentence to file a motion for new trial.	Art. 45.037/45A.201(a), C.C.P.  See Article 45.013/45A.054, 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.
<input type="checkbox"/> 2. A motion for new trial may be granted not later than 10 days after the date of judgment when the judge, for good cause shown, believes that justice has not been served.	Art. 45.038/45A.201(b), C.C.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.
<input type="checkbox"/> 3. A defendant may only receive one new trial.	Art. 45.039/45A.201(e), C.C.P.
<input type="checkbox"/> 4. The court must hold a second trial as soon as practicable.	Art. 45.039/45A.201(d), C.C.P.
<input type="checkbox"/> 5. In no case is the State entitled to a new trial.	Art. 45.040/45A.201(f), C.C.P.

## CHAPTER 10 NEW TRIALS AND APPEALS

### 2. Appeal in Non-record Municipal Court

Checklist 10-2	Script/Notes
<input type="checkbox"/> 1. All defendants have a right to appeal their convictions.	Art. 44.02, C.C.P. See <i>Municipal Courts and the Texas Judicial System</i> : Chapters 1 and 8.
<input type="checkbox"/> 2. Defendants are not required to go to trial; the defendant can plead guilty or nolo contendere and have judgment entered.	
<input type="checkbox"/> 3. Defendant may give notice of appeal (but is not required to do so).	Art. 45.0426(c)/45A.202(c), C.C.P.
<input type="checkbox"/> 4. An appeal bond must be filed with the judge who tried the case not later than the 10th day after the date the judgment was entered.	Art. 45.0426(a)/45A.203(a), C.C.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.	Courts should keep the defendant's postmarked envelope. Art. 45.013 /45A.054, C.C.P.
<input type="checkbox"/> b. If appeal bond is not timely, the municipal court should still send it to the appellate court.	The appellate court does not have jurisdiction if the bond is not timely, and the appellate court shall remand the case back to the municipal court for execution of the sentence. Art. 45.0426(b) /45A.203(b), C.C.P.
<input type="checkbox"/> 5. Appearance by mail or delivery in person to the court: Court shall notify the defendant either in person or by regular mail of the amount of any fine or costs assessed in the case, information regarding the alternatives to the full payment of any fine or costs assessed against the defendant, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond the court will approve.	Art. 27.14(b), C.C.P.  A court may send any notice or document using mail or electronic mail. Sec. 80.002, G.C.

<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. 45.013/45A.054 C.C.P.</p>
<p><input type="checkbox"/> b. If appeal bond is not timely, the municipal court should still send it to the appellate court.</p>	<p>The appellate court does not have jurisdiction if the bond is not timely, and the appellate court shall remand the case back to the municipal court for execution of the sentence. Art. 45.0426(b)/45A.203(b)), C.C.P.</p>
<p><input type="checkbox"/> 6. Appeal 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)/45A.203(c), C.C.P.</p>
<p><input type="checkbox"/> 7. Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond.</p>	<p>Arts. 17.38 and 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 instantler, 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) 45A.203(e), C.C.P. See <i>TMCEC 2024 Forms Book</i>: Cash Appeal Bond; Surety Appeal Bond; and Personal Appeal Bond.</p>
<p><input type="checkbox"/> 8. 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)/45A.203(b), C.C.P.</p>
<p><input type="checkbox"/> 9. 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"/> 10. When court receives bond, clerk should date stamp day received.</p>	<p></p>
<p><input type="checkbox"/> a. Posting of bond perfects (completes) appeal.</p>	<p>Art. 45.0426(a)/45A.203(a), C.C.P.</p>

<input type="checkbox"/> 11. Clerk should give bond to judge to make a determination if the surety is sufficient.	Arts. 17.10 and 17.13-141, C.C.P.
<input type="checkbox"/> 12. Clerk makes copies of all original papers in case file.	Art. 44.18, C.C.P.
<input type="checkbox"/> 13. Clerk sends all the original papers and attaches the bond with a certified record to the appellate court (usually county court). The certified record could include: <ul style="list-style-type: none"> <li><input type="checkbox"/> a. Citation;</li> <li><input type="checkbox"/> b. Complaint;</li> <li><input type="checkbox"/> c. Magistrate’s warning;</li> <li><input type="checkbox"/> d. Appearance bond;</li> <li><input type="checkbox"/> e. Plea form;</li> <li><input type="checkbox"/> f. Copy of setting notice to defendant;</li> <li><input type="checkbox"/> g. Applications for subpoenas;</li> <li><input type="checkbox"/> h. Writ summoning venire;</li> <li><input type="checkbox"/> i. Jury waiver;</li> <li><input type="checkbox"/> j. Venire;</li> <li><input type="checkbox"/> k. Jury;</li> <li><input type="checkbox"/> l. Verdict;</li> <li><input type="checkbox"/> m. Certified copy of judgment of conviction;</li> <li><input type="checkbox"/> n. Motion for new trial;</li> <li><input type="checkbox"/> o. Notice of appeal; and</li> <li><input type="checkbox"/> p. Appeal bond.</li> </ul>	See <i>TMCEC 2024 Forms Book: Certified Transcript of Proceedings (Court of Non-Record)</i> .
<input type="checkbox"/> 14. Case is tried de novo in county court.	Trial de novo means a whole new trial as if no earlier trial had occurred. Arts. 44.17 and 45.042(b) /45A.202(b), C.C.P.

- ☐ 15. If defendant is convicted in appellate court, appellate court collects fine and deposits it in the county treasury.
- ☐ 16. Defendant may not withdraw appeal.

## CHAPTER 10 NEW TRIALS AND APPEALS

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

Checklist 10-3	Script/Notes
<input type="checkbox"/> 1. A defendant has the right to appeal from a judgment or conviction in a municipal court of record.	Sec. 30.00014(a), G.C.
<input type="checkbox"/> 2. The appellate court shall determine each appeal from a 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 clerk's record and reporter's record prepared from the proceedings leading to the conviction or appeal.	Art. 44.17, C.C.P. Sec. 30.00014(b), G.C.
<input type="checkbox"/> 3. An appeal from the municipal court of record may not be by trial de novo.	Sec. 30.00014(b), G.C.
<input type="checkbox"/> 4. Judgment is entered (conviction).	Art. 45.041/45A.251, C.C.P.
<input type="checkbox"/> 4. Defendant makes a written motion for a new trial not later than the 10th day after date on which judgment is rendered.	Sec. 30.00014(c), G.C.
<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.	
<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 10th day after the date on which the motion for new trial was overruled.	Sec. 30.00014(d), G.C.

<p><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.</p> <p><input type="checkbox"/> b. If there is no hearing on the motion for new 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 for good cause the time period not to exceed 90 days from the original filing deadline.</p> <p><input type="checkbox"/> c. 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.</p>	<p>Rule 25.2(e), Rules of Appellate Procedure</p>
<p><input type="checkbox"/> 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.</p>	<p>Sec. 30.00015(a), G.C.</p>
<p><input type="checkbox"/> 7. The appeal bond must be for \$100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater.</p>	<p>Sec. 30.00015(b), G.C.</p>
<p><input type="checkbox"/> 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.</p>	<p>Sec. 30.00015(c), G.C. See <i>TMCEC 2024 Forms Book</i>: Cash Appeal Bond; Surety Appeal Bond; and Personal Appeal Bond.</p>
<p><input type="checkbox"/> b. Judge determines whether the surety is sufficient.</p>	<p>Sec. 30.00015(a), G.C.</p>
<p><input type="checkbox"/> 8. 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"/> 9. 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.</p>	<p>Sec. 30.00014(f), G.C.</p>

<input type="checkbox"/> 10. Defendant must pay the cost for an actual transcript of the proceedings.	Sec. 30.00014(g), G.C.
<input type="checkbox"/> 11. Defendant must pay for a reporter's record.	Sec. 30.00019(b), G.C.
<input type="checkbox"/> 12. Record on appeal: Must conform to the Texas Rules of Appellate Procedure and the C.C.P.	Sec. 30.00016, G.C. Art. 44.33, C.C.P. Rule 34.1-35.3, Rules of Appellate Procedure
<input type="checkbox"/> a. The clerk's record must conform to provisions in the Texas Rules of Appellate Procedure and the C.C.P.	Sec. 30.00017, G.C. See <i>TMCEC 2024 Forms Book</i> : Checklist for Record on Appeal (Court of Record). See Checklist 10-4.  Rules 33.1 and 33.2, Rules of Appellate Procedure
<input type="checkbox"/> b. The bills of exception must conform to the Texas Rules of Appellate Procedure and the C.C.P.	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 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.
<input type="checkbox"/> c. The reporter's record must conform to the Texas Rules of Appellate Procedure and the C.C.P.	Sec. 30.00019, G.C. Art. 44.33, C.C.P. Rules 34.6, 35.2, and 35.3, Rules of Appellate Procedure
<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.	Sec. 30.00020(a), G.C.
<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.	Sec. 30.00020(b), G.C.



<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"/> 13. Brief on Appeal:</p>	<p>Sec. 30.00021, G.C.</p>
<p><input type="checkbox"/> a. An appellant's brief on appeal must be filed with the appellate court clerk not later than the 15th day after the date on which the clerk's record and reporter's record are filed with that clerk.</p>	<p>Sec. 30.00021(a)-(b), G.C.</p>
<p><input type="checkbox"/> b. An appellee's brief on appeal must be filed with the appellate court clerk not later than the 15th day after the date on which the appellant's brief is filed.</p>	<p>Sec. 30.00021(c), G.C.</p>
<p><input type="checkbox"/> c. Each party shall deliver a copy of the brief to the opposing party and to the municipal judge.</p>	<p>Sec. 30.00021(d), G.C.</p>
<p><input type="checkbox"/> 14. Withdrawal of appeal and new trial:</p>	<p>Sec. 30.00022, G.C.</p>
<p><input type="checkbox"/> a. The trial court shall decide from the briefs of the parties whether the appellant should be permitted to withdraw the notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time before the record is filed with the appellate court.</p>	<p>Unless the briefs are filed well in advance of the deadline, the municipal court will not have the ability to grant the new trial.</p>
<p><input type="checkbox"/> 15. Disposition on appeal – Appellate court may:</p>	<p>Sec. 30.00024(a)(1), G.C.</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 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.</p>	<p>Art. 44.281, C.C.P.</p>
<p><input type="checkbox"/> (2) The municipal court may enforce the judgment by:</p> <p><input type="checkbox"/> (a) Forfeiting the defendant's bond;</p> <p><input type="checkbox"/> (B) Issuing a writ of <i>capias</i> for the defendant;</p> <p><input type="checkbox"/> (C) Abstracting the judgment;</p> <p><input type="checkbox"/> (D) The municipal court may order a refund of the defendant's costs; or</p> <p><input type="checkbox"/> (E) The municipal court may conduct an indigency hearing.</p>	<p>Sec. 30.00025(b)(1)-(5), G.C.</p> <p>See Checklist 2-2. See <i>TMCEC 2024 Forms Book: Capias</i> (Chapter 43).</p> <p>See <i>TMCEC 2024 Forms Book: Abstract of Judgment</i>.</p> <p>See Checklist 8-3.</p>
<p><input type="checkbox"/> b. Reverse and remand for a new trial;</p> <p><input type="checkbox"/> (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.</p>	<p>Sec. 30.00024(a)(2), G.C.</p> <p>Sec. 30.00026, G.C.</p>
<p><input type="checkbox"/> c. Reverse and dismiss the case; or</p> <p><input type="checkbox"/> (1) If appellate court reverses and dismisses the case, the court must refund the \$25 transcription preparation fee to the defendant.</p>	<p>Sec. 30.00024(a)(3), G.C.</p>
<p><input type="checkbox"/> d. Reform and correct the judgment.</p>	<p>Sec. 30.00024(a)(4), G.C.</p>



- ❑ (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.