

**IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS**

SHERI HENDRIGSMAN

Appellant,

v.

STATE OF TEXAS

Appellee.

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**No. 12-MCA-3579
Ticket No. 18-419-432.2**

OPINION

Appellant appeals her conviction in Municipal Court for failing to maintain financial responsibility.

Appellant received for disposition under Article 45.051, Texas Code of Criminal Procedure, for 180 days from the date of conviction conditioned that she provide proof of continuous insurance coverage during the deferral period and not receive any other citation for any other offense.

The Court's order also has a notation at the bottom that Appellant was to return to court on March 28, 2012 at 12:00 p.m. However, Appellant complied with all conditions of the deferral, and the City Prosecutor has confirmed such compliance. On March 28, 2012 a judgment on the court's deferred adjudication docket was entered, found Appellant guilty and assessed the initial fine of \$400.00 plus court costs.

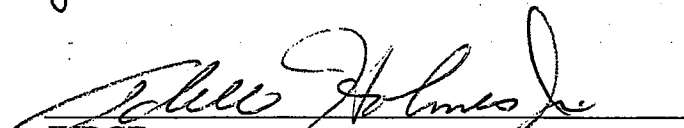
There is no Notice to Show Cause as provided in Article 45.051(c-1) that requires the court to notify the defendant in writing, mailed to the address on file with the Court or appearing on the Notice to Appear of that failure. That notice requires the defendant to appear at the time and place stated in the Notice to Show Cause why the Order of Deferral should not be revoked. In this case no Notice to Show Cause appears to have been sent to the Appellant and none appears in the record before this Court. Although the Court's order directs Appellant to return to

court, such notation does not represent compliance with the Notice to Show Cause provisions cited above. See *Torre v. State*, 12MCA3546 (Mun. Ct. App. 2012), and also *Cory v. State*, 10MCA3421 (Mun.Ct.App. 2011).

It is further this Court's opinion that even though the notice that it has seen in the present case on the Order of Deferral is convenient, it does not meet the requirements of Article 45.051(c-1) requiring a Notice to Show Cause be issued. This Court would suggest that the Municipal Court Clerk's Office and the judges of our Municipal Court modify their procedures for handling these matters accordingly. It should also be further noted by the Municipal Court Clerk's Office and the trial judges that the exact same procedures for issuing a Notice to Show Cause are applicable under Article 45.0511(I). Under both sections, (Article 45.051(c-2) and Article 45.0511(j)), if the defendant fails to appear at the time and place stated in the notice or appears at such time but does not show good cause for the defendant's failure to comply with the terms entered, the Court shall enter an adjudication of guilt and impose sentence. Such language suggests that the Notice to Show Cause provisions and the hearing required are mandatory before an adjudication of guilt can be made.

The City Prosecutor agrees that appellant complied with the terms of her deferment, but failed to "return to court on 3/28/12" as noted on the original Order of Deferment. However, since no Notice to Show Cause was sent to Appellant to give her an opportunity to show compliance or request an extension to do so, the judgment of the Court is hereby reversed and remanded to the Trial Court for further consideration.

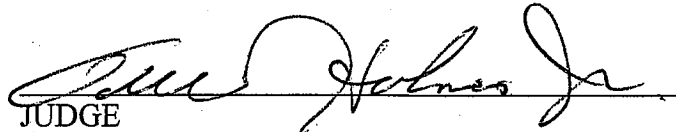
SIGNED this 18th day of July, 2012.


JUDGE

JUDGEMENT

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, if is ORDERED, ADJUDGED and DECREED by the Court that the case be reversed and remanded to the Trial Court for re-trial.

SIGNED this 18th day of July, 2012.


JUDGE