

Appeal Procedures

Directive #24-64
Issued by:

April 23, 1965
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Administrative Director

Attached for your information is an excerpt from Municipal Court Bulletin Letter #109 dealing with several matters involving appeals from the municipal courts. The purpose of this item was to have the municipal courts provide the Superior Court judges and the county clerks with specific information on municipal court sentences to indicate whether penalties have been stayed or executed. With this information the Superior Court judgment can be properly worded to cover the situation and eliminate instances of defendants having to pay a fine twice.

You will also note the reference to *R. 3:23-7* and *R. 3:24* which require the county clerk to return the record to the municipal court when the appeal is dismissed for lack of prosecution and to notify the municipal court of the determination of the appeal. A number of municipal courts indicate this is not being done.

As you know, on all appeals under *R. 3:23* the trial is de novo whether it be a plenary trial de novo or de novo on the record and accordingly the county court judgment should be a finding of not guilty or guilty rather than a reversal or affirmance of the municipal court judgment. The Law Division judgment should provide that the municipal court conviction be set aside where the defendant is found not guilty and should also provide for the return of any fine and costs paid by the defendant.

Your attention is also called to the fact that if the Superior Court imposes sentence it is the obligation of the Superior Court to see that the sentence is executed. In the event a fine is collected by the Superior Court, it must be disbursed to the proper governmental agency as required by law. *N.J.S.A. 2C:46-1, et seq.*, governs the distribution of fines for disorderly persons offenses and *N.J.S.A. 39:5-41* governs the distribution of fines and forfeitures for Title 39 traffic violations.

Your cooperation in these matters will be appreciated.

Excerpt from Municipal Court Bulletin Letter #109
March, 1965

APPEALS FROM CONVICTIONS IN THE MUNICIPAL COURTS

When there is a judgment of conviction and a fine is imposed if an appeal is taken, it is important that the county clerk and the Superior Court know whether the fine has been paid or whether the municipal court judge has stayed payment pending the appeal. The same is true of any jail sentence which the municipal court may impose. This information should be clearly stated as a part of the transcript of the docket which the municipal court is required to prepare and send to the county clerk along with the original complaint, the judgment and the exhibits pursuant to *R. 3:23-4*. If the Superior Court does not know whether a municipal court fine or jail sentence has been paid or served, or stayed, the court in entering judgment of either acquittal or conviction will not know whether to order payment or refund of a fine or to grant credit on any jail sentence the court might impose. In some instances defendants have been required to pay a fine twice, once in the municipal court and once in the Superior Court, because the Superior

Court had no official information that the fine in the municipal court had actually been paid.

I am writing to the county clerks and the Superior Court judges on this matter and also reminding the county clerks of their obligation to notify the municipal courts of the determination of the appeal pursuant to *R. 3:23-8* and that when the appeal is dismissed for failure of the defendant to prosecute the appeal, the record must be remanded to the municipal court for execution of the municipal court judgment pursuant to *R. 3:23-7*.

In traffic cases when an appeal has been filed and the court stays the penalty pending the appeal, the back of the Municipal Judge's Disposition Report (MF-1) should state that the fine and license suspension, as the case may be, have been stayed pending the appeal.

EDITOR-S NOTE

The text of the directive has been changed to replace all references to the former county court with the Superior Court and to update all the cited rules and statutory references. *R.R. 3:10-9* has become *R. 3:23-7*; *R.R. 3:10-12* has been replaced by *R. 3:24*; *R.R. 3:10* has become *R. 3:23*; *R.R. 3:10-4* has become *R. 3:23-4*; *R.R. 3:10-12* has become *R.3:23-8(e)*.

N.J.S.A. 2A:169-9 has been replaced with *N.J.S.A. 2C:46-1, et seq.*, and *R.S. 39-5-41* has become *N.J.S.A. 39:5-41*.

See *Rule 7:8*, governing appeals in municipal courts.

Chapter 7 of the Rules Governing the Courts of the State of New Jersey governs practice in municipal courts. This chapter was substantially revised in 1997 and users of this compilation should consult the revised chapter for any changes that may affect these directives.