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From: Roy Mcgeady
Sent: Wednesday, March 04, 2015 11:06 AM
To: Comments Mailbox
Subject: Comment on the Criminal Practice Committee Report regarding de novo appeals
Attachments: Memorandurm of Comments to the Criminal Practice Committee Sub-Committee Considering the Trial De Novo Standard of Review.pdf

I submit my comments as a Municipal Court Judge individually and not on behalf of or as a representative of any Conference or Committee on which I serve.It is clear from the Criminal Practice Committee report that the issue of de novo appeals was given a thorough examination.I respectfully disagree with the conclusion to retain that standard.I have taken the liberty of attaching a Memorandum I submitted to the Committee and its sub-committee on this issue opposing the continuation of the standard.Addressing myself to the Report,I note that one of the reasons expressed for retention of the standard is "..in the Municipal Court there is no right to have an independent factual assessment made by a jury or other neutral body."I submit that is true in Superior Court in the Chancery Division as well as the Family Division and yet appeals from those Courts do not require the de novo standard.Another reason referred to by the Committee was that"...the fact that Municipal Court Judges are not afforded the same tenure and safeguards as Superior Court Judges...."I submit that Superior Court Judges have no assured tenure in the first seven years of their service and yet the de novo standard is not applied.The Committee cites the 1985 Task Force Report on the Improvement of Municipal Courts in that thirty years ago the Task Force recommended the abolishing of the de novo standard.What has happened in the last thirty years in Municipal Court?They are all computerized having access to the Infonet.They have their own tracking systems in ATS ACS and MACS.A system of Presiding Judges exists throughout the State.There is a four day Comprehensive Judicial Orientation Program which all new Judges must attend.There is an Annual Judicial Conference and local Vicinage training.Municipal Judges are equally as well trained as Superior Court Judges.What more would have to be done to treat the Municipal Court decisions with the same confidence as Superior Court decisions?I submit the time has come to abandon the anachronistic standard of de novo trials which is a throwback to the times when Municipal Court Judges didn't have to have a legal education and a more thorough scruitiny on appeal was justified.Kindly see my

attached Memorandum.Thank you!Roy F.McGeady
roy.mcgeady@judiciary.state.nj.us

SUPERIOR COURT OF NEW JERSEY
BERGEN VICINAGE
MUNICIPAL DIVISION
Bergen County Justice Center
10 Main Street, Suite 309
Hackensack, New Jersey 07601
Tel: (201) 527-2266
Fax: (201) 371-1150

Roy F. McGeady
Presiding Judge, Municipal Courts

Brendis Montijo-Wrigley
Municipal Division Manager, CCM, CMCA

MEMORANDURM OF COMMENTS TO THE CRIMINAL PRACTICE COMMITTEE SUB-COMMITTEE CONSIDERING THE TRIAL DE NOVO STANDARD OF REVIEW

Date: February 19, 2013

I would like to take this opportunity to comment on the trial de novo standard of appeal review from the municipal courts. The contents of this memo are the opinion solely of its author and not of any conference or committee on which I serve.

The municipal courts in the State of New Jersey are treated differently than any other court in New Jersey. There is an added level of review. The municipal court decisions initially are appealed to the Law Division - Rule 4:74-2 and Rule 4:74-3. The standard of review of those municipal court decisions is the de novo standard - Rule 3:23-8(a). This standard enables the Law Division Judge to decide the case anew on the record giving due deference to the Municipal Court Judge's determination of credibility of the witnesses.

It is a standard of review that was established when the municipal courts were less skilled and, in many cases, presided over by non-lawyer lay judges. This, of course, is no longer true, municipal court judges must be attorneys at law and have practiced for five years.

I know that the Criminal Practice Committee and the Sub-Committee are aware of the extensive training of the Municipal Court Judges. That has been made public in prior Criminal Practice Committee reports. Suffice it to say for the purpose of these comments that, in my opinion, the Municipal Court Judges are trained equally as well as Administrative Law Judges, Workers' Comp. Judges, Tax Court Judges and even Superior Court Judges.

Despite this equality of training, appeals from the courts referred to above and including appeals from administrative agencies of the State of New Jersey go directly to the Appellate Division – Rule 2:2-3(a)(1). Administrative agency decisions are often based upon hearings conducted by "hearing examiners." While I can't comment on the level of training of those hearing examiners and while it may be different in different administrative agencies, it is difficult to believe that it is any more extensive than that of the municipal court judges.

The standard of review in the Appellate Division of the above referenced appeals is "whether findings could reasonably have been reached on sufficient credible evidence present in the record." The Appellate Division can't engage in an independent assessment of the evidence. The findings of fact of the trial judge and the administrative agencies are considered binding on appeal. If an Appellate Court finds that the standard of review has been met, it must uphold those findings even if it believes it would have reached a different result. In the matter of Eva Taylor, 158 N.J. 644 (1999).

Why should a different standard be applied to municipal court appeals as opposed to appeals from the previously referred to courts? Some might say it is because the municipal court is considered a court of limited jurisdiction, a statutory court. N.J. Const. Art. VI, Sec. I, Para. 1. But so is the Tax Court. "The Division of Tax Appeals in the State Department of the Treasury, which was excluded from the jurisdiction of the OAL, has now been supplanted by the New Jersey Tax Court a statutory court of limited jurisdiction under the Constitution..." Unemployed-Employed Council of New Jersey, Inc. v. John Horn, 85 N.J. 646 (1981). And yet the Tax Court decisions are subject to the same standard of review on appeal as Superior Court Law Division decisions.

It is understandable why the defense bar would be interested in maintaining the de novo standard. I keep extensive records of my decisions in municipal court and my appeals. In the 29 years that I have been a Municipal Court Judge, I have decided 4,030 trials at the time of this writing. Of those trials, 172 have been appealed to the Law Division and decided by the de novo standard. Of those 172 appeals, 56 times the Law Division Judge has arrived at a different decision than the municipal court. Even though it is an independent decision on the evidence, it, in effect, reverses the municipal court decision. That reversal rate is 32.5%. On the other hand, where the Law Division Judge has agreed with the Municipal Court Judge, 37 times the defendant has appealed to the Appellate Division or the Supreme Court. Of those 37 subsequent appeals, six have resulted in reversals under the "sufficient credible evidence in the record" standard. This reversal rate, under that standard, is 16.2%. That is half of the reversal rate from municipal court to Law Division.

I understand the special need to protect criminal defendants from unjustified conviction and consequences. That is why we have a high standard of proof of beyond a reasonable doubt. That is why we require a unanimous jury verdict. That is why we have the Exclusionary Rule. That is why the Constitution prohibits double jeopardy. But where else does a losing defendant get a second bite of the apple? A second trial? Not even a criminal defendant losing in a Superior Court Trial. In Municipal Court, if the defendant is acquitted that ends the matter. If the defendant is convicted, the defendant under the de novo standard has a second opportunity for a second trial.

The Supreme Court has recognized that certain trial courts gain an expertise in the matters before them. "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare v. Cesare, 154 N.J. 394 (1998) and D.N. v. K.M., ___ N.J. Super. ___ (App. Div. 2013). Municipal Court Judges deal with complicated DWI issues everyday. They have been extensively trained in the workings and preadmission requisites of the Alcotest 7110. Municipal Court Judges deal with municipal ordinances and the municipal code in their municipality extensively. Many Law Division Judges have never had an opportunity to try a DWI case as an original trial. And yet, they are called upon to "decide the case anew" based upon the record made in municipal court. I suggest that the special expertise of the Municipal Court Judges support a higher deference being given to their factfinding and credibility assessments.

In conclusion, I urge the Sub-Committee and the Criminal Practice Committee to recommend to the Supreme Court that the archaic standard of de novo review be removed as it has outlived its usefulness and the reasons for its existence no longer continue. I urge the Committee to adopt the same standard that is used for review of other equally well trained Judges, namely "whether findings could reasonably have been reached on sufficient credible evidence present in the record."

Thank you

Regards,

Hon. Roy F. McGeady
Presiding Judge Municipal Courts

RFM/jl