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Representing a Defendant in a Municipal Court Appeal

A Primer for Assigned Counsel

Note: This document is provided as a reference tool for attorneys who are appointed via the Madden v. Delran list. It is current through the date of publication. It does not replace the attorney's own research and evaluation of the legal and procedural issues involved. An attorney has an ongoing duty to be informed of current statutes, cases, and Court Rules.

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Written by the Working Group on *Pro Bono* Attorney Training Materials—Municipal Court Appeals

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CHAPTER ONE - ASSIGNMENT

You have been assigned to represent an indigent defendant in a municipal court appeal. This chapter explains how you were assigned a *pro bono* case.

In Madden v. Delran, 126 N.J. 591 (1992), the Supreme Court reaffirmed the bar's duty to represent indigent defendants without pay where the Legislature has made no provision for the Public Defender to represent defendants who are entitled to counsel. The Court recognized that it was placing a burden on the bar that should be more generally shared by the public at large. The Court stated: "We realize it is the bar that is bearing the burden . . . We trust that the bar understands the strong policy considerations that have persuaded us. As has so often been the case, it is the bar that makes the system work, often without compensation." Id. at 614.

Attorneys are assigned mandatory *pro bono* cases through the *pro bono* computer system that was developed, and is currently maintained, by the Administrative Office of the Courts. The Supreme Court in Madden chose the current system of *pro bono* assignments in an effort to spread the burden among as many attorneys as possible. The system maintains a list of attorneys eligible for *pro bono* assignment in each county. The attorneys are listed in the order mandated by the Supreme Court in Madden -- they are arranged by the number of *pro bono* cases the attorney has handled in the past and then organized alphabetically. At the top of the list are the attorneys who have never been assigned a *pro bono* case, in alphabetical order. Next on the list are attorneys who have only been assigned one case, in alphabetical order. Attorneys are called upon whenever their name reaches the top of the list. Notification is made by letter or phone call. The number of *pro bono* cases an attorney is required to do depends on the number of attorneys in the county and the number of *pro bono* assignments in that county.

When a *pro bono* attorney is needed, the local *pro bono* coordinator assigns the case to the next attorney on the computer-generated *pro bono* list. Attorneys are not required to do a certain **number** of hours per year; rather, attorneys are required to complete an assigned *pro bono* case, no matter how many hours that may require.

CHAPTER TWO – OVERVIEW OF MUNICIPAL COURT AND THE APPEAL PROCESS

This chapter provides a brief overview of the municipal courts, the right to appeal, and how the appeal was initiated.

I. Municipal Courts

New Jersey's municipal courts handle approximately six million cases each year and are often referred to as the face of the Judiciary. For most citizens, their municipal court experience is their only exposure to the courts and judges of this State. The New Jersey Supreme Court has referred to municipal court as "the people's court." State v. Storm, 141 N.J. 245, 254 (1995).

New Jersey municipal courts are courts of limited jurisdiction, constitutionally authorized by N.J. Const., art. VI, § I, ¶ 1. Their creation and operation is governed by statutes primarily found in N.J.S.A. 2B:12-1 *et seq.* N.J.S.A. 2B:12-17 grants a municipal court jurisdiction over seven categories of cases: local ordinance violations; motor vehicle and traffic violations; disorderly persons, petty disorderly persons, and other nonindictable offenses; fish and game law violations; penalty collection proceedings if authorized by statute; boating law violations; and all other proceedings where jurisdiction is granted by statute. These categories are also set forth in the New Jersey Court Rules. R. 7:1. A municipal court's jurisdiction extends only to those offenses that provide for a maximum term of imprisonment of six months or less.

II. Right to Appeal

Your responsibilities begin after the appeal has been initiated. A defendant who is found guilty in municipal court has the right to file an appeal in the Superior Court, Criminal Division. R. 3:23-2. A defendant who wishes to appeal his or her municipal court conviction can bring that appeal to the Superior Court. See R. 3:23-1 – 3:23-8.[1]

You have been directed to represent an indigent defendant on a matter which involves a consequence of magnitude (as set forth in the "Guidelines for Determining a Consequence of Magnitude" in Appendix 2 to Part VII of the Rules of Court), or a matter in which the person is constitutionally or otherwise entitled by law to counsel. R. 3:28-8(a)(4). See Madden v. Delran ,126 N.J. 591 (1993); R. 7:13-1.

III. Process of Appeal

A municipal appeal may be initiated by a defendant and/or attorneys filing a notice of appeal at any time within 20 days after the entry of judgment. See R. 3:23-2. The Rule states that within five days after the filing of the notice of appeal, one copy shall be served on the prosecuting attorney and one copy thereof shall be filed with the Criminal Division Manager's office, along with an affidavit of timely filing of the notice with the clerk of court below and service on the prosecuting attorney (giving the prosecuting attorney's name and address). State v. Robertson, 228 N.J. 138, 147 (2017); State v. Kuropchak, 221 N.J. 368, 382 (2015).

The documents required to initiate the appeal **should have been completed by the defendant and/or attorney for the defendant after the municipal court has rendered its**

[1] You may find the full text of the Court Rules on the Judiciary's public website, www.njcourts.gov.

decision and before your appointment as counsel. A template of these documents developed by the Administrative Office of the Courts to assist defendants is included as background in Appendix A (How to Appeal a Decision of a Municipal Court), and may also be found on the Judiciary's public internet page, within the Municipal Court section. These documents include a notice of municipal court appeal, a transcript request, and certification of timely filing. The notice of municipal appeal is also to be served by the defendant/attorney for the defendant below on the appropriate prosecuting attorney.

The 20-day time limit is an absolute and, according to court rules, not enlargeable. If the notice of appeal is received after the allotted time, the appeal is returned to the defendant. However, if the municipal court judge has not advised the defendant of his or her right to appeal, the defendant may file the appeal after the 20 days and up until five years from the date of the appealable event. State v. Martin, 335 N.J. Super. 447 (App. Div. 2000).

Generally, the Superior Court will review the matter based on the record created in the municipal court. This is referred to as a *de novo* appeal. *De novo* review means, in effect, a retrial of the municipal court proceeding. See State v. DeBonis, 58 N.J. 182, 188 (1971). No additional evidence outside the record below (such as new testimony) is presented at a municipal appeal, unless to cure a legal error. However, a defendant appealing the decision can present new legal arguments based upon the record below. In the *de novo* proceeding, the Law Division must make independent findings of fact, as well as an independent determination of the defendant's guilt or innocence. See State v. L.S., 444 N.J. Super. 241, 247 n.4 (App. Div. 2016). Although the Law Division must make its own findings and rulings on the evidence, it is bound by the evidentiary record of the municipal court. See State v. Loce, 267 N.J. Super. 102, 104 (Law Div. 1991), aff'd o.b. 267 N.J. Super. 10 (App. Div.), certif. den. 134 N.J. 563 (1993). The defendant's right to seek *de novo* review is absolute; it does not depend on error in the municipal court proceeding. See State v. DeBonis, 58 N.J. at 188; State v. Ingram, 67 N.J. Super. 21, 33-34 (Cty. Ct. 1961).

Once an attorney has been assigned to the appeal, a *pro bono* letter is generated. Copies are provided to the Assignment judge, prosecutor's office, defendant (the appellant), the Criminal Division, and municipal court with a notification to order the transcript (original and two copies) at public's expense. The nature of the municipal violation governs which entity pays for the transcript. R. 3:23-8(a)(3) ("If the appellant, upon application to the court appealed to, is found to be indigent, the court may order the transcript of the proceedings below furnished at the county's expense if the appeal involves violation of a statute and at the municipality's expense if the appeal involves violation of an ordinance.").

The attorney and prosecutor assigned to the case are provided with a copy of the notice of appeal along with the *pro bono* letter. If the person filing the appeal is incarcerated, a different *pro bono* letter is used, including the name of the institution where the appellant is located so the attorney will be able to contact him or her. A copy of the *pro bono* letter is forwarded to the defendant at the appropriate jail or prison and mailed to the defendant's home address.

A notice fixing the date of the hearing is prepared after the transcript has been received and the date has been obtained from the judge's team leader. Copies are then mailed to the *pro bono* attorney, defendant/appellant, prosecutor's office, and to the township/borough attorney, along with a copy of the transcript and calendar.

CHAPTER THREE - BAIL AND STAYS

While an appeal is pending, an appellant may (1) seek a stay of non-custodial aspects of the municipal court sentence; or (2) seek bail from the Superior Court if the appellant is in custody upon a sentence of incarceration by the municipal court.

I. Stay of Non-Custodial Aspects of Sentence

A. Relevant rules

The authority for a stay pending appeal is found in both Part VII of the Rules of Court, governing municipal practice, and Part III, governing criminal practice.

Rule 7:13-2 invests stay authority in both the municipal court ("the court in which the conviction was had") and the Superior Court ("the court . . . to which the appeal is taken"). Rule 7:13-2 states: "Notwithstanding R. 3:23-5, a sentence or a portion of a sentence may be stayed by the court in which the conviction was had or to which the appeal is taken on such terms as the court deems appropriate."

Rule 3:23-5, in turn, addresses both forms of "Relief Pending Appeal" – bail and a stay. The stay-related subsections state:

> (b) Relief from Fine. A sentence to pay a fine, a fine and costs, or a forfeiture may be stayed by the court in which the conviction was had or to which the appeal is taken upon such terms as the court deems appropriate.
>
> (c) Relief from Order for Probation. An order for probation may be stayed if an appeal is taken. [R. 3:23-5].

Thus, although R. 3:23-5 refers only to a stay of a fine, forfeiture, or probation, R. 7:13-2 is not so limited and apparently authorizes the stay of any other non-custodial aspect of a sentence; for example, a community service obligation.

A separate rule provides for an automatic stay of a municipal court order suppressing evidence upon the State's timely appeal. Consequently, if a *pro bono* attorney represents a defendant as respondent on appeal, he or she should be aware that the suppression order shall be stayed. Rule 7:5-2(c) states:

> (1) Order Granting Suppression. An order granting a motion to suppress evidence shall be entered immediately upon decision of the motion. Within ten days after its entry, the municipal court administrator shall provide a copy of the order to all parties and, if the county prosecutor is not the prosecuting attorney, also to the county prosecutor. All further proceedings in the municipal court shall be stayed pending a timely appeal by the State, pursuant to R. 3:24. The property that is the subject of the suppression order shall, if not otherwise subject to lawful detention, be returned to the person entitled to it only after exhaustion by the State of its right to appeal.

Lastly, special provisions govern an application to stay an order of forfeiture of public office associated with a conviction of a disorderly persons or petty disorderly persons offense involving or touching upon public office. See N.J.S.A. 2C:51-2(a)(2) (providing for forfeiture of office by anyone convicted of an offense involving or touching upon such office); N.J.S.A. 2C:51-2(e) (providing for waiver of forfeiture upon State's application in cases of disorderly persons or petty disorderly persons offense); N.J.S.A. 2C:51-2(c) (setting standard for stay of forfeiture pending appeal).

You may also wish to compare the above-cited rules with the rules governing stays of sentence pending appeal to an appellate court, such as the Appellate Division or Supreme Court. R. 2:9-3(c) authorizes a stay of a fine or probation pending appeal but expressly provides that the court may require the appellant to deposit the fine and costs, to post a bond, or to submit to an examination of assets, or the court may restrain the appellant from dissipating assets.

B. Standard for stay pending appeal

While the Court Rules do not expressly dictate the factors the court must consider regarding a stay of non-custodial aspects of a sentence pending appeal, the Supreme Court in State v. Robertson, 228 N.J. 138 (2017), addresses these concerns in the context of a stay of a driver's license suspension as a result of a driving under the influence conviction. The Robertson holding may implicitly guide requests for stays of other non-custodial and non-driver's license suspension aspects of a sentence such as community service, intoxicated driver resource center detainment and imposition of the breath alcohol ignition interlock device. The Robertson Court held that in a DWI or refusal case, the defendant is "presumptively eligible" for a stay of the required license suspension. Id. at 151. The State has the burden of overcoming that presumption; the standard to overcome is to establish that a stay would present a serious threat to the safety of any person or the community. Ibid. If no conditions would mitigate that risk, the court should not stay the sentence. Ibid.

The Court in Robertson held:

> The defendant's criminal past history and past history of motor vehicle violations may be considered to assess the risk. Other factors for consideration are defendant's history of drug and alcohol abuse and dependency, evidence of rehabilitation and relapse, the egregiousness of the particular offense and evidence of defendant's general disregard for the law. To militate against the risk and protect the public, the license suspension stay may be subject to conditions. Ibid.

The Court also directed that the court must set forth on the record the reasons when it rules on the motion for the stay. Id. at 152. A written motion for a stay should be filed with the Superior Court if the appeal has already been filed. Ibid. See R. 7:8-7(b); R. 3:23-9(d) to determine which prosecutor should be served depending on the nature of the charge.

C. Practical issues

1. Requesting relief from municipal court

Some Superior Court judges may require the applicant to seek the stay first from the municipal court. Although the rules governing municipal appeals do not expressly require this, the analogous rules governing appellate practice do. See R. 2:9-3(c) (stating that a fine or probationary

sentence may be stayed by the trial court, and if denied, the application may be renewed before the appellate court); R. 2:9-5(b) (authorizing a stay of a civil judgment, but providing that the motion shall first be made to the court that entered the judgment and then, if denied, to the appellate court).

If a stay has not already been sought from the municipal court, you may want to inquire of the Superior Court Judge who will hear the stay application whether he or she requires the defendant to first obtain the stay from the municipal court.

2. The 20-day stay

Some municipal court judges may stay all or a portion of their sentence for 20 days only. That period coincides with the time by which an appeal must be filed. If you enter the case before the 20-day stay expires, you will want to move swiftly to seek a stay from the Law Division. *Pro bono* counsel will usually enter the case long after such a 20-day stay has expired. However, execution of the sentence for one reason or another may not have been accomplished. You will want to move rapidly to seek to restore the stay.

In light of the requirement in R. 7:13-2 that "a sentence or a portion of a sentence may be stayed by the court in which the conviction was had or to which the appeal is taken on such terms as the court deems appropriate," you should be prepared to suggest conditions of the stay that would be appropriate under the circumstances of the case as authorized by R. 7:13-2 and Robertson. For example, if a defendant is appealing a license suspension for a driving-under-the-influence conviction, a court may condition the stay upon installation of a breath alcohol ignition interlock device that would address, to some extent, the "serious threat to the safety of any person or the community" under Robertson. A court may also require regular drug testing as a condition of a stay if the case involved driving under the influence of drugs.

It is advisable to confer with your adversary. Before filing your stay application, identify the assistant prosecutor who will be handling the matter and explore whether the State would consent to a stay and, if so, under what conditions. (See Appendix D). However, even if consent is obtained, you should still be prepared to justify the requested relief if required by the court.

II. Bail Pending Appeal

A. Relevant rules and standards

The authority for bail pending appeal is found in both Part VII of the Rules of Court, governing municipal practice, and Part III, governing criminal practice. The municipal court judge has the authority to grant bail and indeed should impose bail according to the Rule, only if the court has significant reservations regarding defendant's appearance.

Rule 7:4-8 provides:

> When a sentence has been imposed and an appeal from the judgment of conviction has been taken, the trial judge may admit the appellant to bail within 20 days from the date of conviction or sentence, whichever occurs later. Bail after conviction may be imposed only if the trial judge has significant reservations about the appellant's willingness to appear before the appellate court. The bail or other recognizance shall be of sufficient surety to guarantee the appellant's appearance before

> the appellate court and compliance with the court's judgment. Once the appellant has placed bail or filed a recognizance, if the appellant is in custody, the trial court shall immediately discharge the appellant from custody. The court shall transmit to the vicinage Criminal Division Manager any cash deposit and any recognizance submitted.

However, if *pro bono* counsel's client is incarcerated when representation begins, the application for bail should be made to the Law Division, under R. 3:23-5(a). That rule mandates the grant of bail. It states, "If a custodial sentence has been imposed, and an appeal from the judgment of conviction has been taken, the defendant shall be admitted to bail by a judge of the Superior Court in accordance with the standards set forth in R. 3:26-1a." (Emphasis added). See State v. Robertson, supra.

B. Practical Issues

1. Conditions in general

As noted above, the court has the power to impose conditions on release. No-contact orders are commonly imposed as a condition of release involving domestic violence or another act of violence against a person. However, you should be prepared to propose other conditions that might assist in persuading the State and the court regarding the least restrictive yet appropriate conditions of release pending appeal. For example, in a case of an appeal from a DWI conviction involving a custodial sentence, the appellant may propose installation of an ignition interlock or restrictions on driving as a condition of release.

A no-contact condition of release for a municipal case is separate and distinct from no-contact restrictions in a domestic violence restraining order. A restraining order is a civil order that is filed in the Family Court by the alleged victim of domestic violence. As a result, a temporary restraining order is issued preventing any contact between the plaintiff and the defendant. If the defendant contacts the plaintiff, he or she can be arrested and charged with contempt of court. N.J.S.A. 2C:29-9. By contrast, a "no contact order" is related to criminal charges and may be a condition of release or bail.

Thus, if the alleged victim voluntarily dismisses the domestic violence complaint, and the restraints are consequently dissolved, the separate no-contact release conditions would be unaffected. Moreover, the court may find that notwithstanding the dismissal of the domestic violence restraining order, the release conditions in the municipal case should remain in place. In some cases, the victim may voluntarily dismiss the domestic violence complaint because the victim knows that the municipal court criminal case is still pending, and she or he is protected by the no-contact condition of release. The victim also may wish to avoid creating the impression that she or he is the one pressing charges, out of fear of retaliation. In sum, although a civil temporary restraining order may be dismissed, any no contact order issued as a condition or release would remain in place.

2. Confer with your adversary

Before applying for release pending appeal in the Superior Court, you may wish to confer with the prosecutor to determine if the request for bail may be resolved by consent. To determine which prosecutor should be served depending on the nature of the charge, see R. 7:8-7(b); R. 3:23-9(d).

CHAPTER FOUR - PREPARING THE APPEAL

Once you have received an appointment letter to represent an indigent defendant in his or her appeal (trial *de novo* on the record) to the Superior Court Law Division from a conviction in the municipal court, you must then determine that the appeal has been properly filed and served, and the transcripts of all the appearances in the court below have been ordered.

Once the transcript is received by the Superior Court, that court will enter an order fixing the dates for the filing of the defendant's brief, the State's response, and the hearing. After you have read the transcript, you must contact both the defendant and the attorney (generally the municipal public defender) who tried the case below to assist you with the issues to be presented in the appeal.

It is also important that you call the municipal court administrator and/or the Superior Court judge's law clerk to make certain that all of the exhibits that were introduced into evidence in the municipal court were transmitted to the Superior Court and that you have a copy of each of them. R. 3:23-4. This is particularly important with respect to any audio/video recordings.

You must meet with your client to explain the procedure and to emphasize that his or her failure to appear at the hearing renders the appeal subject to dismissal. Should the client fail to respond to a letter or phone call from you, you are obliged to make reasonable efforts to locate him or her. You may wish to contact the local police department or the municipal court to determine the latest contact information for your client. If you are unable to make contact, you still need to appear at the appeal proceeding and continue without your client.

If your client is incarcerated and you need to speak with him or her and have documents reviewed and signed, you will need to contact the facility where your client is staying. There are three types of incarceration facilities in New Jersey: federal prisons, state prisons, and county jails. You may research visiting procedures on the facility's website and will need to call the facility and ask for the Warden's Office. For county jails, the Sheriff's Department may also be of help in arranging visits or calls. There will be someone assigned in the facility's administration to assist in communication with prisoners. Depending on the type of facility, you may be able to arrange to have phone or video conferences with your client. Make sure you are on time for scheduled calls, as the facilities cannot accommodate late starts or time overruns.

The facility will give you an address at which to send documents to your client. You will want to ask for your client's identification number and use that on all written communication. Be prepared for delays, as mail goes through inspection and may take some time to get to the inmate.

When meeting with your client, you should explain that testimony will not be taken during the appeal, but that the court will rely upon oral argument, the brief, and the transcript(s) from the court below.

For court appearances, provide the facility information to your judge's staff or the Surrogate's Office. They will be able to arrange for your client to appear by video conference for most appearances.

You may find other helpful information at:
New Jersey Department of Corrections webpage: www.state.nj.us/corrections
New Jersey Department of Corrections Inmate Telephone System Information webpage: www.state.nj.us/corrections/pages/InmateTelephoneSystemInfo
New Jersey County Jail Wardens Association webpage: www.njcjwa.org/jails

At the hearing, be prepared to carry the burden of moving forward. While the burden of proof has not shifted; i.e., the State must prove the defendant's guilt beyond a reasonable doubt, many courts will expect you to argue first since your client has already been convicted, and it is his or her appeal. The transcript must support all of your arguments unless you are in the unusual position where the court will permit the record to be supplemented. The Law Division may permit supplementation of the record for purposes of *de novo* review when the record itself is partially unintelligible, R. 3:23-8(a)(1); or for the limited purpose of correcting a legal error in the proceedings before the municipal court, R. 3:23-8(a)(2).

Any arguments and supporting evidence against aggravating and in favor of mitigating factors should be presented. For any charge alleging a violation of Title 39, the Motor Vehicle Code, you should have and be familiar with your client's driving record (Motor Vehicle Commission certified driver's abstract). Please see the New Jersey Motor Vehicle Commission website for instructions on reading the abstract. www.state.nj.us/mvc. Any legal sentence imposed by the court below may not be increased on appeal. However, the Law Division retains the power to correct an illegal sentence. See State v. Baker, 270 N.J. Super. 55 (App. Div. 1994); State v. Laird, 25 N.J. 298 (1957). If possible, you may wish to consult with attorneys who can provide you with insight as to the judge before whom you are appearing and the prosecutor who will be your adversary.

Your client is expected to be present at the hearing. R. 3:16-1. He or she may face the immediate execution of the sentence and should be prepared to satisfy the fines, costs, restitution, and other penalties, or make arrangements for time payments. Your client may be required to surrender his or her driver's license and perhaps be incarcerated.

CHAPTER FIVE - BRIEF & TRIAL

I. Standard of Review

The Superior Court has the option of deciding an appeal *de novo* based on the municipal court record, or simply reversing and remanding for a new trial. R. 3:23-8(a)(2). Accord, State v. Robertson, 228 N.J. 138, 147 (2017). Under *de novo* review, the Superior Court judge re-conducts the trial and enters a new verdict based on the municipal court proceedings. In a *de novo* review, the court's "function is to determine the case completely anew on the record made in the municipal court, giving due, although not necessarily controlling, regard to the opportunity of the magistrate to judge the credibility of the witnesses." State v. Johnson, 42 N.J. 146, 157 (1964). See State v. Loce, 267 N.J. Super. 102, 104 (Law. Div. 1991), aff'd o.b., 267 N.J. Super. 10 (App. Div.), cert. denied, 134 N.J. 563 (1993).

Briefs are required if the appeal involves questions of law or if the court orders them. If they are required, they must be filed and served prior to the date fixed for the hearing or another date established by the court. See R. 3:23-8(b). A brief submitted in connection with a request for *de novo* review may take the form of a letter brief. A failure to file a required brief can result in a dismissal of the appeal. See State v. Lawrence, 445 N.J. Super. 270 , 275 (App. Div. 2016).

II. Format of Brief

A. Letter Brief

1. Opening

   Dear Judge _____,

   Please accept this letter brief in lieu of a more formal brief in support of defendant's appeal from the denial of his Motion to Suppress, Conviction, and Sentence entered in the Hamilton Township Municipal Court on August 2, 2018.

2. Procedural History – setting forth the procedural steps in the progression of the case, from first court appearance through filing of appeal

3. Statement of Facts

   The trial *de novo* is based on the record made below – the facts must be presented by citing to the transcript of the proceeding in the municipal court. Facts taken from the transcript are cited as T (transcript). In municipal court, there is often more than one hearing date and a transcript from each date will have a footnote at the first cite indicating the number of transcripts.
   Example: T2, p.20, l.12-16

4. Legal Argument

   a. Point I – Example – officer did not have reasonable and articulable suspicion to stop defendant's automobile.

   b. Point II – Example -- State did not prove beyond a reasonable doubt that defendant violated the statute.

5. Conclusion

B. Trial/Oral Argument

1. The defendant needs to be present

    a. if the defendant is convicted again, he or she will need to be sentenced.

    b. the original sentence is usually imposed but an argument can be made for a lesser sentence if allowed by law.

2. Because it is a trial *de novo*, some judges may require the State to present the argument first, while others will require the defendant to make the argument first.

3. The judge will have reviewed the briefs so plan to hit the high points in your argument and be prepared to field questions from the court.

For questions regarding filing of a municipal appeal, you may reach out to the Criminal Division Manager in the vicinage in which the matter is being heard. The list of phone numbers for Vicinage Criminal Divisions may be found on the Judiciary's public website by entering 'Criminal Division' in the page search bar. A list of phone numbers current through November 2018 is also found in the appendix to this manual. You may wish to ask for the contact person in the Criminal Division who assists with municipal appeals.

CHAPTER SIX - COMMON ISSUES

A number of issues frequently arise in the context of a municipal court appeal. Some may be procedural, such as defects associated with the taking of a guilty plea. Others may be more substantive, such as motions to suppress evidence, motions to exclude a confession, and sentencing errors. In all cases, a careful reading of the transcript is necessary to identify issues to raise on appeal. As counsel, you must be aware of the standard of proof associated with various aspects of the municipal court trial. Proof beyond a reasonable doubt does not apply to every decision made by a municipal court judge.

I. Standards of Proof

A. Probable Cause

Probable cause must be established for issuance of a complaint. There must be sufficient facts established to demonstrate that a violation of a state statute or municipal ordinance occurred and that the defendant committed it. This standard is generally applied to the initial issuance of process, the complaint, and the issuance of a search warrant. Probable cause has been defined in case law as follows:

> [M]ore than mere naked suspicion but less than legal evidence necessary to convict. It is not a technical concept but rather one having to do with "the factual and practical considerations of every day life" upon which reasonable men, not constitutional lawyers, act. It has been described by this Court as a "well grounded suspicion" that a crime has been or is being committed. [State v. Waltz, 61 N.J. 83, 87 (1972); citations omitted].

B. Reasonable and Articulable Suspicion

The reasonable and articulable standard of proof must be met by the State to justify an investigative detention and frisk for weapons, to effect a motor vehicle stop, and to seek consent to perform a non-custodial warrantless search. See e.g., State v. Scriven, 226 N.J. 20, 33-34 (2016); State v. Locurto, 157 N.J. 463, 470 (1999). The reasonableness of an officer's suspicion is judged from the standpoint of a reasonably prudent officer and due weight must be given to the reasonable inferences an officer is entitled to draw from the facts the officer encounters in light of his experiences. See State v. Lund, 119 N.J. 35, 45 (1990); State v. Oliveri, 336 N.J. Super. 244, 247 (App. Div. 2001). The law enforcement officer must be able to state an objective basis for the belief that an offense has occurred. See State v. Williamson, 138 N.J. 302, 304-306 (1994). This standard of proof is often seen in DWI cases where the State must justify the underlying motor vehicle stop. The facts in the record may be applied to the question: was there a reasonable and articulable suspicion that the defendant's operation of a motor vehicle violated some part of the motor vehicle code?

C. Preponderance of the Evidence

Prosecutions under ordinances providing only for a civil penalty, as well as proceedings pursuant to the Penalty Enforcement Law of 1999, are civil in nature. In those cases, the applicable standard of proof is a preponderance of the evidence. See State v. Stafford, 365 N.J. Super. 6, 11 (Law. Div. 2003); State v. Bradley, 375 N.J. Super. 24, 27 (Law Div. 2004). To prevail, the State must prove the allegations are more likely true than not true.

D. Clear and Convincing Evidence

The clear and convincing evidence standard is defined as that amount of admissible evidence that produces in the mind of the judge a firm belief or conviction as to the truth of facts that the municipal prosecutor is trying to prove. It has further been defined as evidence that is so clear, direct, and convincing so to enable the judge to come to a clear conviction without hesitancy of the precise facts in issue. State v. Campbell, 436 N.J. Super. 264, 270-71 (App. Div. 2014). See also, State v. Chun, 194 N.J. 54 (2008) (admission of evidence in DWI).

The municipal prosecutor must meet this standard of proof to establish foundational requirements for the admissibility of the results of a breath-testing device. It also applies to the State in certain motions to suppress evidence where the issue involves consent to search, inevitable discovery of evidence, or the independent source rule.

E. Proof beyond a Reasonable Doubt

The prosecutor must satisfy the standard of proof beyond a reasonable doubt in order to secure a conviction in criminal and quasi-criminal proceedings, traffic offenses, and municipal ordinance violations. See State v. Kuropchak, 221 N.J. 368, 382 (2015); State v. Robertson, 228 N.J. 138, 147 (2017); Belleville v. Parrillo's, Inc., 83 N.J. 309, 312, 318 (1980). The term 'offense' includes disorderly persons and petty disorderly persons offenses. See N.J.S.A. 2C:1-14k. This standard is also applied to the State when the prosecutor seeks to establish the voluntariness of a confession or when attempting to disprove an affirmative defense. The Supreme Court defined this standard in State v. Medina, 147 N.J. 43, 61 (1996), cert. denied, 520 U.S. 1190 (1997), in a jury trial, but the definition applies to a judge acting as a fact finder as well:

> A reasonable doubt is an honest and reasonable uncertainty in your mind about the guilt of the defendant after you have given full and impartial consideration to all of the evidence. A reasonable doubt may arise from the evidence itself or from a lack of evidence. It is a doubt that a reasonable person hearing the same evidence would have.
>
> Proof beyond a reasonable doubt is proof, for example, that leaves you firmly convinced of the defendant's guilt. In this world, we know very few things with absolute certainty. In criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you are not firmly convinced of defendant's guilt, you must give defendant the benefit of the doubt and find him not guilty.

F. Conclusion

You must examine the record carefully to determine the issues to raise on appeal and argue the standard of proof that applies.

II. Legal Error

Because municipal appeals are tried *de novo* on the record before the Superior Court judge, it is not necessary to rely only on those errors that were subject to an objection by the defendant or defense counsel. In theory, all errors are automatically preserved in a *de novo* hearing and no trial is perfect. However, many, if not most, errors are harmless. The better practice is to focus the appeal on those errors that had the capacity to cause an unjust result. See generally, R. 2:10-2.

III. The Guilty Plea

The procedural requirements of a legally sufficient guilty plea sometimes form the basis of an issue on appeal. R. 7:6-2(a)(1). A municipal court judge must be satisfied that every guilty plea is entered voluntarily with an intelligent understanding not only for the charge or charges but also the consequences of the plea; namely, the penalties that will be faced as a result of pleading guilty. Ibid. If a plea is entered by a self-represented defendant, the judge must be sure there is an intelligent waiver of counsel and every plea must be supported by a factual basis. Ibid. See State v. Paladino, 203 N.J. Super. 537, 544 (App. Div. 1985).

To ensure that a defendant makes a knowing, voluntary, and intelligent plea, a municipal court judge must make sure that the defendant understands the charge and the consequences of pleading guilty. R. 7:6-2(a). Accord, Maida v. Kuskin, 221 N.J. 112, 123 (2015); State v. Colon, 374 N.J. Super. 199, 212 (App. Div. 2005). The defendant should be advised of the range of penalties, and in the case of a traffic matter, that notice of the guilty plea will be sent to the New Jersey Motor Vehicle Commission and become part of the defendant's New Jersey driving record. Defendants licensed in another state should be advised that their home state will be notified of the violation.

The transcript should reflect that the municipal court judge spoke to the defendant directly explaining the consequences of a guilty plea. R. 7:6-2(a). The transcript should also contain an acknowledgement by the defendant that he or she understands the charge, the consequences of the guilty plea, and that the plea is entered freely and voluntarily, not as a result of threats or coercion, or the payment of any consideration.

For a defendant who was not represented by counsel at the municipal court level, the record should contain a knowing and voluntary waiver of the right to counsel and court-appointed counsel for those cases that subject a defendant to a consequence of magnitude. R. 7:3-2(a). See State v. Hermanns, 278 N.J. Super. 19, 23, 26 n.3 (App. Div. 1994). A consequence of magnitude is any charge that exposes a defendant to a jail sentence, suspension of driver's license, or suspension of a defendant's right to apply for a driver's license, or other financial obligations that will exceed $800.00. Appendix to Part VII Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey. There should be a colloquy between a defendant and the municipal court judge about the risks of representing oneself while not being familiar with the Rules of Court, the Rules of Evidence, all potential defenses, and the way to effectively cross-examine witnesses. Failure to knowingly waive one's right to counsel may be an issue to raise on appeal.

Lastly, all guilty pleas must be supported by a factual basis, an admission from the defendant that he or she committed all the elements of the offense charged. R. 7:6-2. The factual basis must come from the defendant directly, not just representations from defense counsel. This requirement applies to every guilty plea involving criminal, traffic, and ordinance violations. This ensures that

the defendant is in fact guilty of the offense and subject to the sentence. State v. Pineiro, 385 N.J. Super. 129 (App. Div. 2006).

IV. Conditional Guilty Plea

Some transcripts may contain a conditional guilty plea, which is authorized by R. 7:6-2(c). A conditional guilty plea allows a defendant to plead guilty while reserving the right to appeal from certain pre-trial motions. It must be conducted with the consent of the prosecutor and approval of the court. For instance, a judge may rule against a defendant on a motion to suppress evidence or a motion that there was no reasonable and articulable basis for a motor vehicle stop or a motion to exclude a confession. After such a ruling goes against a defendant, there may be no other defenses to the charge. Therefore, the Rules of Court allow a defendant to enter a conditional guilty plea so as not to waste time on a trial, while preserving a defendant's right to appeal the adverse ruling on the motion.

V. Motions to Suppress Evidence

The right of an accused to be free of unreasonable searches and seizures is found in the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. In many instances, New Jersey case law has recognized that the New Jersey Constitution under Article I, Paragraph 7 grants individuals greater protection against police actions than the Federal Constitution would require.

Many municipal court cases are decided on motions to suppress evidence. Municipal courts have jurisdiction to hear motions to suppress either pursuant to a search warrant which was issued by a municipal court judge (and specifically not issued by a superior court judge) and evidence seized without a search warrant -- in both instances, if the resulting matters are within the jurisdiction of the municipal court. Rule 7:5-2 establishes two different procedures depending on whether the seizure was with or without a search warrant.

If the seizure was without a search warrant, it is presumptively invalid and the burden of proof is on the State to establish that evidence was seized under the circumstances set forth in cases establishing one of the well-recognized exceptions to the need to obtain a search warrant. See State v. Wilson, 178 N.J. 7, 12 (2003)

If the evidence was seized pursuant to a search warrant, it is presumptively valid and the burden is on the defendant to establish the lack of probable cause for the issuance of the search warrant. State v. Hill, 115 N.J. 169 (1989).

A defendant may not move to suppress illegally seized evidence for the first time on appeal to the Law Division; the motion must be made prior to the municipal court trial. See State v. Colapinto, 309 N.J. Super. 132, 137 (App. Div. 1998).

Municipal motions to suppress may be filed in a variety of contexts, such as:

- Lack of a reasonable and articulable suspicion that defendant committed a violation of the motor vehicle code or other law justifying the police stop of the defendant. The motion is made to suppress all evidence collected after the stop.

- Lack of probable cause to believe that a defendant is under the influence of an alcoholic beverage, even if there was a valid stop justifying the arrest of the defendant. The motion is

often made to suppress evidence collected as a result of the arrest in an effort to suppress the Alcotest results (which reveal blood alcohol level), that are obtained as a 'fruit' of the arrest.

- A warrantless search of a defendant's person during a street encounter by law enforcement.

- A warrantless search of defendant's automobile after a roadside stop to enforce the motor vehicle laws. See State v. Witt, 223 N.J. 409 (2015).

- A search of a residence conducted after defendant, or someone else, gave consent to law enforcement for entry into the residence.

VI. Breath-Testing Device Results

One issue raised on appeal may be lack of clear and convincing evidence to support pre-conditions for admitting into evidence breath-testing device results. See State v. Chun, 194 N.J. 54 (2008). For example, a defendant must be observed for 20 minutes before submitting to the test to ensure that he or she has not regurgitated or swallowed substances that could contaminate the results. Id. at 79. Breath-testing device results have been excluded on appeal, and a conviction vacated, because the State failed to prove that the defendant was observed for the requisite 20 minutes. See State v. Ugrovics, 410 N.J. Super. 482 (App. Div. 2009); State v. Filson, 409 N.J. Super. 246 (App. Div. 2009).

VII. Defendant is Not Guilty

Sometimes the only issue on appeal is whether the evidence presented supports a verdict of guilty beyond a reasonable doubt. You may find that no legal error was committed below. Your client may simply insist that he did not commit the offense alleged. The municipal appeal allows a trial *de novo* on the record before a new fact finder.

Two fact finders reviewing the same record may reach different conclusions. You may argue the evidence below simply should not firmly convince the Law Division judge of the defendant's guilt. You may wish to remind the Law Division judge that he or she need not find legal error in the municipal court's verdict. A different fact finder is empowered to reach a different verdict. The municipal appeal is ***not*** like an appeal of a Law Division verdict to the Appellate Division, where the appellate court is required to defer to the fact finders below.

The only deference required in the municipal appeal pertains to credibility findings. The Law Division judge is required to give "due, although not necessarily controlling, regard to the opportunity of the magistrate to judge the credibility of the witnesses." State v. Johnson, 42 N.J. 146, 157 (1964). Also, the municipal court, because of the volume of its caseload, is not required "to articulate detailed, subjective analyses of factors such as demeanor and appearance to support credibility determinations on each and every witness presented…." State v. Locurto, 157 N.J. 463, 475 (1999). However, in some cases, credibility determinations turn not on demeanor, which the municipal court judge is uniquely able to assess, but on such issues as consistency of testimony, motive, and bias, which the Law Division judge is equally able to consider. Moreover, no deference need be accorded unsupported conclusions based on speculation by the municipal court. State v. Segars, 172 N.J. 481, 498 (2002) ("Certainly, no deference was to be accorded the wholly unsupported conclusions the municipal court reached by speculating about what prompted the officer's inaccurate testimony.")

If the appeal rests on the argument that the State failed to prove the defendant guilty beyond a reasonable doubt, then defense counsel should carefully analyze the evidence in the record. You may wish to examine closely the elements of the charged offense, perhaps focusing, in particular, on one of the essential elements of the offense that the State failed to prove. For example, in a harassment case, the defendant's communications may be indisputable, but the defendant's "purpose to harass" – an essential element – may be debatable. See N.J.S.A. 2C:33-4. In some respects, your brief and oral argument would be akin to a summation at the end of a trial.

VIII. Miscellaneous

Other issues might arise during municipal court proceedings that may form the basis of an appeal.

A. Speedy Trial

The right to a speedy trial (the right not to be subjected to unreasonable delay) applies to a trial *de novo* after a municipal court conviction. See State v. Misurella, 421 N.J. Super. 538, 543-544 (App. Div. 2011). There are four factors that a court weighs in analyzing whether the prosecution of a case in municipal court denies a defendant the right to a speedy trial: 1) length of delay, 2) reason for the delay, 3) assertion of one's right to a speedy trial; and 4) prejudice to the defendant. Ibid. Courts must balance these factors. No single factor is controlling on a speedy trial motion. See Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972); State v. Gallegan, 117 N.J. 345 (1989); and State v. Tsetsekas, 411 N.J. Super. 1 (App. Div. 2009); and State v. Cahill, 213 N.J. 253 (2013).

B. Miranda

Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) provides that whenever a person is taken into police custody, before being questioned, he or she must be told of the Fifth Amendment right not to make any self-incriminating statements. Motions to exclude statements and confessions are often made in municipal court. The issue may revolve around the fact of custody or interrogation; for instance - when is a person considered 'in custody'? See e.g., State v. Stott, 171 N.J. 343 (2002). If there is an adverse ruling on a Miranda motion raised in municipal court, that issue may serve as the basis for appeal.

C. Discovery

Discovery issues are often raised in municipal court, including pre-trial motions to compel the production of certain documents, photographs, videotapes, and other evidence. Rule 7:7-7(b) sets forth a defendant's right to discovery in municipal court and provides that "in all cases the defendant, on written notice to the municipal prosecutor . . . shall be provided with copies of all relevant material, including but not limited to" the information set forth in eleven discrete categories." R. 7:7-7(b)(1)-(11). See State v. Stein, 225 N.J. 582, 594 (2016). The record should be examined carefully to determine if denial of discovery had an adverse impact on the municipal court proceedings. See State vs. Holup, 253 N.J. Super. 320 (App. Div. 1992). The Holup decision sets forth a process in situations in which discovery is requested but not provided. See R. 7:7-7(j). Rule 7:7-7(h) provides that before a discovery motion may be brought before the Court, the prosecution and defense must attempt to resolve their discovery issues by way of discussion without involvement by the Judiciary. Consistent with the case law and R. 7:7-7(j), the failure of the prosecutor to provide discovery may result in the dismissal of the action, barring the contested evidence at trial, or even a monetary sanction.

D. Sentence

There may be situations where the only issue to be raised in an appeal is the sentence imposed by the municipal court judge. See State v. DeBonis, 58 N.J. 182, 185-86 (1971). The basis for such an appeal may be that the sentence imposed by the judge was illegal, beyond that permitted by statute, or that the judge abused his or her discretion and imposed an excessive sentence. See State v. Paladino, 203 N.J. Super. 537, 549-550 (App. Div. 1985). Alternatively, the appeal may simply seek a *de novo* sentencing before the Superior Court Judge, without an assertion of illegality, or abuse of discretion.

Note: Ineffective assistance of counsel is not generally the subject of an appeal to the Law Division since that argument usually relies on matters that are outside of the trial record. Ineffective assistance of counsel may be raised by the defendant in a post-conviction relief application to the municipal court that heard the matter. See R. 7:10-2. As the attorney appointed via the Madden v. Delran list for a municipal appeal, you are not responsible for a separate post-conviction relief motion.

CHAPTER SEVEN – SUPERIOR COURT DETERMINATION

The Law Division has the option of deciding the municipal appeal *de novo* on the basis of the municipal court record, or simply reversing and remanding for a new trial. R. 3:23-8(a)(2). Accord, State v. Robertson, 228 N.J. 138, 147 (2017). Under *de novo* review, the Superior Court judge re-conducts the trial and enters a new verdict based on the municipal court proceedings.

A defendant may be convicted after a *de novo* trial and sentenced accordingly by the Superior Court judge. If the defendant is acquitted after a *de novo* trial, the Law Division shall order the defendant discharged, the municipal court conviction set aside, and the return of all fines and costs paid by the defendant. The court must also enter an appropriate judgment and transmit a copy to the municipal court. R. 3:23-8(e). And see N.J.S.A. 22A:3-4 (if judgment of guilt is reversed on appeal, court costs imposed must be repaid to defendant). If the municipal court has previously disbursed any fines and costs paid by the defendant, the defendant or the defendant's attorney may obtain reimbursement by serving on the recipient of the funds a copy of the order reversing the judgment. See R. 7:13-3.

CHAPTER EIGHT - SENTENCING

I. Overview

A. Introduction

When a Superior Court judge finds a defendant guilty of an offense as part of a municipal appeal, the judge is required to impose sentence. Under R. 3:23-8, the Law Division may not merely affirm the sentence of the municipal court, but must exercise independent judgment with respect to the defendant's punishment. See State v. Johnson, 42 N.J. 146, 157 (1964); State v. Tehan, 190 N.J. Super. 348, 350 (Law Div. 1982).

Usually the judge will impose sentence immediately, typically after affording both the defendant and his or her attorney the opportunity to speak in mitigation of punishment. R. 3:23-8(e). See State v. Taimanglo, 403 N.J. Super. 112, 120-122 (App. Div. 2008), cert. denied 197 N.J. 477 (2009). The defendant has a right to be present and to make a statement before sentence is announced. R. 3:21-4(b). In addition, the Law Division judge must inform the defendant of the right to appeal to the Appellate Division. R. 3:21-4(h). If the defendant waives the right to be present at sentencing, you must agree to convey the required advice about the right to appeal. Also, if the Law Division judge issues a written opinion to resolve the trial, the opinion should refer expressly to the requirements of R. 3:21-4(h). See State v. Taimanglo, 403 N.J. Super. at 121.

The sentence imposed on any offense by the Superior Court on appeal may not exceed the sanctions that were imposed in municipal court. This restriction is based upon a judicial policy set by the Supreme Court in the landmark decision of State v. DeBonis, 58 N.J. at 188-89. However, when the sentence imposed in the municipal court was illegal, the Superior Court judge may correct it, even if it results in an increased penalty. This practice is justified under the theory that where the sentence imposed in the first instance was illegal, a defendant has no basis to argue that imposition of a harsher sentence on appeal is prohibited. State v. McCourt, 131 N.J. Super. 283, 287-88 (App. Div. 1974).

In any traffic matter, you should review your client's driver's abstract before sentencing, in order to determine if your client is a first or repeat offender and to ascertain if the accumulation of points (see below) will affect his/her driving privileges. The New Jersey Motor Vehicle Commission website features a brochure on how to read a driver's abstract.

If the defendant is convicted after a *de novo* trial, the Law Division must impose a sentence as provided by law.

B. Sentencing in Traffic Cases – In General

The statutory authority to impose fines for moving motor vehicle violations in Chapter 4 of Title 39 usually stems from one of two independent sources. First, the language of the statute that was violated may contain its own provision pertaining to fines. If the statute does not specifically provide the penalty to be assessed for a violation, then the fine is usually assessed under N.J.S.A. 39:4-203, the general sentencing statute of the Motor Vehicle Code, applicable to most moving violations in Chapter 4.

Chapter 3 of Title 39 also has a general penalty provision set forth under N.J.S.A. 39:3-86. The statute can be utilized in those instances where no specific fine has been set forth in the statute.

However, N.J.S.A. 39:3-79 is the general penalty for equipment violations, which are found in N.J.S.A. 39:3-43 - 79.

C. Court Costs and Assessments

Court costs of up to $33 may be imposed on every traffic ticket where a conviction has been entered. N.J.S.A. 22A:3-4. In addition, a $6 assessment must be added to every fine or penalty imposed for a Title 39 violation. See generally N.J.S.A. 39:5-41 and N.J.S.A. 39:3-79.

D. Suspension of Driving Privileges

Normally, the suspension or revocation of a defendant's driver's license is imposed for a motor vehicle violation because the statute mandates it. For example, driving while intoxicated, driving on the revoked list, leaving the scene of a motor vehicle accident, and driving without liability insurance are all offenses that require the court to suspend a defendant's license upon conviction. Some offenses, such as driving on the revoked list, allow the judge discretion in setting the suspension period. Others specifically provide the time period of defendant's license loss.

On occasion, a motor vehicle statute may provide authority for the judge to suspend the defendant's driving privileges as a matter of discretion or because the driving conduct was particularly dangerous. E.g., N.J.S.A. 39:5-31, allowing for the suspension of driving privileges for a willful violation of any provision of Subtitle 1 of Title 39. When a judge chooses to order a discretionary suspension, the case law requires the judge to weigh and evaluate a number of aggravating and mitigating factors. State v. Moran, 202 N.J. 311 (2010).

E. Imprisonment

Short jail sentences are an option that may be imposed by the judge. The jail term may either be required as part of the statutory sentence or may be imposed as a matter of discretion by the judge, where authorized. Unless otherwise required by law, discretionary jail sentences imposed for traffic offenses are exceedingly rare in the absence of evidence of extremely dangerous driving. If a jail term is imposed as a result of a conviction involving a number of traffic offenses arising from a single incident, the total sentence may not exceed 180 days. State v. Palma, 219 N.J. 584 (2014).

Finally, some counties maintain a labor assistance program that can be utilized as a substitute for a jail term. The sentencing judge may also authorize the jail term to be served on a periodic basis. See N.J.S.A. 2B:12-22. However, a third or subsequent driving while intoxicated offender is ineligible for periodic service of the mandatory 180-day sentence. State v. Anicama, 455 N.J. Super. 365 (App. Div. 2018).

F. Probation

Probation is an option in any motor vehicle case where the mandatory penalty is not fixed by statute. N.J.S.A. 39:5-7; N.J.S.A. 2C:45-2(a). For Title 39 violations, the term of probation must not be less than six months nor more than one year. N.J.S.A. 39:5-7. For Title 2C violations, the term of probation is one to five years. N.J.S.A. 2C:45-2(a). A defendant who is sentenced to probation may be subject to the same conditions as a person placed on probation for a criminal offense. N.J.S.A. 2C:45-1. Therefore, a judge may, as conditions of defendant's probation, require the defendant to support his family, find or continue employment, undergo medical or psychological

treatment, pursue vocational training, refrain from consorting with disreputable people, remain in the jurisdiction, or perform community service.

Where a defendant has been sentenced to pay restitution, that payment shall be a condition of probation. N.J.S.A. 2C:45-1(c). By utilizing this option, a defendant convicted following a municipal appeal may be required to pay for any personal injury or property damage occurring in a routine traffic accident through the court as a condition of probation rather than through civil litigation.

G. Civil Reservation

Often in motor vehicle cases and certain disorderly persons offenses and petty disorderly persons offenses, a plea or finding of guilt may affect a subsequent civil case involving personal injury or property damages. This is especially true where a traffic accident or a simple assault is involved. The Rules of Court provide a mechanism for people to resolve their municipal court cases without necessarily exposing them to liability in any later civil suit. Rule 7:6-2(a)(1) allows a defendant to plead guilty with a reservation that the guilty plea will be non-evidential in any civil proceeding. This offers a defendant in municipal court a way to avoid a trial and settle his motor vehicle or disorderly persons or petty disorderly persons case in an expeditious manner without any danger to his position in a related civil matter.

In order to plead guilty with a civil reservation, the defendant must request the court to order the non-evidential effect of the plea. The Rule does not specify whether such an order is mandatory or discretionary once the defendant has made the request. The use of the word "may" implies that the order is left to the discretion of the judge. However, one court has held differently, stating that a "non-evidential order should … be entered as a matter of course on the request of a defendant, unless the State or a victim… shows good cause to the court why the order should not be entered." State v. LaResca, 267 N.J. Super. 411 (App. Div. 1993).

More recently, the New Jersey Supreme Court in Maida v. Kuskin, 221 N.J. 112 (2015), defined the circumstances under which a defendant may obtain a civil reservation in municipal court. In this case, the Court held that a request for a civil reservation in municipal court must be made in open court and at the same time as the court's acceptance of defendant's guilty plea. Id. at 123-124. The Court also held that a court may not enter a civil reservation order if the prosecutor or the victim demonstrates good cause to bar entry of such an order, or the charge to which a defendant pleads guilty does not arise out of the same occurrence that is the subject of the civil proceeding. Id. at 127-128. Further, the Court directed that a civil reservation order should not be entered "when the conduct encompassed by the traffic offense bears no relation to any issue in the subsequent civil proceeding" or if the defendant entered a guilty plea without a court appearance. Ibid.

The rule governing civil reservations in municipal courts differs from R. 3:9-2 in respect to the admissibility of a guilty plea entered in Superior Court. The Superior Court rule requires a showing of good cause for an inadmissibility order, or civil reservation. In contrast, in municipal court, a civil reservation will issue upon the defendant's request, unless the State or the victim can show good cause why the order should not be entered. Note, however, that the stricter standard of R. 3:9-2 applies if the guilty plea is entered in the Superior Court to traffic or disorderly persons or petty disorderly person offenses pursuant to a plea negotiation involving the dismissal of indictable offenses. State v. Tsilimidos, 364 N.J. Super. 454, 458-459 (App. Div. 2003).

H. Motor Vehicle Points

The Motor Vehicle Commission has imposed a point system for various motor vehicle violations. Information may be found on the State of New Jersey Motor Vehicle Commission webpage: www.state.nj.us/mvc.

II. Criminal Sentencing

A. Introduction

The Superior Court hears many appeals each year dealing with disorderly and petty disorderly persons offenses. The statutorily authorized sentences for these violations are set forth in N.J.S.A. 2C:43-1 *et seq.* Sentencing for disorderly and petty disorderly persons offenses is controlled exclusively by the Code of Criminal Justice, Title 2C.

The normal range of punishment for a disorderly persons offense allows the court to impose a jail sentence of up to six months or a fine of up to $1,000, or both. A petty disorderly persons offense carries a jail sentence of up to 30 days or fine of up to $500, or both. There are also mandatory associated assessments for both types of offenses, including the $50 Victims of Crime Compensation Office (VCCO) assessment and the $75 Safe Neighborhood Services Fund (SNSF) assessment. Court costs of up to $33 may also be added.

The Code authorizes a range of sanctions for disorderly and petty disorderly persons offenses and also offers guidance as to how and under what circumstances those sanctions are to be imposed. This includes guidance on how a judge is required to exercise discretion in determining the appropriate sentence for a disorderly or petty disorderly persons offense.

There are also numerous possible sentencing alternatives authorized by the Code for disorderly or petty disorderly persons offenses. These include, but are not limited to: probation, restitution, suspended sentences, loss of driving privileges, and credit for time served before the imposition of sentence. These issues are as applicable to sentencing for disorderly and petty disorderly persons offenses in a municipal appeal as they are for sentencing in the Superior Court. This chapter will outline some of the sentencing options available following a municipal appeal in determining the appropriate sentence to be imposed in a disorderly or petty disorderly persons offense.

B. Suspended Sentence

N.J.S.A. 2C:43-2(b) provides that a judge may suspend the imposition of a defendant's sentence, provided the defendant meets or follows certain conditions authorized by N.J.S.A. 2C:45-1. The judge may suspend a portion of a sentence and impose the balance of the sentence or the judge may suspend the entire sentence. A judge, however, may not impose a term of imprisonment for a specific number of years, and then suspend that sentence. See State v. Cullen, 351 N.J. Super. 505, 507-08 (App. Div. 2002), Cannel, New Jersey Criminal Code Annotated, comments on N.J.S.A. 2C:43-2.

N.J.S.A. 2C:43-2(b) also gives a judge the authority to suspend fines. It does not allow a judge to suspend mandatory assessments such as the VCCO and SNSF. By law, these assessments cannot be suspended. It is doubtful, therefore, that a judge may suspend any portion of a defendant's

sentence that is otherwise mandatory. For example, N.J.S.A. 2C:20-11(c)(4) provides that any person convicted of a third or subsequent shoplifting offense shall serve a minimum term of imprisonment of not less than 90 days.

C. Probation

Following a municipal appeal, the sentencing judge has the authority to place one or more conditions upon a defendant whose sentence has been suspended or who has been sentenced to probation. N.J.S.A. 2C:45-1. The statute sets forth 12 conditions that may be imposed, as well as a 'catch-all' provision that allows the court to impose any other condition that is reasonably related to a defendant's rehabilitation, but is not unduly restrictive. N.J.S.A. 2C:45-1(b)(1) to (11) and (13).

D. Fines

The court is authorized by statute or ordinance to impose a fine on a person convicted of an offense. Absent extraordinary circumstances, a defendant may be sentenced to up to a $1,000 fine for a disorderly persons offense and up to a $500 fine for a petty disorderly persons offense. A judge may use his or her discretion in sentencing a defendant to any amount up to the statutory limit, subject to N.J.S.A. 2C:44-1(a) and 44-2 (c)(1). On appeal, a defendant who claims an inability to pay a fine imposed by the municipal court should be prepared to present evidence of his or her financial situation at sentencing in the Law Division.

E. Restitution

A court may also order a defendant to make restitution to the victim instead of, or in addition to, the imposition of a fine. Corporate defendants may also be required to make restitution to a victim. However, when the victim is any department or division of the New Jersey government, the sentencing court is required to order the defendant to make restitution to the victim. N.J.S.A. 2C:43-3. The amount of restitution is set at the discretion of the court, subject to N.J.S.A. 2C:44-2(c)(2). Unless otherwise stipulated, the amount should be determined following a hearing where the judge will balance the loss to the victim against the defendant's ability to pay. State in Interest of R.V., 280 N.J. Super. 118 (App. Div. 1995). The total restitution must not exceed the amount of the victim's loss, except that a failure to pay a State tax allows the State to receive the amount evaded, plus any civil penalties and interest. N.J.S.A. 2C:43-3. Any restitution imposed on a person shall be in addition to any fine that may be imposed pursuant to this section. Ibid.

F. Imprisonment

Following a municipal appeal, the Superior Court has the authority to impose a jail sentence on a person convicted of a disorderly or petty disorderly persons offense. A defendant may be sentenced up to six months in jail for a disorderly persons offense and up to 30 days in jail for a petty disorderly persons offense. N.J.S.A. 2C:43-8.

When sentencing any criminal defendant, a court must follow certain steps. First, the court must determine if imprisonment is appropriate based on certain factors set forth in the Code of Criminal Justice. Second, if the presumption of non-incarceration does not apply or is overcome, the court must determine the appropriate length of the sentence, based on the aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1(a) and (b). In analyzing the aggravating factors, the sentencing court must disregard those factors which are also elements of the offense. This so-called "double counting" of elements has been banned by the Supreme Court. State v. Yarbough, 100 N.J. 627

(1985). For example, harm to the victim of a simple assault could not be considered as an aggravating factor since injury is an element of the offense of simple assault.

Disorderly and petty disorderly persons offenders who are first offenders are afforded a presumption of non-incarceration. N.J.S.A. 2C:44-1(e). This presumption can only be overcome if the sentencing court finds that because of aggravating factors, incarceration is necessary for the protection of the public. If the presumption of non-incarceration does not apply to the defendant, then no presumption exists at all. The presumption of incarceration never applies to disorderly or petty disorderly persons offenses.

If the presumption of non-incarceration does not apply or is overcome and the sentencing court decides that a term of incarceration is necessary, it must use the balance of aggravating and mitigating factors in determining the appropriate sentence. R. 7:9-1; N.J.S.A. 2C:44-1 to 2C:44-3. Since there are no presumptive terms for disorderly and petty disorderly persons offenses, the aggravating and mitigating factors are the focus of the court's consideration in determining a term of incarceration. There is also no authority for a judge to require that the defendant serve a portion of his sentence with a minimum term of parole ineligibility.

Finally, following a municipal appeal, judges in the Superior Court may impose a so-called "split sentence." A split sentence involves a probationary term, coupled with a period of incarceration that can be as long as 90 days. N.J.S.A. 2C:43-2(b)(2). See State v. Hartye, 105 N.J. 411, 418-19, (1987). The fact that a defendant has a presumption of non-incarceration does not apply to this type of sentence.

Both N.J.S.A. 2B:12-22 and N.J.S.A. 2C:43-2(b)(7) allow a defendant to serve his custodial sentence at night or on the weekends, subject to defendant qualifying for the jail's program, so that he or she may continue to work or participate in training or educational programs. These statutes are especially important for municipal appeals because, although the jail terms tend to be relatively short, a defendant who serves the sentence continuously could conceivably lose a job and be unable to support his/her family. Sentencing judges thus have the option of sentencing offenders to jail at nights, on weekends, or any other time that would allow the defendant to continue his employment and support her/himself and her/his family. Serving a jail term this way also allows the defendant to continue generating income in order to pay fines, restitution, costs, and assessments.

It is important to note that a defendant's acceptance into a night or weekend reporting program is usually at the discretion of the county jail. For example, a defendant may have to pass a background check with a focus on certain types of prior charges, as well as a medical and mental health/substance abuse clearance. Furthermore, even if the defendant successfully passes these screenings, most jails maintain the discretion to deny a defendant entry into a night or weekend reporting program due to operational needs of the jail at that particular time. Therefore, it is important to inform clients that while night/weekend reporting may be an option and can be ordered by the court, a denial by the jail of the defendant's entry into this type of program would require a resentencing. Outstanding detainers from other courts may preclude a defendant from participating in a night/weekend reporting program or other programs within the jail.

When sentenced to jail, a defendant may be sentenced to pay a fine and make restitution as well. For further reference, see N.J.S.A. 2B:12-23.1 regarding a judge's ability to impose alternatives to custodial sentences for financial obligations. Note: This does not include restitution and the $250 surcharge on an Unsafe Operation violation. Also, see R. 7:9-1(b) requiring a judge to articulate factors in the statute.

III. Drunk Driving Sentencing

A. Monetary Sanctions

A DWI defendant who has been found guilty following a municipal appeal will be subject to a variety of monetary sanctions. These include the following:

Monetary Sanction	Required Amount	Statute
Fine	$250–$400	N.J.S.A. 39:4-50(a)(1)(i)
Fine	$300–500	N.J.S.A. 39:4-50(a)(1)(ii)
Fine 2nd Offense	$500 – $1000	
Fine 3rd Offense	$1000	
VCCO	$50	N.J.S.A. 2C:43-3.1
SNSF	$75	N.J.S.A. 2C:43-3.2
DWI Enforcement	$100	N.J.S.A. 39:4-50.8
DWI Surcharge	$125	N.J.S.A. 39:4-50(i)
Court Costs	$33	N.J.S.A. 22A:3-4
Additional fine assessments	$6	N.J.S.A. 39:5-41

B. Loss of Driving Privileges

First Offense – 3 Months (BAC less than 0.10%)
First Offense – 7 Months to 1 year (BAC 0.10% or greater or under influence of drugs)
Second Offense – 2 years
Third Offense – 10 years

C. Jail Term

First Offense – Up to 30 days (discretionary)
Second Offense (2 days to 90 days)
Third Offense (mandatory 180 days)

D. Community Service

30 days (180 hours) mandatory for 2nd offenders

E. Ignition Interlock Device

First Offense (6 – 12 months discretionary with BAC less than .15%)
First Offense (6 – 12 months mandatory with BAC greater than .149%)
Second and Subsequent offenses (1 – 3 years – mandatory)

In instances where a first offender has a blood alcohol level less than 0.15%, if the sentencing court orders the installation of the interlock device, the installation need not occur until after the license suspension term has expired. In all other cases, the interlock must be installed immediately, kept on the vehicle during the suspension term, and then for the determinate term ordered by the sentencing judge. The Motor Vehicle Commission will not restore driving privileges until proof of compliance with the interlock portion of the sentence has been provided.

CHAPTER NINE - APPEAL TO THE APPELLATE DIVISION

Appeals from final judgments of the Superior Court following a trial *de novo* may be taken to the Appellate Division per R. 2:2-3(a)(1). The appeal shall be taken within 45 days pursuant to R. 2:4-1(a).

Rule 2:7-2(d) governs the extent of the *pro bono* attorney's obligation on appeal from municipal court decisions. The rule provides:

> Assigned counsel representing a defendant in a non-indictable prosecution shall file an appeal for a defendant who elects to exercise his or her right to appeal. An attorney filing a notice of appeal shall be deemed the attorney of record for the appeal unless the attorney files with the notice of appeal an application for the assignment of counsel on appeal.

Thus, if you were the *pro bono* attorney for the appeal to the Superior Court and your client wishes to next appeal to the Appellate Division, you **must** file the notice of appeal to the Appellate Division. If you seek to be relieved of your *pro* bono duty to serve as counsel in the Appellate Division, you must file a motion with that court to be relieved. **Otherwise, you will be considered the attorney of record in the Appellate Division.**

The Supreme Court has ordered that electronic filing is mandatory in the Appellate Division for all attorneys for all appellate case types. If you file a motion to be relieved as counsel, you must serve your client in paper and provide proof of service to the Appellate Division. Your adversary must be served electronically through eCourts Appellate.

To initiate the appeal, you must file a notice of appeal, criminal case information statement, and transcript request form or motion for transcripts at public expense. An indigent defendant provided with transcript services on appeal from the municipal court to the Law Division is also so entitled, without formal application, on appeal from the Law Division to the Appellate Division. R. 2:7-4.

The Appellate Division webpage on the Judiciary's website provides detailed information on electronic filing of Appellate appeals. To locate this information, go to the NJ Courts homepage, www.njcourts.gov, and enter "Appellate Division" in the search bar. The Appellate Division's help desk telephone number is **(609) 815-2950**. For eFiling information, use extension **52590**. An indigent appellate is entitled to have a transcript of the proceedings below furnished without charge for use on appeal. R. 2:5-3(d).

A *pro bono* attorney may also be assigned via the Madden v. Delran list to represent the defendant on an appeal to the Appellate Division **after** the attorney handling the case up to that point has had the motion to be relieved of counsel granted. Since this newly appointed attorney will be entering the case for the first time, consultation with the client and review of the proceedings below are necessary to enable proper Appellate representation in the matter.

APPENDIX

APPENDIX A – How to Appeal the Decision of a Municipal Court

(Note: this packet of information may also be found on the Judiciary's public internet site www.njcourts.gov, in the Municipal Court section. It is designed to assist defendants with the initiation of the municipal appeal process, including forms for Notice of Appeal, Transcript Request, and Certification of Timely Filing. These documents should have been filed by defendant or defense counsel below prior to your appointment as counsel on appeal and are provided here as background).

APPENDIX B - Sample Brief

APPENDIX C - Criminal Division Phone Numbers

APPENDIX D - Proceeding at a Glance – Municipal Court Appeal

APPENDIX E – Discovery-Related Documents

Appendix A

HOW TO USE THIS ONLINE

This form can be filled out on your screen, saved to your local drive, and printed out on your local printer or it can be printed out on your local printer for completion by hand or typewriter.

The information you enter is NOT submitted electronically.

How to Appeal a Decision of a Municipal Court

Who Should Use This Packet?

If you have been found guilty and have been sentenced by a Municipal Court judge and you want to appeal, then this packet will show you how. Some reasons to file an appeal are:

- You believe the facts do not support the judge's decision; or
- You believe the judge's decision does not follow the law.

IMPORTANT POINTS TO REMEMBER:

The Municipal Court must **receive** your Notice of Municipal Court Appeal form within 20 days (including weekends and holidays) from the date you were found guilty (see Steps 1 and 3 on page 3).

There is a **$100 filing fee plus a transcript fee** which you must pay in advance. Both of these fees are non-refundable (see Steps 2 and 6).

If you were represented by a court appointed attorney in your Municipal Court proceeding, please consult with that person prior to filing your appeal. The assigned counsel can help you file your appeal.

Note: These materials have been prepared by the New Jersey Administrative Office of the Courts for use by self-represented litigants. The guides, instructions, and forms will be periodically updated as necessary to reflect current New Jersey statutes and court rules. The most recent version of the forms will be available at the county courthouse, your local Municipal Court or on the Judiciary's Internet site www.njcourts.com. However, you are ultimately responsible for the content of your appeal.

THINGS TO THINK ABOUT BEFORE YOU REPRESENT YOURSELF IN COURT

DECIDE WHETHER TO GET A LAWYER

The court system is often complicated and confusing. As a result, you may wish to consult with a lawyer before deciding whether to represent yourself in court. If you cannot afford a lawyer or do not know how to go about finding a lawyer, you can:

- Call the New Jersey Attorney Referral Office in your county; or
- Ask any of the State or County Bar Associations for the names of lawyers who may be able to represent you at a reduced price.

NOTE: If you believe you qualify for a court-appointed lawyer, ask the court staff at either the Municipal or Superior Court for more information. The court staff can give you the forms needed to apply for a court-appointed lawyer.

WHAT YOU SHOULD EXPECT IF YOU REPRESENT YOURSELF

While you have the right to represent yourself in court, you should not expect special treatment, help or attention from the court. The following is a list of some things court staff can and cannot do for you. Please read it carefully before asking court staff for help.

- *We can* explain and answer questions about how the court works.
- *We can* tell you what the requirements are to have your case considered by the court.
- *We can* give you some information from your case file.
- *We can* explain and answer questions about how to fill out forms
- *We can* provide you with samples of court forms that are available.
- *We can* provide you with guidance on how to fill out forms.
- *We can* usually answer questions about court deadlines.
- *We cannot* give you legal advice. Only your lawyer can give you legal advice.
- *We cannot* tell you whether or not you should bring your case to court.
- *We cannot* give you an opinion about what will happen if you bring your case to court.
- *We cannot* recommend a lawyer, but we can provide you with the telephone number of a local lawyer referral service.
- *We cannot* talk to the judge for you about what will happen in your case.
- *We cannot* let you talk to the judge outside of court.
- *We cannot* change an order issued by a judge.

COURT RULES ABOUT MUNICIPAL COURT APPEALS

You can get additional information on how to file a Municipal Court appeal by looking up *Rule* 3:23 in the *Rules Governing the Courts of the State of New Jersey*. Although this packet will walk you through the appeal process, you should consider reading this rule if you decide to file your own Municipal Court appeal. A copy of the rule book is available at the State Library in Trenton, law libraries, and at many of the county and municipal public libraries located throughout the State.

CHECKLIST

Please feel free to use this Checklist as you complete each of the six steps discussed in the following section. Please pay close attention to the time frames indicated in each Step.

____ Complete FORM A (*Notice of Municipal Court Appeal*) – See STEP 1
____ Complete FORM B (*Transcript Request – Municipal Court*) – See STEP 2
____ Contact the Municipal Court to determine what the estimated cost of the Transcript will be – See STEP 2
____ After completing FORM B (*Transcript Request – Municipal Court*), take it to the Municipal Court to order the correct number of transcripts. Please remember to bring/enclose a check to pay for the transcript – See STEP 2
____ Mail or deliver FORM A (*Notice of Municipal Court Appeal*) to the Municipal Court – See STEP 3
____ Mail or deliver a copy of FORM A (*Notice of Municipal Court Appeal*) to the Prosecuting Attorney(s) – See STEP 4
____ Complete FORM C (*Certification of Timely Filing*) – See STEP 5
____ Mail or deliver a copy of FORM A and the completed FORM C, along with the $100 filing fee, to the Criminal Division Manager at the Superior Court – See STEP 6

6 STEPS FOR FILING YOUR APPEAL

STEP 1: **Fill out FORM A (*Notice of Municipal Court Appeal).***

STEP 2: Fill out FORM B (*Transcript Request Municipal Court*).

As part of the appeal process, you must order an original and a copy of the written record, also called a *transcript,* of your Municipal Court hearing. To order these transcripts, you must fill out FORM B (*Transcript Request-Municipal Court*) and mail or deliver it to the Municipal Court where your hearing took place.

NOTE: You will have to pay for the transcript in advance. This non-refundable fee depends on the length of your trial. Before you send or deliver the *Transcript Request-Municipal Court* form to the court, please call the court to get from them 1) the estimated cost of the transcript and 2) who the check should be written to. If you cannot afford to pay for the transcript, ask court staff at either the Municipal or Superior Court how you can apply to have the transcript produced at court expense.

One of the two transcripts you are required to order is for the Prosecutor and the other is for the Criminal Division Manager at the Superior Court (see STEPS 4 and 6). If you want a transcript for yourself, you should order a third copy when you place your original transcript order.

STEP 3: Mail or deliver FORM A (*Notice of Municipal Court Appeal*)) to the Municipal Court.

In order to let the Municipal Court Administrator of the Municipal Court in which you were originally found guilty know that you are filing an appeal, you must mail or deliver FORM A *(Notice of Municipal Court Appeal)* to that court. The Municipal Court must receive this form **no later than 20 calendar days (this includes weekends & holidays)** after the date you were found guilty**. If the Municipal Court does not RECEIVE the appeal form by the 20 day deadline, your appeal will not be heard.**

NOTE: Before you deliver or mail the original of FORM A to the Municipal Court, please make some extra copies. The information contained in STEPS 4 and 6 will let you know how many copies you will need. These additional copies are needed to help you complete the filing of your appeal.

If you mail FORM A instead of delivering it in person, you should send it certified mail, return receipt requested. Your post office can tell you how to do this.

STEP 4: Mail or deliver a copy of FORM A (*Notice of Municipal Court Appeal*) to the Prosecutor.

You must send a copy of FORM A to the Prosecutor **no later than 5 days** after you mailed or delivered the original copy of FORM A to the Municipal Court. If you mail the form, instead of delivering it in person, you should send it certified mail, return receipt requested.

In almost all cases the prosecuting attorney is the County Prosecutor. However, in some cases the prosecuting attorney may be a different person. To determine if the prosecuting attorney for your case may be someone other than the County Prosecutor, please refer to the sheet at the end of this packet labeled *Determining the Prosecuting Attorney*.

STEP 5: Fill out FORM C (*Certification of Timely Filing*).

Fill out the *Certification of Timely Filing* (FORM C) and attach it to a copy of FORM A. FORM C is your certification telling the court that you mailed the necessary papers on time and to the correct places.

STEP 6: Mail or deliver a copy of FORM A (*Notice of Municipal Court Appeal*) and the original of the FORM C (*Certification of Timely Filing*) to the Criminal Division Manager at the Superior Court.

You must send a copy of FORM A (*Notice of Municipal Court Appeal)* and the original of FORM C (*Certification of Timely Filing*) to the Criminal Division Manager at the Superior Court. The Superior Court must **receive** these forms **no later than 5 days** after the original copy of FORM A (*Notice of Municipal Court Appeal*) was received by the Municipal Court. If you mail the forms, you should send them in one envelope certified mail, return receipt requested.

The copy of FORM A and the original of FORM C should be mailed or delivered to the Criminal Division Manager at the County Courthouse in the county where the original Municipal Court case was heard. This address can be found in the Directory of Superior Court Clerk's Offices-Law Division contained in this packet. If you are not sure which county you should file your appeal in, ask someone at the Municipal Court for assistance.

NOTE: A filing fee of $100 is required to file your Notice of Appeal with the Criminal Division Manager. Make the check or money order payable to the *Treasurer, State of New Jersey*. However, if you cannot afford to pay for filing the appeal, ask the court staff at either the Municipal or Superior Court how to apply for the waiver of the filing fee.

Form A

STATE OF NEW JERSEY
NOTICE OF MUNICIPAL COURT APPEAL

v. Superior Court of
(Title of Action)

MunicipalCourt Ticket or Complaint #. (refer to ticket or complaint):

Your Name: Lawyer's Name (If applicable):

Your Address: Lawyer's Address (if appl):

Contact Phone #: ( ) - Lawyer's # (if appl): ( ) -

If you were represented by a lawyer, was he/she appointed by the court? ☐ Yes or ☐ No (check one)

I, , am appealing to the Superior Court from a conviction entered in the Municipal Court on .

On that date, I was convicted of the following offense(s):

The Municipal Court Judge found me guilty and ordered the following:

- Fine (Specify Amount):
- Restitution (Specify Type): Amount:
- Jail Sentence (Length of Sentence):
- Community Service (Describe):
- Probation (Length):
- Driver License Suspension (Length of Suspension):
- Other Penalty (Please Specify):

In connection with this outcome:
__ No Fine was Assessed, or
A Fine was Assessed and:
__ has been paid
__ has not been paid
__ has been stayed pending appeal

In connection with this outcome:
__ No Jail Term was Imposed, or
A Jail Term was Imposed:
__ however, I am not in jail
__ I am in jail confined at the following facility:

A Sound Recording was made in the above matter at the time of the trial, as required by Rule 7:8-8.

Docket # _____
(Superior Court Use Only)

Form B

TRANSCRIPT REQUEST-MUNICIPAL COURT

Name of Municipal Court:

Title of Action: v.

Name of Municipal Court Judge:

Name of County:

Date(s) of Hearing(s):

COMPLETE THIS SECTION ONLY IF YOU ARE FILING AN APPEAL OF A MUNICIPAL COURT JUDGMENT

To file a Municipal Court appeal you must order and pay in advance for a minimum of two (2) copies of your court case transcript. The Municipal Court Administrator will file the original copy of the transcript with the Criminal Division Manager at the Superior Court and a certified copy with the Prosecuting Attorney. You may also order one or more copies of the transcript for yourself if you choose, at an additional charge.

Number of transcripts requested:

__1__ Copy for the Criminal Division Manager at the Superior Court (**required**)

_____ Copy or copies for the Prosecuting Attorney or Attorneys (a minimum of one is **required)**

_____ Additional copies (**optional**)

_____Total Copies Ordered

Your name: Address:

Telephone #: ( ) -

I agree to pay for the preparation and all copies ordered of the transcript.

_____ _____

(Your Signature) (Date)

(Type or Print your name)

New Jersey Court Rule 3:23-8(a) requires that when an appeal is filed, the original transcript must be filed with the Criminal Division Manager at the Superior Court and a certified copy with the Prosecuting Attorney.

Note: Before you send or deliver the *Transcript Request-Municipal Court* form to the court, please call the court to get from them 1) the estimated cost of the transcript and 2) who the check should be written to.

Amount of Deposit: $_____
(Court Use Only)

Form C

CERTIFICATION OF TIMELY FILING

I certify that a copy of the Notice of Municipal Court Appeal form (FORM A) has been mailed or delivered to the Municipal Court Administrator of the Municipal Court, and also to the Prosecuting Attorney(s), within the deadlines specified by the Rules of Court. In addition, I certify that I have contacted the Municipal Court Administrator of the Municipal Court stated above, before filing my Notice of Municipal Court Appeal, and I have ordered an original and a copy of the transcript of my proceedings. Additionally, if required, I have paid the transcript deposit specified by the Municipal Court Administrator to have the transcript produced.

I certify that the foregoing statements made by me are true. I am aware that if any of these statements made by me are not true, I am subject to punishment.

_____ _____

(Your Signature) Appellant (Date)

(Type or print your name)

List the name(s) and address(es) of the Prosecuting Attorney(s) who has been provided with a copy of Form A *(Notice of Municipal Court Appeal).*

(a) Name:
Address:

(b) Name:
Address:

(c) Name:
Address:

Determining the Prosecuting Attorney

Determining the Prosecuting Attorney- In order for you to file a copy of FORM A (*Municipal Court Appeal*) with the Prosecuting Attorney, you must first determine who the Prosecuting Attorney for your case will be when it gets to the Superior Court. It may be an attorney representing the Municipality where your matter was heard, the County Prosecutor or even an attorney from the office of the State Attorney General. Who the Prosecuting Attorney will be is determined by the nature of the case on which you are appealing. For example:

a) If one or more of the charges on which you were found guilty and are appealing is a municipal ordinance violation, a copy of FORM A (*Notice of Municipal Court Appeal*) must be mailed or delivered to the Municipal Attorney for the town where the Municipal Court is located. Staff at the town's main administrative building can provide you with the name and address of the Municipal Attorney.

b) If your appeal is based on a claim that a State law, statute, rule, regulation, or an order by the executive branch of government is unconstitutional, then a copy of FORM A (*Notice of Municipal Court Appeal*) must be mailed or delivered to the Office of the Attorney General, at the following address:

Office of the Attorney General
R. J. Hughes Justice Complex
25 Market Street, P.O. Box 080
Trenton, NJ 08625

c) For all other matters, a copy of FORM A (*Notice of Municipal Court Appeal*) must be mailed or delivered to the County Prosecutor. This includes most traffic offenses and driving while intoxicated (DWI) violations. Please be aware that your case may require you to send a copy of FORM A (*Notice of Municipal Court Appeal*) to more than one Prosecuting Attorney. For example, if one of the charges is a municipal ordinance violation and another a speeding offense, then you will need to send a copy of FORM A to both the Municipal Attorney and the County Prosecutor. The Municipal Prosecutor, the local police department or Municipal Court staff can provide you with information on whether a particular charge is a municipal ordinance violation or a State law violation. Finally, if you are still unsure who the Prosecuting Attorney in your case will be, you may want to consider sending a copy of FORM A (*Notice of Municipal Court Appeal*) to the County Prosecutor, the Municipal Attorney, and the State Attorney General. Please refer to the Summary Table below for information on determining the Prosecuting Attorney(s).

SUMMARY

If you are appealing:		**You must send a notice to:**
A Municipal Ordinance violation	>>	The Municipal Attorney for the town where the Municipal Court is located
A violation of State law, (i.e., a traffic violation, assault charge or most other matters)	>>	The County Prosecutor
The Constitutionality of the law, rule, regulation, or an Executive Order	>>	The Office of the Attorney General
If you are not sure who the Prosecuting Attorney will be.	>>	Ask the Municipal Prosecutor or Municipal Court staff for help

Directory of Superior Court Clerk's Offices- Law Division

A copy of the *Notice of Municipal Court Appeal* (Form A) must be sent to the Criminal Division at the Superior Court in the county where you are filing your Appeal.

Atlantic County
Municipal Appeals Clerk
Atlantic County Courts Complex
4997 Unami Boulevard
Mays Landing, NJ 08330
609-909-8148

Bergen County
Criminal Division Manager
Bergen County Courthouse
10 Main Street, Room 116
Hackensack, NJ 07601
201 - 527-2409

Burlington County
Criminal Division Manager
Burlington Courts Facility
50 Rancocas Rd. -3rd Fl.
Mount Holly, NJ 08060
609-518-2578

Camden County
Criminal Division Manager
Camden County Hall of Justice
101 So. Fifth St., Rm 380
Camden, NJ 08103
856-379-2230

Cape May County
Municipal Appeals Clerk
Criminal Division
Cape May County Superior Court
4 Moore Rd.
Cape May Court House, NJ 08210
609-463-6550

Cumberland County
Assistant Criminal Division Manager
60 West Broad Street
Bridgeton, N.J. 08302
856-453-4300

Essex County
Criminal Division Manager
Essex County Veterans Courthouse
50 West Market Street
Newark, NJ 07102
973-776-9300

Gloucester County
Criminal Division Manager
Gloucester County Justice Complex
70 Hunter Street
Woodbury, NJ 08096
856-686-7500

Hudson County
Criminal Records Office
Hudson County Admin. Building
595 Newark Ave., Room 101
Jersey City, NJ 07306
201-217-5217

Hunterdon County
Municipal Appeals Clerk
Hunterdon County Criminal Division
Hunterdon County Justice Center
65 Park Avenue
Flemington, NJ 08822
908-237-5851

Mercer County
Criminal Division Manager
Mercer County Courthouse
209 So. Broad St.
Trenton, NJ 08650
609-571-4104

Middlesex County
Criminal Division Manager
Middlesex County Courthouse
56 Paterson St.
P.O. Box 964
New Brunswick, NJ 08903
732-519-3837

Monmouth County
Municipal Appeals Clerk
Monmouth County Courthouse
Court St., East Wing, 1st Fl.
Freehold, NJ 07728
732-677-4562

Morris County
Criminal Division Manager
Morris County Courthouse
Washington St.
Morristown, NJ 07960
973-326-6950

Ocean County
Criminal Case Processing
Ocean County Justice Complex
120 Hooper Ave., Room 220
Toms River, NJ 08753
732-929-4780

Passaic County
Criminal Division Manager
Passaic County Courthouse
77 Hamilton Street
Paterson, NJ 07505
973-247-8344

Salem County
Assistant Criminal Division Manager
Salem County Court House
92 Market Street
Salem, NJ 08079
856-878-5050 x.15851

Somerset County
Criminal Division Manager
Somerset County Courthouse - 2nd Fl.
20 North Bridge Street, P.O. Box 3000
Somerville, NJ 08876
908-231-7666

Sussex County
Municipal Appeals Clerk
Criminal Division
Sussex County Judicial Complex
43-47 High Street
Newton, NJ 07860
973-579-0913

Union County
Criminal Division Manager
Union County Courthouse
Tower Bldg., 7th Fl., 2 Broad St.
Elizabeth, NJ 07207
908-659-4662

Warren County
Municipal Appeals Clerk
Warren County Criminal Division
P.O. Box 900
Belvidere, NJ 07823
908-475-6990

Appendix B

SAMPLE BRIEF March 14, 2018

Honorable XXX, J.S.C.
Mercer County Courthouse
209 South Broad Street
Trenton, New Jersey 08650
Hand Delivered

Re: **State v. XXX**
Docket #xxx
Appeal #xxx
Municipal Appeal

Dear Judge XXX:

Please accept this letter brief in lieu of a more formal brief in opposition to the defendant's appeal from his Denial of Motion to Suppress, Conviction and Sentence entered in the XXX Township Municipal Court on XXX 2, XXXX, in which defendant pled guilty to a violation of N.J.S.A. 39:4-50 and was sentenced to fines, costs, and penalties totaling $2,146.00, 180 days to be served in jail, and 10 years suspension of his driver's license.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On XXX 2, XXXX, in XXX Township Municipal Court, the Honorable XXX, J.M.C. heard argument and testimony on the defendant's motion to suppress the evidence. New Jersey State Trooper XXX testified for the State. On XXX 9, XXXX, Trooper XXX was on a tour of duty in which he was responsible for Interstates 195, 295 and 95. (1T 7:11-14). He was in uniform and operating a marked troop car with overhead lights. (1T 7:15-21). At approximately five o'clock in the evening Trooper XXX received a call from his dispatcher to be on the lookout for a white work van with a ladder on top. (1T 7:22 through 8:12). His dispatcher advised that the caller was still on the phone because he was giving

location updates. (1T 8:20-22). Trooper XXX observed a vehicle that fit the description and heard someone honking as the white van passed his location. (1T 8:19, 22-23).

As a result, Trooper XXX pulled out of the right shoulder and began to follow the van at approximately Milepost 1 on 195. (1T 9:5-12). As Trooper XXX started to follow the vehicle, he observed the van was weaving within the center lane and crossed over into the right lane about three times. (1T 9:13-19, 10:15-17). Trooper XXX followed the van for approximately 1500 feet, made the determination that he was going to stop the vehicle, and then proceeded to activate his camera as the van began to make an exit off of 195 onto 295. (1T 10:24 through 11:6, 16:12-18).

Trooper XXX observed further motor vehicle infractions after his camera was activated. At 16:08:39 of S-1 Trooper XXX observed defendant's vehicle cross over the white line. (1T17: 19-22). At 16:08:51, 52 of S-1 Trooper XXX observed defendant's vehicle failed to maintain a straight lane and crossed over the line again. (1T17: 25 through 18:2). At 16:09:06 of S-1 Trooper XXX observed defendant's vehicle weaving to the left, going back to the left again, getting close to the white line, and going further to the left yet again. (1T18: 4-9). At 16:09:17 of S-1 Trooper XXX observed defendant's vehicle hit the white line again. (1T18:25 through 19:1). At approximately 16:09:40 of S-1 Trooper XXX observed defendant's vehicle go to the left and come back to the right again. (1T21: 12-14). At 16:10:50 of S-1 Trooper XXX observed defendant's vehicle once again failed to maintain a straight line. (1T24: 10-12). Trooper XXX went to the shoulder to make sure it was a safe stopping area, activated his lights and siren, and proceeded to pull over the defendant's vehicle. (1T 25:17 through 27:19). Trooper XXX issued defendant a summons for weaving based upon his observations of defendant's vehicle. (1T 29:11-15).

The trial court held Trooper XXX, who Judge XXX found to be a credible witness, had a reasonable basis to stop defendant's vehicle on two separate grounds. First, the trial court found Trooper XXX was justified in stopping defendant's vehicle based upon his community caretaking function. Second, the trial court found Trooper XXX was justified in stopping defendant's vehicle because he had a reasonable and articulable belief that defendant failed to maintain a lane. Judge XXX specifically held:

> Two prong. Number one is that when he saw the vehicle weaving within the lane I believe he would have had the opportunity to stop the vehicle and had a right to based upon a caretaking function alone. That vehicle is weaving within a lane and going – drifting to one side and jerking back, the trooper would have a right, if he wanted to, to stop the vehicle to determine whether, in fact, there was a problem with the driver or whether there was a problem with the vehicle.

(1T 42:8-17)

The court further added:

> But quite candidly, that's not the only basis on which I'm making my determination. It's clear to me, based upon the trooper's testimony, the defendant's vehicle had failed to maintain a lane or he had a reasonable and articulable belief that he failed to maintain a lane.
>
> And he had this articulable reasonable suspicion that he committed a motor vehicle offense by seeing the vehicle moving from the center lane to the right lane and then back and then also, quite candidly, on going over the fog line on two different occasions. And when in fact trooper saw this weaving and saw the defendant going over the fog line, that is a reasonable basis to stop the vehicle and, in fact, issue a motor vehicle summons.
>
> So, I am satisfied that, in fact, there was probable cause for the stop, that the trooper had a reasonable and articulable suspicion that a motor vehicle offense had occurred, and therefore, the motion to suppress is denied.

(1T 42:18 to 43:12)

LEGAL ARGUMENT

STANDARD OF REVIEW

With regard to the standard of review for this appeal, this is a trial de novo, and as such, the Court's "function is to determine the case completely anew on the record made in the Municipal Court, giving due, although not necessarily controlling, regard to the opportunity of the magistrate to judge the credibility of the witnesses." State v. Johnson, 42 N.J. 146, 157 (1964). Additionally, although the Court "must make original findings and rulings on the evidence," the evidence to be considered is limited to the "record created in the Municipal Court." State v. Loce, 267 N.J. Super. 102, 104 (Law Div. 1991), aff'd o.b., 267 N.J. Super. 10 (App. Div.), certif. denied, 134 N.J. 563 (1993).

The lone issue on appeal is the propriety of the police officer's initial stop of the defendant. The defendant argues that the police action of stopping the defendant was unconstitutional because the factual circumstances were insufficient to establish an objectively reasonable and particularized suspicion that criminal activity was afoot or a crime or a traffic offense had been committed. The State submits that such contentions are without merit for two reasons. First, the State submits Trooper XXX lawfully stopped defendant's vehicle pursuant to his community caretaking function. Second, or in the alternative, the State asserts that the factual circumstances, taken as a whole, established a reasonable, articulable suspicion sufficient to justify the trooper's stop of defendant's vehicle. Specifically, Trooper XXX had a reasonable and articulable belief that defendant failed to maintain a lane.

POINT I

TROOPER XXX LAWFULLY STOPPED THE DEFENDANT'S VEHICLE PERSUANT TO HIS COMMUNITY CARETAKING FUNCTION

The community caretaking function was first developed by the Supreme Court of the United States in Cady v. Dombrowski, 413 U.S. 433 (1973). This exception to the warrant requirement is closely related to the reasonable suspicion standard. The distinction is that the suspicion of the officer is not that there has necessarily been a violation of the law, but rather that there may be a problem with the vehicle or its operator. The community caretaking exception has been found in several cases by the Appellate Division to justify a motor vehicle stop. See State v. Martinez, 260 N.J. Super. 75 (App. Div. 1992) (Objectively reasonable to stop a vehicle going 10 miles per hour in a residential area at 2:00 a.m.); State v. Goetaski, 209 N.J. Super. 362 (App. Div. 1986) (Motor vehicle stop was legally sufficient where vehicle was operating in the shoulder of a roadway with left-turn signal on).

In State v. Washington, 296 N.J. Super. 569 (App. Div. 1997), the Appellate Division found the community caretaking function justified the stop of a vehicle traveling nine miles per hour below the speed limit and weaving both within its lane of travel and, at one point, slightly across the shoulder portion of the roadway. The court found the conduct of the driver "engenders reasonable grounds to conclude that the vehicle is a potential safety hazard to other vehicles and that there is either something wrong with the driver, with the car, or both." Ibid. at 572.

In State v. Chapman, 332 N.J. Super. 452, 463-464 (App. Div. 2000), the Appellate Division held that officers were justified in making a community caretaking stop in order to determine if the operator of an erratically driven car was intoxicated or fatigued, thus posing a danger to others on the road.

Applying the legal principles articulated above to the facts at hand, the State argues that any detention of the defendant's vehicle was based upon Trooper XXX's community caretaking function and thus, legally valid. According to the testimony of Trooper XXX, which Judge XXX found to be credible, defendant's vehicle was drifting to the left and jerking back to the right and then twisting to the left and jerking back to the right. (1T 37:4-7). S-1, which shows defendant's vehicle making wide swings within its lane on several different occasions, lends further credibility to the testimony of Trooper XXX. This type of abnormal conduct clearly suggests objectively reasonable concerns that involve the community caretaking function of an alert police officer. The most obvious of these concerns is that there is something wrong with the car or something wrong with the driver.

POINT II

THE FACTUAL CIRCUMSTANCES, TAKEN AS A WHOLE, ESTABLISHED A REASONABLE, ARTICULABLE SUSPICION SUFFICIENT TO JUSTIFY THE STOP OF DEFNDANT'S MOTOR VEHICLE

In order to stop an automobile, a police officer need only have a reasonable suspicion to believe that a crime or traffic offense is being or has been committed. Delaware v. Prouse, 440 U.S. 648; State v. Murphy, 238 N.J. Super. 546, 554 (App. Div. 1990). This reasonable suspicion is less than probable cause. Murphy, 238 N.J. Super. at 554. In addition, a police officer's observation of a motor vehicle offense, even a minor one, is sufficient to justify a stop. Ibid. at 553.

Moreover, to validate the officer's stop, the State need not prove that a motor vehicle violation occurred as a matter of law. State v. Williamson, 138 N.J. 302, 304 (1994). Pursuant to the Williamson Court, constitutional precedent requires only reasonableness on the part of the officer, not legal perfection. Id. Thus, the State

only prove that the police lawfully stopped the car, not that it could convict the driver of a motor vehicle offense. Ibid. See also State ex rel. D.K., 360 N.J. Super. 49, 54 (App. Div. 2003) (Where the license plate of a vehicle was covered by a tinted shield, the court noted that it does not matter to the validity of the stop that it is ultimately decided there was no infraction). It is also important to note the constitutional reasonableness of traffic stops does not depend upon the "actual motivations of the officers involved." See Whren v. United States, 116 S.Ct. 1769 (1996). The subjective intentions and/or ulterior motives of an officer play no role in the court's analysis and thus, will not serve to invalidate a "stop" that is otherwise justifiable on the basis of a reasonable, articulable suspicion of criminal activity. Id.

Furthermore, State v. Davis, 104 N.J. 490 (1986) offers additional insight into reviewing the propriety of a given "stop" and/or seizure. Specifically, this Davis Court established a "totality of the circumstances" analysis surrounding police/citizen encounters, balancing the State's interest in effective law enforcement against the individual's right to be protected from unwarranted and/or overbearing police intrusions. Ibid. at 504. The function of the Court is to insure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions at the unfettered discretion of the officers in the field. See Delaware v. Prouse, supra.

Applying the legal principles articulated above to the facts at hand, the State argues that any detention of the defendant's vehicle was based upon a reasonable, articulable suspicion that defendant failed to maintain a lane and thus, legally valid. According to the testimony of Trooper XXX, which the trial court found to be credible, defendant's vehicle was weaving within the center lane and crossed into the right lane approximately three times before defendant even came upon the exit for Interstate 295

and Trooper XXX activated his camera. Thus, the stop of defendant's vehicle was fully justified independent of the motor vehicle violations documented on S-1. Further, S-1 clearly shows defendant weaving within his lane multiple times and crossing over the fog line twice on the exit ramp to Interstate 295. (1T 41:3-9).

Defendant's argument that Trooper XXX's understanding of N.J.S.A. 39:4-88b renders the stop of defendant's vehicle unconstitutional is wholly without merit. Defendant's vehicle was not merely weaving within his lane of travel. Rather, defendant's vehicle crossed from the center lane into the right lane approximately three times before defendant's vehicle even came upon the exit ramp to Interstate 295 and Trooper XXX activated his camera. Further, as the trial court emphasized, S-1 clearly shows defendant's vehicle crossing over the fog line on at least two separate occasions. (1T 41:3-9).

Defendant's contention that his vehicle twice crossed the fog lines on the exit ramp due to road conditions is also without merit. With reference to the exit ramp, Judge XXX specifically found "people don't have to go over the fog line" and that "they can stay within the lane of traffic." (1T 41:19-22). S-1 displays nothing about the exit ramp which suggests it is impractical for a driver to maintain his lane. Defendant also suggests his previous motor vehicle infractions on Interstate 195 were nothing more than proper lane changes. This argument obfuscates the testimony of Trooper XXX, who the trial court found to be a credible witness. Trooper XXX clearly testified defendant's vehicle crossed over the right lane marking about three times and then proceeded to change lanes. (1T 10:14 to 11:18). Finally, defendant's argument that the motor vehicle stop was based solely upon an anonymous tip by a passing motorist is misplaced. This "tip" merely alerted Trooper

XXX to an erratically driven vehicle which was weaving both within and outside of its lane of traffic.

CONCLUSION

For the foregoing reasons, the State respectfully submits that the defendant's motion to suppress evidence should be denied.

Respectfully submitted,

XXX
MERCER COUNTY PROSECUTOR

By: _____
XXX
Assistant Prosecutor

Appendix C

Criminal Division Manager Conference Contact List

Name	Address	Phone Number	Fax
Atlantic/Cape May			
Jason Wertzberger Criminal Division Manager	Atlantic County Criminal Courts Criminal Complex 4997 Unami Blvd. Mays Landing, NJ 08330	609-402-0100 ext. 47310	609-909-8219
Bergen			
Leslie Darcy Criminal Division Manager	Bergen County Justice Center 10 Main St. Room 134 Hackensack, NJ 07601	201-221-0700 ext. 25020	201-371-1122
Burlington			
Shannon DeNise-Budenas Criminal Division Manager	Burlington County Courts Facility 49 Rancocas Rd. 3rd Floor Mt. Holly, NJ 08060	609-288-9500 ext. 38080	609-288-9497
Camden			
Alba Rivera Criminal Division Manager	Camden County Hall of Justice 101 So. Fifth St. Camden, NJ 08103-4001	856-379-2230	856-379-2257
Cumberland/Gloucester/Salem			
Rosemarie Gallagher Criminal Division Manager Cumberland	Gloucester County Justice Complex 70 Hunter St. Woodbury, NJ 08096	856-686-7500	856-451-7152
Essex			
Deborah Despotovich Criminal Division Manager	Essex County Veteran's Courthouse 50 W. Market St. Room 912 Newark, NJ 07102	973-776-9300 ext. 69029	973-776-9036
Hudson			
Jennifer Sincox Criminal Division Manager	Hudson County Administration Building 595 Newark Ave. Jersey City, NJ 07306	201-748-4400 ext. 60160	201-217-5210
Mercer			
Janet VanFossen	Mercer County Criminal Courthouse	609-571-4200 ext. 74104	609-571-4150

Name	Address	Phone Number	Fax
Criminal Division Manager	400 South Warren St. Trenton, NJ 08608		
Middlesex			
Laura Schweitzer, Chair Criminal Division Manager	Middlesex County Courthouse 56 Paterson St. P.O. Box 964 New Brunswick, NJ 08903	732-645-4300 ext. 88094	732-519-3849
Monmouth			
Kristy Smith Criminal Division Manager	Monmouth County Courthouse 71 Monument Park P.O. Box 1271 Freehold, NJ 07728	732-677-4558	732-677-4358
Morris/Sussex			
Daniel J. Kenny Criminal Division Manager	Morris County Courthouse Washington St. P.O. Box 910 Morristown, NJ 07960	973-326-6995	973-326-6973
Ocean			
Michelle L. Tierney, Vice Chair Criminal Division Manager	Ocean County Justice Complex 120 Hooper Ave. Room 240 Toms River, NJ 08753	732-929-2042	732-288-7606
Passaic			
John J. Harrison Criminal Division Manager	Passaic County Courthouse Criminal Division 77 Hamilton St. Paterson, NJ 07505	973-247-8099	973-247-8401
Somerset/Hunterdon/Warren			
Meghann Lipovetsklyi Criminal Division Manager	Somerset County Courthouse 20 No. Bridge St. P.O. Box 3000 Somerville, NJ 08876	908-750-8100 ext. 13720	908-332-7684
Union			
Robert Eppenstein Criminal Division Manager	Union County Courthouse 2 Broad St. Tower Building, 7th Floor Elizabeth, NJ 07207	908-787-1650 ext. 21150	908-659-5988

Appendix D

Proceeding At A Glance
Municipal Court Appeal

Purpose: To Determine Whether the Defendant was Properly Convicted and sentenced at an Earlier Trial

Movant: Defendant.

Burdens of Proof: On appeal, there is to be a trial *de novo* with deference given to the trial judge's assessment of witness credibility. Generally, the evidentiary record is limited to that established at trial and the State must have proven the charges beyond a **"reasonable doubt"**.

Proceeding Type: Post conviction, *de novo* review on the record below.

Court Rule: R. 3:23-2, R. 3:23-5, R. 3:23-8

Leading Case(s): State v. Medina, 147 N.J. 43 (1996), State v. Ross, 189 N.J. Super. 67 (App. Div. 1983).

MUNICIPAL COURT APPEAL

Hon. Bernard E. DeLury, Jr., J.S.C

Before the Court is a Trial *de novo* arising from the judgment of the Municipal Court, from which appeal is brought into the Law Division.

The Defendant has **20 days** to appeal the judgment of the Municipal Court. R. 3:23-2. Within five days after filing the appeal, notice of the appeal needs to be sent to the Prosecutor and to the Criminal Division Manager. Id. A filing fee and affidavit of timely notice must also be filed. Id. Failure to comply with these requirements will result in dismissal.

A municipal court decision is reviewed on appeal on a *de novo* basis by the Superior Court. R. 3:23-8. This, by definition, requires that the reviewing court make its own findings of fact. State v. Ross, 189 N.J. Super. 67, 75 (App. Div. 1983); State v. Kotsev, 396 N.J. Super. 58, 60 (Law Div. 2005). Although independently made, these findings should give due deference to the opportunity and ability of the municipal court judge to directly assess the demeanor and credibility of the witnesses.

However, these findings of the municipal court judge are not controlling. State v. Locurto, 157 N.J. 463, 469-71; 474 (1999); State v. Johnson, 42 N.J. 146, 161-62 (1964). That deference notwithstanding, the sole limitation imposed upon the Superior Court is the requirement that it not go beyond the evidentiary record established in the lower court. State v. Loce, 267 N.J. Super. 102, 104 (Law Div. 1991), aff'd 267 N.J. Super. 10 (App. Div.), cert. den. 134 N.J. 563 (1995). When hearing the matter on appeal, the appellate court may supplement the record or include additional testimony if:

- The Municipal Court erred in excluding evidence offered by the Defendant; or
- The State offers rebuttable evidence to discredit supplementary evidence newly added; or
- The record being reviewed is partially unintelligible or defective

R. 3:23-8(a).

Under both the United States and New Jersey Constitutions, in order to convict a defendant of a criminal offense, the State must prove each element of the offense **beyond a reasonable doubt**. In re Winship, 397 U.S. 358, 364 (1970); Sullivan v. Louisiana, 508 U.S. 275, 277-78 (1993); State v. Anderson, 127 N.J. 191, 200-01 (1992); State v. Medina, 147 N.J. 43, 49-50 (1996); see also N.J.S.A. 2C:1-13. Proof beyond a reasonable doubt has been defined as "an honest and reasonable uncertainty in [the mind of the trier

of fact] about the guilt of the defendant after [the trier of fact has] given full and impartial consideration to all of the evidence. Reasonable doubt may arise from the evidence itself or from lack of evidence. It is a doubt that a reasonable person hearing the same evidence would have." Medina, 147 N.J. at 61.

Pursuant to R. 3:23-5, the Defendant can seek relief from judgment pending appeal.

- Custodial Sentence- The Defendant can seek relief from a custodial sentence; he is admitted to bail by a Superior Court judge who shall make his findings to bail pursuant to R. 3:26-1(a). R. 3:23-5(a).

- Fines- The Defendant may be granted a stay on a sentence which imposed fines, costs or forfeitures by the sentencing court or by the court taking the appeal if it is deemed appropriate. R. 3:23-5(b).

- Probation- The Defendant may be granted a stay from probation if an appeal is taken. R. 3:23-5(c).

Additionally, the court hearing the appeal can limit the argument on the record. R. 3:23-8(b) cmt. nt.2 (2010). Briefs on appeal are only required if:

- There is a question of law

--OR--

- They are ordered by the court

Appeals, while they are viewed *de novo*, also act as a waiver of all defects in the record. R. 3:23-8(c).This waiver acts as consent that the court is able to amend the complaint either before or during the appeal by making the charge more definite, specific or certain. Id.

- This waiver only applies to defects in the prosecution or in the proceedings; however, it does not apply to issues of constitutionality or jurisdiction. R. 3:23-8(c) cmt. nt. 3 (2010).

- The power to amend the complaint does not allow for a more serious offense to be charged or a more serious punishment enacted than the original offense. State v. Koch, 161 N.J. Super. 63 (App. Div. 1978); State v. Duthie, 200 N.J. Super. 19 (App. Div. 1985).

Certain defenses must be raised by the Defendant before trial if he wishes to use them pursuant to R. 3:23-8(d):

- Double Jeopardy
- Lack of Jurisdiction in the court
- Failure to charge an offense
- Unconstitutionality of the statute
- Regulation promulgated pursuant to the statute or ordinance under which the complain is made

R. 3:32-8(d).

The other defenses the Defendant may wish to raise based on prosecution or in the complaint must be raised by motion in accordance with R. 3:10. R. 3:23-8(d).

When the court on appeal finishes the trial, the *de novo* aspect continues. If a finding of guilty *de novo* has been entered, then the court must impose a sentence after the hearing; it must do more than just affirming or modifying the original trial court's sentence. State v. Russo, 328 N.J. Super. 181 (App. Div. 2000);*See* also R. 3:23-8(e) cmt. nt. 5 (2010). Judges on appeal are required to impose a sentence, but may not impose a more severe sentence than what was originally imposed at the trial level. State v. Kashi, 180 N.J. 45, 49 (2004).

Appendix E

LAW OFFICE OF XXXX XXXX, ESQ.
XXXXX AVENUE
HAMILTON, NEW JERSEY 08619
(609) XXX-XXXX
ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	**:**	**BASIN CITY MUNICIPAL COURT BURLINGTON COUNTY**
Plaintiff	**:**	**SUMMONS NOS. XXX-XXXXX**
vs.	**:**	**QUASI-CRIMINAL ACTION**
JOHN DOE	**:**	**NOTICE OF MOTION PURSUANT TO RULE 1:6-2 AND RULE 7:7-7(j)**
Defendant	**:**	

PLEASE TAKE NOTICE that on October 19, 2017, the undersigned counsel will move before this Court for an order barring the introduction in evidence at trial of the results of laboratory testing of a blood sample purportedly taken from his body on the date of his arrest.

This motion is authorized under Rule 7:7-7(j) and through the case law as established by State vs. Holup, 253 N.J.Super 320(App.Div.1992).

In support of this application, Defendant will rely upon the annexed affidavit and oral argument.

XXXX XXXXX LAW OFFICE

XXXX XXXXX, Esq.

Dated: October 16, 2017

LAW OFFICE OF XXXXX, XXX, ESQ.
HAMILTON, NEW JERSEY 08619
(609) XXX-XXXX
ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	**:**	**BASIN CITY MUNICIPAL COURT BURLINGTON COUNTY**
Plaintiff	**:**	**SUMMONS NOS. XXXXX**
vs.	**:**	**QUASI-CRIMINAL**
JOHN DOE	**:**	**ACTION**
Defendant	**:**	**CERTIFICATION OF COUNSEL**

I, XXX XXXX, Esq., of full age, do certify the following to be true.

1) I am counsel of record in the above captioned case now pending in the Basin City Municipal Court.

2) I entered my appearance on or about January 26, 2017.

3) Consistent with Rule 7:7-7(g), upon entry of my appearance with the Court, I sent a written demand for discovery to the municipal prosecutor, demanding all discovery to which Defendant is entitled pursuant to Rule 7:7-7(b). A copy of this demand is annexed hereto as Exhibit A.

4) I also demanded production of the charts and graphs associated with the testing of a blood sample purportedly taken from the body of my client on the date of his arrest. Defendant is entitled to this discovery. State vs. Weller, 225 N.J.Super 274(LawDiv.1986).

5) Although I have received partial discovery from the prosecutor in the form of the results of laboratory results of the blood test, I have yet to receive the charts and graphs.

6) I have made applications for the receipt of this particular piece of discovery on three separate occasions, including by writing on April 7, 2017 (annexed hereto as Exhibit B) and twice on the record before this Court (on March 31, 2017 and April 28, 2017).

7) Despite these requests, the required discovery has not been provided.

8) Accordingly, by way of the attached Form of Order, pursuant to the Court's authority under State vs. Holup, 253 N.J.Super 320, 325(App.Div.1992) and Rule 7:7-7(j), Defendant will seek to bar the results of the laboratory report related to his blood-tests if the results have not been provided by November 1, 2017.

9) Consistent with Rule 7:7-7(h) I have conferred with the prosecutor and attempted to reach an agreement on this discovery issue without success.

Pursuant to Rule 1:4-4(b), I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____

XXXXX XXXXX, Esq.

Dated: October 16, 2017

LAW OFFICE OF XXXX XXXX, ESQ.
XXX AVENUE
HAMILTON, NEW JERSEY 08619
(609) XXX-XXXX
ATTORNEY FOR DEFENDANT

STATE OF NEW JERSEY	**:**	**BASIN CITY MUNICIPAL COURT BURLINGTON COUNTY**
Plaintiff	**:**	
		SUMMONS NOS. XXXXXX
vs.	**:**	
		QUASI-CRIMINAL
JOHN DOE	**:**	
		ACTION
Defendant	**:**	
		ORDER

THIS MATTER having been opened to the Court upon the application of XXXX XXXXX, Esquire, and the Court having considered the associated moving papers and good cause having been shown;

IT IS ON THIS _____ DAY OF _____, 2017;

ORDERED that if the charts and graphs associated with the testing of Defendant's blood have not provided to Defendant by November 1, 2017, the results of such blood tests will be barred from introduction in evidence at trial.

_____
XXXX. X. XXXXX, J.M.C.