

SUPREME COURT OF NEW JERSEY

STUART RABNER
CHIEF JUSTICE



RICHARD J. HUGHES JUSTICE COMPLEX
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MEMORANDUM

To: All Judges of the Municipal and Superior Courts

From: Stuart Rabner, Chief Justice

Re: Fines and Penalties in Municipal Court

Date: April 17, 2018

Each day, the fairness, independence, and integrity of the Judiciary are on display in courthouses throughout the State. The overwhelming majority of judges at all levels ensure that litigants are treated with respect and that their rights to due process and equal protection under the law are fully protected. A few recent events, though, highlighted some disturbing practices.

More than a year ago, court staff identified a problem in multiple municipal courts presided over by a single judge; he diverted fines against defendants in a way that generated more revenue for municipalities and less for the county. The Assignment Judge referred the matter to the Prosecutor's Office and the Advisory Committee on Judicial Conduct. In February, the former judge pleaded guilty to a fourth-degree crime of falsifying records. Pursuant to a plea agreement, he is barred from ever holding public office.

In another matter, a municipal court judge opened a court session by announcing that any fines imposed were due that day, and that any defendants who refused to pay would be sentenced to county jail. The judge later fined a defendant \$239, including court costs. When the defendant said he could not make a payment that day, the judge -- without first conducting a hearing on the defendant's ability to pay -- sentenced him to five days in jail and had him arrested.

These rare incidents call to mind some troubling practices in other jurisdictions. They also remind us of certain basic principles and features of our justice system.

Judges occupy a unique position of authority. Our conduct and professionalism help shape the public's confidence in the court system. Not surprisingly, most

interactions between the public and the Judiciary take place in the municipal court system. As the Supreme Court has observed, millions of people who come into contact with municipal courts each year form their impressions of the justice system based primarily on those interactions. See State v. McCabe, 201 N.J. 34, 42 (2010). For most individuals, municipal court judges “are the face of the Judiciary.” Ibid.

It is the court’s responsibility, in every case, to ensure that justice is carried out without regard to any outside pressures. That means that each defendant is entitled to have his or her case decided on the merits; that any punishment imposed should reflect the defendant’s conduct and history; and that incarceration should only be ordered if the circumstances of the case require it.

Certain related principles are equally straightforward. The imposition of punishment should in no way be linked to a town’s need for revenue. And defendants may not be jailed because they are too poor to pay court-ordered financial obligations.

Decades ago, the United States Supreme Court held that defendants who fail to pay a fine or make restitution are entitled to a hearing to determine their ability to pay. See Bearden v. Georgia, 461 U.S. 660, 672 (1983). If a defendant “willfully refuse[s] to pay or fail[s] to make sufficient bona fide efforts legally to acquire the resources to pay,” a judge may sentence the person to jail. Ibid. But if the defendant cannot pay despite good faith efforts, “the court must consider alternative measures of punishment other than imprisonment.” Ibid. (emphasis added); see also N.J.S.A. 2B:12-23.1(a) (“[I]f a municipal court finds that a person does not have the ability to pay a penalty in full on the date of the hearing . . . , the court may order the person to perform community service in lieu of the payment of a penalty; or, order the payment of the penalty in installments for a period of time determined by the court.”); State v. De Bonis, 58 N.J. 182, 196 (1971) (“[A] defendant may not be jailed merely because he cannot pay a fine in full at once.”). The case law reflects a simple value: in a modern system of justice, people should not be sent to jail because they are too poor to pay a fine and do not have access to other resources.

Last year, I asked a group of judges and staff from the Superior and Municipal Courts, representatives of the Attorney General’s Office and the New Jersey State League of Municipalities, practicing attorneys, and others to examine current laws and policies relating to municipal court. The Supreme Court Committee on Municipal Court Operations, Fines and Fees is ably led by Assignment Judges Julio Mendez and Lisa Thornton.

The Committee is finalizing a report that will be made public soon. It will bring to light additional concerns and offer practical suggestions to help start a larger discussion about our municipal court system. All of us can contribute to that conversation. I welcome your thoughts as we continue to work together to enhance the system of justice in our State.

cc: Justices of the Supreme Court
Hon. Glenn A. Grant, Acting Director, AOC
Steven D. Bonville, Chief of Staff
Directors and Assistant Directors
Trial Court Administrators
Municipal Division Managers
Municipal Court Directors and Administrators