

# Criminal Appeals

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Motor vehicle violations and criminal charges can cost you. You may have to pay fines in court or receive points on your drivers license. An accumulation of too many points, or certain moving violations may require you to pay expensive surcharges to the N.J. Division of Motor Vehicles or have your license suspended. It is usually best to hire an experienced attorney to represent you for motor vehicle violations. The trial in a Municipal Court is held in front of a Municipal Court Judge, and no jury trial is permitted. The Judge is ordinarily selected by the Town Mayor and Council. The appointment sometimes is based upon input from the Police Chief, PBA and local political organization. If after your trial you are unhappy with the decision and the suspension is excessive, you should hire an experienced attorney for the appeal. There is only twenty days for your attorney to properly prepare the papers and appeal. On appeal, the Judge only reads a transcript and looks at exhibits. There is no new testimony and the appeal judge is bound by the fact finding below, according to *State v Lutz* 309 N.J. Super. 317 (App. Div. 1998). The following are some of the Court Rules you and your attorney must comply with.

Appeal; How Taken; Time Rule 3:23-2

Appeals from judgments of conviction in the municipal court shall be taken in accordance with R. 3:23 and 3:24, The defendant's attorney must file a notice of appeal with the municipal court within 20 days after the entry of judgment. Within 5 days after the filing of the notice of appeal, one copy thereof shall be served upon the prosecuting attorney, , and one copy thereof shall be filed with the county clerk together with the filing fee and an affidavit of timely filing of said notice with the clerk of court and service upon the prosecuting attorney. On failure to comply with each of the foregoing requirements, the appeal shall be dismissed by the Superior Court, Law Division without further notice or hearing.

Notice of Appeal; Contents 3:23-3.

The notice of appeal shall set forth 1. the title of the action; 2. the name and the address of the appellant and appellant's attorney, 3. a general statement of the nature of the offense; 4. the date of the judgment; 5. the sentence imposed; 6. whether the defendant is in custody; 7. if a fine was imposed; 8 whether the fine was paid or suspended; and 9 the name of the court from which the appeal is taken.

There shall be included in the Notice of Appeal a statement as to whether or not a stenographic record or sound recording was made pursuant to R. 7:8-8 in the court from which the appeal is taken. Where a verbatim record of the proceeding was taken, the Notice of Appeal shall also contain the attorney's certification of compliance with R. 2:5-3(a) (request for transcript) and R. 2:5-3(d) (deposit for transcript) or certification of the filing and service of a motion for abbreviation of transcript pursuant to R. 2:5-3(c).

Duties of Clerk of the Trial Court and Superior Court, Law Division 3:23-4.

(a) Preparation of Transcript. Upon the filing of the notice of appeal, the clerk of the court below shall forthwith deliver to the county clerk the complaint, the judgment of conviction, the exhibits

retained by the clerk, and a transcript of the entire docket in the action, and the county clerk shall deliver copies thereof to the prosecuting attorney on request.

(b) Docketing; Hearing Date. Upon the filing of a copy of the notice of appeal, the affidavit and the payment of the filing fees, as provided by R. 3:23-2, the county clerk shall docket the appeal and shall thereafter fix a date for the hearing of the appeal and mail written notice thereof to the prosecuting attorney and the appellant, or, if the appellant is represented, the appellant's attorney.

Stay of Penalties Rule 7:13-2.

A sentence to pay a fine, a fine and costs, a forfeiture, an order for probation, or a revocation of the license to operate a motor vehicle 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.

Relief Pending Appeal Rule 3:23-5.

(a) Relief From Custodial Sentence. If a custodial sentence (jail) 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.

(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.

Hearing on Appeal Rule 3:23-8.

(a) Plenary Hearing; Hearing on Record; Correction or Supplementation of Record; If a verbatim record or sound recording was made pursuant to R. 7:8-8 in the court from which the appeal is

taken, the original transcript thereof duly certified as correct shall be filed by the clerk of the court below with the county clerk, and a certified copy served on the prosecuting attorney by the clerk of the court below within 20 days after the filing of the notice of appeal or within such extension of time as the court permits. In such cases the trial of the appeal shall be heard de novo on the record unless it shall appear that the rights of either party may be prejudiced by a substantially unintelligible record or that the rights of defendant were prejudiced below in which event the court to which the appeal has been taken may either reverse and remand for a new trial or conduct a plenary trial de novo without a jury. The court shall provide the municipal court with reasons for the remand. The court may also supplement the record and admit additional testimony whenever : 1) the municipal court erred in excluding evidence offered by the defendant, (2) the state offers rebuttal evidence to discredit supplementary evidence admitted hereunder, or (3) the record being reviewed is partially unintelligible or defective.

Rule 3:23-8 (b) Briefs. Briefs shall be required only if questions of law are involved on the appeal or if ordered by the court and shall be filed and served prior to the date fixed for hearing or such other date as the court fixes. (It is better for the defense to prepare a brief with applicable cases and statutes to assist the Judge who handles the de novo appeal)

(c) Waiver; Exception. The appeal shall operate as a waiver of all defects in the record including any defect in, or the absence of, any process or charge laid in the complaint, and as a consent that the court may, during or before the hearing of the appeal, amend the complaint by making the charge more specific, definite or certain, or in any other manner, including the substitution of any charge growing out of the act or acts complained of or the surrounding circumstances of which the court from whose judgment or sentence the appeal is taken had jurisdiction, except that if the appeal is from a conviction for an indictable offense, the appeal shall not operate as a consent that the complaint may be amended so as to charge such an offense or a new or different

indictable offense, unless the defendant agrees to such amendment.

(d) Defenses Which Must Be Raised Before Trial. The defenses of double jeopardy, lack of jurisdiction in the court, failure of the complaint to charge an offense, the unconstitutionality of the statute, regulation promulgated pursuant to statute or ordinance under which the complaint is made and all other defenses and objections based on defects in the institution of the prosecution or in the complaint must be raised by motion and determined in accordance with R. 3:10.

(e) Disposition by Superior Court, Law Division. If the defendant is convicted, the court shall impose sentence as provided by law. If the defendant is acquitted, the court shall order the defendant discharged, the conviction in the court below set aside, and the return of all fines and costs paid by the defendant. An appropriate judgment shall be entered and a copy thereof transmitted to the court below.

## Conclusion

If someone is going to appeal a conviction by the Municipal Court Judge, they need to immediately file all the necessary appeal papers, Certifications and briefs. Occasionally, the County Prosecutor's office may even negotiate a plea bargain to a lesser offense with your attorney if permitted under the law. When your driver's license is in jeopardy or you are facing thousands of dollars in fines, DMV surcharges and car insurance increases, you need excellent legal representation. The least expensive attorney is not always the answer. Please call us if you need experienced legal representation in a traffic/municipal court matter.

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