

Action on Cases Involving Possible Indictable Offenses

Directive #10-82
Issued by:

May 3, 1983
Robert D. Lipscher
Administrative Director

This directive is being issued in accordance with the Supreme Court's decision in *State v. Dively*, 92 N.J. 573 (1983). The purpose of the procedures set forth herein is to avoid any double jeopardy problems that may arise when a municipal court judge takes action on a complaint prior to the disposition of any indictable charges against the same defendant arising out of the same incident.

Where a complaint has been filed in municipal court with respect to a Title 39 violation involving a motor vehicle accident resulting in death or serious personal injury, the municipal court judge or municipal court administrator should notify the County Prosecutor. This will afford the County Prosecutor an opportunity to determine whether the accident involved an indictable offense. If the County Prosecutor determines not to proceed in the case, he or she should advise the municipal court, which should then dispose of the non-indictable charges.

If the County Prosecutor determines that an indictable offense is involved and intends to proceed, the municipal court shall not take action on any of the non-indictable charges until the case has been presented to the grand jury. If the grand jury fails to return an indictment, *i.e.*, if it "no-bills" the case (*R. 3:6-8(b)*), the clerk of the grand jury should notify the municipal court which shall then dispose of the non-indictable offenses involved. If, however, the grand jury returns an indictment or the defendant consents to trial on accusation (*R. 3:7-2*), all charges, including the non-indictable motor vehicle violations, should be tried in Superior Court. If the indictment or accusation is dismissed under *R. 3:25-1*, the prosecuting attorney shall notify the municipal court which shall then dispose of the non-indictable offenses involved.

As noted in the *Dively* opinion, these procedures were the subject of a prior municipal court directive, as follows:

Where several complaints have been filed in a municipal court against only one person and one of the charges is an indictable offense not within the jurisdiction of the municipal court to try, then all of the complaints should be referred to the County Prosecutor provided, of course, [that] the complaints arose out of the same factual situation. The purpose of this procedure is to eliminate questions of double jeopardy which have arisen when magistrates have proceeded to hear a complaint prior to the disposition of indictable charges arising out of the same factual situation. This procedure applies only as to charges against the same defendant. If the factual situation also involves other defendants as to whom no indictable charges have been filed and the magistrate has no reason to believe that indictable charges might be involved, then the magistrate should retain and dispose of complaints within his or her jurisdiction to try which have been filed against such other defendants. Where a complaint is filed in the municipal court over which the magistrate has jurisdiction and the magistrate has reason to believe that the factual situation out of which the complaint arose may also involve an indictable offense, the matter should be referred to the County Prosecutor. The County Prosecutor will then be in a position to determine whether to present the matter to the Grand Jury or to refer the complaint back to

the municipal court for disposition. [Municipal Court Bulletin Letter #96, February 20, 1964.]

EDITOR-S NOTE

The original text has been modified by addition of the reported citation for *State v. Dively* and the deletion of any citations to the slip opinion.

A later case, *State v. DeLuca*, 108 *N.J.* 98 (1987), held that a Superior Court Judge could preside over simultaneous prosecutions of death by auto and driving under the influence.

In paragraph 2 the new title "municipal court administrator" has replaced "municipal court clerk" P.L. 1991, c.98, which amends *N.J.S.A.* 2A:8-13, *et. seq.* The language has been amended to render it gender-neutral.

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