

## **RULE 3:23. Appeals From Judgments Of Conviction In Courts Of Limited Criminal Jurisdiction**

### **3:23-1. Exclusive Method of Review**

Except as provided by R. 2:2-3(b), review of a judgment of conviction in a criminal action or proceeding in a court of limited criminal jurisdiction shall be by appeal as provided by R. 3:23.

Note: Source-R.R. 3:10-1.

### **3:23-2. Appeal; How Taken; Time**

The defendant, a defendant's legal representative, or other person aggrieved by a judgment of conviction, or the defendant or State, if aggrieved by a final post-judgment order entered by a court of limited jurisdiction, shall appeal therefrom by filing a notice of appeal with the clerk of the court below within 20 days after the entry of judgment. Within five days after the filing of the notice of appeal, one copy thereof shall be served on the prosecuting attorney, as hereinafter defined, and one copy thereof shall be filed with the Criminal Division Manager's office together with the filing fee therefor and an affidavit of timely filing of said notice with the clerk of court below and service on the prosecuting attorney (giving the prosecuting attorney's name and address). 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. However, if the appeal is from a final judgment of the Superior Court arising out of a municipal court matter heard by a Superior Court judge sitting as a municipal court judge, the appeal shall be to the Appellate Division in accordance with R. 2:2-3(a)(1) and the time limits of R. 2:4-1(a) shall apply.

Note: Source-R.R. 1:3-1(c), 1:27B(d), 3:10-2, 3:10-5. Amended November 22, 1978 to be effective December 7, 1978; amended July 11, 1979 to be effective September 10, 1979; amended November 5, 1986 to be effective January 1, 1987; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended July 28, 2004 to be effective September 1, 2004.

### **3:23-3. Notice of Appeal; Contents**

The notice of appeal shall set forth the title of the action; the name and the address of the appellant and appellant's attorney, if any; a general statement of the nature of the offense; the date of the judgment; the sentence imposed; whether the defendant is in custody; and if a fine was imposed; whether it was paid or suspended; and 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).

Note: Source-R.R. 3:10-3. Amended July 7, 1971 to be effective September 13, 1971; amended July 13, 1994 to be effective September 1, 1994; amended January 5, 1998 to be effective February 1, 1998.

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

- **(a) Preparation of Transcript.** Upon the filing of the notice of appeal, the clerk of the court below shall forthwith deliver to the criminal division manager's office the complaint, the judgment of conviction, the exhibits retained by the clerk, and a transcript of the

entire docket in the action, and the criminal division manager's office 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 criminal division manager's office 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.

**Note:** Source-R.R. 3:10-4. Caption amended November 22, 1978 to be effective December 7, 1978; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000.

### 3:23-5. Relief Pending Appeal

- **(a) Relief From Custodial Sentence.** 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.
- **(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.

**Note:** Source-R.R. 3:10-6. Paragraph (c) amended July 24, 1978 to be effective September 11, 1978; paragraph (a) amended January 5, 1998 to be effective February 1, 1998.

### 3:23-6. Transmittal of Recognizance or Cash Deposit

The judge or clerk of the court below shall transmit to the finance division manager's office any recognizance taken in accordance herewith or cash deposited in lieu of such recognizance.

**Note:** Source-R.R. 3:10-7. Amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000; corrective amendment adopted November 8, 2000 to be effective immediately.

### 3:23-7. Dismissal of Appeal

If the appeal shall be dismissed for failure to comply with the requirements of R. 3:23-2 or 3:23-8(a) or (b) or for failure to prosecute, the matter and the record therein shall forthwith be remanded to the court from which the appeal was taken for execution of the judgment therein.

**Note:** Source-R.R. 3:10-9.

### 3:23-8. Hearing on Appeal

- **(a) Hearing on Record; Correction or Supplementation of Record; Remand; Transcript for Indigents; Assignment of Counsel.** 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 criminal division manager's office, 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.
  - **(1)** If it appears that the record is partially unintelligible, the court to which the appeal is taken may supplement the record or may remand the matter to the

municipal court to reconstruct the portion of the record that is defective. If the record below is substantially unintelligible, the matter shall be remanded to the municipal court to reconstruct the entire record or, if the record cannot be reconstructed, for a new trial or hearing.

- **(2)** The court to which the appeal has been taken may reverse and remand for a new trial or may conduct a trial de novo on the record below. The court shall provide the municipal court and the parties with reasons for a reversal and the remand. If the court to which the appeal is taken decides the matter de novo on the record, the court may permit the record to be supplemented for the limited purpose of correcting a legal error in the proceedings below.
- **(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.
- **(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.
- **(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.
- **(f) Appearance by Prosecuting Attorney.** The prosecuting attorney shall appear and act on behalf of the respondent at the hearing.

Note: Source -- R.R. 3:10-13. Paragraph (b) amended by order of September 5, 1969 effective September 8, 1969; paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraphs (a), (b) and (e) amended November 22, 1978 to be effective December 7, 1978; paragraphs (a), (b) and (e) amended July 11, 1979 to be effective September 10, 1979; paragraph (a) amended February, 1983 to be effective immediately; paragraph (a) amended January 5, 1998 to be effective February 1, 1998; paragraph (a) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) caption and text amended July 9, 2013 to be effective September 1, 2013; paragraph (a) caption and text amended July 22, 2014 to be effective September 1, 2014.

### **3:23-9. Prosecuting Attorney Defined**

In all appeals under R. 3:23 the prosecuting attorney shall be:

- **(a)** The Attorney General, where required by law.
- **(b)** The municipal attorney, in a case involving a violation of a municipal ordinance.
- **(c)** The county prosecutor, in all other cases.

- **(d)** With the assent of the prosecuting attorney and the consent of the court, the attorney for a complaining witness or other person interested in the prosecution may be permitted to act for the prosecuting attorney; provided, however, that the court has first reviewed the attorney certification submitted on a form prescribed by the Administrative Director of the Courts, ruled on the contents of the certification, and granted the attorney's motion to act as private prosecutor for good cause shown. The finding of good cause shall be made on the record.

**Note: Source-R.R. 3:10-13. Paragraph (b) amended September 5, 1969 to be effective September 8, 1969; paragraph (d) amended November 22, 1978 to be effective December 7, 1978; paragraph (d) amended July 11, 1979 to be effective September 10, 1979; amended July 28, 2004 to be effective September 1, 2004.**