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Date

Re: Deadline and Attorney Fee for Appeal

Dear :

Thank you for allowing our office to be of service to you in the Municipal Court. If you wish to appeal your judgment of conviction, you must pay an appeal fee, transcript cost, and legal fee. A formal notice of appeal must be filed with the Clerk of the Municipal Court within 20 days of judgment (sentencing decision by the Judge).

As I indicated to you, our retainer agreement requires my office to represent you through a contested municipal court matter and not appeals. If you wish us to file and handle an appeal, we will be required to file a notice of appeal, other papers with the court, order and read a transcript, prepare a brief and appear in court with you to argue before a Superior Court Judge. The transcript fee requires a down payment of approximately \$300.00, the appeal fee is approximately \$50.00 and our legal fee will be \$1,500.00. Please either provide my office with your credit card information to authorize the charge for the \$1,500 legal fee, or a check, money order or cash. **We are required to advise you that we will not file the appeal unless all legal fees are paid prior to ____.**

The proceedings before the court are tape recorded. An outside company is contracted with the court to type up the audiotape. That is called a transcript of proceedings. You must pay the transcript company by preparing a check payable to the transcript company with a deposit of \$300.00. To expedite proceedings, we recommend you call the Municipal Court to determine the name and address of the transcript company. Appeal; How Taken; Time Rule 3:23-2. Under the rule of professional conduct, we will not prepare any paper or draft an appeal until paid in full.

Appeals from judgments of conviction in the municipal court shall be taken in accordance with

Rule 3:23 and 3:24, The defendant's appeal 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 shall be served upon the prosecuting attorney, and one copy thereof shall be filed with the Deputy Clerk of the Superior Court-Criminal Division 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. Under the Court Rules, on failure to comply with each of these requirements, the appeal shall be dismissed by the Superior Court, Law Division without further notice or hearing.

Notice of Appeal; Contents Rule 3:23-3.

The typed notice of appeal must 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; and
7. if a fine was imposed; whether it was paid or suspended;
8. 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).

The Following are Additional Court Rules:

Duties of Clerks 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 Superior Court 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 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 3:23-5.

(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.

Hearing on Appeal 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.

(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.

Further information on appeals can be read on our website www.injlaw.com. <http://www.jdsupra.com/post/documentViewer.aspx?fid=97ce623f-0d08-4a9a-9037-f223410fd644>

Very truly yours,

KENNETH VERCAMMEN