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REPORT OF THE

NEW JERSEY SUPREME COURT'S

MUNICIPAL COURT COMMITTEE

Robert O. Bentley, Jr.
Robert E. Boakes
Nicholas Castellano
Edward J. Curran, Jr.
Stephen A. Damico
Louis Di Nicola
Seymour R. Kleinberg
Stephen F. Lichtenstein
Warren J. Lynch
Abraham L. Motolinsky
Michael A. Travers
Milton Freiman, Chairman

Dated: March 29, 1962

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF NEW JERSEY:

The Municipal Court Committee herewith submits its Annual Report. Pursuant to Rule, the members of the Committee met and reviewed matters that had been referred to it for consideration. The Committee received communications from Municipal Court Judges and other court personnel. It met in conjunction with the annual mid-winter meeting of the State Bar Association on November 17, 1961. The Committee also reviewed problems submitted to it by the Administrative Director of the Courts.

The following report contains a review of matters heretofore submitted by the Municipal Court Committee in previous reports, as to which final action had not been taken by the State Legislature or by the Supreme Court, and as to which this Committee desires to renew its recommendations. New matters submitted to the Committee for consideration are also hereinafter referred to.

I - PRIOR RECOMMENDATIONS

1. The following subjects were covered by Bills introduced in the 1961 Assembly, none of which were adopted. The Committee recommends that appropriate action be taken to effect the re-introduction and passage of the Bills.

(a) Assembly Bill A-632 (1961) relating to the payment of a single filing fee on appeal from a Municipal Court judgment.

(b) Assembly Bill A-627 (1961) relating to the appearance of a prosecuting attorney in the Municipal Court.

(c) Assembly Bill A-636 (1961) relating to the enlargement of the permissible period of probation in Disorderly Persons cases to three years.

(d) Assembly Bill A-673 (1961) to permit the magistrate to retain costs, from forfeited bail, in motor vehicle cases and pay the same to the Municipal Treasurer.

(e) Assembly Bill A-635 (1961) relating to the bonding of all court personnel.

(f) Assembly Bill A-638 (1961) relating to an appeal from a conviction for contempt in the Municipal Court and hearing of the appeal in the County Court instead of the Appellate Division of the Superior Court.

2. Appointment of Court Clerk and Other Court Personnel.

This Committee re-emphasizes the problems which magistrates face in having no authority in the determination by the municipal governing body in the selection of the court clerk and other court personnel. Rule 8:13-3A imposes upon the magistrate responsibility for proper administration of his court and of all court records.

Recommendation: The Committee urges the adoption of legislation vesting the authority of appointment of the court clerk and other court personnel in the magistrate, subject to applicable statutes pertaining to civil service and tenure in office. (Previously recommended in the Municipal Court Committee Reports of 1960 and 1961).

3. Assignment of Counsel in Indigent Cases in the Municipal Court.

No uniform procedure exists in the courts of this State with respect to the assignment by a magistrate of counsel to an indigent defendant. Rule 8:3-3(b) provides that the magistrate shall inform the defendant of the privilege of having counsel assigned to him

if he is indigent, but the Rule does not indicate which court shall assign counsel in Municipal Court matters. Rule 1:12-9 provides for the use of Criminal Procedure Form 5-A on application for assignment of defense counsel. A diversity of opinion seems to exist as to the authority of a magistrate to assign defense counsel. In most counties such assignments for Municipal Court matters are made by a County Court Judge or an Assignment Judge. Frequently, delay in such assignment process results in the inconvenience and to the disadvantage of a defendant, resulting in unnecessary confinement and custody while awaiting counsel and arrangements for bail.

Recommendation: Rule 8:3-3 should be amended to provide that a magistrate may assign counsel to a defendant whose indigency is established by Form 5-A, upon receipt from the Assignment Judge or the County Judge of the name of an attorney determined pursuant to Rule 1:12-9(e).

(Previously recommended in 1961 Committee Report).

4. Admission to Bail.

Rule 8:9-1 prohibits a magistrate from admitting to bail, a defendant charged with treason, murder, kidnapping, manslaughter, sodomy, rape, arson, burglary, robbery or forgery. The Committee feels that this prohibition in the enumerated instances can result in undue hardship to a confined defendant, due to the necessity of making application to a judge of a higher court for admission to bail. As stated in the 1961 Committee Report, it recognizes that persons charged with treason, murder, kidnapping and manslaughter should be required to apply to the higher court

for bail but that the rule should be relaxed in cases involving the other less serious crimes. The Committee recognizes, of course, that they are serious but it feels that due consideration will be given by magistrates to all factors relating to questions of bail before an application in the less serious enumerated cases is granted.

Recommendation: Rule 8:9-1 should be amended to the end that magistrates may admit to bail in cases charging sodomy, rape, arson, burglary, robbery and forgery. The Committee further recommends that Rule 3:9-3(b), covering the same subject matter, be similarly amended.

(Previously recommended in 1961 Committee Report).

5. Fines Paid in Municipal Court "Contempt" Proceedings.

Court rules and statutes provide the procedure for criminal contempt matters in the Municipal Court; they specify the acts or conduct which constitute contempt; they give the Municipal Court and other courts power to punish for contempt; they provide for the disposition of fines and penalties imposed in a Municipal Court "as provided by law". (See Rule 8:8; N.J.S. 2A:10-1, 5, 7; N.J.S. 2A:8-33). No rule or statute presently provides that a contempt fine shall be paid to the municipality in which the court sits.

Recommendation: N.J.S. 2A:8-33 should be amended to provide that in Municipal Court contempt proceedings, the fine imposed shall be paid to the Municipal Treasurer or to the applicable finance officer.

(Previously recommended in 1961 Committee Report).

6. Varying Minimum and Maximum Fines for Motor Vehicle
Violations under Title 39.

The 1961 Committee Report reviewed the matter of varying minimum and maximum fines and jail sentences, imposed in approximately 60 different sections of Title 39. It pointed out the injustices that frequently result when the magistrate is prevented from exercising discretion in the determination of the penalty in those particular instances. This Committee last year urged the elimination from Title 39 of all minimum and maximum fines and jail sentences with the exception of cases dealing with violations of N.J.S. 39:4-50. This Committee further recommended the adoption of an omnibus penalty provision in lieu of the many varying penalties.

Subsequent to the submission of the Committee's Report to the State Judicial Conference, the Chairman of the Committee urged the Supreme Court to consider the advisability of a recommendation that a complete review of Title 39 be made in order that current problems be reflected in the statute.

The Committee on Criminal Law of the New Jersey State Bar Association adopted and submitted to the Association at the mid-winter meeting last fall, a resolution recommending to the respective branches of the State Legislature the appointment of a commission to review and revise Title 39. The Municipal Court Committee considers the resolution worthy of serious consideration by all governmental and private agencies and by all persons in the Government.

Recommendation: Title 39 be completely and thoroughly reviewed to the end that current problems presented by the operation

of motor vehicles and all related phases thereof be reflected in appropriate statutory amendments or, if considered advisable by the applicable authorities, by a complete revision of Title 39.

II - NEW RECOMMENDATIONS

7. Copy of Written Opinion from County Court in Certain Trial de Novo Matters.

Appeals from Municipal Court judgments of conviction are heard in the County Court on trial de novo. The Municipal Court clerk is advised of the disposition of the case following the trial in the County Court, usually by a formal notification of either acquittal or conviction. In many instances, the County Court may acquit a defendant for legal or factual reasons but the magistrate is not made aware of those reasons. This Committee feels that the administration of justice in the Municipal Court would be served if the magistrate were advised of the reasons for the conclusions by the County Court Judge.

Recommendation: The County Court should be required to file a copy of its opinion, following a trial de novo, with the clerk of the Municipal Court in the following instances:

- (a) Where the County Court prepared a written opinion.
- (b) Where a point of law influenced the decision of the County Court.
- (c) Where the trial de novo is on the record.

8. Venue in "Telephone" Cases Under N.J.S. 2A:170-25.5

N.J.S. 2A:170-25.5 provides that a person failing to relinquish a telephone party line under the emergency circumstances

therein set forth, shall be a Disorderly Person. The statute does not provide for the venue for making complaint. This is in contrast with N.J.S. 2A:170-29 which relates to the use of indecent language over the telephone or to repeated annoying or molesting telephone calls to a person. The latter statute provides that an offense committed under the above circumstances is deemed to have taken place at either the place at which the telephone call was made or the place at which the telephone call was received. This Committee feels that a similar alternate venue provision should be incorporated in N.J.S. 2A:170-25.5.

Recommendation: N.J.S. 2A:170-25.5 be amended to so provide.

STATEMENT OF POLICY

At a meeting held on March 9, 1962 the Municipal Court Committee considered the question whether it should assume a position and express its views, as a Committee, regarding the proposed abolition of the Municipal Courts and replacement thereof with other courts at the County level.

After due deliberation the Committee concluded that any consideration of this subject by it, as a Committee, would be foreign to the purposes for which it was created.

The Committee is aware of the opinion, although erroneous, held by many magistrates, that the Committee represents all magistrates and should express the views of magistrates.

It is the opinion of this Committee, as the result of a rational and logical consideration of the Rules of Court, that the Committee's area of activity is confined, generally, to the

consideration of matters which relate to the Municipal Courts, as presently constituted. Any discussion, therefore, by this Committee of the proposed dissolution of the present Municipal Court system and of its replacement by other courts would be contrary to the true concept and purposes of the Committee. In short, this Committee, as such, cannot and should not pass judgment on a matter involving the basic Court structure of the State of New Jersey. As a Committee, we cannot reflect the opinions nor present the views of the magistrate on this subject.

However, this Committee does urge all Municipal Court Judges to make known their personal views and to direct their thoughts and feelings to any other committee or agency of the State that may now be considering the general question. We suggest that magistrates communicate their personal views to the Chairman of their respective County Magistrates Associations, at the earliest possible date.

Respectfully submitted,

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