

## **Appellate Procedures**

### **New Trial**

If you are found guilty, you have the right to appeal the decision of the court. You must first make a written motion to the court requesting a new trial. The motion must be made within ten (10) days after a judgment and sentence are rendered against you and it must state specifically why you believe you did not receive a fair trial. If you fail to state a reason why the judgment is wrong or how the court made a mistake, you may not assert the mistake if you decide to appeal.

The judge may grant a new trial if the judge is persuaded that justice has not been done in the trial of your case. Only one new trial may be granted for each offense. You must set a hearing for the court to consider your motion for new trial. If the court does not make a decision on your motion for new trial within 30 days from the date the judgment is signed, the motion is automatically denied. In the event you want to appeal the decision of the court, the following procedures must be carefully followed.

### **Appeal**

- A defendant has the right of appeal from a judgment or conviction in a Municipal Court of Record. The state has the right to an appeal as provided by article 44.01, Code of Criminal Procedure. The County Court of Tarrant County that has appellate criminal jurisdiction shall hear the appeal.
- The Appellate Court shall determine each appeal from a Municipal Court of Record conviction on the basis of the errors that are set forth in the defendant's motion for new trial and that are presented in the transcript and statement of facts prepared from the proceedings leading to the conviction. An appeal from the Forest Hill Municipal Court may not be by trial de novo.
- To perfect an appeal, the defendant or State must file with the Forest Hill Municipal Court clerk a written motion for new trial not later than the 10th day after the date on which the judgment and sentence are rendered. The motion must set forth the points of error of which the defendant complains. The motion constitutes the assignment of the error on appeal. A ground or an error not set forth in the motion for new trial is waived. If the court does not act on the motion for new trial before the expiration of 30 days after the judgment and sentence is rendered by the court, the motion is overruled by operation of law.

- After an order is entered overruling a motion for new trial, the defendant or State must give written notice of appeal and pay the transcript preparation fee not later than the 10th day after the date on which the motion is overruled. The clerk will note the payment of the fee on the docket of the court. If the case is reversed on appeal, the fee will be refunded to the appellant.
- The City Attorney shall prosecute all appeals from the Forest Hill Municipal Court.

### **Appeal Bond; Record on Appeal**

- If the defendant is not in custody, the defendant may not take an appeal until the defendant files an appeal bond with the Forest Hill Municipal Court. The bond must be approved by the Judge and must be filed with the court clerk not later than the 10th day after the date on which the motion for new trial is overruled. If the defendant is not in custody, the defendant shall be committed to jail unless the defendant posts the appeal bond.
- The appeal bond must be in the amount of \$50 or double the amount of the fine and costs adjudged against the defendant, whichever is greater. The bond must:
  - state that the defendant was convicted in the case and has appealed;
  - be payable to the State for the use and benefit of the City of Forest Hill;
  - and

be conditioned on the defendant's appearance in the court to which the appeal is taken.

The record on appeal consists of a transcript and, if necessary to the appeal, a statement of facts. The court reporter prepares the record from the reporter's record or mechanical, audiotape, or videotape recordings of the proceedings. THE APPELLANT MUST PAY FOR THE COST OF THE TRANSCRIPTION AND STATEMENT OF FACTS. If the case is reversed on appeal, the court will promptly refund the cost to the appellant. If the court finds that the defendant is unable to pay or give security for the record on appeal after a hearing in response to an affidavit by the defendant, the court will order the reporter to prepare the record without charge to the defendant.

### **Transcript**

- On the written request of the appellant or appellant's attorney, the Forest Hill Municipal Court clerk shall prepare, under the clerk's hand and seal of the court, a transcript of the Forest Hill Municipal Court of Record

- proceedings, after payment of the transcript preparation fee. The clerk shall prepare the transcript under written instructions from the defendant or defendant's attorney.
- Unless otherwise agreed by the parties in writing, the transcript must include a copy of:
    1. the complaint;
    2. court orders on any motions or exceptions;
    3. the judgment;
    4. the verdict of the jury;
    5. any findings of fact or conclusions of law made by the court;
    6. the motion for new trial and the order of the court on the motion;
    7. the notice of appeal;
    8. any statement of the parties regarding material to be included in the record;
    9. the appeal bond; and
    10. any signed paper designated as material by either party.
  - The appellant or appellant's attorney shall file a copy of the written instructions with the clerk and shall deliver a copy to the appellee.
  - The appellee shall file a written direction to the clerk if additional portions of the trial proceedings in the transcript are to be included.

### **Bills of Exception**

Either party may include Bills of Exception in the transcript subject to the applicable provisions of the Texas Rules of Appellate Procedure. The Bills of Exception must be filed with the Forest Hill Municipal Court clerk not later than the 60th day after the date on which the notice of appeal is given or filed.

### **Statement of Facts**

A statement of facts included in the record on appeal must contain:

1. a transcript of all or part of the Forest Hill Municipal Court of Record proceedings that are shown by the notes of the court reporter to have occurred before, during, or after the trial, if the transcript is requested by the defendant;
2. a brief statement of the facts of the case proven at trial as agreed to by the defendant and the prosecuting attorney;
3. a partial transcript and the agreed statement of the facts of the case; or
4. a transcript of all or part of the Forest Hill Municipal Court of Record proceedings in the case that is prepared from mechanical, audiotape, or videotape recordings of the proceedings.

The court reporter shall transcribe in duplicate any portion of the recorded proceedings or the notes of the court proceedings in the case at the request of either party or the Forest Hill Municipal Judge. The appellant shall pay for the transcription unless the court finds, after hearing in response to an affidavit by the defendant, that the defendant is unable to pay or give security for the transcription. On certification by the court that the court reporter has rendered the service without charge to the defendant, the court reporter shall be paid for the services by the city.

### **Completion, Approval, and Transfer of Record**

Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file with the Forest Hill Municipal Court clerk:

1. the statement of facts;
2. a written description of material to be included in the transcript in addition to the required material; and
3. any material to be included in the transcript that is not in the custody of the clerk.
4. On completion of the record, the Forest Hill Municipal Judge shall approve the record in the manner provided for record completion, approval, and notification in the Court of Appeals.
5. After the Court approves the record, the clerk shall promptly send it to the Appellate Court clerk for filing. The Appellate Court clerk shall notify the defendant and the prosecuting attorney that the record has been filed.

### **Brief on Appeal**

- An appellant's brief on appeal from the Forest Hill Municipal Court of Record must present points of error in the manner required by law for a brief on appeal to the Court of Appeals.
- The appellant must file the brief with the Appellate Court clerk not later than the 15th day after the date on which the transcript and statement of facts are filed with that clerk. The appellant or appellant's attorney must certify that the brief has been properly mailed to the appellee.

The appellee must file the appellee's brief with the Appellate Court clerk not later than the 15th day after the date on which the appellant's brief is filed.

On filing, each party shall deliver a copy of the brief to the opposing party and to the Forest Hill Municipal Judge.

- To avoid unnecessary delay, the record and briefs on appeal shall be limited as far as possible to the questions relied on for reversal.

## **Disposition on Appeal**

- According to law and the nature of the case, the Appellate Court may:
  1. affirm the judgment of the Forest Hill Municipal Court of Record;
  2. reverse and remand for a new trial;
  3. reverse and dismiss the case; or
  4. reform and correct the judgment.
- Unless the matter was made an issue in the trial court or it affirmatively appears to the contrary from the transcript or the statement of facts, the Appellate Court shall presume that:
  1. venue was proven in the trial court;
  2. the jury, if any, was properly impaneled and sworn;
  3. the defendant was arraigned and pleaded to the complaint; and
  4. the Forest Hill Municipal Judge certified the charge and the clerk filed the charge before it was read to the jury.

In each case decided by the Appellate Court, the Court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. The court shall state the reasons for its decision. The Appellate Court clerk shall mail copies of the decision to the parties and to the Municipal Judge as soon as the decision is rendered.

## **Certification of Appellate Proceedings**

When the judgment of the Appellate Court becomes final, the clerk of that court shall certify the proceedings and the judgment and shall mail the certificate to the Forest Hill Municipal Court of Record. The court clerk shall file the certificate with the papers in the case and note the certificate on the case docket. If the Forest Hill Municipal Court of Record judgment is affirmed, further action to enforce the judgment is not necessary except to:

- forfeit the bond of the defendant;
- issue a writ of capias for the defendant; or
- issue an execution against the defendant's property.

## **Effect of Order of New Trial**

If the Appellate Court awards a new trial to the defendant, the case stands as if a new trial had been granted by the Forest Hill Municipal Court of Record.

## **Appeal to Court of Appeals**

The defendant has the right to appeal to the Court of Appeals if the fine assessed against the defendant exceeds \$100 and if the judgment is affirmed by

the Appellate Court. The provisions of the Code of Criminal Procedure relating to direct appeals from a county or a district court to the Court of Appeals apply to the appeal, except that:

the record and briefs on appeal in the Appellate Court constitute the record and briefs on appeal to the Court of Appeals unless the rules of the Court of Criminal Appeals provide otherwise;

and the record and briefs shall be filed directly with the Court of Appeals.