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MECHANICS OF A MISDEMEANOR APPEAL

by THOMAS GRIPPANDO*†

INTRODUCTION

The Clerk of the Circuit Court of Cook County, Illinois, reports that between December 1, 1969, and November 30, 1970, in the First Municipal District¹ there were a total of 285,711 non-traffic misdemeanor complaints filed. 248,207 of these cases have been disposed of; 209,358 were found not guilty, and 38,849 were found guilty.² This article is written for those attorneys who have handled the latter group of cases.

The Honorable Judge Skelly Wright, a noted federal judge, in discussing misdemeanor courts stated that:

These courts are, in practice, courts of last resort. The careful provisions of appeal, certiorari and habeas corpus, which look so fair in the statute books, are almost a dead letter as far as indigent misdemeanor defendants are concerned.³

The judge could have stated that in practice the right to appeal is almost a dead letter to middle class defendants as well. Recently, the Illinois Supreme Court, taking cognizance of this problem, issued new rules. These rules require the trial court to declare that it has found the defendant guilty of a crime punishable by more than six months on a plea of not guilty and to admonish the defendant of his right to appeal.⁴ If the defendant indicates the desire to appeal the conviction and is financially unable to hire private counsel to prosecute the appeal, the court is further obligated to order the Clerk to file a Notice of Appeal and to appoint counsel to represent the defendant.⁵ Where there is a Public Defender in the county, the court is to appoint the Public Defender.⁶

The purpose of this article is to explain step by step the prosecution of a misdemeanor appeal. Anyone who is in the

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¹ Covering the City of Chicago.

² 1970 Annual Report of the Circuit Court of Cook County to the Illinois Supreme Court.

³ BLUMBERG, *THE SCALES OF JUSTICE* 15 (1970).

⁴ ILL. REV. STAT. ch. 110A, §605 (1969).

⁵ *Id.*

⁶ *Id.* §607(a).

habit of reading the advance sheets knows that very few of the 38,000 convictions mentioned above are ever appealed. It is the hope of the author that this article will assist attorneys in preparing more appeals in cases of this type.

At the outset, a distinction must be made between state misdemeanor convictions and municipal misdemeanor convictions. Misdemeanors provided for by Illinois statutes are treated as crimes⁷ and are governed by the Code of Criminal Procedure⁸ and the Supreme Court Rules governing prosecution of a criminal appeal.⁹ Prosecution for violation of a municipal ordinance is traditionally treated as a civil matter¹⁰ and thus governed by the Civil Practice Act¹¹ and Supreme Court Rules governing civil appeals.¹² Procedures for prosecuting civil and criminal cases are similar, but there are differences worth noting. These differences will be pointed out during the course of the article.

IS THE CASE WORTH APPEALING?

This is a decision which every practitioner must arrive at with his client. The factors he should consider are the costs of the appeal and its effect. The actual out-of-pocket expenses incurred in a typical misdemeanor appeal are as follows:

50-page transcript (\$.75 per page)	\$ 38.50
Fee for preparation of record on appeal	10.00
Xeroxing 20-page brief (10 copies) ¹³	10.00
Reproducing excerpts of record (10 copies) ..	25.00
Filing fee in Appellate or Supreme Court	25.00
	<u>\$108.50</u>

Added to this are the salary paid to a typist to type out the brief and other documents and the cost of the attorney's own time.

Supreme Court Rule 342(h)¹⁴ provides that the actual expense of printing or duplicating the abstract or excerpts is to be taxed as costs to the party that loses the appeal. Because Rule 612¹⁵ specifically states that Rule 342 applies to criminal cases, these costs would be taxable to the state or city if the appeal is successful.

⁷ See ILL. REV. STAT. ch. 38, §100-2 (1969).

⁸ ILL. REV. STAT. ch. 38, §100-1 *et seq.* (1969).

⁹ *Id.* ch. 110A, §601 *et seq.*

¹⁰ Village of Midlothian v. Walling, 118 Ill. App. 2d 358, 255 N.E.2d 23 (1969); Village of Park Forest v. Nicklas, 103 Ill. App. 2d 99, 243 N.E.2d 421 (1968); Village of Park Forest v. Bragg, 38 Ill. 2d 225, 230 N.E.2d 868 (1967).

¹¹ ILL. REV. STAT. ch. 110 (1969).

¹² *Id.* ch. 110A, §301 *et seq.*

¹³ See ILL. REV. STAT. ch. 110A, §607(d) (1969).

¹⁴ ILL. REV. STAT. ch. 110A, §342(h) (1969).

¹⁵ *Id.* §612.

Defendants are frequently concerned with whether or not they will receive a greater sentence if the appeal is successful, the case is remanded for a new trial, and the defendant is found guilty a second time. In Illinois, whenever a conviction has been set aside and a greater sentence has been imposed on re-trial, the judge's reasons for imposing the sentence must appear in the record.¹⁶ These reasons must be predicated upon objective information concerning conduct of the defendant occurring after the time of the original sentencing.¹⁷ In addition, if the State has failed to meet its burden of proof in the original trial, it is not entitled to a second chance to meet its burden.¹⁸ Accordingly, the Appellate Court will simply reverse the case without remanding it for a new trial. Finally, Illinois Statutes now provide that a party acquitted of a felony or misdemeanor who does not have a prior conviction may make a motion before the Chief Judge of the Circuit to expunge his arrest record.¹⁹

WHEN APPEAL IS PROPER REMEDY

Another consideration is whether or not you are able to file an appeal. Only cases resulting in a conviction can be appealed.²⁰ Interlocutory appeals by the defendant are not permitted²¹ except in the case of the denial of a motion to set or reduce bail.²² A motion to dismiss the charges is not reviewable until a conviction has been entered.²³ A finding putting your client under supervision is not reviewable because technically it is merely a continuance.²⁴

Certain judgments involving pre-trial motions are subject to collateral attack, but not appeal. In *People ex rel. MacMillan v. Napoli*,²⁵ the trial court judge denied a motion to suppress evidence that was clearly the product of an illegal search. The defendant's attorneys filed a mandamus action against the trial judge directly in the Supreme Court. The Supreme Court, rea-

¹⁶ *People v. Smith*, 44 Ill. 2d 272, 255 N.E.2d 450 (1970).

¹⁷ *Id.*

¹⁸ *People v. McCoy*, 44 Ill. 2d 458, 256 N.E.2d 449 (1970).

¹⁹ *People v. Brown*, 99 Ill. App. 2d 281, 241 N.E.2d 653 (1968). See also P.A. 77-1362, §5 (1971).

²⁰ *People v. Houghs*, 91 Ill. App. 2d 246, 234 N.E.2d 63 (1968); *Village of Niles v. Szczsny*, 13 Ill. 2d 45, 147 N.E.2d 371 (1958).

²¹ *People ex rel. Filkin v. Flessner*, 48 Ill. 2d 54, 268 N.E.2d 376 (1971); *People v. McGary*, 120 Ill. App. 2d 170, 256 N.E.2d 374 (1970).

²² ILL. REV. STAT. ch. 110A, §604 (1969).

²³ *People v. Tamborski*, 415 Ill. 466, 114 N.E.2d 649 (1953).

²⁴ It is interesting to note that there is no mention of "supervision" in the Illinois Statutes or decisions. This is merely a tool which the municipal courts use to continue the case for a certain length of time at the expiration of which a not guilty finding will be entered by the Court. However, as a practical matter it does leave a stigma on the defendant's record.

²⁵ 35 Ill. 2d 80, 219 N.E.2d 489 (1966).

soning that the defendant would eventually have the case reversed but in the interim would face imprisonment, granted the relief requested and ordered the trial court judge to suppress the illegally seized evidence.²⁶

SIX STEPS OF A MISDEMEANOR APPEAL

A misdemeanor appeal can be conveniently divided into the following steps: Post-trial motion, Notice of Appeal, The praecipe, the preparation and filing of the Record on appeal; The brief, Oral arguments.

Post-trial Motion in Trial Court

A post-trial motion is not required in cases tried without a jury in both civil²⁷ and criminal proceedings.²⁸ Failure to file such a motion does not limit the scope of review. However, in jury cases where the issue is one of sufficiency of evidence, a post-trial motion must be filed in order to raise that issue on appeal.²⁹ If the case is reversible on sufficiency of the evidence,³⁰ the motion should be for acquittal, rather than for a new trial. This will prevent the defendant from being put in jeopardy twice. The statute provides that motions should be made in writing, and should indicate the grounds for the motion.³¹ Where a written post-trial motion is filed and appeal is taken from the denial of that motion, the appeal is limited to the grounds set forth in the motion.³² Where an oral post-trial motion is made without objection from the State, the entire record is open to review on appeal.³³ The post-trial motion must be filed 30 days after the day of conviction.³⁴

Whether or not a post-trial motion for new trial is made is discretionary with the attorney. However, it is essential that a motion be made to set an appeal bond. An appeal may be a great legal victory for the attorney, but a hollow one for his client; the client having served his sentence during the pendency of the appeal. Thus, for the client the most important aspect of the

²⁶ *Id.*

²⁷ ILL. REV. STAT. ch. 110, §68.3 (1969).

²⁸ *People v. Shines*, 394 Ill. 428, 68 N.E.2d 911 (1946); *People v. Hoffman*, 381 Ill. 460, 45 N.E.2d 874 (1943).

²⁹ *People v. Majczek*, 360 Ill. 261, 195 N.E.2d 653 (1935); *People v. Heider*, 209 Ill. 50, 70 N.E. 674 (1904). See also ILL. REV. STAT. ch. 110, §68.1(5) (1969).

³⁰ See text at note 18 *supra*.

³¹ ILL. REV. STAT. ch. 38, §116-1 (1969).

³² *People v. Ledford*, 94 Ill. App. 2d 74, 236 N.E.2d 19 (1968); *People v. Hunter*, 23 Ill. 2d 177, 177 N.E.2d 138 (1961).

³³ *People v. Everett*, 117 Ill. App. 2d 411, 254 N.E.2d 659 (1969).

³⁴ ILL. REV. STAT. ch. 38, §116-1(b) (1969).

appeal is the appeal bond. The motion to set the appeal bond should be made before the trial court. The amount of bond is discretionary with the court, except where the defendant has been convicted and only a fine has been imposed. In that situation, the bond cannot be more than an amount double the amount of the fine.³⁵ The defendant, of course, must only deposit ten percent of that amount. If the appeal bond set by the trial court is excessive, a motion may be made before the reviewing court to reduce the bond set.³⁶ One factor which the reviewing court takes into consideration in setting bond is the merits of the appeal.³⁷ For that reason it is best to attach a copy of the transcript of the case to your motion. A short record³⁸ is required for this motion. There have been cases in which the defendant has been released by the reviewing court on recognizance bond.³⁹

Notice of Appeal

Rules 606(d)⁴⁰ and 303(c)⁴¹ contain the forms for a notice of appeal.⁴² The notice of appeal must be filed within 30 days after the judgment was entered.⁴³ The 30 day period is computed by excluding the first day and including the last day. If the 30th day falls on a Saturday, Sunday, or legal holiday, the notice may be filed on the next business day.⁴⁴ The notice of appeal is filed with the Clerk of the trial court.

If a post-trial motion is filed in appropriate time, the time for filing a notice of appeal does not begin to run until the motion is disposed of.⁴⁵ Rule 606(c)⁴⁶ permits the filing of a notice of appeal within six months after the expiration of the 30 day period in criminal cases with leave of the reviewing court upon a showing of reasonable excuse for failure to file a timely notice of appeal. The rule also permits the filing of a late notice of appeal with leave of the reviewing court within 30 days after the expiration of the original 30 day period in municipal criminal cases.⁴⁷ The filing of the notice of appeal is the most important step in the appellate process, because it is jurisdictional.⁴⁸

A further consideration is to which court the appeal should

³⁵ *Id.* §110-5(c).

³⁶ ILL. REV. STAT. ch. 110A, §604 (1971).

³⁷ ILL. REV. STAT. ch. 38, §110-5 (1969).

³⁸ For format of a short record *see* ILL. REV. STAT. ch. 110A, §328 (1969).

³⁹ *City of Chicago v. Maxey*, No. 44262 (Ill. Sup. Ct. 1971).

⁴⁰ ILL. REV. STAT. ch. 110A, §606(d) (1969).

⁴¹ *Id.* §303(c).

⁴² *See* Appendix.

⁴³ ILL. REV. STAT. ch. 110A, §303(a) (1969).

⁴⁴ *Id.* ch. 131, §1.11.

⁴⁵ *Id.* ch. 110A, §303(a).

⁴⁶ *Id.* §606(c).

⁴⁷ *Id.*

⁴⁸ *Id.* §606(a), §301.

be taken. It should be noted that under the previous state constitution,⁴⁹ cases involving constitutional issues were appealable directly from the Circuit Court to the Supreme Court as a matter of right. This option does not exist under the 1970 Illinois Constitution.⁵⁰

Supreme Court Rule 302⁵¹ provides that appeals from the final judgments of the Circuit Court shall be taken directly to the Supreme Court in cases involving a question of the constitutionality of a state statute that is in issue. If a case is appealed to the Supreme Court directly and the court finds that there are no substantial issues, it can in its discretion transfer the case to the Appellate Court.

Rule 302(b)⁵² provides that a case not appealable to the Supreme Court may in the discretion of the Supreme Court be taken there for decision without an intermediate appeal to the Appellate Court if the court determines that such is in the public interest. The procedure in such a case is to file the appeal in the Appellate Court and then file a motion in the Supreme Court for leave to transfer the case to the higher court.

In the appeal of a state criminal conviction, the defendant does not have to notify the state's attorney of the filing of the notice of appeal. This is the responsibility of the clerk of the court.⁵³ In the appeal of a municipal ordinance conviction, the corporation counsel must be notified of the filing of the notice of appeal within seven days of filing, and proof of service of the notice must be filed.⁵⁴

Praecepta

In state criminal cases, a praecipe of record⁵⁵ is not required and is rarely filed; the clerk of the court is responsible for notifying the State's Attorney of the filing of the notice of appeal. If there are certain sections of the record which are considered irrelevant, and are not to be included in the record on appeal, a praecipe may be filed. A praecipe is merely a list of documents to be included in the record on appeal. In municipal cases, however, the appellant must file a praecipe, serve it on the opposing party and file a proof of service⁵⁶ with the clerk within 14 days after filing the notice of appeal.⁵⁷

⁴⁹ ILL. CONST. art. VI, §6 (1870).

⁵⁰ ILL. CONST. art VI, §4 (1970).

⁵¹ ILL. REV. STAT. ch. 110A, §302(a) (1971).

⁵² *Id.* §302(b).

⁵³ ILL. REV. STAT. ch. 110A, §606(e) (1969).

⁵⁴ *Id.* §303(d). Also see Appendix.

⁵⁵ See Appendix.

⁵⁶ *Id.*

⁵⁷ ILL. REV. STAT. ch. 110A, §322(a) (1969).

Preparation of the Record on Appeal

Two to three weeks after filing the notice of appeal, the clerk of the court will request a \$5.00 deposit for the preparation of the record on appeal. It is important that this deposit be made as soon as possible because the clerk will not begin to prepare the record until the fee is paid. The record on appeal consists of all the relevant documents in the court file regarding the case and the transcript. If the proceeding is in forma pauperis, a copy of the order⁵⁸ signed by the judge may be filed in lieu of the \$5.00.

The transcript of proceedings must be made up and presented to the clerk of the transcript department no later than 49 days after the filing of the notice of appeal, unless leave is given by the trial court judge to extend the time.⁵⁹ The extension of time in the trial court will be limited to one or more extensions, not to exceed 42 days after the 49 days.⁶⁰ If more time is required, a motion must be made before the reviewing court accompanied by short record and an affidavit stating the reasons for the failure to obtain the transcript on time.

In state misdemeanor cases, a certificate of correctness by the court reporter is adequate; the judge does not have to certify the correctness of the transcript.⁶¹ In municipal cases, the transcript may be submitted to the trial judge or his successor in office for a certificate of correctness or may be filed without certification if the parties so stipulate.⁶² In seeking a certificate of correctness by the trial judge, it is best to mail him a copy of the transcript in advance so that he may have an opportunity to review it before hearing the motion for certification. A motion for certification⁶³ may then be made upon proper notice to the opposing party.

If your client is indigent and was convicted of a crime *punishable* by more than six months' imprisonment he is entitled to a free transcript of the proceedings.⁶⁴ An indigent defendant convicted of a crime carrying a lesser penalty is also entitled to a free transcript under some circumstances.⁶⁵ The

⁵⁸ See text at note 64 *infra*.

⁵⁹ ILL. REV. STAT. ch. 110A, §323 (b) (1969).

⁶⁰ *Id.* §323 (e).

⁶¹ *Id.* §323 (b).

⁶² *Id.*

⁶³ See Appendix.

⁶⁴ *Williams v. Oklahoma*, 395 U.S. 458 (1969); ILL. REV. STAT. ch. 110A, §607 (1969).

⁶⁵ *Mayer v. City of Chicago*, 40 U.S. L. W. 4055 (U.S. Dec. 14, 1971). The U.S. Supreme Court held that the equal protection clause requires that a record of sufficient completeness be provided to permit the proper consideration of appellate claims to indigent appealing from a misdemeanor conviction that is punishable only by fine. The Court further held that where the defendant shows a colorable need for a complete transcript,

motion is usually made before the trial judge. The defendant's attorney should prepare a motion and a written order for free transcript and free record.⁶⁶ If the client is not incarcerated he should be present at time of the motion in order to give the court an opportunity to question him as to indigency. After the judge signs the order, a copy should be brought to the office of the official court reporter. A copy should also be given to the transcript department of the clerk's office in order that the record on appeal will be prepared without charge.

All records on appeal, whether or not they include a report of the proceedings must be transmitted to the reviewing court within 63 days from the date the notice of appeal is filed, which is 14 days after the last date fixed for the filing of the report of the trial proceedings. However, if the time for filing the transcript proceedings is extended by either the trial or reviewing court, the time for filing the complete record in the reviewing court is thereby automatically extended, and the record is due 14 days from the last day of the extended period for filing the transcript of the proceedings.⁶⁷

If the appeal is to the Appellate Court, the filing of the record on appeal consists of obtaining the record from the clerk's office and filing it with the Clerk of the Appellate Court. The Clerk will upon request permit the record to be taken out on receipt for the purpose of preparing the briefs. It should be noted that the Clerk of the Circuit Court is under no duty to deliver or transmit the record to the reviewing court.

If the appeal is to the Illinois Supreme Court, the record on appeal may be mailed or delivered. Because the record is needed for preparing the briefs, it is best to request the clerk in the transcript department to execute an affidavit stating that the common law record has been prepared. This affidavit can be transmitted to Springfield in lieu of the common law record.⁶⁸ Receipt of the affidavit is equivalent of receipt of the common law record. At the time that the record on appeal is received, the case will be docketed and a docket number assigned.

Where the appellant is proceeding in forma pauperis, it is best to file the motion for leave to proceed in forma pauperis affidavit of indigency⁶⁹ at the time of docketing of appeal. The appellant within seven days of filing the record on appeal, must

the state has the burden of proof to show that less than a complete transcript will constitute an adequate alternative record.

⁶⁶ See Appendix.

⁶⁷ ILL. REV. STAT. ch. 110A, §326 (1969).

⁶⁸ *Id.* §325.

⁶⁹ See Appendix.

serve written notice thereof upon all other parties of the date of the filing and docket number.⁷⁰

Where the defendant has been convicted of more than one crime, or where there is more than one defendant, the clerk will prepare a record of each charge, and each charge will be given a separate docket number unless the cases have been formally consolidated in the trial court. Consolidation in the trial court will save the expense of paying a docket fee of \$25.00 for each charge, and will further save the necessity of making a motion to consolidate in the reviewing court.

Excerpts of Record or Abstracts

The appellant must file abstracts or designations of excerpts⁷¹ from the record within 35 days after the day the record on appeal is filed unless the reviewing court has granted more time.⁷² In the case of a misdemeanor bench trial, the transcript is rarely more than 40 pages; therefore, it is far more efficient to use the entire report of proceedings as the excerpts from the record than to prepare abstracts. In the case of a jury trial, an abstract should be used. The reviewing court may, on motion, excuse the filing of abstracts or excerpts.⁷³

If excerpts from the record are to be used, a designation of excerpts and certificate of service must be filed at the time of filing the appellant's brief.⁷⁴ This is merely a statement as to those pages in the common law record which you will designate as your excerpts. Generally the notice of appeal, the complaint, judgment, and report of proceedings as found in the record on appeal are the pages so designated. The requirements relating to an abstract are contained in Supreme Court Rule 342(e).⁷⁵

Briefs

Appellant's brief is due 35 days after the date of the record of appeal is filed.⁷⁶ Appellee's brief is due 35 days after the last day allowed for the filing of appellant's brief.⁷⁷ Appellant's reply brief is due 14 days after the last day allowed for the filing of appellee's brief.⁷⁸ The time for filing may be extended by motion in the reviewing court.⁷⁹

⁷⁰ ILL. REV. STAT. ch. 110A, §327 (1969). See Appendix.

⁷¹ See Appendix.

⁷² ILL. REV. STAT. ch. 110A, §342(b) (1969).

⁷³ *Id.* §342(i).

⁷⁴ *Id.* §342(a).

⁷⁵ *Id.* §342(e).

⁷⁶ *Id.* §343.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

The form and contents of briefs in the Appellate and Supreme Courts are spelled out clearly in Supreme Court Rule 341.⁸⁰ The least expensive method of preparing a brief is by xerox. The pages should be letter size. In the Appellate Court, you must file nine copies of the brief with the court and serve three copies upon your opponent. In the Supreme Court, you must file 15 copies with the Clerk of the Court and serve three copies upon your opponent. In both courts, you must file a certificate that you have served the proper number of copies on your opponent.⁸¹

If the State or City raises new cases in the appellee's brief, the court would prefer that the appellant reply to them. However, a reply is not necessary. It is absolutely essential, however, that you file excerpts from the record⁸² within two weeks after the time that the appellee's brief is due. Nine copies of the excerpts from the record or the abstract should be filed in an appeal to the Appellate Court and 15 copies in an appeal to the Supreme Court.⁸³ Three copies should be served on each party to the appeal represented by separate counsel. Once again, a certificate must be filed with the reviewing court stating that all parties have been properly served with copies. The reviewing court can excuse the filing of excerpts.⁸⁴

Oral Argument

The party desiring oral argument must note that fact on the bottom of the cover page of his brief. Rule 352⁸⁵ governs oral argument. Unless the court otherwise orders, each side is allowed 30 minutes for its oral argument.⁸⁶ The appellant is confined to 10 additional minutes for rebuttal.⁸⁷ If only one side argues, the argument cannot exceed 20 minutes.⁸⁸

SUCCESSIVE APPEALS

If the appeal is unsuccessful, you can petition the reviewing court for a rehearing.⁸⁹ The petition for rehearing must be filed within 21 days after the filing of the opinion.⁹⁰ Motions to extend the time for filing the petition are not favored. Unless the reviewing court authorizes a longer petition, the petition

⁸⁰ *Id.* §341.

⁸¹ *Id.* §344. See Appendix.

⁸² ILL. REV. STAT. ch. 110A, §342(b) (1969).

⁸³ *Id.* §344(a).

⁸⁴ *Id.* §342(i).

⁸⁵ *Id.* §352.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* §367.

⁹⁰ *Id.*

should not exceed 20 pages if printed, or 27 pages if not printed.⁹¹

The petition should briefly state the points claimed to have been overlooked or misapprehended, with proper references to the particular portion of the record or brief relied upon.⁹² The requirements of the number of copies and form of the petition are the same as the requirements of briefs.⁹³ It must also be noted that a petition for rehearing is rarely granted.

This concludes the ordinary steps taken in a typical misdemeanor appeal. If the decision of the lower court is sustained, there exists avenues opened to the attorney who is not easily discouraged. These avenues should be mentioned in passing.

If you lose in the Appellate Court, you can appeal to the Illinois Supreme Court by a petition for leave to appeal,⁹⁴ by certificate of importance,⁹⁵ or by appeal as a matter of right.⁹⁶ If the Illinois Supreme Court refuses to review the decision of the Appellate Court or has sustained the conviction, the defendant's state remedies have been exhausted, and you may seek review in the United States Supreme Court by Petition for Writ of Certiorari,⁹⁷ or Appeal.⁹⁸

⁹¹ *Id.*

⁹² Supreme Court Rule specifically provides that the case shall not be reargued in a petition for rehearing. ILL. REV. STAT. ch. 110A, §367(b) (1969). See also *Nelson v. Union Wire Rope Corp.*, 39 Ill. App. 2d 73, 187 N.E.2d 425 (1963), *rev'd* 31 Ill. 2d 69, 199 N.E.2d 769 (1965).

⁹³ ILL. REV. STAT. ch. 110A, §367(c) (1969).

⁹⁴ *Id.* §315.

⁹⁵ *Id.* §316.

⁹⁶ *Id.* §317.

⁹⁷ The United States Supreme Court has jurisdiction to review final judgments of state courts by Certiorari in three instances:

1. When the validity of a treaty or statute of the United States is drawn in question.
2. When the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States.
3. When a title, right, privilege or immunity is set up or claimed under the federal Constitution, treaties or statutes, or under a commission held or authority exercised under the United States. 28 U.S.C. §1257(3).

Whether a petition will be granted is discretionary with the Supreme Court. However, the Court is most likely to grant the petition in situations:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

United States Supreme Court Rule 19.

Finally, it should be mentioned that federal habeas corpus is available to a defendant who has been convicted of a misdemeanor and faces probation⁹⁹ or for whom there exists no state

The requirements of the contents of the petition are set forth in United States Supreme Court Rule 23. It must be printed and the petitioner must file 40 copies of the petition together with \$100.00 docket fee and must bear the name of a member of the bar of the United States Supreme Court 39, 23(2), unless the petition is filed in forma pauperis.

United States Supreme Court 53(2) provides that only one copy is necessary and that copy can be handwritten or typed. Party wishing to proceed in forma pauperis must file a motion for leave to do so together with his affidavit at the time the petition is filed. See 28 U.S.C. §1915 as to statutory requirements for proceeding in forma pauperis.

The requirements alone are enough to deter most misdemeanor appeals. The petition must be filed within 90 days after entry of the judgment.

The petition must be accompanied by an appendix containing the opinions of the courts below and the judgment of which review is sought. United States Supreme Court Rule 23(1)(i)(i). The petitioner must also file a certified transcript of the record in the courts below. United States Court Rule 21(1).

Within 30 days or an extended time the respondent can file 40 copies of a printed brief disclosing any matter of ground why the cause should not be reviewed. (1) The petitioner can file a reply brief. United States Supreme Court Rule 24(4).

⁹⁸ The United States Supreme Court has jurisdiction to review the decision of a state court where the appeal raises the issue that a state statute is repugnant to the United States Constitution, treaties or laws, and the state has held it valid. 28 U.S.C. §1257(1) and (2) (1966).

In appealing from the judgment of a state court, the appellant must file a notice of appeal with the clerk of the court from which the appeal arises within 90 days after rendition of the judgment of which review is sought. 28 U.S.C. §2101 (1966). United States Supreme Court Rule 10(2) sets out the requirements for the notice of appeal.

Appellant's initial brief is called a Jurisdictional Statement. The requirements for the Jurisdictional Statement are contained in United States Supreme Court Rule 15. The brief must show "that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction of this court." United States Supreme Court Rule 15(1)(d). The printing requirements and docket fee are identical with those of a petition for writ of certiorari. United States Supreme Court Rule 39, 15(2), 13(2), 52(a). Just as in filing a petition for certiorari, the appellant must file an appendix containing the text of all opinions of the courts below with the brief. United States Supreme Court Rule 15(1)(a) and (1). The Jurisdictional Statement is due 90 days after the entry of judgment appealed from; however, for good cause shown an extension for an additional 60 days may be obtained. United States Supreme Court Rule 13(1).

The appellee's brief is called a motion to dismiss or a motion to affirm (or both). The appellee may contend:

1. The appeal was not taken in conformity with the applicable statute or rule;
2. The case does not present a substantial federal question;
3. The federal question was not timely or properly raised, or expressly passed on;
4. The judgment rests on an adequate non-federal basis.

The Supreme Court "will receive a motion to dismiss or affirm on any other grounds which the appellee wishes to present as reasons why the Court should not set the case for argument." United States Supreme Court Rule 16.

The advantage of an appeal as opposed to a petition for certiorari is that the Court is more disposed to review the former than the latter. If the Court decides not to review the appeal it can summarily find that no substantial federal question is involved. An excellent work on practice before the United States Supreme Court is STERN AND GRESSMAN, *SUPREME COURT PRACTICE* (4th ed. 1969).

⁹⁹ *Benson v. California*, 328 F.2d 159 (9th Cir. 1964).

remedy for securing a determination of whether a particular constitutional deprivation alleged has merit.¹⁰⁰ Any violation of the United States Constitution which makes state custody of the petitioner unlawful is a proper subject matter for a federal habeas corpus petition.

Thus habeas corpus would be available to a defendant who was denied leave by the Illinois Appellate Court to file late notice of appeal where the failure to file the notice was not the fault of defendant.¹⁰¹ It would also be available to a defendant whose conviction was sustained by the Illinois Appellate Court whose petition for review was denied by the Illinois Supreme Court. The procedure in a federal habeas corpus proceeding is beyond the scope of this article.¹⁰²

CONCLUSION

While it is somewhat contradictory, this article must conclude by noting that the appellate system is not designed for misdemeanors. If a defendant cannot post an appeal bond, he will invariably have served his sentence before the reviewing court issues a ruling. The attorney may succeed in creating new law which will assist future defendants, but his client will not benefit.

One solution would be to permit circuit court judges other than the trial court judge to hear post-trial motions on the basis of the transcript. This would rectify some of the grosser errors committed by overworked and sometimes overzealous municipal judges. A proceeding such as the one outlined above would permit a decision within 30 days after conviction.

If we must continue with the present system the following changes are recommended with regard to the appeals of misdemeanors. These suggestions are based on the assumption that in the typical misdemeanor appeal, the transcript is short, the issues are few in number:

1. Briefs should be replaced with legal memorandums. The formal requirements of briefs are important where there are several complicated issues. However, this situation rarely arises in a misdemeanor case. The appellant's case can frequently be set forth in a five page memorandum.

¹⁰⁰ 28 U.S.C. §§2241-54 (1966).

¹⁰¹ United States *ex rel.* Singleton v. Woods, 440 F.2d 835 (7th Cir. 1971).

¹⁰² Readers are referred to ILLINOIS INSTITUTE FOR A CONTINUING LEGAL EDUCATION, CRIMINAL LAW.

2. The Appellate Court should do away with some of its time consuming procedures. For example, there is no reason why motions should be filed with four blue-backed copies. The Illinois Supreme Court requires only one copy. Where the defendant is convicted of more than one crime at the same trial, the charges should be accepted by the Appellate Court as consolidated without requiring each charge to be docketed separately as a separate case.

3. A realistic appraisal should be made as of the resources available to handle misdemeanor appeals. Under Supreme Court Rules 605 and 607¹⁰³ the Public Defender in Cook County has been mandated to appeal the misdemeanor convictions of indigent defendants convicted of crimes punishable by more than six months imprisonment. Many of these appeals are without merit. In such cases, the Public Defender should be permitted to file an affidavit stating that he has examined the record and that there are no appealable issues. This would permit the office to expedite those cases that are meritorious.

The above suggestions must be seriously considered now. The Appellate Courts will shortly face a deluge of misdemeanor appeals resulting from Rules 605, 607.¹⁰⁴ Unless steps are taken to expedite these cases, they will clog the judicial machinery, delaying the adjudication of both criminal and civil appeals. The delays could be justified if the convicted defendant obtained meaningful benefits, but, as pointed out above, a reversal after a defendant has served his term is a hollow victory.

¹⁰³ ILL. REV. STAT. ch. 110A, §§605 and 607 (1969).

¹⁰⁴ *Id.*

APPENDIX

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY
MUNICIPAL DEPARTMENT, FIRST DISTRICT

Plaintiff-Appellee,	}	No.
vs.		
Defendant-Appellant		

NOTICE OF APPEAL

An appeal is hereby taken from the final judgment entered in the above entitled cause.

Appellant's Name:

Appellant's Address:

Appellant's Attorney:

Address:

Phone:

The Offense:

The Judgment:

The Date:

The Sentence:

Defendant-appellant prays that the judgment be reversed or in the alternative that the judgment be reversed and the cause remanded for a new trial.

By:

Attorney for Defendant-Appellant

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY
MUNICIPAL DEPARTMENT, FIRST DISTRICT

Plaintiff-Appellee,
vs.
Defendant-Appellant } No.

NOTICE OF FILING AND PROOF OF
SERVICE OF NOTICE OF APPEAL

To:

Corporation Counsel
City of Chicago
City Hall
Chicago, Illinois 60602

YOU ARE HEREBY NOTIFIED that on _____,
19__-, I filed on behalf of Defendant-Appellant the attached
Notice of Appeal. A copy of the Notice of Appeal and a copy
of the Notice of Filing and Proof of Service of Notice of
Appeal are hereby served upon you.

Attorney for Defendant-Appellant

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

CERTIFICATE OF ATTORNEY

I hereby certify that I served a copy of the above notice
by mailing a copy to everyone to whom it is directed on
_____, 19__-

Attorney for Defendant-Appellant

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY
MUNICIPAL DEPARTMENT, FIRST DISTRICT**

Plaintiff-Appellee,
vs.

No.

Defendant-Appellant

PRAECIPE FOR RECORD

To the Clerk of the Circuit Court of Cook County, Illinois:

The Clerk of the Circuit Court of Cook County will please prepare a transcript of record for appeal by the Defendant in the above entitled cause to the Appellate Court of Illinois, First District, and certify to the correctness thereof and will include in the transcript of record the following documents:

1. Placita
2. Complaint
3. All motions made by defendant
4. All orders entered by the Court
5. Judgment
6. Notice of Appeal
7. Notice of Filing and Proof of Service of Notice
8. Original Report of Proceedings at the trial
9. This Praecipe for Record
10. Notice of Filing and Proof of Service of this Praecipe for Record
11. All other documents and papers as may be filed and orders as may be entered subsequent to the filing of Praecipe for Record
12. Certificate of the Clerk of the Circuit Court of Cook County.

Attorney for Defendant-Appellant

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY
MUNICIPAL DEPARTMENT, FIRST DISTRICT**

Plaintiff-Appellee,	}	No.
vs.		
Defendant-Appellant		

**NOTICE OF FILING AND PROOF OF
SERVICE OF PRAECIPE FOR RECORD**

To: Corporation Counsel of the
City of Chicago
City Hall
Chicago, Illinois 60602

YOU ARE HEREBY NOTIFIED that on _____, 19__
I filed on behalf of Defendant-Appellant the attached Praecipe
for Record. A copy of the Praecipe for Record and a copy of
this Notice are herewith served upon you.

Attorney for Defendant-Appellant

STATE OF ILLINOIS	}	ss.
COUNTY OF COOK		

CERTIFICATE OF ATTORNEY

I hereby certify that I served the above Notice by mailing
a copy to everyone to whom it is directed on _____,
19__.

Attorney for Defendant-Appellant

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

Plaintiff, }
vs. } No.
Defendant }

MOTION TO CERTIFY REPORT OF PROCEEDING

Now comes the defendant and moves the court to certify the correctness of the attached report of proceedings.

Attorney for Defendant

NOTICE

To: Corporation Counsel
City of Chicago
City Hall
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on _____ I will appear before the Honorable Judge _____, and make the above motion.

Attorney for the Defendant

CERTIFICATE OF ATTORNEY

I hereby certify that I served the above motion by mailing a copy to everyone to whom it is directed.

Attorney for Defendant

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

Plaintiff, }
vs. } No.
Defendant }

MOTION FOR A TRANSCRIPT

Now comes the defendant by his attorney and moves the Court to enter an order granting defendant a free transcript and free record on appeal. In support thereof defendant attaches the following affidavit:

AFFIDAVIT OF INDIGENCY

- I, _____, called "applicant," on oath state:
- 1. Applicant's occupation or means of support:
 - a. Applicant is employed as _____, by _____.
 - b. Applicant's other sources of income or support are:
- 2. Applicant's income for the preceding year was \$_____.
- 3. The sources and amount of income expected by applicant hereafter are:
- 4. The persons dependent on applicant for support are:
- 5. Applicant owns (a) no real estate except: (State address or location, nature of improvements and value.) and (b) personal property which in the aggregate does not exceed \$_____, in value and consists of: _____ including a --(make)-- motor vehicle, 19 --(year)--, valued at \$_____.
- 6. No applications for a transcript were filed by or on behalf of applicant as a poor person during the preceding year except:
- 7. Applicant was tried on the charge of _____ on _____ 19__, and found guilty. A court reporter transcribed the proceedings.
- 8. Applicant is unable to pay the costs of this transcript.
- 9. Applicant has a meritorious appeal and said transcript is necessary in order to prosecute said appeal.

Applicant's Signature

Signed and sworn to
before me this ____
day of _____, 1971.

Notary Public

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

Plaintiff, }
vs. } No.
Defendant }

O R D E R

Upon the verified petition of the defendant, filed pursuant to Supreme Court Rule 607 and *Williams v. Oklahoma*, 395 U.S. 458 (1969), the Court being fully advised in the premises, FINDS:

1. That the petitioner was sentenced to imprisonment in the above-entitled cause on -----

2. That the petitioner was at the time of such sentence and is now without financial means to pay for the cost of a Report of Proceedings at his trial.

IT IS THEREFORE ORDERED that the Official Shorthand Reporter of this Court shall:

(a) Forthwith transcribe an original and a copy of all of the notes taken of the proceedings in the above-entitled cause; and

(b) Without charge to the defendant and within forty-nine days from date of Notice of Appeal, file the original of the Report of Proceedings with the Clerk of the Court and on the same day mail or deliver the copy of the Report of Proceedings to the defendant; and

(c) Within ten days thereafter, file in writing in open court, a Report of Compliance with this Order.

IT IS FURTHER ORDERED that the Clerk of this Court shall furnish the defendant with a copy of the common law record.

ENTER:

JUDGE

DATED: -----

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

Plaintiff-Appellee,
vs.

No.

Defendant-Appellant

NOTICE

To: Corporation Counsel

City Hall

Chicago, Illinois 60602

PLEASE TAKE NOTICE that on _____, 19____,
I shall file in the Office of the Clerk of the Appellate Court
of Illinois, the attached Motion and Affidavit.

Attorney for Defendant-Appellant

STATE OF ILLINOIS
COUNTY OF COOK

} ss.

_____, being first duly sworn on oath,
says that he served the above and foregoing Notice, Motion and
Affidavit thereto attached by mailing to the above named at-
torney on

Affiant

SUBSCRIBED AND SWORN TO

before me this _____ day

of _____, 1971.

Notary Public

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

Plaintiff-Appellee, }
vs. } No.
Defendant-Appellant }

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

Now comes the defendant-appellant by his attorney, -----
-----, and moves the Court to enter an order to permit
defendant-appellant to appeal in forma pauperis. In support
thereof, appellant has prepared the following Affidavits.

By _____
Attorney for Defendant

AFFIDAVIT OF INDIGENCY

I, -----, called "applicant,"
on oath state:

1. Applicant's occupation or means of subsistence:
 - a. Applicant is employed as -----
(job)
by -----
 - b. Applicant's other sources of income of support are:

2. Applicant's income for the preceding year was \$-----
3. The sources and amount of income expected by applicant hereafter are:
The persons dependent for support are: -----
4. Applicant owns (a) no real estate except:
(State address or location, nature of improvements and value.)
and personal property which in the aggregate does not exceed \$----- in value and consists of -----, including a ----- (make) ----- (year) motor vehicle valued at \$-----
5. No applications were filed by or on behalf of applicant for leave to sue or defend or appeal as a poor person during the preceding year except:
6. Applicant is unable to pay the costs of this case.
7. Applicant has a meritorious appeal.

(Signature)

Signed and sworn to before me

-----, 19--

----- (Notary Public)

Name

Attorney for Applicant

Address

City

Telephone

**IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT**

Plaintiff-Appellee,

vs.

No.

Defendant-Appellant

**NOTICE OF DOCKETING AND
PROOF OF SERVICE**

To:

You are hereby notified that on -----, 19,--
I filed the record on appeal in the above-captioned case. A
copy of this notice and proof of service are hereby served upon
you.

Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the above notice
by mailing a copy to everyone to whom it is directed on
-----, 19---

Attorney for Defendant-Appellant

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT**

Plaintiffs-Appellees, }
vs. } No.
Defendant-Appellant }

DESIGNATION OF RECORD

The Defendant-Appellant hereby designates the following documents to be included in the Excerpts of Record:

- 1. Complaint R
- 2. Judgment R
- 3. Report of Proceedings R

Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the above Designation of Record and three (3) copies of the Brief of Appellant-Defendant by mailing a copy to the State's Attorney, Civic Center, Chicago, Illinois 60602.

Attorney for Defendant-Appellant

**IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT**

Plaintiff-Appellee, }
vs. } No.
Defendant-Appellant }

**MOTION TO EXTEND TIME TO FILE
APPELLANT'S BRIEF**

Now comes the appellant by his attorney and moves the Court to extend the date for filing appellant's brief up to and including _____, 19___. In support thereof appellant attaches the following affidavit.

By _____
Attorney for Defendant

STATE OF ILLINOIS }
COUNTY OF COOK } SS.

A F F I D A V I T

-----, being first duly sworn on oath, deposes and says:

That he is the attorney for Defendant-Appellant since -----;

That the Brief and Argument for the Defendant-Appellant was due for filing in this Honorable Court on or before -----;

That due to the heavy, sustained volume of appeals in the Supreme Court of Illinois and the heavy, sustained volume of appeals in the Appellate Court of Illinois, First District, your affiant has been unable to complete and have ready for filing the Defendant-Appellant's Brief in the instant cause on the due date and will require additional time for same;

That this is your affiant's ----- request for an extension of time in the instant cause;

WHEREFORE, your affiant prays that the foregoing Motion be allowed.

Subscribed and Sworn to _____
before me this ----- day
of -----, 197---
Notary Public

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