

Municipal Court Appeals

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Municipal Court Appeals

Reference Number:
MTAS-1750

The Municipal Court Reform Act of 2004 contains the following provision governing appeals from municipal court judgments:

Notwithstanding any law to the contrary, any person dissatisfied with the judgment of a municipal court, in any case or cases heard and determined by the court acting pursuant to § 16-18-302(a), may, within ten (10) days thereafter, Sundays exclusive, appeal to the circuit court of the county, upon giving bond in the amount of two hundred fifty dollars (\$250) for the person's appearance and the faithful prosecution of the appeal. As used in this section, person includes, but is not limited to, a natural person, corporation, business entity or the municipality. *Tenn. Code Ann.* § 16-18-307.

The law is clear on the amount of the appeal bond to be posted and the time period in which the appeal must be filed, but some aspects of the appeal procedure are not explained. The most frequently asked question about city court appeals is which court gets the appeal bond. The answer to that question is provided by case law, most recently in *Tubwell v. City of Memphis*, 413 S.W.3d 77, 79-80 (Tenn. Ct. App. 2013), where the court clearly held that the bond or pauper's oath (affidavit of indigency) should be posted at the city court. In 2015, the Attorney General opined that all papers must be transmitted to the Circuit Court. *Tenn. Op. Atty. Gen. No.15-07* (2015 WL 510343). Presumably, this includes the \$250 bond.

In the case *City of Red Boiling Springs v. Whitley*, 777 S.W.2d 706 (Tenn. Ct. App. 1989), the defendant-appellant attempted to appeal a decision of the Red Boiling Springs Municipal Court. He told the judge on the day he was convicted that he intended to appeal, and the judge accordingly wrote on the court citation: "Asked for appeal. Has 10 days to appeal. This 10-5-1985." *Id.*, 777 S.W.2d 706, 707 (Tenn. Ct. App. 1989). The defendant then filed a document with the circuit court clerk on October 12, 1985 titled "Notice of Appeal from City Court and Demand for Jury Trial," with an appeal bond in the amount of \$250. The city moved to dismiss on grounds the defendant did not properly file his appeal, and the trial court dismissed the city's motion.

The city's appeal was heard before the existence of the Municipal Court Reform Act, and the adoption of the statute cited above on municipal court appeals. The Court of Appeals reviewed the statutes governing the appeal procedure from general sessions courts and concluded:

Although *Tenn. Code Ann.* § 27-5-103 does not specifically say where the bond is to be filed, it is clear from *Tenn. Code Ann.* § 27-5-105 (1980) and the cases construing the statutory procedure that the bond is to be filed in the court from which the appeal is taken. See *Chapman v. Howard*, 71 Tenn. 363 (1879); *Hoback Motor Co. v. Kyle*, 10 Tenn. App. 306 (1929). It is then the duty of that court to forward the papers to the clerk of the circuit court. See *Spencer v. Dixie Finance Co.*, 205 Tenn. 485, 327 S.W.2d 301 (1959). *City of Red Boiling Springs v. Whitley*, 777 S.W.2d 706, 707 (Tenn. Ct. App. 1989).

Also, the Court of Appeals found that the defendant-appellant did not perfect his appeal, due to the fact he did not file his appeal bond with the municipal court clerk, as explained below:

As to the defendant's second argument, that filing a bond in the office of the circuit court clerk is sufficient, we cannot agree. The requirement of a bond in order to perfect an appeal from an inferior court to the circuit court is not a formality. The appeal is not perfected without it. See *Chapman v. Howard*, 71 Tenn. at 363. We share the view "that when our Tennessee cases are examined, that the rule seems to be now settled, that the bond in some form must be tendered and accepted by the Justice of the Peace within the time provided by statute...." *Hoback Motor Co. v. Kyle*, 10 Tenn.App. at 309.

We conclude that the defendant did not properly perfect his appeal to the circuit court. Therefore, the circuit court did not have any jurisdiction over the controversy. *City of Red Boiling Springs v. Whitley*, 777 S.W.2d 706, 708 (Tenn. Ct. App. 1989).

It does not matter if a defendant-appellant is following the directions of the judge or clerk when filing an appeal bond, if the filing is defective. The defendant-appellant in the case *City of Brentwood v. Roberts*, 01A01-9307-CV-00293, 1994 WL 164108 (Tenn. Ct. App. May 4, 1994), followed the directions provided to his attorney by both the city court judge and the circuit court clerk, and filed an appeal bond surety in the amount of \$500 and a notice of appeal in circuit court. His attorney filed an affidavit stating that he followed the directions of the city judge and the circuit court clerk in filing the appeal, but this proof was not sufficient to preserve his client's right to appeal. The Court of Appeals was not convinced that bad advice or direction by public officials relieves the obligation to follow the legal procedure for appeals, reasoning:

As to the reliance issue, counsel for the appellants does not cite any authority for the proposition that a failure to follow the statutory appeal procedures may be excused because counsel relied on someone else's advice. We would be very reluctant to establish such a precedent-even where the advice is given by public officers and involves matters pertaining to the officer's official duties.

But, beyond that, if we examine the reliance issue on traditional principles, we think the reliance by appellant's

counsel on the advice of third parties was unjustified.... A casual reading of the annotations under Chapter 5, Title 27 of the code (the appellant cited *Tenn. Code Ann.* § 27-5-108 in the "notice of appeal") would have revealed the Red Boiling Springs case, a decision emphatically stating that the procedure used by the appellants in this case was not sufficient to perfect the appeal. *City of Brentwood v. Roberts*, 01A01-9307-CV-00293, 1994 WL 164108 (Tenn. Ct. App. May 4, 1994).

A similar judgment was rendered in the case *City of Gatlinburg v. Bell*, 03A01-9412-CV-00431, 1995 WL 114186 (Tenn. Ct. App. 1995). The defendant-appellant in the Bell case appealed numerous cases from the city court and used appeal bond forms typed by the city court clerk. Those that were signed in front of the clerk and left with the city court were determined to have perfected his appeal of some citations. He later signed appeal bond forms at a bond office and filed those with the circuit court clerk, which the Court of Appeals found to be defective as to the appeal of those city court judgments. Despite the fact he was following directions allegedly provided to him by the court clerk, the court determined he failed to perfect his appeals.

The City of Gatlinburg prevailed again in the last case on the issue, *City of Gatlinburg v. Odom*, E2001-02934-COA-R3CV, 2002 WL 1611572 (Tenn. Ct. App. July 22, 2002). The Odom case was decided on the same grounds as the other cases discussed herein, and the defendant-appellant lost his appeal due to failure to file his appeal bond with the city court clerk.

Tenn. Code Ann. §16-18-307, governing appeals from city courts, does not specify where the appeal bond should be posted. However, case law provides clear direction that the **\$250 appeal bond or pauper's oath (affidavit of indigency) is given to the city court clerk, not the circuit court clerk.**^[1] The city court clerk then sends the court documents concerning the case, which typically consists of a citation, to the county circuit court, along with a copy of the appeal bond form and the appeal bond money. The defendant-appellant will have to pay a filing fee to the circuit court clerk, which should not be confused with the \$250 appeal bond forwarded by the city court clerk with the documents for the appeal.

On the sample appeal bond form [1], you will note it contains a space for signature of a surety, if the defendant is using an attorney. "Surety" is defined for purposes of appeals in our state as follows:

In all cases of bonds, for the prosecution of original suits, or where security is taken or recorded in any court, sufficient security shall be taken by the clerk to pay all costs that may be at any time adjudged against the principal, in the event they are not paid by the principal. Notwithstanding any other law to the contrary, where an attorney undertakes to serve as surety after July 1, 1999, such surety shall only be obligated for amounts required by law or included in the clerk's bill of costs, and shall not be responsible for discretionary costs. In such instances, the clerk may require an additional surety other than the attorney as may be necessary to secure payment for discretionary costs. *Tenn. Code Ann.* § 20-12-125.

The surety's signature satisfies the bond-posting requirement, so no money must be deposited with the court clerk if his attorney signs the form as surety.

Another question that frequently arises from city court appeals is the use of the appeal bond money. According to the Municipal Court Reform Act, the purpose of the bond is to ensure "the person's appearance and the faithful prosecution of the appeal." *Tenn. Code Ann.* § 16-18-307. If the defendant-appellant fails to prosecute his appeal in circuit court, the bond is forfeited and the funds should be applied to cover any unpaid court costs or fines, with the balance being refunded to the defendant, if any. If the amount is insufficient, it is collectible as any other debt.

After the appeal, if the city court judgment was upheld and the defendant has not satisfied the judgment, the appeal bond may be used to pay the city court judgment, with any remaining funds being refunded to the defendant. If the defendant is successful and wins his appeal, the entire bond is refunded to the defendant, as well as any costs or fines he may have paid toward the original city court judgment. Additionally, if the appeal concerns a traffic citation and the defendant's appeal is successful, the court clerk should file a corrected court action report with the Department of Safety to remove the violation from the defendant's record.

[1] For general information on filing a pauper's oath or an affidavit of indigency, please refer to T.C.A. §§ 20-12-127 and 27-5-103, Tennessee Supreme Court Rule 29, and Tennessee Rule of Appellate Procedure E. 18 (Appeals by Indigent Persons).

Appeal Bond

Reference Number:
MTAS-1751

MUNICIPAL COURT FOR THE CITY OF _____, TENNESSEE

CITY OF _____

CASE # _____

VS.

APPEAL BOND

The undersigned Defendant (and his/her Surety, if applicable) hereby posts this appeal bond in the sum of two hundred and fifty dollars (\$250), for his/her appeal of case number _____. This appeal bond is posted pursuant to the provisions of *Tennessee Code Annotated § 16-18-307*, and is posted within ten (10) days of the date judgment was entered by the Municipal Court Judge.

The undersigned Defendant hereby appeals this matter to the Circuit Court, and agrees to appear in Circuit Court on the date and time specified by the Circuit Court Clerk.

Defendant

Received by: _____

Date: _____

For A.D.A. Assistance, please contact: _____ at (_____) _____.

Surety

Reference Number:
MTAS-1752

SURETY

I am the attorney representing the above-named defendant, and I hereby acknowledge myself/my firm as surety for the costs of this appeal, in an amount not to exceed \$250.

Print Attorney's Name

Firm Name

Attorney's Signature

Links:

[1] <https://www.mtas.tennessee.edu/reference/appeal-bond>

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