

1973 WL 26697 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 4, 1973

*1 Honorable Silas N. Pearman

Special Note: A notice of appeal served more than five days after trial, a verbal notice of appeal, and a notice of appeal that has not been served on the magistrate or municipal judge personally are void. These should be referred to my Office for handling.

ORDER OF MAGISTRATE OR MUNICIPAL JUDGE GRANTING NEW TRIAL

SCHD Action: The department should take no action upon receipt of an order granting a new trial.

ORDER STATING NEW TRIAL HAS BEEN GRANTED AND DEFENDANT FOUND NOT GUILTY

Requirements: A new trial may not be granted by a magistrate or municipal judge unless motion is made within five days after trial and before the fine has been paid.

SCHD Action: All such orders or letters stating that a new trial has been granted and the defendant found not guilty, or the charge dismissed, should be referred to my Office for handling before suspension status is altered.

ORDER OF COUNTY COURT OR CIRCUIT COURT AFFECTING SUSPENSION

Requirements: The tests governing the validity of such orders are of such a legally technical nature that each must be studied individually.

SCHD Action: Every such order should be stamped as to date of receipt by the Department and sent to this Office immediately upon receipt for handling. Suspension status should not be changed except upon advice of this Office.

ORDER OF MAGISTRATE OR MUNICIPAL COURT GRANTING NEW TRIAL AFTER BOND FORFEITURE

Requirements: Theoretically, if no trial, either in absentia or otherwise, has been had, the granting of a trial at any subsequent time is lawful. There is growing feeling, however, that, since more than 90% of all traffic cases are effectively concluded by bond forfeiture, such forfeiture should be tantamount to conviction. This is a question that deserves study and, possibly, an answer from our courts.

SCHD Action: All such orders should be referred to my Office for advice before suspension status is changed.

Yours very truly,

Daniel R. McLeod
Attorney General

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