



## MINNESOTA JUDICIAL TRAINING UPDATE



### APPEALS & REMANDS - 10 COMMON TRIGGERS

**QUESTION:** What Are the Most Common Judicial Triggers for Appeals and Remands? Do you ever wonder what your colleagues around the state are doing (or not doing) that tend to statistically trigger appeals and remands? Regardless of merit, certain judicial actions carry a high probability of triggering an appeal, a remand, or both. For Example:

The Most Common Judicial Appeal Triggers Broken Down Into Two Categories:

#### **AFFIRMATIVE JUDICIAL ACTS: 2 PRIMARY TRIGGERS:**

- 1) **SUMMARY JUDGMENT:** Making findings of fact on disputed material issues on Summary Judgment. This also includes resolving credibility questions, drawing inferences, and assessing the weight of the evidence. These are all matters for the trier of fact and should not be addressed by the Court on Summary Judgment. *See M.R.Civ.P. 56;*
- 2) **PLEA NEGOTIATIONS:** Excessive Involvement In Criminal Plea Negotiations.
  - a) Appellate courts recognize that judges have a delicate role in plea negotiations and necessarily play a part in any negotiated guilty plea. However, there are two basic guidelines that control the extent of Court involvement:
    - i) The Court's role in plea negotiations is not to "usurp the responsibility of counsel or become excessively involved in plea negotiations." Anytime the Court improperly injects itself into plea negotiations the guilty plea is per se invalid.
    - ii) The Court may not offer or promise the defendant an anticipated sentence that is not part of an existing agreement between the defendant and the prosecutor.

*State v. Anyanwu, 681 N.W.2d 411 (Minn. App. 2004); State v. Melde, A09-1050, Minn.Ct.App. Feb 22, 201*

**JUDICIAL OMISSIONS: 8 PRIMARY TRIGGERS:**

- 3) **MOTIONS AND ARGUMENTS:** FAILURE TO ACKNOWLEDGE AND DECIDE ALL ISSUES RAISED IN MOTIONS AND ARGUMENTS. If you choose NOT to decide an issue you should, at a minimum, provide an **explanation** (even a brief one) as to why the matter is not being decided, or need not be decided (e.g., some other issue in the case is fully dispositive of the action). For example:
- a) *State v. Jones*, 772 N.W.2d 496, 508 (Minn. 2009) Noting that defendant's application for counsel was denied, but there were neither findings nor any explanation on the record as to the "reasons for denying the application," which made it "impossible to apply an abuse-of-discretion standard of review of the Court's denial."
  - b) *In re Estate of Eckley*, 780 N.W.2d 407, 414-15 (Minn. App. 2010) Case remanded because Judge failed to consider specific arguments clearly made by the parties.
  - c) *State v. Stanke*, 764 N.W.2d 824, 828 (Minn. 2009) Failure to address severe aggravating factors in sentencing ordinarily results in a remand to the District Court.
- 4) **FAILURE TO MAKE SPECIFIC ESSENTIAL FINDINGS OF FACT:**
- a) This problem recurs with the *Austin* factors in probation revocations, attorneys' fees, juvenile and TPR cases, civil commitments, marriage dissolution and child custody matters.
- 5) **FAILURE TO RESOLVE CREDIBILITY CONFLICTS IN EVIDENCE AFTER A TRIAL:**
- a) Avoid "findings" that simply describe what the conflicting testimony was without resolving the conflict.
  - b) The Court may make specific credibility findings (although these are not required), or it may simply indicate which version it found persuasive. No special wording is required as long as the Court can get beyond the descriptive and into the evaluative.

- 6) **LOTHENBACH TRIALS AND STIPULATED CRIMINAL COURT TRIALS:** Failure to obtain Defendant's personal waiver of the right to a jury trial and all other trial rights under *Minn. R. Crim. P. 26.01, subds. 3 and 4*.
- 7) **CRIMINAL TRIALS IN GENERAL:** Failure to obtain Defendant's **personal** waiver of jury trial (for court trials), the right to counsel (for pro-se defendants), and the right not to testify (for any trial where defendant decides to testify).
- 8) **RULE 15 GUILTY-PLEA ADVISORY:** Failure to follow the requirements of guilty-plea advisories under *Rule 15.01 (felonies and gross misdemeanors)* and *Rule 15.02 (misdemeanors)*.
- 9) **SPREIGL (Bad Acts) AND JONES (Impeachment) FACTORS - FINDINGS:** Failure to make specific "findings" to support your ruling. Although there is no absolute requirement that specific "findings" be made on these issues, at least some disclosure that the court has considered and weighed the components of those issues would help obviate appeals. However, making specific "findings" is recommended as a Judicial Best Practice.
- 10) **SENTENCING:** Failure to be specific at sentencing and, in the judgment of conviction, as to the disposition of counts in which no sentence is imposed.

**NOTE:** Paying particular attention to the 10 Judicial Triggers identified above could substantially reduce the risk of appeal or remand in your cases. Although avoiding these 10 Judicial Triggers are ultimately the responsibility of the trial judge, you are encouraged to enlist the aid of competent counsel in ensuring that "all bases are covered."

**SOURCE:** This update is based on and contains excerpts from an article written by Justice Gordon Shumaker, Minnesota Court of Appeals, entitled: "Appeal-Triggers and Remand Issues: A List"