



Annual Courts Conference

May 23-25, 2018

Conference Notebook



MMACJA 2018 Annual Courts Conference

Abbreviated Agenda & Index

This abbreviated agenda shows only CLE sessions. See page 4 for a full agenda, including breakfast times, breaks, after-hours events information, and full descriptions of all sessions, including the annual business meeting and the annual luncheon.

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- 2:20 – 3:20 **pg 90** Reinstatement Revisited
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THURSDAY, MAY 24, 2018

- 8:30 – 10:00 **pg 96** From the Clouds to the Weeds
- 10:10 – 11:40 From the Clouds to the Weeds, continued w/ Q&A
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- 1:30 – 2:30 **pg 286** Courtroom Civility
- 2:40 – 5:20 **pg 298** What Does Rule 37 Have to Do With It?

FRIDAY, MAY 25, 2018

- 8:30 – 9:30 **pg 302** Caselaw Update Part 1
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- 9:30 – 10:30 **pg 354** Judicial Ethics
- 10:45 – 12:00 Caselaw Update Part 2

NOTE: Some presentations do not contain written materials; space has been provided for you to take notes. Some materials are available only electronically at MMACJA.org > Annual Courts Conference.

Conference Survey: In the folder you received at check-in, you will find a survey with which to give your feedback on this conference. Please turn it in on Friday when you return your nametag and lanyard for the drawing.



Welcome Letter from the 2018 Conference Chair

On behalf of the MMACJA Board of Directors, it is my pleasure to welcome you to the MMACJA 2018 Annual Courts Conference! Some of our most popular speakers of the past will return for this year's conference to provide practical information to Missouri judges, prosecuting attorneys, private practitioners, and court administrators.

As I planned this conference, I endeavored to honor MMACJA's tradition of providing practical and thought-provoking educational programming. You won't want to miss any part of the conference. The first day of the conference will be packed with sessions and demonstrations that will inform and invoke discussion. The Office of State Courts Administrator will provide you with demonstrations on Show Me Courts and ebench updates. There will be sessions on trends in fines and costs, DWI enforcement and the suspended and revoked driver. A panel of legislators will discuss recent legislation relevant to Missouri courts. YourSTLCourts.com will finish off the first day of programming with a presentation discussing an application that allows users access to court records, procedures, and court information.

On day two, you will be taken from the clouds to the weeds during a presentation about the Minimum Operating Standards. This session is sure to bring clarity to anyone confused about how to comply with the Minimum Operating Standards. During the lunch hour, you can pick up ethics credit and witness a special presentation. Later in the day, many of the court administrators will join the judges as Supreme Court Judge Paul Wilson and Court of Appeals Judge Roy Richter discuss civility. To complete the day of programming, the court administrators will participate in a role-playing session with the judges.

The final day of the conference will include an overview of the ethical rules and an in-depth discussion of relevant case law decided this past year.

After each day of programming, there will be opportunities for socializing. The usual Wednesday night Welcome Reception will afford you opportunities for conversations, socializing and delicious food and refreshments. You will enjoy the spacious Campana Hall during the joint sessions and social event on Thursday night.

Thank you to all of the judges, court administrators, and anyone who volunteered to make the 2018 Annual Courts Conference a success. Thank you for allowing me to serve as your conference chair.

Renee Hardin-Tammons, Vice-President & 2018 Conference Chair

Agenda for Wednesday, May 23, 2018

- 9:00 AM – 5:00 PM **Conference Registration Open** 5th Floor Atrium
- 9:00 AM – 12:00 PM **Office of State Courts Administrator** Valencia
*Pre-Conference Demonstrations throughout the morning including:
 Show-Me Courts and eBench Updates*
- 11:15 – 11:45 AM **Welcome Reception for New Judges & First-Time Attendees** Valencia A
Judge Cotton Walker, President
- 12:00 – 12:10 PM **Welcome to Annual Courts Conference** Granada
Judge Renee Hardin-Tammons, Conference Chair & Judge Cotton Walker, President
- 12:10 – 1:00 PM **Courtroom Issues in DWI Enforcement** Granada
*Judge Robert Aulgur, City of Columbia; Prosecuting Attorney Robert Rinck
 and Steve Wilson, DWI Defense Center* 1 hour CLE
 Panel Presentation on statutory reporting requirements along with issues presented by current breath testing procedures and related topics.
- 1:10 – 2:10 PM **Trends in Court Costs, Fines, Fees & Bail** Granada
*Judges Andrea Niehoff, Jennifer Fisher, Brandi Miller
 and Teresa Bright-Pearson* 1.2 hours CLE
 Panel of experienced judges will present and discuss the mandates that govern assessing court costs, fines, fees and bail in municipal courts and how recent trends are suggested and are leading to a fresh look and approach to the topic.
- 2:20 - 3:20 PM **Reinstatement Revisited** Granada
Hardy Menees, City of St. John Prosecuting Attorney 1 hour CLE
 Municipal judges will be advised how a specialty court is tackling the mounting problem of suspension/revocation of licenses and the multi-jurisdictional impact that suspension and revocation of licenses creates.
- 3:30 - 4:20 PM **Legislative Update** Granada
Attorney Rich AuBuchon, Moderator 1 hr CLE
 Panel of Missouri State Legislators
- 4:30 - 5:00 pm **Your STLCourts.com** Granada
Laura Kinsell-Baer, President of St. Louis CivicTech Data Collaborative .6 hrs CLE
 Ms. Kinsell-Baer will present information on an application that will allow access to municipal court records into one, no cost, mobile friendly online portal where citizens and attorneys can access ticket and warrant information along with court contact information and procedures.
- 5:00 - 7:00 pm **Welcome Reception** Valencia Indoor/Outdoor
 Join your fellow conference attendees for an opening night reception where you will enjoy a selection of hors d'oeuvres, a cash bar, and scenic views of the Lake of the Ozarks.
- 7:00 - 9:00 pm **2017-2018 Board of Directors Meeting & Dinner** Escollo

Agenda for Thursday, May 24, 2018

7:00 – 8:30 AM	Breakfast Buffet	Marbella
	Breakfast for conference attendees and paid guests of the conference. Please have your identification badge or ticket with you.	
8:30 – 10:00 AM	From the Clouds to the Weeds	Granada
	<i>Judges Frank Vatterott, Douglas Beach, Michael Gunn, Keith Cheung and Kevin Kelly</i> 1.8 hours CLE	
	Host Judge Frank Vatterott will present a view from the clouds – how new laws, Supreme Court Rules, standards and local court rules fit together. Judge Vatterott will present and discuss Court Operating Order #4, which is offered to be adopted as part of local court rules or by individual municipal divisions.	
	Now the weeds - Judge Vatterott will also present his “Supplemental Rules of Procedure” for consideration to be adopted in municipal divisions, which complements Court Operating Order #4, and is specifically designed to comply with procedures required by Minimum Operating Standards and to assist in court management.	
10:10 - 11:40 AM	From the Clouds to the Weeds Continued with Q & A	Granada
	<i>Judges Frank Vatterott, Douglas Beach, Michael Gunn, Keith Cheung and Kevin Kelly</i> 1.8 hours CLE	
	Judge Vatterott continues his presentation with panelists Presiding Judge Douglas Beach of the 21st Circuit (St. Louis County), Judges Mike Gunn, Keith Cheung and Kevin Kelly, to review their recommended practices to comply with the MOS. Judge Beach will explain his future role as municipal division court monitor throughout the State of Missouri and what he might expect from your court.	
	Judge Vatterott has also prepared a number of tough questions on MOS compliance which will be tackled by the panelists.	
11:40 AM - 12 PM	MMACJA General Membership Meeting & Election of Officers	Granada
12:00 – 1:15 PM	Luncheon/ “What do Missourians DESERVE in their judges?”	Marbella
	<i>Attorney Morry Cole, Missouri Bar President (2017-2018)</i> .6 hrs CLE (ethics)	
	will highlight the traits of a good judge as featured in Part Two of a Six-Part Series.	
	--Special Presentation--	
1:30 - 2:30 PM	Courtroom Civility	Campana Hall
	<i>Joint session with judges and court administrators</i> 1.2 hours CLE (ethics)	
	<i>Supreme Court Judge Paul Wilson and Court of Appeals Judge Roy Richter</i>	
	Discussion of principles of courtroom civility	
2:40 - 5:20 PM	What Does Rule 37 Have To Do With It?	Campana Hall
	<i>Joint session with judges and court administrators</i> 3 hours CLE	
	<i>Judges Renee Hardin-Tammons, Todd Thornhill, Keith Cheung and Cotton Walker</i>	
	Court administrators and municipal judges will role play and discuss the mandates of Rule 37 in a joint interactive session.	
5:20 PM	Dinner On Your Own	
8:00 - 10:30 PM	Joint Social Event (MACA and MMACJA)	Campana Hall

Agenda for Friday, May 25, 2018

7:00 – 8:30 AM	Breakfast Buffet	Marbella
	Breakfast for conference attendees and paid guests of the conference. Please have your identification badge or ticket with you.	
7:00 – 8:20 AM	2018-2019 Board of Directors Meeting & Breakfast	Escollo
8:30 – 9:30 AM	Caselaw Update Part 1 <i>Judges Mike Svetlic & Joe Cambiano</i>	Granada 1.0 hours CLE
	Judges Mike Svetlic and Joe Cambiano will present The Mike and Joe Show with the latest case law relevant to our courts including Search & Seizure / Illegal Stops.	
9:30 - 10:30 AM	Judicial Ethics <i>Judge Glenn Norton</i>	Granada 1.2 hours CLE (ethics)
	Judge Glenn Norton will teach the canons of judicial ethics utilizing hypotheticals and real life examples.	
10:45 AM - 12 PM	Caselaw Update Part 2 <i>Judges Mike Svetlic & Joe Cambiano</i>	Granada 1.6 hours CLE
	Judges Mike Svetlic and Joe Cambiano will present The Mike and Joe Show with the latest case law relevant to our courts including ethics and DWI Training.	

Conference Materials

Electronic conference materials will be made available one week prior to the conference. The electronic notebook will be available for non-members at MMACJA.org for 2 weeks. After that, members can download this year’s electronic notebook, along with previous years’ materials, by logging in and clicking Documents in the menu.

There is an additional \$25 surcharge for paper notebook and materials.

* Refreshments will be available during throughout the entire conference. Feel free to take breaks as needed.

CLE Hours

The conference program has applied for 17 MCLE hours, including 3 ethics hours, under Supreme Court Rules 15 and 18 for Reporting Year July 1, 2017, through June 30, 2018. Attendance at the entire conference qualifies for these credits.

MCLE	14.0
Ethics	3.0
Total	17.0

The George Pittman Award

The George Pittman Award was first awarded in May, 1995, to George Pittman, Jr. The distinguished winners of this award are chosen based on their service to our Association through their writings, lecturing, and serving as an officer or director of our Association. It recognizes the honoree’s contributions to our Association which substantially exceed those normally expected of our officers and board members.

The first award was granted at the May 1995 Annual Conference and was awarded posthumously to George Pittman, Jr.

Previous Award Winners

- | | |
|--|---|
| <ul style="list-style-type: none"> • George Pittman, Jr. • Bob Guthland • Tom Sims • Polly Shelton | <ul style="list-style-type: none"> • McCormick Wilson • Larry Butcher • Frank Vatterott • Mark Levitt • Jess Ullom |
|--|---|

MMACJA Past Presidents

Year	President	Year	President
1965-66	McCormick Wilson	1991-92	Fred Kidd, Jr.
1966-67	Louis Davis	1992-93	Frank Vatterott
1967-68	Louis Huston	1993-94	Polly Shelton
1968-69	Temple H. Morgett	1994-95	Charles Curry
1969-70	Reginald Smith	1995-96	James Tobin
1970-71	Roger D. Hines	1996-97	David Evans
1971-72	George Pittman	1997-98	Jess Ullom
1972-73	W. Harry Wilson	1998-99	Frank Vatterott
1973-74	Jack Koslow	1999-2000	Charles Curry
1974-75	Clifford Spottsville	2000-01	Todd Thornhill
1975-76	James E. May	2001-02	Kevin Kelly
1976-77	McCormick Wilson	2002-03	Mark Levitt
1977-78	Thomas E. Sims	2003-04	Marcia Walsh
1978-79	J. Lloyd Wion	2004-05	Greg Beydler
1979-80	Fred Dannov	2005-06	Larry Butcher
	Patrick Horner	2006-07	Robert Adler
1980-81	Joanne Mayberry	2007-08	Dennis Laster
1981-82	Gary Titus	2008-09	Shawn McCarver
1982-83	Joseph Cambiano	2009-10	Bill Piedimonte
1983-84	Earl Drennen	2010-11	Robert Hershey
1984-85	William Lewis	2011-12	Thomas Fincham
1985-86	Michael Frank	2012-13	Mark Rundel
1986-87	Michael Svetlic	2013-14	Robert Aulgur
1987-88	Timothy Kelly	2014-15	Steve Sanders
1988-89	D. Larry Dimond	2015-16	Tom Motley
1989-90	Joseph Lott	2016-17	Andrea Niehoff
1990-91	William Buchholz III	2017-18	Cotton Walker

PRESS RELEASE

FOR IMMEDIATE RELEASE

HEADLINE

Judge _____ Attends 53rd Annual Courts Conference

Lake Ozark, MO – May 25, 2018 -

Judge _____ recently attended the 2018 Annual Courts Conference of the Missouri Municipal and Associate Circuit Judges Association (MMACJA) held at Lake of the Ozarks. Judge _____ is the Municipal Judge for the City of _____. Municipal judges are judges of the circuit courts, and are subject to requirements for continuing legal education in order to receive annual updates on new laws passed by the legislature, important decisions of the Supreme Court and the court of appeals as well as developments in the judicial branch of government. Attendance at the three-day Annual Courts Conference of the MMACJA fulfills a significant part of that requirement.

The Missouri Municipal and Associate Circuit Judges Association is composed of municipal judges, both lawyer and non-lawyer, and associate circuit judges. These judges preside over municipal and associate circuit courts in the state of Missouri. The municipal and associate circuit divisions hear the greatest majority of the cases heard by the Missouri judiciary.

The purpose of the association is to assist and train its members to better perform their duties as judges. Since its founding, the association has grown from a small group of twelve to over 350 members.

Among the topics included in the 2018 Annual Courts Conference were DWI enforcement, trends in court costs, and an application that allows users to access court records and procedures. The conference also included a case law and legislative update, joint afternoon sessions with the Missouri Association of Court Administrators (MACA), and a two-part session on Minimum Operating Standards. The 2017-2018 Missouri Bar President Morry S. Cole presented during the Thursday luncheon.

Over 350 judges attended this 53rd Annual Courts Conference.

Contact:

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eNotebook Interactive Features

If you are using this eNotebook on your computer/laptop, tablet, or smartphone, you can take advantage of some special features to help you move around the document faster. Depending on your device, these features may have a visible blue link box or a button appearance, but they might not be visible at all. Even if they are not visible, the interactive features will work, so tap around and see what you can discover!

- Page 2, the Index, has links embedded that will take you to the section you tap on.
- On pages 3 to the end, there is a button in the top center of the page that will take you back to the index.
- Bookmarks are set up to take you to the first page in any section. Open the bookmarks panel in your PDF reader to access these links.
- Most of the text in this eNotebook should be searchable, so click CTRL+F on a computer or laptop, or look for the magnifying glass or search feature in the PDF reader you are using on your tablet or smartphone.

Have you seen an interactive feature in another electronic document that could make this eNotebook better? Share it with the MMACJA office by emailing Linden at linden@clubmanagementservices.com!

Wednesday, May 23, 2018
12:10 – 1:00 in the Granada Room

Courtroom Issues in DWI Enforcement (1 hr CLE)

Ret. Judge Robert Aulgur, City of Columbia Prosecuting Attorney Robert Rinck, and Steve Wilson, DWI Defense Center

Session Summary

Panel Presentation on statutory reporting requirements along with issues presented by current breath testing procedures and related topics.

Speaker Bios

Robert D. Aulgur

Undergraduate Degree: Westminster College. Fulton Mo.

Juris Doctorate Degree: University of Missouri

Retired Judge Aulgur served as the Municipal Division Judge for the City of Columbia Missouri from October 27, 2003 until his retirement on January 11, 2017. During that time, Aulgur served as a member of the Board of Directors, Secretary, Vice President and Conference Chair, and President of the M.M.A.C.J.A. Judge Aulgur currently serves on the President's Advisory Board and as chair of the New Legislation and O.S.C.A. Liaison Committees of our Board.

During his entire legal career, Aulgur prosecuted, defended, and heard thousands of intoxication related traffic cases. As General Counsel for the Missouri Department of Revenue he helped design and implement the administrative suspension of driving privileges process still in use today.

He has completed special training from the National Highway Traffic Safety Administration and the National District Attorneys Association and presented programs on intoxicated related matters to numerous police agencies and members of the Missouri Bar and Judiciary over the years.

Robert Rinck

City Prosecutor, City of Columbia. cityprosecutor@como.gov

Juris Doctor, University of Missouri, 2004

Robert has worked at the Columbia City Prosecutor's Office since September 2005, first as the Assistant City Prosecutor and then as the City Prosecutor beginning in January 2017. He supervises a staff of one full-time assistant city prosecutor and two part-time assistant city prosecutors and five support staff. Along with managing

the prosecutor's office, Robert handles a caseload including all traffic, fire, property maintenance, health, business licensing, and rental code violations. He has been the primary driving while intoxicated prosecutor for the office since 2005 handling an average of 350 DWI prosecutions per year for the past 12 years. Robert also sits on the City's Vision Zero Team, Nuisance Business Team, and the Missouri OSCA Price of Justice work group. He also assists the University of Missouri Law Enforcement Training Institute with training on courtroom testimony for police officer cadets.

Prior to obtaining his law degree, Robert was a non-attorney judge for 9 years at the municipal court for the City of Flagstaff, Arizona and Justice of the Peace Pro Tempore for the Flagstaff Justice of the Peace Court. He began his career in the justice field as a court clerk in the Flagstaff courts and helped to establish the first court administrator's office in Coconino County, Arizona.

Stephen P. Wilson

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Columbia, MO 65205

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Email: swilson.dwilaw@charter.net

Stephen P. "Steve" Wilson is currently a criminal defense attorney practicing in Columbia, Missouri at Murray Law Firm. Steve is a 2001 graduate of the University of Missouri and a 2004 graduate of the University of Missouri School of Law. He is a member of the Missouri Bar, the Boone County Bar Association, MACDL, NCDD, and the Missouri Bar Criminal Law and Procedure Committee.

Steve originally practiced law in Cape Girardeau, Missouri in general practice in the areas of criminal defense, personal injury, insurance defense, estate planning, business/contract law, and other general civil litigation. Since moving to Columbia, Mr. Wilson practices solely in the area of DWI and general criminal defense, and related civil cases.

Intoxication Related Offenses Reporting Requirements.

The Court must have a written policy requiring municipal court personnel to timely report all charges for intoxication related traffic offenses to the central repository.

The written policy referenced above must be filed with the Office of State Court Administrator (O.S.C.A) and the Missouri State Highway Patrol (M.S.H.P.). The current mailing addresses are in your materials. An example of sufficient language is in Municipal Court Operating Rule #1 available on the M.M.C.J.A. website or appendix D of the Municipal Clerk Handbook.

The Court must file a Municipal Division Summary Reporting Form by the 15th day of each month to their municipality and to O.S.C.A. This form includes information on intoxication related traffic offenses.

The Court must provide a written report to the circuit court en banc every six months relating to intoxication related traffic offenses. This report is due no later than August 29, for the January to June reporting period and no later than February 28 for the July to December reporting period. This report can be made of the relevant six Municipal Division Summary Reporting Forms and a cover letter to the Presiding Judge of your circuit. A sample of the cover letter is in the materials.

The Court must report disposition information on all alcohol and drug-related traffic offenses, including guilty pleas, findings of guilt, suspended imposition of sentence, suspended execution of sentence, probation, conditional sentences, sentences of confinement, and any other disposition. These dispositions must be reported to the Missouri Department of Revenue within 7 days of disposition but the time period does not include the 10 day timeframe for requesting a trial de novo.

The Court must report all filings and dispositions involving municipal ordinance violations involving alcohol or drug related driving offenses to the M.S.H.P. within 30 days of disposition. Dispositions must include the offense cycle number (O.C.N.) from the Missouri State Criminal Fingerprint Card which is completed by the agency at the time of the arrest or by order of the court.



Words ▾

1st search term

And ▾

2nd search term

**Effective 01 Jan 2017, see footnote**

Title XXXII COURTS

Chapter 479

479.172. Intoxication-related traffic offenses, municipal judges to receive adequate instruction — written policy on timely disposition of cases — report required. — 1. Each municipal judge shall receive adequate instruction on the laws related to intoxication-related traffic offenses as defined in section 577.001 including jurisdictional issues related to such offenses, reporting requirements to the highway patrol central repository as set out in section 43.503 and required assessment for offenders under the substance abuse traffic offender program (SATOP). Each municipal judge shall adopt a written policy requiring that municipal court personnel timely report all dispositions of all charges for intoxication-related traffic offenses to the central repository.

2. Each municipal court shall provide a copy of its written policy for reporting dispositions of intoxication-related traffic offenses to the office of state courts administrator and the highway patrol. To assist municipal courts, the office of state courts administrator may create a model policy for the reporting of dispositions of all charges for intoxication-related traffic offenses.

3. Each municipal division of every circuit court in the state of Missouri shall prepare a report every six months. The report shall include, but shall not be limited to, the total number and disposition of every intoxication-related traffic offense adjudicated, dismissed or pending in its municipal court division. The municipal court division shall submit said report to the circuit court en banc. The report shall include the six-month period beginning January first and ending June thirtieth and the six-month period beginning July first and ending December thirty-first of each year. The report shall be submitted to the circuit court en banc no later than sixty days following the end of the reporting period. The circuit court en banc shall make recommendations or take any action it deems appropriate based on its review of said reports.

(L. 2010 H.B. 1695, et al., A.L. 2014 S.B. 491)

Title 7--Missouri Department of Transportation
Division 10--Missouri Highways and Transportation Commission
Chapter 20--Financial Assistance

RECEIVED
APR 06 2018
SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

COPY

7 CSR 10-20.010 State Transportation Assistance Revolving Fund. The Missouri Highways and Transportation Commission is amending sections (4) and (6), and subsections (2)(A) through (2)(C), (4)(A) through (4)(E), (5)(A) and (5)(B); and adding new subsections (5)(C) through (5)(F).

PURPOSE: This proposed amendment removes unnecessary restrictive wording and clarifies the department and commission review and approval process.

(2) Eligibility.

(A) Applicability. This rule applies to any political subdivision of Missouri or to any public or private not-for-profit organization or entity involved in transportation projects serving a public purpose other than highways as described in subsection (1)(2)(B) of this rule.

(B) Projects. The funds in the **State Transportation Assistance Revolving (STAR) Fund** are to be allocated for the following:

1. Facilities for transportation by air, water, rail or mass transit;
2. Vehicles for the transportation of elderly or handicapped persons; or
3. Rolling stock for transit purposes.

(C) Costs.

1. Eligible costs. Applicants can request monetary assistance in the planning, acquisition, development and construction of the projects described in subsection (1)(2)(B) of this rule.

2. Ineligible costs. No funds provided by this section shall be used for the payment of the operating expenses of such transportation facilities or for the construction or maintenance of state highways.

(4) Application *[Requirements]* for Financial Assistance.

(A) An applicant *[shall]* submit **its** completed application*[s]* on a form*[s]* provided by the commission, **which *[including]* includes the *[required]* application fee, to the department's Financial Services Director. The *[A]*application*[s]*, dated March 1, 2018, is incorporated herein by reference and made a part of this rule as published by the department, P.O. Box 270, Jefferson City, MO 65102. This rule does not incorporate any subsequent amendments or additions to the application. A copy of the application can be acquired from the Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102 or on-line at <http://www.modot.org/partnershipdevelopment/application.htm>.**

(B) *Selection of projects for financial assistance requires both a pre-application and a final application.*

1. *The pre-application will serve as a working document that permits department staff and the applicant to review and negotiate project scope and details prior to submission of a final application.*

2. The *[final]* application will *[request]* **provide** precise project details and funding information that will be incorporated into the loan agreement.

(C) *Pre-Application Cycle.*

1. *Pre-applications can be submitted at any time, but must be initiated on a schedule that will*

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ADMINISTRATIVE RULES

permit the review process to be completed and a formal application submitted by the application closing date appropriate for the project time line.

2. There is no fee for submission of a pre-application.

3. Acceptance, rejection, positive or negative comments on a pre-application do not constitute formal rejection or approval of a final application by the commission.

(D) *Final Application Cycle.* Final applications shall be provided by the deadline established by the department to be eligible for evaluation and funding during the period to which the deadline applies.

(E) *Unfunded Applications.*

1. Refunds of application fees. Application fees charged on applications that are not approved for funding will be retained by the commission. There are no refunds of application fees.

2. Resubmittal of unfunded applications.

A. Applicants may resubmit an application or a revised application [during any subsequent application cycle].

B. There will be no fee for resubmission of an unrevised application.

C. Adjustments for inflation in project costs/financing is not considered a revision.

(5) *Application Review and Evaluation.*

(A) The department [shall] evaluate each proposal that [is determined to be eligible and complete, using a department-established evaluation method. The department shall submit the applications in rank order to the Missouri Highways and Transportation Commission, up to the amount of funds available to finance applications] **requests a loan from the STAR Fund to determine eligibility and completeness under section 226.191 and this rule.**

(B) The evaluation criteria [shall] includes the following criteria:

1. Public benefit;
2. Transportation need;
3. Economic benefit;
4. Financial feasibility;
5. Noncommission financial contribution; and
6. Timeliness of repayment.

(C) **If the application is complete and the department determines the project is eligible for a loan, the department then evaluates and determines whether the applicant sponsoring the project has the ability to repay a loan issued under this rule.**

(D) **If more than one project has been submitted, the department then ranks the applications in order of each application's evaluation score.**

(E) The department then presents the application, or applications, to the department's cost share committee. The cost share committee reviews and then either approves, denies, or requests additional information for each STAR loan application.

(F) **If the cost share committee approves the loan, the loan is then presented to the commission for final approval or disapproval to issue the loan. If there is more than one application, the applications to be submitted to the commission will not exceed the amount of funds available to finance the applications.**

(6) *Loan Awards.* All applicants will be notified of the outcome of the review process. Funded applications [shall] receive a letter of loan commitment, followed by a loan agreement upon loan closing. [The loan agreement must be approved by the commission.] **The loan conditions and repayment terms are dependent on the credit worthiness of the applicant and will be set out**

in the loan agreement.

*AUTHORITY: section 226.191, RSMo [(Cum. Supp. 1996)]. * Emergency rule filed July 14, 1997, effective July 24, 1997, expired Feb. 26, 1998. Original rule filed July 14, 1997, effective Jan. 30, 1998. Amended: Filed April 6, 2018.*

**Original authority 1996.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment rulemaking with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**COPY
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**Title 7--Department of Transportation
Division 10--Missouri Highways and Transportation Commission
Chapter 21--Transportation Corporations**

MAR 09 2018

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

PROPOSED AMENDMENT

7 CSR 10-21.010 Procedures for Authorizing Transportation Corporations to Enforce Collection of Tolls. The Missouri Highways and Transportation Commission is amending sections (2) and (6) and subsections (1)(A), (1)(O), (2)(F), (6)(A), and (6)(B); deleting sections (3) through (5) and subsections (1)(B), (1)(F), (1)(G), (1)(I), and (1)(M) through (1)(N); and renumbering as necessary.

PURPOSE: This proposed amendment eliminates redundant provisions existing in state law and clarifies the application process for transportation corporations to enforce tolls.

(1) Definitions.

(A) "Act" means the Missouri Transportation Corporation Act, sections 238.300 to 238.367, RSMo[Cum. Supp. 1997, as amended].

[(B) "Authorized emergency vehicles" means vehicles of fire departments, police departments, the department and the state highway patrol; ambulances, emergency vehicles of public service companies, and other vehicles approved and authorized by the corporation when performing emergency business.]

[(C) "Commission" means the Missouri Highways and Transportation Commission.

[(D) "Corporation" or "transportation corporation" means any transportation corporation organized under the Act.

[(E) "Department" means the Department of Transportation of the state of Missouri.

[(F) "Motor driven cycles" means every motorcycle or motor scooter with less than one hundred fifty (150)-cubic centimeter piston displacement, including motorized pedal cycles.

[(G) "Pay" means paying a toll by cash, by permitting a charge against a valid account with the authority or by another means of payment approved by the corporation at the time.]

[(H) "Person" means any individual, firm, corporation, cooperative, association, trust, partnership, joint venture or other legally recognized entity.

[(I) "Photo monitoring system" means a vehicle sensor installed to work in conjunction with a toll collection facility which automatically produces one (1) or more photographs, one (1) or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of toll collection regulations.]

[(J) "Project" includes any bridge, street, road, highway, access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail, or other mass transit and any similar or related improvement or infrastructure.

[(K) "Toll" or "tolls" means charges prescribed by the corporation for the use of its property.

[(L) "Toll collection regulations" means those rules and regulations of a corporation providing for and requiring the payment of tolls for the use of bridges under its jurisdiction or those rules and regulations of a corporation making it unlawful to refuse to pay or to evade or to attempt to evade the payment of all or part of any toll for the use of bridges under the jurisdiction of the corporation.

[(M) "Toll collector" means a person authorized by the corporation to collect tolls for use of the

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project.

(N) "Vehicle" or "motor vehicle" means every device in, upon or by which a person or property is or may be transported or drawn upon a highway except devices used exclusively upon stationary rails or tracks.]

(FOI) "Violation" or "toll evasion" means one (1) or more acts [prohibited] **not authorized** by the Act and/or any rules or regulations promulgated [thereto] **as a result of the Act** relating to the payment or failure to pay tolls.

(2) Application. Transportation corporations seeking authority to enforce payment of tolls shall file with the commission an application [which shall set forth] **with** the following information:

(F) A copy of the transportation corporation's proposed toll collection regulations [which shall] **that compl[y]ies** with the provisions of the Act.

[(3) Transportation corporation's toll collection regulations shall include, but not be limited to, the following:

(A) Payment of Tolls. All persons driving vehicles upon the project, except as provided in subsection (3)(B) below, are required to pay the prescribed toll. Tolls may be paid for in the following manner:

1. By currency or change presented to a toll collector, or by correct change deposited in an automatic coin machine; or

2. By a valid and current billing account, charge plate, commuter pass, or electronic recording or identification device issued by the corporation and presented to the toll collector;

(B) Tolls shall not be required of corporation officers and employees while on corporation business, department vehicles, state highway patrol vehicles, or of public police, public fire or public ambulance vehicles when on emergency business or duty necessitating the use of the project, and when the vehicle is readily identifiable as such;

(C) Any person who shall fail to pay the prescribed toll shall be deemed guilty of an infraction and is subject to fines and punishment as provided in sections 238.365–238.367, RSMo of the Act; and

(D) Any person who shall use or attempt to use any currency or coins other than legal tender of the United States of America, counterfeit, expired, or unauthorized credit cards of any type, counterfeit tickets, coupons or tokens or any electronic device or equipment not authorized by the corporation in lieu of or to avoid payment of a toll shall be deemed guilty of an infraction and shall be subject to a fine for each such offense, as provided in sections 238.365–238.367, RSMo of the Act.

(4) Compliance with Orders or Directions of State Highway Patrol Officer or Patrolman and Corporation Employees. No person shall willfully fail or refuse to comply with any lawful order or direction of any Missouri State Highway Patrol officer or patrolman, toll collector, or other corporation employee or agent at the scene of an emergency, or willfully fail or refuse to comply with an order or direction from such person to comply with this chapter at any other time or place while using the project, or while on corporation right-of-way, whether or not traffic related.

(5) Procedure to Issue Citations. The following procedures must be taken for the collection of tolls and the issuance of traffic citations under this rule:

(A) Any toll collector witnessing a violation of the toll collection regulations is authorized to

report such violation to a law enforcement official or agency. The report may be in one (1) of the following forms:

1. A telephone call from a toll collector to a law enforcement agency indicating a violation, and a reasonable description of the vehicle violating the toll enforcement regulations including, but not limited to, the license plate of the vehicle, the make, model and color of the vehicle; or

2. A certificate, or written report sworn to or affirmed by a toll collector, agent of the corporation, Missouri state highway patrolman or sheriff's department deputy which charged that the violation occurred, or facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a photo monitoring system or a photo from a photo monitoring system, shall be prima facie evidence of the facts contained therein, subject to foundation evidence to establish the authenticity of such photographs, microphotographs, videotape or other recorded images produced by a photo monitoring system, and shall be admissible in any proceeding charging a violation of toll collection regulations, provided that any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection and admission into evidence in any proceeding to adjudicate the liability for such violations.

(B) After a report has been given to a Missouri law enforcement agency, such agency is authorized to issue a traffic citation for failure to pay the required toll.

(C) The law enforcement agency issuing the traffic citation is responsible for prosecution of such citation.

(D) The provisions of this section supplement the enforcement of the Act by law enforcement officers, and this section does not prohibit a law enforcement officer from issuing a citation for a violation of the Act or any violation of traffic regulations in accordance with normal traffic enforcement procedures.]

([6]3) Commission Review and Decision [to Grant Authority]Process. Upon receipt of a completed application, the commission [shall] reviews the application at its next scheduled meeting **and makes a decision to either approve or disapprove it.** The applicant shall be provided an opportunity **at the commission meeting** to describe its proposal to the commission and can make any modifications and revisions at the commission's meeting that the commission deems advisable. [The commission shall approve or disapprove the application at the meeting.]

(A) If the application is approved, the transportation corporation [shall be deemed] **is** authorized to enforce collection of tolls at its project as described in its proposed toll collection regulations.

(B) If the application is disapproved, the reasons for said disapproval shall be provided to the transportation corporation in writing within thirty (30) days of said meeting and the transportation corporation [shall have ninety (90) days in which to] **is authorized to resubmit an application that** addresses the deficiencies. After receiving information from the transportation corporation addressing the deficiencies, the commission [shall] approves or den[y]ies the application at its next scheduled meeting. The transportation corporation may **be provided an opportunity to** describe its proposal and any supplemental information it supplied to the commission at the commission's meeting.

([7]4) Appeal. A transportation corporation aggrieved by any decision of the commission may appeal the commission's decisions in the manner prescribed by Missouri's Administrative Procedures and Review Act.

AUTHORITY: sections 238.347, RSMo 1994 and 238.362, 238.365 and 238.367, RSMo Supp. 1997. Emergency rule filed Jan. 13, 1998, effective March 5, 1998, expired Aug. 31, 1998. Original rule filed Jan. 13, 1998, effective July 30, 1998. Amended: Filed March 9, 2018.*

**Original authority: 238.347, RSMo 1990; 238.362, RSMo Supp. 1997; 238.365, RSMo Supp. 1997; and 238.367, RSMo Supp. 1997.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment rulemaking with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—[Traffic and]Highway Safety and Traffic Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational
Requirements

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PROPOSED AMENDMENT

7 CSR 60-2.010 Definitions. The Missouri Highways and Transportation Commission is amending section (1).

PURPOSE: This proposed amendment defines the terms used in the breath alcohol ignition interlock device certification and operational requirements.

(1) Definitions.

(A) The following words and terms as used in *[these requirements shall]* 7 CSR 60-2.010 through 7 CSR 60-2.060 have the following meaning:

1. Alcohol retest setpoint—The breath alcohol concentration at which the ignition interlock device is set for the rolling retests;

2. Alcohol setpoint—The breath alcohol concentration at which the ignition interlock device *[is set to lock the ignition]* **prevents the vehicle from starting** *[The alcohol setpoint is the nominal lock point at which the ignition interlock device is set at the time of calibration];*

3. Alveolar air—Deep lung air or alveolar breath, which is the last portion of a prolonged, uninterrupted exhalation;

4. Authorized service provider (ASP)—**The entity designated by the manufacturer to provide services to include, but not be limited to, installation, monitoring, maintenance and removal of the breath alcohol ignition interlock device***[A person, company, or authorized franchise who is certified by the state of Missouri to provide breath alcohol ignition interlock devices under sections 577.600–577.614, RSMo];*

5. Bogus breath sample—Any *[gas]* sample other than an unaltered, undiluted, and unfiltered alveolar air sample from a driver;

6. Breath alcohol concentration (BrAC)—**The amount of alcohol in a given amount of breath, expressed in weight per volume** *[number of grams of alcohol]*(% weight/volume) based on grams of alcohol per two hundred ten (210) liters of breath;

7. Breath alcohol ignition interlock device (BAIID)—**A breath testing device, including all parts necessary for operation, e.g. handset and camera, installed in a vehicle that prevents it from operating if breath test results show a BrAC that meets or exceeds the alcohol setpoint. The device also requires the driver to continue to pass repeated breath tests while the vehicle is running to ensure that the driver remains below the alcohol setpoint. However, the interlock device will not interfere with the normal operation of the vehicle while it is in use** *[mechanical unit that is installed in a vehicle which requires the taking of a BAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the unit detects a BAC test result below the alcohol setpoint, the unit will allow the vehicle's ignition switch to start the engine and will provide a warning message. If the unit detects a BAC test result at or above the alcohol setpoint, the vehicle will be prohibited from starting];*

8. Breath *[sample]*—Expired human breath containing primarily alveolar air;

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9. Calibration—The process which ensures an accurate alcohol concentration reading on a device;

10. Circumvention—An unauthorized, intentional, or overt act or attempt to start, drive, or operate a vehicle equipped with a breath alcohol ignition interlock device without the driver of the vehicle providing a pure breath sample **and/or blocking, moving or disabling the camera, if required;**

11. **Commission—The Missouri highways and transportation commission created by article IV, section 29, Constitution of Missouri***[Committee—The persons delegated to conduct informal reviews of suspension or revocation of a device by the Missouri Highways and Transportation Commission];*

12. **Department—The Missouri department of transportation created by article IV, section 29, Constitution of Missouri;**

1[2]3. Designated monitoring period—The period of time indicated by the Department of Revenue for required monitoring of the driver's ignition interlock use by the **manufacturer***[authorized service provider];*

1[3]4. Device—Breath alcohol ignition interlock device *[(BAIID)];*

15. **Division—The highway safety and traffic division under the department that is delegated the authority to administer the provisions of 7 CSR 60-2.010 through 7 CSR 60-2.060;**

1[4]6. Download—The transfer of information from the interlock device's memory onto disk or other electronic or digital transfer protocol;

1[5]7. Emergency service—Unforeseen circumstances in the use and/or operation of a breath alcohol ignition interlock device, not covered by training or otherwise documented, which requires immediate action;

1[6]8. Filtered breath sample—A breath sample which has been filtered through a substance in an attempt to remove alcohol from the sample;

1[7]9. Global positioning system (GPS)—A feature of the device that will log the location (longitude and latitude), date, and time of each breath sample including any refusal, any circumvention attempt, and any attempt to tamper with the ignition interlock device;

[18. Independent laboratory—A laboratory which properly equipped and staffed to conduct laboratory tests on ignition interlock devices;

19]20. Initial breath test—A breath test required to start a vehicle to ensure that the driver's BrAC is below the alcohol setpoint;

2[0]1. Installation—Mechanical placement and electrical connection of a breath alcohol ignition interlock device in a vehicle by installers;

[21. Installer—A dealer, distributor, supplier, individual, or service center who provides device calibration, installation, and other related activities as required by the authorized service provider;]

22. **ISO—International Organization for Standardization;**

2[2]3. Lockout—*[The ability]* **A condition of the device [to]which** prevents a vehicle's engine from starting unless it is serviced or recalibrated;

24. **Manufacturer—A person or company responsible for the design, construction, and/or production of a BAIID;**

25. **Mobile Service—A portable authorized service provider, whether contained within a vehicle or temporarily erected on location, which includes all personnel and equipment necessary to conduct ignition interlock device related business and services;**

[23. NHTSA—Federal agency known as the National Highway Traffic Safety Administration;]

2[4]6. Operator—Any person who operates a vehicle that has a court-ordered or Department of Revenue required breath alcohol ignition interlock device installed;

27. Override lockout—Method of overriding a lockout condition by providing a breath sample;

2[5]8. Permanent lockout—**A condition in which the device will not accept a breath test until serviced by an ASP**[feature of a device in which a vehicle will not start until the device is reset by a device installer];

2[6]9. Photo ID technology—A feature of the device that incorporates [technology] **photo identification or digital images of** [that will photograph] the person who is providing the breath test;

[27. Refusal—The failure of a driver to provide a breath sample and complete the breath test when prompted by the ignition interlock device;]

[28]30. Pure breath sample—Expired human breath containing primarily alveolar air and having a breath alcohol concentration below the alcohol setpoint of twenty-five thousandths (.025);

31. Real-Time Reporting—The near real-time transmission of ignition interlock data between the manufacturer’s server and the driver’s ignition interlock while the device is in use;

[29]32. Refusal—The failure of a driver to provide a breath sample and complete the breath test when prompted by the device[Reinstallation—Replacing a breath alcohol ignition interlock device in a vehicle by an installer after it has been removed for service];

33. Relative Within Second Degree of Consanguinity or Affinity—A spouse or domestic partner, parent, step parent, child, step child, grandparent, step grandparent, grandchild, step grandchild, brother, step brother, sister, step sister, mother-in-law, father-in-law, grandparent-in-law, grandchild-in-law, brother-in-law, or sister-in-law;

3[0]4. Retest—Two (2) additional chances to provide a breath sample below the alcohol setpoint when the first sample failed; or three (3) chances to provide a breath alcohol sample below the alcohol setpoint on the [rolling]running retest;

[31. Revocation—A revocation is a removal of a device from the approved list and requires reapplication under 7 CSR 60-2.020. After revocation, an authorized service provider must wait at least one (1) year or longer, if determined by Traffic and Highway Safety Division or the committee, before reapplication;]

3[2]5. [Rolling]Running retest—A subsequent breath test that must be conducted within five (5) minutes after starting the vehicle and randomly during each subsequent thirty- (30-) minute time period thereafter while the vehicle is in operation;

3[3]6. Service lockout—**A condition**[feature] of the breath alcohol ignition interlock device **that occurs when the operator fails to have the device serviced during a certain period of time and results in a permanent lockout condition**[which will not allow a breath test and will not allow the vehicle to start until the device is serviced and recalibrated as required];

[34. Suspension—The period after a finding by the Missouri Department of Transportation, Traffic and Highway Safety Division, or the committee designated by the Missouri Highways and Transportation Commission to conduct informal review of a device, that is to be or has been removed from the list of approved devices. A suspension is temporary and may not require the manufacturer to go through the approval procedure although the Traffic and Highway Safety

and Traffic Division or the committee may impose requirements before the suspension is removed;]

3[5]7. Tampering—An overt, purposeful attempt to physically alter or disable an ignition interlock device, or disconnect it from its power source, or remove, alter, or deface physical anti-tampering measures, so a driver can start the vehicle without taking and passing an initial breath test;

38. Technician—A person trained by the authorized service provider to possess the skills necessary to install, service, calibrate, and/or remove ignition interlock devices;

3[6]9. Temporary lockout—A condition[feature of the device] in which the device will not allow the vehicle to start for fifteen (15) minutes after three (3) failed attempts to blow a pure breath sample; and

[37]40. Violations reset—A feature of a device in which a service reminder is activated due to one (1) of the following reasons:

- A. Two (2) fifteen- (15-) minute temporary lockouts within a thirty- (30-) day period;
- B. Any three (3) refusals to provide a retest sample within a thirty- (30-) day period;
- C. Any three (3) breath samples, after startup, at or above the alcohol setpoint within a thirty- (30-) day period; or
- D. Any attempts to circumvent or tamper with a device.

AUTHORITY: sections 302.440-302.462, RSMo, 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.010. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.010, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expired Dec. 30, 2009. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed April 8, 2010, effective April 18, 2010, expired Nov. 30, 2010. Amended: Filed April 8, 2010, effective Nov. 30, 2010. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Amended: Filed March 9, 2018.*

**Original authority: 577.600–577.614, see Missouri Revised Statutes and 226.130, RSMo 1939, amended 1993, 1995.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational
Requirements**

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ADMINISTRATIVE RULES**

PROPOSED RESCISSION

7 CSR 60-2.020 Approval Procedure. This rule outlined the necessary steps for manufacturers to get their interlock devices approved and certified in the state of Missouri.

PURPOSE: This rule is being rescinded and readopted to make it more concise and to bring it in line with current practices at both the federal and state levels, and eliminate any unnecessary restrictive wording.

AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.020. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.020, effective Aug. 28, 2003. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and readopted: Filed March 9, 2018.*

*Original authority: 577.600–577.614, see **Missouri Revised Statutes** and 226.130, RSMo 1939, amended 1993, 1995.

PUBLIC COST: This proposed rescinded rulemaking will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescinded rulemaking will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescinded rulemaking with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Highway Safety and Traffic Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational
Requirements**

PROPOSED RULEMAKING

7 CSR 60-2.020 Approval Procedure.

PURPOSE: This rule is being proposed to make it more concise and to bring it in line with current practices at both the federal and state levels. This rule outlines the necessary steps for manufacturers to get their interlock devices approved and certified in the state of Missouri.

(1) Submit the following information.

(A) Submit a letter on the manufacturer's letterhead requesting approval of the breath alcohol ignition interlock device. If the manufacturer's letterhead is not used, then provide the name and business address of the company. The letter should be signed by an authorized representative of the company. In the letter:

1. Identify the name and model number of the device;
 2. Provide the applicant's toll-free customer service/question/complaint hot-line number;
- and

3. Certify that the device:

A. Is programmed according to the standards and specifications found in 7 CSR 60-2.030 and capable of meeting the requirements found in 7 CSR 60-2.040 and 7 CSR 60-2.050;

B. Does not impede the safe operation of the vehicle;

C. Minimizes opportunities to circumvent the device;

D. Prevents an operator from starting a vehicle when the operator has a breath alcohol concentration which meets or exceeds the alcohol set point; and

E. Is not the subject of any action to disallow and has never been disallowed for use in another state. If the applicant cannot certify as directed in this subparagraph, then identify the state(s) where the device has been disallowed or an action is pending.

(B) Submit a complete and certified copy of laboratory testing results from an independent laboratory that is ISO 17025 certified and properly equipped and staffed to conduct testing on breath alcohol ignition interlock devices, which indicates that the device meets or exceeds the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 78 FR 26849-26867 as published in the *Federal Register* on May 8, 2013 by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective March 8, 2014, and 80 FR 16720-16723 as published in the *Federal Register* on March 30, 2015 and effective March 30, 2015, which are hereby incorporated by reference and made a part of this rule. This paragraph does not incorporate any subsequent amendments or additions to this publication;

(C) Include credentials of the laboratory that conducted the testing.

(D) Submit policies and/or procedures for device calibration.

(E) Submit a quality control plan that includes, but is not limited to:

1. A listing of the manufacturer's management staff by full name and title, including management at the state, installation site, and service center levels;

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2. Training materials for technicians on the installation and calibration of the device;
3. Training materials for installation sites and service centers on how to explain or train drivers on the use of the device;
4. Training materials on the use of the device given to drivers;
5. Policies, procedures, and/or guidance concerning the supervision of installation sites, service centers, and technicians in the state;
6. Policies, procedures, and/or guidance that explain how the manufacturer will ensure that technicians do not have two (2) or more alcohol related enforcement contacts as defined in Section 302.525, RSMo; or, a manslaughter, involuntary manslaughter, or any type of crime or conduct involving moral turpitude that would compromise the program;
7. Policies, procedures, and/or guidance concerning disciplinary action for authorized service providers and technicians that fail to meet requirements set forth in 7 CSR 60-2.030 through 7 CSR 60-2.050 or any policies of the applicant; and,
8. A copy of the service and/or lease agreement given to drivers.

(F) Submit these materials to the Missouri Department of Transportation, Highway Safety and Traffic Division, PO Box 270, Jefferson City, MO 65102. The approval process will not continue until all information is received and is complete to the satisfaction of the Division.

(2) Testing and Evaluation.

(A) Submit three (3) devices for compliance testing by the Division or its designee. One (1) device will be installed in a vehicle at applicant's expense and tested for a period of thirty (30) days. The applicant will install the device with all anti-circumvention features activated in a vehicle provided by the state, or its designee, and programmed according to the standards and specifications found in 7 CSR 60-2.030 and capable of meeting the requirements found in 7 CSR 60-2.040 and 7 CSR 60-2.050.

(B) Submit a power source and mechanical device capable of causing the submitted device to function as in an vehicle for demonstration purposes in a laboratory setting and include all attachments reflecting the normal operating function (i.e., horn, siren, grounding, tachometer, or other vehicle "in operation" signal, etc.).

(C) Submit true and correct copies of the information retained in the memory of the ignition interlock device as well as all reported events and forms and/or service records capable of generation by the device during testing.

(3) Certification or Denial. Within thirty (30) days following completion of compliance testing and testing of reporting requirements, the Division will issue a letter of certification or certification denial. No device will be deemed approved unless applicant has received written notification of certification from the Division.

AUTHORITY: sections 302.060, 302.304, 302.309, 302.440-302.462, RSMo, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600-577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.020. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.020, effective Aug. 28, 2003. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Amended: Filed October 17, 2016. Rescinded and Readopted: Filed March 9, 2018.*

**Original authority: 577.600–577.614, see Missouri Revised Statutes and 226.130, RSMo 1939, amended 1993, 1995.*

PUBLIC COST: This proposed rulemaking will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rulemaking will not cost private entities more than five hundred dollars (\$500) in the aggregate.

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Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational Requirements

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PROPOSED RESCISSION

7 CSR 60-2.030 Standards and Specifications. This rule outlined the minimum standards and specifications for ignition interlock device approval and certification in the state of Missouri.

PURPOSE: This rule is being rescinded and readopted to make it more concise and to bring it in line with current practices at both the federal and state levels, and eliminate any unnecessary restrictive wording.

AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000.* This rule originally filed as 11 CSR 60-2.030. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.030, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expired Dec. 30, 2009. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed April 8, 2010, effective April 18, 2010, expired Nov. 30, 2010. Amended: Filed April 8, 2010, effective Nov. 30, 2010. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and readopted: Filed March 9, 2018.

*Original authority: 577.600–577.614, see *Missouri Revised Statutes* and 226.130, RSMo 1939, amended 1993, 1995.

PUBLIC COST: This proposed rescinded rulemaking will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescinded rulemaking will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescinded rulemaking with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

JOINT COMMITTEE ON
MAR 09 2018
ADMINISTRATIVE RULES

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**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Highway Safety and Traffic Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational
Requirements**

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PROPOSED RULEMAKING

MAR 09 2018

7 CSR 60-2.030 Standards and Specifications.

SECRETARY OF STATE
ADMINISTRATIVE RULES

PURPOSE: This rule clarifies the standards and specifications required for an ignition interlock device to be certified for use in Missouri.

(1) Device standards and specifications. To be certified, a breath alcohol ignition interlock device must:

(A) General.

1. Meet or exceed the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 78 FR 26849-26867 as published in the *Federal Register* on May 8, 2013 by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective March 8, 2014, and 80 FR 16720-16723 as published in the *Federal Register* on March 30, 2015 and effective March 30, 2015, which are hereby incorporated by reference and made a part of this rule. This paragraph does not incorporate any subsequent amendments or additions to this publication;

2. Effective on and after January 1, 2019, be manufactured or assembled by an entity which possesses an ISO 9001 certification;

3. Have electro-chemical fuel cell sensor technology or other advanced technology approved by the Department;

4. Not be affected by humidity, dust, electromagnetic interference, smoke, exhaust fumes, food substance, or normal automobile vibration when used in accordance with device instructions;

5. Audibly or visually indicate when a 1.5 liter breath sample has been collected. The Division, at its discretion, may permit the adjustment of the breath volume requirement to as low as 1.2 liter, when provided documentation from a licensed physician verifying an applicable medical condition. The physician's documentation will be submitted in a format approved by the Division. Upon review, the Division will notify the operator in writing of approval or denial of a lowered breath volume;

6. Permit a vehicle to be restarted without requiring an additional breath test for three (3) minutes after the ignition has been turned off or the vehicle has stalled, except when the operator has failed to take a random test or has provided a breath sample which meets or exceeds the alcohol set point;

7. Have an anti-circumvention feature activated to deter bogus breath samples; and

8. Display on a label the message: "WARNING! ANY PERSON TAMPERING, CIRCUMVENTING OR OTHERWISE MISUSING THIS DEVICE IS GUILTY OF A CLASS A MISDEMEANOR".

(B) Information to operator.

1. Alert the operator of its readiness for a breath sample;

2. A visual pass/fail indicator of the BrAC, or a combination audio response and

visual pass/fail indicator;

3. Alert the operator of scheduled service at least seven (7) days prior to a scheduled service date;

4. Provide a warning to obtain service within seven (7) days following a missed scheduled service date, violations reset, and any act or attempt to tamper or circumvent a device;

5. The device will permanently lockout if service is not obtained within the seven (7) day warning period.

(C) Alcohol set point to start vehicle.

1. Have an alcohol set point below twenty-five thousandths (.025) for initial breath test to start the vehicle;

2. Permit a maximum of three (3) attempts to blow a breath sample below the alcohol set point within a ten- (10-) minute period;

3. Cause a fifteen- (15-) minute temporary lockout when three (3) failed startup attempts occur within a ten- (10-) minute period; and

4. Present a violations reset message when two (2) fifteen- (15-) minute temporary lockouts occur within a thirty (30) day period.

(D) Alcohol retest set point and running retest.

1. Provide a running retest feature;

2. Have an alcohol retest set point of twenty-five thousandths (.025);

3. Request a running retest within five (5) minutes after the start of the vehicle and randomly during each subsequent thirty- (30-) minute time period thereafter as long as the vehicle is running;

4. Activate the vehicle's horn, or other installed alarm, until the operator shuts off the engine when a device calculates a breath sample at or above the alcohol retest set point of twenty-five thousandths (.025) or when a device records a failure to provide a running retest sample within five (5) minutes;

(a) Any aftermarket alarm or siren installed in a vehicle by the ASP will be installed inside the passenger compartment of the vehicle; and

5. Present a violations reset message when three (3) running retest breath samples at or above the alcohol retest set point occur within a thirty- (30-) day period or when three (3) running retest refusals are recorded within a thirty- (30-) day period.

(E) Violations reset message.

1. Instruct the operator to obtain device service within seven (7) days following receipt of the message; and

2. Cause the vehicle to enter a permanent lockout condition when a device is not serviced within seven (7) days.

(F) Device calibration.

1. Utilize calibration devices that are listed on the "Highway Safety Programs; Conforming Products List of Calibrating Units for Breath Alcohol Testers" established by the United States Department of Transportation, National Highway Traffic Safety Administration, 77 FR 64588-64590 as published in the *Federal Register* on October 22, 2012 by the National Highway Traffic Safety Administration, 1200 New Jersey SE., Washington, DC 20590 and effective October 22, 2012, which are hereby incorporated by reference and made a part of this rule. This paragraph does not incorporate any subsequent amendments or additions to this publication;

2. Calibrate devices at least every thirty (30) days, \pm seven (7) days, or during each

monitoring service;

3. Be calibrated for accuracy by using a wet bath or dry gas alcohol standard with a reference value between 0.02 and 0.050 g/dL BrAC. The solution or gas should have a certificate of analysis that is traceable to the National Institute of Standards and Technology (NIST);

4. The device calibration must be within ± 0.005 BrAC of the calibration standard reference value;

5. House and use wet bath simulators in environmentally stable, temperature controlled settings. Utilize wet bath simulators containing mercury-in-glass thermometers or digital thermometers and read thirty-four (34) degrees Celsius, $\pm .2$ degrees Celsius. Tubing length connecting the simulator to the interlock device will not exceed six inches in length; and

6. Store dry gas alcohol standard tanks in an environment where the temperature range remains between 50-104 degrees Fahrenheit and secured in a manner as to prevent harm to the public. The reference value will be adjusted for changes in elevation.

(G) Data storage and retention.

1. Have a sufficient internal memory to allow continuous recording and storage of all data for a minimum of thirty-seven (37) days;

2. Store data in a manner so the data will not be lost or affected by unintended data corruption, low vehicle battery voltage, loss of power supply, or disengagement or disconnection of the device;

3. Store data in a manner so that it can be printed in a report format that can be reasonably understood without reference to other information or documents;

4. Capture the date and time of: any use or attempted use of a vehicle, any act or attempt to tamper or circumvent the device, device malfunctions, running retest refusals, when a violation reset message was presented and any device servicing;

5. Capture the date, time, and breath alcohol concentration, in grams per two hundred ten (210) liters of air, of each breath sample provided to the device; and

6. Provide photo identification or digital images and global positioning data when the features are enabled as required by the court supervising authority, Department of Revenue, or Missouri statute.

(H) Photo identification or digital images when the features are enabled as required by the court supervising authority, Department of Revenue, or Missouri statute.

1. Not impede the field of vision of the driver for safe and legal operation of the vehicle;

2. Include a reference photo or digital image of the operator at installation that is included as part of their electronic record;

3. Provide a wide angle view of sufficient quality so the person providing a breath sample and his/her position in the vehicle can be clearly identified;

4. Provide a photo or digital image of sufficient quality and resolution so that the operator can be clearly identified in all lighting conditions including, but not limited to, extreme brightness, darkness and low light conditions;

5. Provide a photo or digital image for each successful completion of the initial breath test, successful completion of any running retest breath test, unsuccessful delivery of the initial breath test, unsuccessful delivery of any running retest breath test; and any refusal to take the breath test;

6. Indicate the date, time and BrAC reading when the photo or digital image was

taken;

(I) Real-Time Reporting.

1. Effective on and after January 1, 2019, incorporate real-time reporting capabilities on all new installations of devices that require a camera by statute or court order;

2. Effective on and after August 1, 2019, incorporate real-time reporting capabilities on all currently installed devices that require a camera by statute or court order except when the operator is within three (3) months of removal of the device unless they have received a violations reset during that time period;

3. Provide near real-time data transmission between the operator's device and the manufacturer's server while the device is in use;

4. Make available for viewing, when a violation occurs, all data, including photos or digital imaging and global positioning system coordinates, if required, on the manufacturer's website within ten (10) minutes from when the data was recorded on the device or as soon as cellular transmission will permit. This includes any last event data recorded after power off or as power is restored (e.g., skipped running retest data);

5. Make available for viewing, during normal operation without violations, all data, including photos or digital imaging and global positioning system coordinates, if required, on the manufacturer's website within twelve (12) hours from when the data was recorded on the device or as soon as cellular transmission will permit. This includes any last event data recorded after power off or as power is restored (e.g., skipped running retest data);

6. Provide the date of the last upload on the operator's web account; and,

7. Utilize a cell phone company as well as a cellular contract that includes roaming services or a data transmission service. In cases where there is no cellular reception or data transmission, the device will store the data and send it as soon as reception is available or restored.

AUTHORITY: sections 302.060, 302.304, 302.309, 302.440-302.462, RSMo, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600-577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.030. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.030, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expired Dec. 30, 2009. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed April 8, 2010, effective April 18, 2010, expired Nov. 30, 2010. Amended: Filed April 8, 2010, effective Nov. 30, 2010. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and Readopted: Filed March 9, 2018.*

**Original authority: 577.600-577.614, see Missouri Revised Statutes and 226.130, RSMo 1939, amended 1993, 1995.*

PUBLIC COST: This proposed rulemaking will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rulemaking will affect the costs to private entities, including small businesses. The annual fiscal impact to ignition interlock manufacturers is estimated to be

\$18,810.60 to \$28,340.00 to comply with the proposed rulemaking. In the event a device cannot meet the proposed rulemaking, the device will be decertified. The annual cost to the manufacturer if a device is decertified is estimated to be \$164,874.00 and \$45,900.00 for their authorized service providers.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rulemaking with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational
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PROPOSED RESCISSION

**SECRETARY OF STATE
ADMINISTRATIVE RULES**

7 CSR 60-2.040 Responsibilities of Authorized Service Providers. This rule outlined the responsibilities of breath alcohol ignition interlock device authorized service providers.

PURPOSE: This rule is being rescinded and readopted to make it more concise and to bring it in line with current practices at both the federal and state levels, and eliminate any unnecessary restrictive wording.

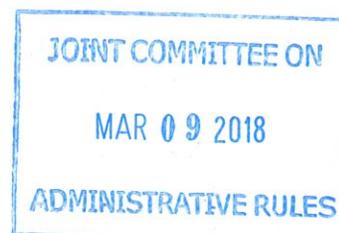
AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.040. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.040, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expired Dec. 30, 2009. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and readopted: Filed March 9, 2018.*

**Original authority: 577.600–577.614, see Missouri Revised Statutes and 226.130, RSMo 1939, amended 1993, 1995.*

PUBLIC COST: This proposed rescinded rulemaking will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescinded rulemaking will not cost private entities more than five hundred dollars (\$500) in the aggregate.

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**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Highway Safety and Traffic Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational
Requirements**

PROPOSED RULEMAKING

7 CSR 60-2.040 Responsibilities of Manufacturers.

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PURPOSE: This rule clarifies the manufacturer's responsibilities in regard to ignition interlock devices certified for use in Missouri.

(1) A manufacturer shall:

(A) Carry product liability insurance with minimum liability limits of one (1) million dollars per occurrence and three (3) million dollars aggregate total that includes coverage for defects in device design and materials as well as device manufacturing, calibration, installation, and removal;

(B) Indemnify and hold harmless the state of Missouri and its officers, employees, and agents from all claims, demands, actions, and costs whatsoever which may arise, directly or indirectly, out of any act or omission by the manufacturer or its authorized service providers relating to device installation, service, repair, use, or removal;

(C) Review all data downloaded from a device for any evidence, within the designated monitoring period, of violations reset, tampering, and/or circumvention as those terms are defined in 7 CSR 60-2.010;

(D) Provide testimony in any civil, criminal, or administrative proceeding or hearing on device manufacturing, function, testing protocol(s) and any report or information provided to the division, Department of Revenue or court supervising authority;

(E) Retain all information obtained as a result of each calibration or inspection for a minimum of three (3) years from the date of device removal;

(F) Retain records of installation, calibration, downloads, service, removal and their associated invoices for a minimum of three (3) years from the date of device removal;

(G) Provide, upon request and at no cost, informational materials on devices to the Division of Probation and Parole, the Circuit Courts, and the Department of Revenue for distribution to operators;

(H) Create a printed price list reflecting any and all fees related to ignition interlock services that are not covered in the lease agreement; and

(I) Document any evidence of tampering and circumvention and notify court supervising authority.

(2) A manufacturer shall provide to the division the following:

(A) Proof of insurance that also includes a statement from the insurance company that thirty (30) days' notice will be given to the division prior to cancellation of any insurance required under this rule;

(B) Written notice of any modification or alteration in the components, design, or installation and operating instructions of any certified device;

(C) Satisfactory proof that any modifications or alterations do not adversely affect the device's ability to meet or exceed the standards established by the United States Department of

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Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 78 FR 26849-26867 as published in the *Federal Register* on May 8, 2013 by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective March 8, 2014, and 80 FR 16720-16723 as published in the *Federal Register* on March 30, 2015 and effective March 30, 2015, which are hereby incorporated by reference and made a part of this rule. This paragraph does not incorporate any subsequent amendments or additions to this publication;

(D) A quarterly status report for each certified device that is sent electronically and received by the division on or before the fifteenth (15th) of the month immediately following the end of the quarter, and that contains for that quarter the total number of:

1. Devices that were in operation, devices installed during the quarter, devices voluntarily installed during the quarter, devices removed during the quarter, devices that malfunctioned or were defective;
2. Breath tests conducted and breath tests resulting in a BrAC at or above the alcohol set point;
3. Attempts at device circumvention as that term is defined in 7 CSR 60-2.010;
4. Vehicle starts and miles driven between download and calibration appointments; and
5. Number of devices that resulted in a service lockout during the quarter;

The first quarter of each year shall be January 1 through March 31;

(E) Within one (1) business day, electronic notice of any change to the list of authorized service providers for the manufacturer to include any additions, deletions or other changes. Include the company name, location, phone number, contact name for each provider, indicate if the provider is a mobile site or fixed site, and which services are provided at each location (e.g., installation, calibration, removal);

(F) Upon request and at no cost, provide the division or its designee, a copy of all operator files and records;

(G) Notice of and explanation when a device has not transmitted data as outlined in 7 CSR 60-2.030 (1)(I) real-time reporting. Electronic notice will be made once the operator has been contacted or device calibration has occurred, whichever occurs first;

(H) Upon request and at no cost, provide the division or its designee, three (3) devices for periodic compliance testing once a device is certified. One (1) device will be installed in a vehicle and tested for a period of thirty (30) days. The manufacturer will install the device with all anti-circumvention features activated in a vehicle provided by the division, or its designee, and programmed according to the standards and specifications found in 7 CSR 60-2.030 and capable of meeting the requirements found in 7 CSR 60-2.040 through 7 CSR 60-2.050;

(I) Written notification if a certified device is the subject of a proposed sanction, disapproval, suspension, revocation or cancellation of a device by another state or jurisdiction and written notice of the final decision regarding the sanction, disapproval, suspension, revocation, or cancellation by another state or jurisdiction;

(3) A manufacturer shall provide electronic notice to the Missouri Department of Revenue, in a format as determined by the director of revenue, within one (1) working day of device installation, service lockout condition, device removal, and completion of the designated monitoring period.

(4) A manufacturer shall provide to the court ordered supervising authority by a method and in a format as determined by the court ordered supervising authority:

(A) Notice, before the end of the next business day, with the exception of federal holidays, of any instance of operator noncompliance such as any lockout condition, circumvention, violations reset, BrAC at or above the alcohol set point, missed scheduled service date, device removal and other instances of operator noncompliance as determined by the referring court;

(B) Reports every thirty (30) days that contain a summary of violations, the number of starts, the number of miles driven since last calibration, and all instances of tampering, circumvention, violations reset, BrAC at or above the alcohol set point, missed scheduled service date, device removal and other instances of operator noncompliance as determined by the referring court;

(C) Provide to the court ordered supervising authority, upon request, additional reports to include, but not be limited to, records of installation, calibrations, maintenance checks, and usage records.

(5) A manufacturer shall provide to the operator:

(A) Written instructions and hands-on training on how to use and maintain the device;

(B) Written instructions on what type of vehicle malfunctions or repairs may affect the device and what to do when vehicle repairs are necessary;

(C) A twenty-four (24) hour toll-free telephone number for technical information and tow and/or road service in the event of a device malfunction or failure;

1. A call will be answered by a device technician or returned by a device technician within thirty (30) minutes of the original call time;

2. Assistance related to the malfunction or failure of a device should be provided within two (2) hours of the original call time;

3. The device must be made functional or replaced within twenty-four (24) hours from the original call time. In the event of a device malfunction or failure on a federal holiday, the device will be repaired or replaced on the following business day;

(D) Restoration of the vehicle to its original condition after removal of the device;

(E) Access to a separate, enclosed waiting area during device installation and removal; and,

(F) Notification when the device has not transmitted data, as outlined in 7 CSR 60-2.030 (1)(I) real-time reporting, for a consecutive ten (10) day period.

AUTHORITY: sections 302.060, 302.304, 302.309, 302.440-302.462, RSMo, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600-577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.040. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.040, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expired Dec. 30, 2009. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and Readopted: Filed on March 9, 2018.*

**Original authority: 577.600-577.614, see Missouri Revised Statutes and 226.130, RSMo 1939, amended 1993, 1995.*

PUBLIC COST: This proposed rulemaking will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: The proposed rulemaking will not cost private entities more than five hundred dollars (\$500) in the aggregate.

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Title 7—DEPARTMENT OF TRANSPORTATION
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PROPOSED RESCISSION

7 CSR 60-2.050 Breath Alcohol Ignition Interlock Device Security. This rule outlined the security requirements of the authorized service providers.

PURPOSE: This rule is being rescinded and readopted to make it more concise and to bring it in line with current practices at both the federal and state levels, and eliminate any unnecessary restrictive wording.

AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000.* This rule originally filed as 11 CSR 60-2.050. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.050, effective Aug. 28, 2003. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and Readopted: Filed March 9, 2018.

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ADMINISTRATIVE RULES**

PROPOSED RULMAKING

7 CSR 60-2.050 Breath Alcohol Ignition Interlock Device Security.

PURPOSE: This rule outlines security requirements of manufacturers and authorized service providers.

(1) A manufacturer shall require and take steps to ensure that its authorized service providers:

(A) Carry garage keepers or general liability insurance coverage with minimum limits of three hundred thousand (\$300,000) dollars per occurrence and six hundred thousand (\$600,000) dollars in the aggregate to cover damage and loss to the operator's vehicle and personal property while in the authorized service providers care and/or custody;

(B) Meet all federal, state, and local government regulations for operating as a business in the state;

(C) Follow certification standards and specifications for service;

(D) Possess the appropriate skills, equipment, and facilities necessary to comply with all of the certification and operational requirements outlined in 7 CSR 60-2.030 through 7 CSR 60-2.050;

(E) Inspect all vehicles before and after device installation to determine that the mechanical and electrical parts of the vehicle affected by the device are acceptable for the installation and proper operation of the device;

(F) Take reasonable steps to prevent the operator or any other unauthorized person from obtaining access to installation materials and/or from observing the installation or removal of a device;

(G) Do not install or service any device, except for testing and promotional purposes, on a vehicle owned or operated by any of its employees or relatives of its employees within the second degree of consanguinity or affinity as that phrase is defined in 7 CSR 60-2.010;

(H) Provide written and hands-on training for the operator on how to properly use, operate, and maintain the device, including instructions against improper operation and precautions when others use the device;

(I) Do not install a device on a vehicle that cannot be driven from the service center under its own power;

(J) Place all connections between a device and the vehicle under the dash or in an inconspicuous area of the vehicle and cover all exposed electrical connections between a device and the vehicle with unique and easily identifiable seal, epoxy, resin, wire, sheathing, or tape;

(K) Document vehicle mileage as displayed on the vehicle odometer when a device is installed, calibrated, serviced, maintained, and/or repaired;

(L) Conduct physical inspections of all external wiring, insulation, connections, tamper seals, and sheathing when a device is serviced, maintained, and/or repaired;

(M) Check device for proper operation, tampering and circumvention when a device is

serviced, maintained, and/or repaired;

(N) Do not sell or use any type of remote code or reset feature that allows the operator to bypass a device without providing all required breath tests. An override lockout may be provided under the following conditions:

1. The lockout override must be unique to the device;
2. All requirements outlined in 7 CSR 60-2.030 through 7 CSR 60-2.050 apply;
3. The lockout override will not be valid for more than 24 hours upon which the device will enter a permanent lockout status; and
4. Each lockout override will be uniquely recorded in the data storage system.

(O) Document each use of an override lockout on the operator's data log;

(P) Do not assist or facilitate any tampering or circumvention of a device;

(Q) Do not ship a device or other equipment to anyone other than the manufacturer, authorized service provider, or state authority;

(R) Conduct installations, calibrations, downloads, servicing and/or removal of a device for an operator residing out-of-state are in compliance with all requirements outlined in 7 CSR 60-2.010 through 7 CSR 60-2.060;

(S) Maintain records documenting all calibrations, downloads, and any other service performed on a device, including service of a violations reset; and

(T) Do not permit an unauthorized person to view or gain access to an operator's personal or medical information, or other secured materials including, but not limited to, tamper seals, installation instructions, computer discs and any other material used to download device data or install, service, calibrate, monitor or remove a device.

AUTHORITY: sections 302.060, 302.304, 302.309, 302.440-302.462, RSMo, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600-577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.050. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.050, effective Aug. 28, 2003. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and Readopted: Filed on March 9, 2018.*

**Original authority: 577.600-577.614, see Missouri Revised Statutes and 226.130, RSMo 1939, amended 1993, 1995.*

PUBLIC COST: This proposed rulemaking will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rulemaking will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rulemaking with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

RECEIVED

MAR 09 2018

SECRETARY OF STATE
ADMINISTRATIVE RULES

Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational
Requirements

COPY

PROPOSED RESCISSION

7 CSR 60-2.060 Suspension, or Revocation of Approval of a Device. This rule outlined the conditions for which ignition interlock device certification may be suspended or revoked.

PURPOSE: This rule is being rescinded and readopted to make it more concise and to bring it in line with current practices at both the federal and state levels, and eliminate any unnecessary restrictive wording.

AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000.* This rule originally filed as 11 CSR 60-2.060. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.060, effective Aug. 28, 2003. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and Readopted: Filed March 9, 2018.

*Original authority: 577.600–577.614, see *Missouri Revised Statutes* and 226.130, RSMo 1939, amended 1993, 1995.

PUBLIC COST: This proposed rescinded rulemaking will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rescinded rulemaking will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescinded rulemaking with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

JOINT COMMITTEE ON
MAR 09 2018
ADMINISTRATIVE RULES

RECEIVED

MAR 09 2018

SECRETARY OF STATE
ADMINISTRATIVE RULES

Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Highway Safety and Traffic Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational
Requirements

PROPOSED RULEMAKING

7 CSR 60-2.060 Device Suspension and Decertification.

PURPOSE: This rule clarifies the conditions for which an ignition interlock device may be suspended or decertified.

(1) Suspension and Decertification. If a manufacturer does not comply with the requirements of 7 CSR 60-2.030 through 7 CSR 60-2.050, then the commission is authorized to suspend and/or decertify the manufacturer's device.

(2) Circumstances warranting suspension and/or decertification include, but are not limited to:

- A. Voluntary request by the manufacturer;
- B. Termination or cancellation of liability insurance;
- C. Modification or alteration of the components, design, installation, and operation instructions in such a way that the device no longer meets or exceeds the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 78 FR 26849-26867 as published in the *Federal Register* on May 8, 2013 by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective March 8, 2014, and 80 FR 16720-16723 as published in the *Federal Register* on March 30, 2015 and effective March 30, 2015, which are hereby incorporated by reference and made a part of this rule. This paragraph does not incorporate any subsequent amendments or additions to this publication;
- D. Defects in design, materials, or workmanship that appear to cause repeated device failures;
- E. Documented multiple device malfunctions and/or failures;
- F. Instances of device not meeting the standards and specifications of 7 CSR 60-2.030;
- G. Validated complaints from the operator(s) concerning proper device operation;
- H. Instances of the manufacturer not meeting reporting requirements or any other requirements found in 7 CSR 60-2.030 through 7 CSR 60-2.050; and,
- I. Manufacturer or its agent provides false, inaccurate or misleading information relating to device specifications or performance;

(3) Cost. In the event of suspension or decertification, the manufacturer will be responsible for all compliance costs associated with 7 CSR 60-2.010 through 7 CSR 60-2.060 including, but not limited to:

- A. Contacting operator's regarding suspension or decertification;
- B. Removal of decertified devices from the offender's vehicle;
- C. Installation of a new device on the offender's vehicle;
- D. Transfer of all operators' user records and other applicable documents to a location and in a format as directed by the division;

JOINT COMMITTEE ON
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(4) Suspension. A suspension will last for at least ninety (90) days after the commission's final decision. During this period, the suspended device cannot be installed in a vehicle in Missouri as a new install or replacement for the same or different device. The division reserves the right to notify operators, if deemed necessary under the circumstances. If device malfunctions and/or failures were the basis for the suspension, then commission's decision may require certification testing before the suspension is lifted. A suspension will not exceed one (1) year.

(5) Decertification. A device may be decertified for reasons listed under paragraph two (2) or if corrective action on a suspended device has not been timely and satisfactorily completed. Within thirty (30) days of a final commission decision to decertify, a manufacturer will notify operators of the decertification and will transfer all operators' user records and other applicable documents to a location and in a format as directed by the division. The division reserves the right to notify operators, if deemed necessary under the circumstances. Within thirty (30) days of a final commission decision to decertify, a manufacturer will submit its written plan explaining the process and timeline for removing the decertified devices and installing a certified device selected by the operator. All decertified devices shall be removed and replacement devices installed within one hundred twenty (120) days of a final commission decision. If a device is decertified, then it is ineligible for certification for a period of one (1) year beginning on the date the last device is removed.

(6) Notice. Notice of a suspension or decertification will be sent by certified mail to the manufacturer's representative at the address on file with the division. The notice is deemed received upon receipt or five (5) business days after mailing, whichever occurs first.

(7) Effective Date. A suspension or decertification decision takes effect seven (7) days after notice is received unless the division, in its sole discretion, determines that the device should be suspended or decertified immediately due to a risk to public safety. In that instance, the suspension or decertification takes effect once notice is received or five (5) business days after mailing, whichever occurs first.

(8) Final Decision. The division's decision becomes the final decision of the commission, unless an informal review is requested. If an informal review is requested, then the review panel's decision becomes the commission's final decision.

(9) Informal Review. Within seven (7) days following receipt of notice of a suspension or decertification, a manufacturer may submit a written request for an informal review of the division's decision. The review will be conducted by a three (3) person panel of department personnel, appointed by the department's Chief Engineer. A member of the review panel cannot be personnel actively involved in the division's decision. If an informal review is requested, then the manufacturer will have ten (10) business days in which to submit relevant facts, arguments in favor of its position and supporting documentation to the panel. Information may be submitted electronically or by U.S. mail. The panel will have ten (10) business days to review the submissions and make a decision. Pending completion of informal review process, the suspended or decertified device cannot be installed in a vehicle as a new install or as a replacement for the same or different device.

AUTHORITY: sections 302.060, 302.304, 302.309, 302.440-302.462, RSMo, and 302.525,

RSMo Supp. 2013, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.060. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.060, effective Aug. 28, 2003. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and Readopted: Filed on March 9, 2018.*

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STANDARDIZED FIELD SOBRIETY TESTING, OR NOT

How they developed and trends in
how they are being used today.

1

Robert Rinck

City Prosecutor
City of Columbia

2

NHTSA

- National Highway Traffic Safety Administration
- An agency of the Executive Branch of the U.S. government and is part of the United States Department of Transportation.

3

Research and data in this presentation have been taken from the Instructor's Guide for DWI Detection and Standardized Field Sobriety Testing published by NHTSA, Transportation Safety Institute (TSI) and the International Association of Chiefs of Police and can be found online at:

- https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/sfst_ig_full_manual.pdf

4

The Three Phases of DWI Detection

- Phase One: Vehicle in Motion
- Phase Two: Personal Contact
- Phase Three: Pre-Arrest Screening or in other words, SFST's and our focus for today

5

What We Are Used To Seeing in the Past

- We are all probably used to seeing the three familiar SFST's: HGN, Walk and Turn, and One-Legged Stand.
- But many jurisdictions are no longer using all three tests in their investigations for varying reasons.
- The question becomes how reliable is this information when only a limited number of tests are done?

6

The History of SFST's and NHTSA

- NHTSA was founded December 31, 1970 and describes its mission as “Save Lives, prevent injuries, reduce vehicle-related crashes.”
- NHTSA does more than DWI detection, to see all they do, go to: <https://www.nhtsa.gov/>
- Our focus today is impaired driving.

7

NHTSA and Impaired Driving

- What prompted NHTSA to begin looking at the problem of impaired driving?
- Statistics showed that 1 driver in 50 at any given time is driving while impaired, but this is spread across all times of the day and night.
- Research indicated that at certain times, late at night, weekend, holidays, as many as ten percent of drivers on the roadway may be driving under the influence.

8

NHTSA and Impaired Driving, cont.

- Statistics also suggest that the average DWI violator commits the offense of driving while impaired approximately 80 times each year.
- In 2013, there were 10,076 alcohol related fatalities which represent 31% of all traffic fatalities (from the 2015 manual).
- In 2016, there were 10,497 drunk driving deaths.
<https://www.nhtsa.gov/press-releases/usdot-releases-2016-fatal-traffic-crash-data>

9

NHTSA and Impaired Driving, cont.

- From their research, NHTSA found that there was a problem with DWI enforcement, primarily in the area of detection.
- In a 1975 study conducted in Ft. Lauderdale, only 22 percent of traffic violators who were stopped, and also had a BAC between .10 and .20, were arrested for DWI.
- In other words, officers failed to detect 78 percent of the DWI violators they investigated.

10

NHTSA and Impaired Driving, cont.

- The Ft. Lauderdale study was the reason NHTSA developed its course on DWI detection and field sobriety testing.
- If detection is the primary goal, are all three of the standardized tests necessary?
- There is **no** requirement that all three or **any** of the tests be administered to make a determination of impairment.

11

So What Is Required?

- That question is dependent on what you are trying to show, probable cause for an arrest, or proof beyond a reasonable doubt.
- If the answer is probable cause, which is a common challenge in DWI cases, then let's take a look at what Missouri law has to say on the subject.

12

What Does Missouri Require?

- For probable cause: “While mere suspicion is insufficient, absolute certainty is not required.” [Warner v. Mo. Dir. of Revenue, 240 S.W.3d 745, 749 \(Mo.App.2007\)](#)
- “more likely than not” is an inaccurate rendering of the probable cause standard....there is no precise test for probable cause; there simply must be a fair probability- from the perspective of a prudent and cautious law enforcement officer- that a particular offense has been committed based on the totality of the circumstances. [Southards v. Department of Revenue, 321 S.W.3d 458, 462 \(Mo.App. S.D. 2010\)](#)

13

What Does Missouri Require?

- Our courts have held that while field sobriety tests are available to an officer attempting to determine whether probable cause exists, an officer can “ ‘develop probable cause to arrest an individual for driving while intoxicated absent any field sobriety tests at all.’ ” [Lord v. Director of Revenue, 427 S.W.3d 253, 257 \(Mo.App.E.D.2014\)](#) (quoting [Gannon v. Director of Revenue, 411 S.W.3d 394 \(Mo.App.E.D.2013\)](#)). “[F]ield sobriety tests are *not* a requirement for an officer to develop probable cause that an individual is driving while intoxicated[, and] ‘the tests merely supplement the officer's other observations in determining whether probable cause exists.’ ” [Id. at 257](#)(quoting [Gannon, 411 S.W.3d at 398](#)) (internal quotation and citation omitted) (emphasis in original). [Beavers v. Director of Revenue, 467 S.W.3d 318, 321 \(Mo.App.S.D. 2015\)](#)

14

So What Are These “Other” Observations

- Absent field sobriety tests or HGN testing, similar observations as those made by Trooper Van Winkle in the present case, such as traffic violations; the strong odor of intoxicating beverage; bloodshot, glassy, watery eyes; slurred speech; swaying balance or gait, and an admission to drinking by the driver have been considered sufficient evidence of probable cause to arrest for driving while intoxicated. [Brown v. Director of Revenue, 85 S.W.3d 1, 4 \(Mo. banc 2002\)](#) (probable cause to arrest a driver for alcohol-related violation exists when police officer observes illegal operation of motor vehicle, and other indicia of intoxication upon coming into contact with driver); see also [Routt v. Director of Revenue, 180 S.W.3d 521, 523–24 \(Mo.App.E.D.2006\)](#) (strong odor of alcoholic beverage, watery, bloodshot, glassy eyes, slurred speech, and swaying provided officer with reasonable grounds to believe individual was driving while intoxicated); [Rain v. Director of Revenue, 46 S.W.3d 584, 588 \(Mo.App.E.D.2001\)](#) (erratic and illegal driving, glassy, bloodshot eyes, slurred speech, unsteadiness on feet, difficulty concentrating sufficient to provide officer with probable cause to arrest). [Lord v. DOR, 427 S.W.3d 253, 257 \(Mo.App.E.D. 2014\), citing Gannon v. DOR 411 S.W.3d 394, 398-399 \(Mo.App.E.D. 2013\)](#)

15

And What If SFST’s Are Administered, But Incorrectly?

- Even if SFST’s are administered but they are not found to be credible, does that mean the officer did not have probable cause?
- The answer is clearly “no,”: “ the absence of a properly performed field sobriety test will not by itself preclude a finding that there were reasonable grounds to believe that an individual was driving while intoxicated.” [Norris v. Dir. of Revenue, 156 S.W.3d 786, 788 \(Mo. App. W.D. 2005\)](#). [Langley v. DOR, 467 S.W.3d 870, 873 \(Mo.App.W.D. 2015\)](#) See also [Gannon above](#).

16

At The End Of The Day....

- SFST's were developed to increase detection of impaired drivers.
- While they can be helpful, both to the investigating officer and the judge hearing the case, they are not required.
- Be mindful that as a judge, you must look at the "totality of the circumstances" when making your decision and don't get lost in the rhetoric of how an SFST may have not been done strictly in accordance with the established guidelines or not done at all, you should be considering all the information and how it appears to a prudent, cautious, and trained police officer.

17

And Lastly (really)...

- From the Preface to the NHTSA manual you will never hear a defense attorney (sorry, Steve) bring to the court's attention:

"The procedures outlined in this manual describe how the Standardized Field Sobriety Tests (SFSTs) are to be administered under ideal conditions. We recognize that the SFSTs will not always be administered under ideal conditions in the field, because such conditions will not always exist. Even when administered under less than ideal conditions, they will generally serve as valid and useful indicators of impairment. Slight variations from the ideal, i.e. the inability to find a perfectly smooth surface at roadside, may have some effect on the evidentiary weight given to the results. However, this does not necessarily make the SFSTs invalid."

18

STANDARDIZED FIELD SOBRIETY
TESTING, OR NOT (Defense View)
&
UPDATES ON CURRENT DWI
DRIVER LICENSE ISSUES

1

Stephen P. "Steve" Wilson

Murray Law Firm
Columbia, MO

2

First, I take exception to that...

- From Session VIII, “Concepts and Principles of the Standardized Field Sobriety Tests” of the NHTSA Manual, you will never hear a prosecutor (sorry, Robert) bring to the Court’s attention:

“IF ANY ONE OF THE SFST ELEMENTS IS CHANGED, THE VALIDITY **MAY BE** COMPROMISED”

3

CAUTIONARY LANGUAGE HISTORY

- Original NHTSA Manual – 1984
 - “Improved Sobriety Testing”
 - Only 11 Pages Long
 - Essentially a How-To Guide
 - Cautionary Language:
 - “If the standardized testing and scoring procedures presented in this Manual are not followed, the decision making guidelines will not be accurate”

4

Cautionary Language (Cont.)

- 1987 NHTSA Manual -
“DWI Detection & Standardized Field Sobriety Testing”
 - Expanded to approximately 400 pages
 - Included case law and statistics
 - Contained the same Cautionary Language as the 1984 Manual
- 1992 Manual – Virtually Unchanged

5

Cautionary Language (Cont.)

- 1995, 2000, 2002, 2004, 2006 NHTSA Manuals
“DWI Detection & Standardized Field Sobriety Testing”
- Cautionary language changed:

“It is necessary to emphasize this validation applies only when:
 - The tests are administered in the prescribed, standardized manner
 - The standardized clues are used to assess the suspect’s performance
 - The standardized criteria are employed to interpret that performance.If any one of the standardized field sobriety test elements is changed, the validity is compromised.”

6

Cautionary Language (Cont.)

- 2013 NHTSA Manual
 - Reworked in conjunction with International Association of Chiefs of Police (IACP)
 - **All cautionary language contained in the previous NHTSA Manuals was removed**
 - No reason was given for the removal of the language
 - “Testimonial tips” for police and prosecutors were added to the 2013 Manual.

7

Cautionary Language (Cont.)

- 2013 NHTSA Manual (2015 Update)
 - Update written in conjunction with IACP and the Traffic Safety Institute.
 - Not much change from the original 2013 Manual
 - **Except the Cautionary Language reappeared with a slight modification:**
“If any one of the SFST elements is changed, the validity **may be** compromised.”

8

Cautionary Language... Why It Is Important

- Robert is correct that there is no requirement that all three, or even any of the tests be administered to make a determination of impairment
- **There is also no language** in the NHTSA Manuals that contemplates not administering the full three test battery (outside of officer safety)
- The NHTSA Manuals teach a three test battery (HGN, W&T, & OLS)
- The scientific validation of the SFSTs as well as the correct arrest decision percentages in the NHTSA Manual, were based upon administration of the three test battery.

9

Cautionary Language... Why It Is Important

With the current trend of fewer SFSTs being administered, an attorney representing a Defendant in a court proceeding should be given latitude to inquire with the arresting officer as to why the full three test battery was not administered, and what effect, if any, that decision may have had on the officer's ability to make the correct arrest decision.

10

Changes to DWI Related Driver License Issues

- **Administrative Alcohol Suspension/Revocation (302.525, RSMo)**
 - 1st Offense or No Other Offense within 5 Years
 - 30 Day Suspension /60 Day Restricted (Work, School, SATOP)
 - 90 Day Interlock Restricted Driving Privilege
 - 2nd Offense w/in 5 Years
 - 1 Year Revocation (No More 45 Day Hard Walk)
 - Limited Driving Privilege Eligible Immediately w/ IID (302.309, RSMo).
- **Chemical Refusal Revocation (577.041, RSMo)**
 - Always a 1 Year Revocation
 - Limited Driving Privilege Eligible Immediately w/ IID (302.309, RSMo).

11

Changes to DWI Related Driver License Issues

- **DWI/BAC Point Suspension/Revocations (302.302, RSMo)**
 - 1st Conviction for DWI/BAC – 8 Points
 - 30 Day Suspension /60 Day Restricted (Work,School,SATOP)
 - 90 Day Interlock Restricted Driving Privilege.
 - 2nd or Sub. Conviction for DWI/BAC – 12 Points
 - 1 Year Revocation (No More 30 Day Hard Walk)
 - Limited Driving Privilege Eligible Immediately w/ IID.

12

Changes to DWI Related Driver License Issues

- 5 Year Denial (302.060/302.309)
 - 2 Convictions for DWI/BAC within 5 Years
 - Reinstatement Date 5 Years from Conviction Date (Public Safety)
 - Filed in the Circuit Court where the Conviction Occurred
 - Eligible for Limited Driving Privilege Immediately
 - No More 2 Year Waiting Period
 - Issued at Court's Discretion Based Upon Public Safety (IID Required w/ Camera and GPS).
- 10 Year Denial (302.060/302.309)
 - 3 Convictions for DWI/BAC within Lifetime
 - Reinstatement Date 10 Years from Conviction Date (Public Safety)
 - Filed in the Circuit Court where the Conviction Occurred
 - Eligible for Limited Driving Privilege When?:
 - No More 3 Year Waiting Period (If Misdemeanor Convictions)
 - 5 Year Waiting Period if there is a Felony DWI Conviction
 - Issued at Court's Discretion Based Upon Public Safety (IID Required w/ Camera and GPS).

13

Changes to DWI Related Driver License Issues

- Employment Exemption Variance (302.441, RSMo)
- Allows a court to grant an exception to the IID requirement for employment purposes.
 - “to drive an employer-owned vehicle not equipped with an ignition interlock device for employment purposes only”
 - “shall not be granted to a person who is self-employed or who wholly or partially owns or controls an entity that owns an employer-owned vehicle.”
- Can but does not have to be connected to a court issued LDP
 - Can be issued during an administrative suspension/revocation
 - Can be issued during a chemical refusal revocation
 - Can be issued during the 6 month IID reinstatement requirement.
- Specifically prohibits granting the employment exemption
 - an employer-owned vehicle used for transporting children under eighteen years of age or vulnerable persons
 - an employer-owned vehicle for personal use.

14

Wednesday, May 23, 2018
1:10 – 2:10 in the Granada Room

Trends in Court Costs, Fines, Fees & Bail (1.2 hrs CLE)

Judges Andrea Niehoff, Jennifer Fisher, Brandi Miller,
Teresa Bright-Pearson

Session Summary

Panel of experienced judges will present and discuss the mandates that govern assessing court costs, fines, fees and bail in municipal courts and how recent trends are suggested and are leading to a fresh look and approach to the topic.

Speaker Bios

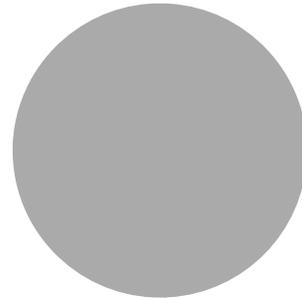
Teresa Bright-Pearson

Juris Doctor, Washington University, 1994

Municipal Judge, City of Cape Girardeau. MMACJA Missouri Judicial Education Committee– member; Task Force on Criminal Justice- member.

1

TRENDS IN COURT COSTS FINES, FEES AND BAIL

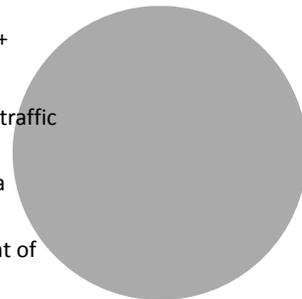


2

Recent Changes in Law (SB 5 and SB 572)

Minor Traffic Violations—fine is limited to \$225.00 (fine + costs) **479.353(1)(a)**

Minor traffic violation is defined as a municipal or county traffic ordinance violation prosecuted that does not involve an accident or injury, that does not involve the operation of a commercial motor vehicle, and for which no points are assessed by the department of revenue or the department of revenue is authorized to assess no more than one to four points to a person's driving record upon conviction. Minor traffic violation shall include amended charges for any minor traffic violation. Minor traffic violation shall exclude a violation for exceeding the speed limit by more than nineteen miles per hour or a violation occurring within a construction zone or school zone. --**479.350(3)**



Municipal Ordinance Offenses—fine is limited to \$200.00 for the first offense; \$275.00 for second offense in twelve month period; \$350.00 for third offense in twelve month period; \$400.00 for fourth and subsequent offense in twelve month period. (fine + costs) **479.353(1)(b)**

Municipal ordinance violation is defined as a municipal or county ordinance violation prosecuted for which penalties are authorized by statute under sections 64.160, 64.200, 64.295, 64.487, 64.690, 64.895, 67.398, 71.285, 89.120, and 89.490.--**479.350(4)**

No Confinement on Minor Traffic or Municipal Ordinance Offenses—479.353(2) and (3); 479.360(3)

1. **479.353(2)**—The court shall not sentence a person to confinement, except the court may sentence a person to confinement for any violation involving alcohol or controlled substances, violations endangering the health or welfare of others, or eluding or giving false information to a law enforcement officer;
2. **479.353(3)**—A person shall not be placed in confinement for failure to pay a fine unless such nonpayment violates the terms of probation or unless the due process procedures mandated by Missouri Supreme Court Rule 37.65 or its successor rule are strictly followed by the court;
3. Defendants are not detained in order to coerce payment of fines and costs unless found to be in contempt after strict compliance by the Court with the due process procedures mandated by Missouri Supreme Court Rule 37.65 or its successor rule. **479.360(3)**.

The 24, 48 and 72 Hour Rules—479.360(1) and (2)

1. Defendants in custody pursuant to an initial arrest warrant issued by a municipal court have an opportunity to be heard by a judge in person, by telephone, or video conference as soon as practicable and not later than forty-eight hours on minor traffic violations and not later than seventy-two hours on other violations and, if not given that opportunity, are released; **479.360(1)**
2. Defendants in municipal custody shall not be held more than twenty-four hours without a warrant after arrest; **479.360(2)**

Alternative Payment Plans and Community Service--479.360(8) and (9)

The Municipal Court makes use of alternative payment plans and; and The Municipal Court makes use of community service alternatives for which no associated costs are charged to the defendant.

Minimum Operating Standards

Minimum Operating Standard #1—Municipal divisions shall ensure that when individuals must be held in jail in the interests of justice, this is done strictly in accordance with the principals of due process.

1. Procedures exist to prevent defendants from being held longer than 48 hours on minor traffic violations and 72 hours on other violations without being heard by a judge in person, by telephone or via video conferencing.
2. The municipal division has made reasonable efforts to communicate to local law enforcement the 24-hour rule: “Defendants in municipal custody shall not be held more than 24 hours without a warrant after arrest.”
3. Confinement to coerce payment of fines and costs is utilized only if found in contempt of court after compliance with Rule 37.65.
4. No additional charge is issued for failure to appear for a minor traffic violation.
5. The municipal division has a duty judge available at all times to rule promptly upon warrants, bail and conditions of pretrial release and other matters without undue delay.

6. Bond schedules are utilized only for persons arrested without a warrant and held no longer than 24 hours.
7. Warrants are issued only upon a finding that reasonable grounds exist to believe that the defendant will not appear upon a summons or that the accused poses a danger to a crime victim, the community, or any other person.
8. The Municipal division has procedures in place to ensure that the recall and cancellation of outstanding warrants is communicated to law enforcement by the clerk without delay.
9. No person is sentenced to confinement on “minor traffic violations” or “municipal ordinance violations” with the exception of violations: involving alcohol or controlled substances; endangering the health or welfare of others; or involving eluding or giving false information to a law enforcement officer.
10. Due process procedures are strictly followed before confining someone for fail to pay fines and costs.

Minimum Operating Standard #2—Municipal Divisions shall inquire of defendants and allow them to present information about their financial condition when assessing their ability to pay and establishing payment requirements for monies due.

1. Procedures exist to inquire of defendants and allow them to present evidence about their financial condition in assessing their ability to pay and establishing payment requirements.
2. Alternative payment plans are utilized.
3. Community service is utilized with no fee assessed to the defendant.
4. Stay of execution procedures exist for defendants to pay fines and costs within a specified period of time or to make installment payments.
5. If probation fees are assessed, the municipal division does so in compliance with statutes and considers factors exempting a probationer from part or all of the standard monthly probation fee. The municipal division advises offenders of the right to request individualized consideration of exemption from paying probation fees and surcharges under these statutes.

Minimum Operating Standard #3—Municipal divisions shall not condition an indigent defendant's access to a judicial hearing or the granting of probation upon the payment of fines or fees.

1. If a defendant files an application for trial de novo, the payment of the statutory trial de novo fee shall be waived if the defendant qualifies as indigent.
2. If the defendant requests a jury trial, the cause shall be transferred to the circuit court without prepayment of fees.
3. The municipal division does not make the granting of probation conditional upon the payment of anything other than authorized fees or deny probation because of the inability of the defendant to pay authorized probation fees and surcharges.

Minimum Operating Standard #4—Municipal Divisions shall neither assess nor collect unauthorized fines, costs, or surcharges.

1. Fines and costs assess on minor traffic violations do not exceed \$225.00.
2. Fines and costs assessed on “municipal ordinance violations” as defined in 479.350(4) meet the mandatory maximum schedule of section 479.353(1)(b).
3. Fines assessed on other ordinance violations do not exceed the maximum amount authorized by state law and the city code.
4. Only court costs authorized by state statute are assessed.
5. Dismissal on payment of costs is prohibited.
6. Court costs are not assessed against indigent defendants.
7. Community service is utilized with no fee assessed.

Sample TVB Lists

TYPE OF VIOLATION	FINE + COSTS = TOTALS
24-3	Obstructing Traffic 75.50 + 31.50 = 107.00
26-52	Failure to Comply with Police Officer or Fire Department Officials 150.50 + 31.50 = 182.00
26-127	Failure to Stop for Steady Red Light 75.50 + 31.50 = 107.00
26-128	Pedestrian Fail to Obey Walk or Don't Walk Signal 60.50 + 31.50 = 92.00
26-130	Failure to Stop for Flashing Red Light 75.50 + 31.50 = 107.00
26-131	Display Unauthorized Signs, Signals or Marking 193.50 + 31.50 = 225.00
26-132	Interference with Traffic Control Device/Railroad Sign or Signal 75.50 + 31.50 = 107.00
26-134	Failure to Drive within Designated Traffic Lane 75.50 + 31.50 = 107.00
26-136	Wrong way on a One Way Street 75.50 + 31.50 = 107.00
26-138	Motor Vehicle Prohibited on Recreation Trail 75.50 + 31.50 = 107.00
26-156	No Muffler - Muffler Cutout 75.50 + 31.50 = 107.00
26-157	Defective Horn; Brakes and Mirrors 75.50 + 31.50 = 107.00
26-158	Use of Tow Lines 75.50 + 31.50 = 107.00
26-159	Projections on Vehicle 75.50 + 31.50 = 107.00
26-160	Bumper Requirement 75.50 + 31.50 = 107.00
26-161	Vision Obscuring Material 75.50 + 31.50 = 107.00
26-177	Use of Headlights 50.50 + 31.50 = 82.00
26-178	Headlights Required 50.50 +

26-179	Light Color Restrictions 75.50 + 31.50 = 107.00
26-180	Auxiliary Lamps Restrictions 75.50 + 31.50 = 107.00
26-181	Cowl, Fender, Running Board and Backup Lights 75.50 + 31.50 = 107.00
26-182	Spotlamps 75.50 + 31.50 = 107.00
26-183	Lamps Illuminating Devices 75.50 + 31.50 = 107.00
26-184	Flashing Lights Prohibited 75.50 + 31.50 = 107.00
26-185	Total of Lamps Lighted 50.50 + 31.50 = 82.00
26-186	Single Beam Headlights; Intensity; Adjustment 50.50 + 31.50 = 82.00
26-187	Multiple-Beam Headlamps; Arrangement 75.50 + 31.50 = 107.00
26-188	Intermediate Beams; Requirements 75.50 + 31.50 = 107.00
26-190	Dimming Headlights 50.50 + 31.50 = 82.00
26-191	Rear Lights Required 50.50 + 31.50 = 82.00
26-193	Rear Reflectors on Motorcycles 50.50 + 31.50 = 82.00
26-177	No Headlights as required 50.50 + 31.50 = 82.00
26-177 - 2	No Headlights during weather or fog 10.00 - Only
26-211	C & I Driving 100.50 + 31.50 = 132.00
26-212	Fail to Drive on Right Half of Roadway (Non-Accident) 75.50 + 31.50 = 107.00

- 26-212 – d Driving Around Barricades or Failure to Obey Temporary Sign** $75.50 + 31.50 = 107.00$
- 26-213 Improper Passing (Non-Accident)** $75.50 + 31.50 = 107.00$
- 26-214 Following Too Closely (Non-Accident)** $75.50 + 31.50 = 107.00$
- 26-215 Improper Turn (Non-Accident)** $75.50 + 31.50 = 107.00$
- 26-216 Making Prohibited Turn (non-Accident)** $75.50 + 31.50 = 107.00$
- 26-217 Fail to Signal a Turn** $50.50 + 31.50 = 82.00$
- 26-218 Fail to Yield Right of Way (Non-Accident)** $75.50 + 31.50 = 107.00$
- 26-219 Moving Without Reasonable Safety (Non-Accident)** $75.50 + 31.50 = 107.00$
- 26-220 Fail to Cover or Secure a Load** $100.50 + 31.50 = 132.00$
- 26-221 Parked Vehicle Emitting Offensive Odors** $75.50 + 31.50 = 107.00$
- 26-223 Opening Doors on Motor Vehicle on Moving Traffic Sides** $75.50 + 31.50 = 107.00$
- 26-224 School Buses - Meeting/Overtaking a Stopped School Bus** $100.50 + 31.50 = 132.00$
- 26-227 Driving too Slowly/Impeding Traffic**

- SPEEDING: Posted - School - Construction Zone**
- 26-228 1 - 5 miles over - Posted Speed Limit** $25.50 + 31.50 = 57.00$
 - 1 - 5 miles over - School or Construction Zone** $75.50 + 31.50 = 107.00$
 - 6 - 10 miles over - Posted Speed Limit** $60.50 + 31.50 = 92.00$
 - 6 - 10 miles over - School or Construction Zone** $110.50 + 31.50 = 142.00$
 - 11 - 15 miles over - Posted Speed Limit** $80.50 + 31.50 = 112.00$
 - 11 - 15 miles over - School or Construction Zone** $130.50 + 31.50 = 162.00$
 - 16 - 20 miles over - Posted Speed Limit** $105.50 + 31.50 = 137.00$
 - 16 - 20 miles over - School or Construction Zone** $155.50 + 31.50 = 187.00$
 - 21 - 25 miles over - Posted Speed Limit** $150.50 + 31.50 = 182.00$
 - 21 miles and over - School or Construction Zone** Mandatory Ct Appearance
 - 26 - 30 miles over - Posted Speed Limit** $250.50 + 31.50 = 282.00$
 - 31 miles and over (Posted - School - Construction)** Mandatory Ct Appearance

- 26-229 Seat Belt 10.00 - Only
- 26-230 Child Restraint 25.00 + 31.50 = 56.60
- 26-232 Minors Riding in Open Bed of a Pickup Truck 100.50 + 31.50 = 132.00
- 26-233 Exhibition Driving 75.50 + 31.50 = 107.00
- 26-283 Fail to Stop at Stop Sign 75.50 + 31.50 = 107.00
- 26-284 Fail to Yield Right-of-Way after Stopping (Non-Accident) 75.50 + 31.50 = 107.00
- 26-285 Fail to Yield Right-of-Way at Yield (Non-Accident) 75.50 + 31.50 = 107.00
- 26-286 Fail to Yield Right-of-Way (Non-Accident) 75.50 + 31.50 = 107.00
- 26-287 Obedience to Signal Indicating Approaching Train 75.50 + 31.50 = 107.00
- 26-306 Pedestrian - Subject to Traffic Control Devices 50.50 + 31.50 = 82.00
- 26-307 Pedestrian - Fail to Yield Right of Way at Crosswalk (Non-Accident) 75.50 + 31.50 = 107.00
- 26-308 Pedestrian - Use of Right Half of Crosswalk 50.50 + 31.50 = 82.00
- 26-309 Pedestrian - Crossing at Right Angles 50.50 + 31.50 = 82.00
- 26-310 Pedestrian - When They Should Yield 50.50 + 31.50 = 82.00
- 26-311 Pedestrian - Prohibited Crossing (Non-Accident) 75.50 + 31.50 = 107.00
- 26-312 Pedestrian - Obedience to Bridge and Railroad Signals 75.50 + 31.50 = 107.00
- 26-313 Pedestrian - Prohibited Walking In the Street 75.50 + 31.50 = 107.00
- 26-332 Tampering with Motor Vehicle 193.50 + 31.50 = 225.00
- 26-333 Restrictions on Operators License 75.50 + 31.50 = 107.00
- 26-333 No Valid Motorcycle License 150.50 + 31.50 = 182.00

- 26-333 No Valid Operators License (1st Offense) 150.50 + 31.50 = 182.00
- 26-334 Permitting Unlicensed Operator to Drive 75.50 + 31.50 = 182.00
- 26-335 Operating Unlicensed or Expired Plates 50.50 + 31.50 = 82.00
- 2nd Offense within 12 months 75.50 + 31.50 = 107.00
- 3rd Offense Within 12 months or more 100.50 + 31.50 = 132.00
- 26-336 Driving Through Processions 100.50 + 31.50 = 132.00
- 26-340 Following/Park near a Fire Apparatus while on an Emergency Call 75.50 + 31.50 = 107.00
- 26-341 Driving Over Fire Hose 150.50 + 31.50 = 182.00
- 26-343 Driving on Sidewalk 75.50 + 31.50 = 107.00
- 26-344 Improper Backing (Non-Accident) 75.50 + 31.50 = 107.00
- 26-345 Carrying Passenger on Motorcycle in Excess on Design 50.50 + 31.50 = 82.00
- 26-346 Motorcycle Helmet 25.00 - Only
- 26-347 Riding Bicycle on sidewalk 50.50 + 31.50 = 82.00
- 26-348 Railroad Trains not to Block Streets 75.50 + 31.50 = 107.00
- 26-352 Cut-Across Parking Lot to Avoid Intersection (Non-Accident) 75.50 + 31.50 = 107.00
- 26-354 Motor Vehicle Financial Responsibility 150.50 + 31.50 = 182.00

- 26-373 Unlawful for Intercity Buses to Drop off/Pickup in Unauthorized Area
50.50 + 31.50 = 82.00
- 26-392 Operating Motorized Bicycle on Certain Streets w/o License 50.50 + 31.50 = 82.00
- 26-392 Operating Motorized Bicycle in a Speeding Zone greater then 35 mph
100.50 + 31.50 = 132.00
- 26-393 Motorized Bicycle Equipment Required 50.50 + 31.50 = 82.00
- 26-394 Motorized Bicycle Brakes Required 50.50 + 31.50 = 82.00
- 26-395 Motorized Bicycle Lights & Reflector Required 50.50 + 31.50 = 82.00
- 26-397 Motorized Bicycle Required Ride as Near to the Right as Practicable 50.50 + 31.50 = 82.00
- Handicapped Parking**
- 26-260 30 days and under 50.00 - Only
- 31 days and over 100.50 + 31.50 = 132.00
- All Other Parking**
- 17-52 & Chapter 26- 30 days and under 35.00 - Only
- 246 - 259 & 261-262 31 days and over 45.00 + 31.50 = 76.50
- Animals**
- 6-26 Leash Requirement 1st Offense, ONLY and NO BITE 75.50 + 31.50 = 107.00
- 6-27 No City Dog License 50.50 + 31.50 = 82.00

COURT ORDER

VIOLATIONS BUREAU SCHEDULE OF OFFENSES AND FINES

Pursuant to 479.050, RSMo, Supreme Court Rule 37.49, the undersigned Municipal Judges of the City of Frontenac hereby orders that the following designated offenses shall be payable to the City of Frontenac Violations Bureau. In such cases, no court appearance is necessary.

This schedule is divided into four parts. Part I consists of the St. Louis County Municipal Court Uniform Traffic Violation Schedule, for moving violations (points). Part II consists of the St. Louis County Municipal Court Uniform Traffic Violation Schedule for non-moving violations. Part III consists of the City of Frontenac Violation Schedule for moving and non-moving violations which are not part of the Uniform Traffic Violation Schedule. Part IV consists of non-traffic ordinance violations which can be paid out of court as imposed by the City of Frontenac.

Court Costs

In accordance with Missouri statutes and ordinances adopted by the City, total Court Costs shall be \$24.50. This includes Basic Court Costs of \$12.00, Crime Victim's Compensation Surcharge of \$7.50, Law Enforcement Training Fund of \$1.00, Peace Officer's Standard Training Fund of \$2.00 and Biometric Verification System Surcharge of \$2.00; for a total of \$24.50. Court costs shall be paid in addition to the fine.

Part I. ST. LOUIS COUNTY MUNICIPAL COURT UNIFORM MOVING TRAFFIC VIOLATION SCHEDULE, AS AMENDED.

Speeding:
 Up to 14 mph over limit: \$6.00 per mile (plus \$0.50), plus Court Costs* (See Above)
 For 15-20 mph over limit: \$7.00 per mile (plus \$0.50), plus Court Costs* (See Above)
 For 21+ mph over limit: \$8.00 per mile (plus \$0.50), plus Court Costs* (See Above)
Must come to court if charged with speeding more than 25 mph over limit.
 For exact dollar amounts see Addendum A.

	FINE	COURT COSTS	TOTAL
Failure to Obey Electric Signal	\$70.50	\$24.50	\$95.00
Failure to Obey Stop Sign	\$70.50	\$24.50	\$95.00
Failure to Yield	\$70.50	\$24.50	\$95.00
Failure to Yield to Emergency Vehicle	\$70.50	\$24.50	\$95.00
Following Too Closely	\$70.50	\$24.50	\$95.00
Improper Lane Usage	\$70.50	\$24.50	\$95.00
Improper Passing	\$70.50	\$24.50	\$95.00
Improper/Prohibited Turn	\$70.50	\$24.50	\$95.00
No Through Traffic	\$70.50	\$24.50	\$95.00
Traffic Turn Signal Violation	\$70.50	\$24.50	\$95.00

****If Accident Involved - Court Appearance Required****

Part II. ST. LOUIS COUNTY MUNICIPAL COURT UNIFORM NON-MOVING TRAFFIC VIOLATION SCHEDULE.

	FINE	COURT COSTS	TOTAL
Blocking Driveway or Alley	\$50.50	\$24.50	\$75.00
Fake/Fictitious Temporary Plates/Tags	\$50.50	\$24.50	\$75.00
Fictitious License Tabs	\$50.50	\$24.50	\$75.00
No Brake Light /Tailights	\$50.50	\$24.50	\$75.00
One Operating Headlight and/or Taillight	\$50.50	\$24.50	\$75.00
No Inspection Sticker	\$50.50	\$24.50	\$75.00
No License Plates	\$50.50	\$24.50	\$75.00
Parking at Fire Hydrant	\$50.50	\$24.50	\$75.00
Parking in Fire Zone	\$50.50	\$24.50	\$75.00
All other Parking Violations (excludes parked in Handicapped Zone)	\$50.50	\$24.50	\$75.00
Tinted Windows	\$50.50	\$24.50	\$75.00
Seat Belt Violation	\$10.00	None	None

Part III. CITY OF FRONTENAC ADDITIONAL TRAFFIC VIOLATION SCHEDULE.

	FINE	COURT COSTS	TOTAL
Failure to Dim Headlights	\$25.50	\$24.50	\$50.00
No Headlights	\$70.50	\$24.50	\$95.00
No Driver's License	\$100.50	\$24.50	\$125.00
Expired Operator's License *	\$70.50	\$24.50	\$95.00
Violation of School Bus Stop	\$75.50	\$24.50	\$100.00
No Insurance [no compliance] *	\$150.50	\$24.50	\$175.00
Expired License Plates (Tags) **	\$50.50	\$24.50	\$75.00
Improper Registration (Failure to Register)**	\$50.50	\$24.50	\$75.00
Parking in Handicapped/Disabled Zone	\$100.50	\$24.50	\$125.00
Child Restraint Seat Violation***	\$49.50	\$24.50	\$74.00
No Motorcycle Helmet	\$25.00		\$25.00

*Proof of insurance on the day of the ticket will be dismissed with no court costs. Proof of insurance at a later date will be considered by the court on the assigned court date and time. *Proof of valid operator's license will be dismissed with no court costs.*

**With proof of compliance the fine will be \$40.50 plus court costs. Proof of compliance is the receipt from the Department of Revenue showing that the vehicle plates are renewed and/or the vehicle has been registered. **

Verification of insurance, operator's license and registration may be shown at the Frontenac Violations Bureau during business hours or on scheduled court date.

***Dismissed if "evidence" of acquisition of a child restraint system "is shown" even if acquired after the date of the ticket. 307.179-3 RSMo* (Report to the Frontenac Police Department for inspection.)

TABLE. CITY OF FRONTENAC ORDINANCE VIOLATIONS SCHEDULE.

	FINE	COURT COSTS	TOTAL
Dog at Large (1 st offense, no bite)	\$50.50	\$24.50	\$75.00
Barking Dog (1 st offense)	\$50.50	\$24.50	\$75.00

All violations not specifically listed require court appearance.

Payment by way of the Violations Bureau shall constitute a guilty plea and the waiver of a trial.

(Charges amended to Illegal Parking by recommendation of the Prosecuting Attorney are not reflected on this Order; however, the Court is authorized to take payment on said recommendation in the Violations Bureau Office. Final disposition is subject to court approval.)

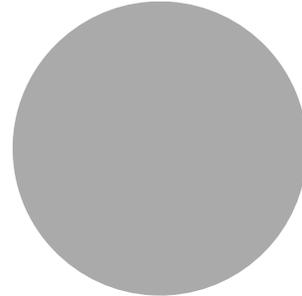
This schedule of fines and costs are subject to change due to any change in state or local laws.

No personal or firm checks will be accepted for cases in warrant status.

Anyone 17 years of age or younger must appear in court on all moving violations with a parent or legal guardian.

Joyce Lee is appointed Violations Clerk, and said Clerk may designate assistants.

Bench Card



MISSOURI JUDICIAL BRANCH

Bench Card: Lawful Enforcement of Legal Financial Obligations

Courts may not incarcerate a defendant/respondent, or revoke probation, for nonpayment of a court-ordered legal financial obligation unless the court holds a hearing and makes one of the following findings:

1. The failure to pay was not due to an inability to pay, but was willful or due to failure to make bona fide efforts to pay; or
2. The failure to pay was not the fault of the defendant/respondent and alternatives to imprisonment are not adequate in a particular situation to meet the State's interest in punishment and deterrence.

If a defendant/respondent fails to pay a court-ordered legal financial obligation but the court, after opportunity for a hearing, finds that the failure to pay was not due to the fault of the defendant/respondent, but rather due to lack of financial resources, the court must consider alternative measures of punishment rather than incarceration. *Bearden v. Georgia*, 461 U.S. 660 (1983); *State ex rel. Fleming v. Mo. Bd. of Prob. & Parole*, 315 S.W.3d 224 (Mo. banc 2017). Punishment and deterrence can often be served fully by alternative means to incarceration, including an extension of time to pay, reduction of the amount owed, or community service. *Bearden*, 461 U.S. at 671.

Court-ordered legal financial obligations (LFOs) include all discretionary and mandatory fines, costs, fees, state assessments, and/or restitution in civil and criminal cases.

1. ADEQUATE NOTICE OF THE HEARING TO DETERMINE ABILITY TO PAY¹

Notice should include the following information:

- a. Hearing date and time;
- b. Total amount claimed due;
- c. That the court will evaluate the person's ability to pay at the hearing;
- d. That the person should bring any documentation or information the court should consider in determining ability to pay;
- e. That incarceration may result only if alternate measures are

- f. not adequate to meet the State's interests in punishment and deterrence or the court finds that the person had the ability to pay and willfully refused;
- g. Right to counsel;² and
- h. That a person unable to pay can request payment alternatives, including, but not limited to, community service and/or a reduction of the amount owed.

2. MEANINGFUL OPPORTUNITY TO EXPLAIN AT THE HEARING³

The person must have an opportunity to explain:

- a. Whether the amount charged as due is incorrect, and
- b. The reason(s) for any nonpayment (e.g., inability to pay).

3. FACTORS THE COURT SHOULD CONSIDER TO DETERMINE WILLFULNESS⁴

- a. Income, including whether income is at or below 125% of the Federal Poverty Guidelines (FPG)⁴

For 2018, 125% of FPG is:	
\$15,175 for an individual;	\$31,375 for a family of 4;
\$20,575 for a family of 2;	\$36,775 for a family of 5;
\$25,975 for a family of 3;	\$42,175 for a family of 6.

- b. Receipt of needs-based, means-tested public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or veterans' disability benefits (Such benefits are not subject to attachment, garnishment, execution, levy, or other legal process);
- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the person is homeless, incarcerated, or resides in a mental health facility;
- e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;

¹ Section 479.360, (4); Rule 37.04, Appendix "A," Minimum Operating Standard 82.

² See *Bearden v. Georgia*, 461 U.S. 660 (1983); *State ex rel. Fleming v. Mo. Bd. of Prob. & Parole*, 315 S.W.3d 224 (Mo. banc 2017).

³ U.S. Dep't of Health & Human Servs., Poverty Guidelines, Jan. 13, 2018, <https://www.hhs.gov/poverty-guidelines/>.

Revised 01/31/2018

¹ Rule 37.05(6)(c); Rule 36-01(b); section 538.006, RSMo (formerly section 560.031, RSMo).

Lawful Enforcement of Legal Financial Obligations

- f. The person's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
- g. Other LFOs owed to the court or other courts;
- h. Whether LFO payment would result in manifest hardship to the person or his/her dependents; and
- i. Any other special circumstances that may bear on the person's ability to pay.

4. FINDINGS BY THE COURT

The court should find, on the record, by docket entry or by written order, that the person was provided prior adequate notice of:

- a. Hearing date/time;
- b. Failure to pay an LFO is at issue;
- c. The right to counsel;³
- d. The defense of inability to pay;
- e. The opportunity to bring any documents or other evidence of inability to pay; and
- f. The opportunity to request an alternative sanction to payment or incarceration.

After the ability to pay hearing, the court should also find on the record that the person was given a meaningful opportunity to explain the failure to pay.

If the court determines that incarceration must be imposed, the court should make findings about:

- 1. The financial resources relied upon to conclude that nonpayment was willful;⁴ or
- 2. If the defendant/respondent was not at fault for nonpayment, why alternate measures are not adequate, in the particular case, to meet the State's interest in punishment and deterrence.⁵

³ See, for example, *State v. Jackson*, 610 S.W.2d 430 (Mo. App. 1980).

⁴ *Burden*, 461 U.S. at 672; *Flanigan*, 313 S.W.3d at 232.

⁵ Section 479.360.1 (RSMo); RSMo, Rule 37.04, Appendix "A," Minimum Operating Standard #2, #4; section 328.006, RSMo (formerly, section 360.031, RSMo).

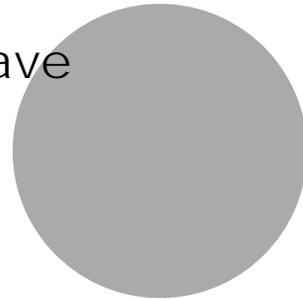
Alternative Sanctions to Imprisonment That Courts Should Consider When There is an Inability to Pay⁷

- a. Reduction of the amount due;
- b. Extension of time to pay;
- c. A reasonable payment plan or modification of an existing payment plan;
- d. Credit for community service (*Caution:* Hours ordered should be proportionate to the violation and take into consideration any disabilities, driving restrictions, transportation limitations, and caregiving and employment responsibilities of the individual);
- e. Credit for completion of a relevant, court-approved program (e.g., education, job skills, mental health, or drug treatment); or
- f. Waiver or suspension of the amount due.

*Case law establishes that the U.S. Constitution affords indigent persons a right to court-appointed counsel in most post-conviction proceedings in which the individual faces actual incarceration for nonpayment of a legal financial obligation or a suspended sentence of incarceration that would be carried out in the event of future nonpayment, even if the original sanction was only for fines and fees.

For more information, contact:
Missouri Office of State Courts Administrator
 P. O. Box 104480, Jefferson City, MO 65110
 (888) 541-4894 or OSCA.Help.Desk@courts.mo.gov

Things to consider, if you have not done so already...



NCSC 2017 Trends in State Courts

22,000	290,885	475.11	-0.50
1,457,850	51.9	90.53	+19.38
2,000	45.32	72.76	-0.41
500	72,480	10.25	46.99
2,800	1,892,750	111.64	167.95
937,000	1,097,800	28.76	57.84
800	23,783,000	47.87	96.4
3,200	74,000	2.3	10.89
3,100,000	366,000	47.26	68.24
18,968,200	18,894,200	22.83	47.86
6,124,700	6,847,000	25.76	50.001

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How the Fines and Fees Issue Impacted the Missouri Courts

Hon. Karl A. W. DeMarce Associate Circuit Judge, Circuit Court of Scotland County, Missouri

Some Missouri municipalities have operated their police departments and municipal courts in a manner designed primarily to maximize revenue from fines and fees. Reforms are now being undertaken to refocus the municipal courts upon the legitimate purposes of the justice system, with consideration given for an offender's ability to pay.

Fines are the most common penalty for violations of municipal ordinances in Missouri. For many violations, fines are the only authorized penalty. Whether an offender is granted probation or is sentenced to pay a fine or to serve jail time, a variety of court costs, fees, and surcharges are typically assessed.

Courts confront a difficult balancing of interests when assessing and collecting fines and fees. The constitutional rights of alleged violators and adjudicated offenders must be safeguarded by an independent judiciary. The essential purposes of maintaining public peace and safety, providing punishment, and deterring unlawful activity must be accomplished. Due consideration must

be given to ability to pay to avoid disproportionate impacts on low-income persons. Improper considerations of generating revenue for governmental entities should not be permitted to influence judicial decision making.

The Situation in Missouri

Regrettably, the design of Missouri's municipal courts makes them highly susceptible to pressure to maximize the revenues derived from fines and fees. Fine monies arising from municipal ordinance violations are not disbursed in the same manner as for state law criminal offenses. Missouri's constitution has long required that all fines and forfeitures from state law violations go to the

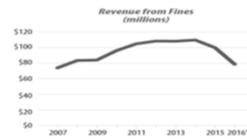
state's school funds. Neither law enforcement nor the courts can benefit directly from fine monies resulting from state law criminal charges.

However, a different policy choice was made when it came to municipal fines. Instead of adequate provision being made for law enforcement, courts, and other city operations to be funded solely from general revenue, the cities were allowed to keep the fines and forfeitures arising from ordinance violations. And this situation prevails in conjunction with the fact that, in the vast majority of instances, the governing bodies of the cities themselves hire and supervise not only their own executive-branch personnel—the police and prosecutors—but also their judicial-branch personnel. These people include municipal judges, many of whom are part-time and maintain private law practices, and clerks of court, most of whom perform some “executive-branch” duties in addition to court-related work.

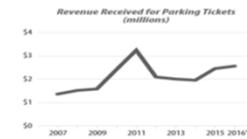
Thus were created both the conditions and the incentives under which misconduct, corruption, and abuse could thrive. The great majority of Missouri's municipal courts resisted this temptation and, in fairness to many honorable and conscientious judges and lawyers, operated in a manner largely above reproach. Still, there remained a few dozen municipalities—many in the St. Louis area, but also some scattered across the state—that succumbed to the temptation to use their police and their municipal courts primarily to generate additional revenue.

The Great Recession of the last decade saw the tax-based revenue sources of many cities dwindle, even as their responsibilities and expenses increased. This was particularly true of many cities that have lost tax base and economic activity in recent decades, including many of the smaller municipalities in northern St. Louis County. Some of these cities turned to their law enforcement and their municipal courts, seeking additional revenues for city

operations (see data on St. Louis area municipal revenue sources collected in C. Gordon and C. R. Hayward, “The Murder of Michael Brown,” *Jacobi*, August 9, 2016, online at <https://tinyurl.com/zq88qzb>). Ferguson, Missouri, was one such community where law enforcement and the courts faced pressure to increase municipal court revenues, as documented in a March 2015 U.S. Department of Justice report.



* Most current data from the Missouri Statewide Municipal Division (may be updated before publication).



* Most current data from the Missouri Statewide Municipal Division (may be updated before publication).

Ferguson, however, was not an isolated example. All revenues collected in Missouri “stand-alone” municipal divisions increased substantially between 2007 and 2014.¹ Municipal fines collected statewide in “stand-alone” municipal courts increased from \$73,963,030.27 to \$109,656,918.94—more than 48 percent in only eight years.

¹ The “stand-alone” municipal divisions operate their own courts to hear municipal-ordinance-violation cases, providing their own municipal judge (or, in some instances, using a state court judge), as well as clerical staff, court facilities, case management, accounting, recordkeeping, etc. As of July 1, 2016, there were over 460 municipal divisions of this type in Missouri. However, there are also many municipalities (140 as of July 1, 2016) that refer their municipal-ordinance-violation cases to the state circuit courts, as authorized by the state constitution and state statutes. In these divisions, the cases are handled as municipal cases, but are heard in the state courts by state court judges and processed by state court clerical personnel. Several additional cities are now actively considering this option for handling their municipal-ordinance-violation cases.

3

Trends in the U.S.

Supreme Court of Ohio Bench Card

In 2014 the Ohio Supreme Court released a bench card about the collection of fines and court costs in adult trial courts. The bench card aimed to both educate and serve as a resource guide to all Ohio judges to ensure the proper imposition, management, and collection of financial sanctions.

See "The Supreme Court of Ohio's Collection of Fines and Court Costs in Adult Trial Courts," at <https://tinyurl.com/ktpp9e>.



The Missouri judiciary's annual statistical reports indicate that between fiscal years 2009 and 2013, the number of reported new case filings in these courts statewide increased by over 241,000 cases, or more than 17.5 percent, over five years.

A few dozen municipalities have seen egregious abuses of authority by both law enforcement and the courts. These have included grossly excessive numbers of tickets being written; tickets with, at best, a marginal connection to public peace and safety; the operation of low-budget, part-time courts in inadequate facilities, with poorly trained staff and insufficient recordkeeping systems and practices; excessively high fines and court costs, with costs and surcharges not even authorized by law; and oppressive and, at times, unconstitutional practices for collecting fines and fees assessed to municipal defendants, often with little or no regard to an individual's ability to pay. These practices have had the most severe impacts upon low-income persons, including many of racial and ethnic minority backgrounds.

Revenue Collection Sources Totals, 2007-16*



* Most current data from the Missouri Statewide Municipal Division (may be updated before publication).

The fatal shooting of Michael Brown, Jr., by Ferguson police officer Darren Wilson on August 9, 2014 focused unprecedented scrutiny upon Ferguson, upon Missouri, and specifically upon Missouri's limited-jurisdiction municipal courts. Since August 2014, there has been close, continuing, and, for the most part, exceedingly negative attention given to Missouri's municipal court system by the press, primarily in the St. Louis area, and from national and international news media.

The Call for Reform

Pressure for change has come from multiple directions. In both 2015 and 2016, the Missouri General Assembly passed major legislation requiring reforms of municipal courts and specifically limiting collection and enforcement of fines and fees. Among the many provisions in these laws, maximum authorized fines were reduced for many offenses; courts were required to consider ability to pay and to permit installment payment plans; and fees connected with the performance of community service were prohibited. The amount of revenue cities could derive from municipal fines was reduced from 30 percent to 12.5 percent in St. Louis County and to 20 percent elsewhere in the state. Under the legislation, cities that exceeded the revenue limits could face significant consequences, including loss of other revenues and a public vote on disincorporation.

Trends in the U.S.

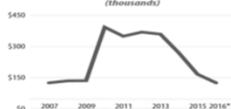
Michigan Supreme Court Ability to Pay Checklists

In 2015 the Michigan Supreme Court State Court Administrative Office's Ability to Pay Workgroup issued its Tools and Guidance for Determining and Addressing an Obligor's Ability to Pay. Appendix A is an Ability to Pay Checklist to assist judges with determining which factors to consider when placing the appropriate findings on the record regarding ability to pay.

See "Appendix A Ability to Pay Checklists," <https://tinyurl.com/mtys4t>.



Revenue Retained for Judicial Education Fund (JEF) (Thousands)



* Most current data from the Missouri Statewide Municipal Division (may be updated before publication).

The Missouri State Auditor's Office has become much more aggressive in reviewing municipal court operations, and it looks closely at whether the revenue percentage limits have been exceeded. Recent auditor's reports have harshly criticized the financial management of several municipal divisions and the collection of unauthorized costs and fees by certain jurisdictions.

Change has also come through litigation. Several Missouri cities have been sued for violating constitutional rights through their enforcement of court financial obligations and for assessment of unauthorized costs and fees. Some of these lawsuits have led to large financial awards against individual cities and to consent decrees in which cities have agreed to substantial restrictions upon the use of judicial authority, limiting their power to enforce their own judgments.

Other cases, including one brought against 13 St. Louis area municipalities, remain pending as of this writing. These cases are typical of many others now pending in various places throughout the United States in which courts are being accused of operating *de facto* "debtor's prisons" to enforce judgments for fines and costs, often without regard to an offender's ability to pay.

Meanwhile, the courts themselves have worked diligently toward reform. The current and immediate past chief justices of Missouri have used major public addresses to emphasize the importance of courts not being used as "revenue generators" for local governments and to highlight work being done internally to improve the performance of the municipal divisions.

The Supreme Court of Missouri has acted to address concerns. Early on, the court enlisted the National Center for State Courts (NCSC) to perform a detailed study of the Ferguson Municipal Court with recommendations for needed improvements. After further study and investigation, NCSC prepared a report of "Best Practices Recommendations" for statewide consideration.

In May 2015 the court established its own Municipal Division Work Group to make an independent and candid study of a wide range of issues concerning municipal courts. After nearly ten months of intensive study and three public hearings, the work group produced a comprehensive report, which was not intended to please, or appease, any of the political players with an interest in these issues; rather, the report identified and addressed the underlying economic incentives and legal structures that have permitted and encouraged corrupt and abusive practices in some of the municipal divisions. Perhaps foremost among the transformative recommendations in the report was that all municipal fines and forfeitures should be directed to the school funds of the state, as the Missouri Constitution already requires for state law violations. Although the legislature has not yet taken such a dramatic step, the work group report has stimulated increased discussion about this concept among state legislators.

The Supreme Court of Missouri took further steps to improve matters relating to fines and costs in the municipal divisions. Rule 37.65 was amended effective July 1, 2015, to emphasize the importance of inquiring as to a defendant's ability to pay, requiring the availability of installment plans for payment of fines and costs, and requiring strict compliance with due process before an individual can be detained in response to nonpayment.

In September 2016, the supreme court promulgated a model local court rule to assist the municipal divisions in making indigency determinations. At the same time, the court published its first "Minimum Operating Standards" for the municipal divisions, providing guidance to the courts and to the presiding circuit judges, who have supervisory responsibility over these courts in each judicial circuit. These standards include clear directives requiring inquiry about ability to pay; forbidding the assessment of unauthorized fines and fees; requiring the availability of installment payment plans; prohibiting the assessment of costs against indigent persons; authorizing the use of community service as an alternative to fines and fees and prohibiting the assessment of fees connected to the performance of community service; requiring strict compliance with due process before an offender can be detained for nonpayment; and directing the courts to pursue new technologies, making it more convenient for the public to obtain current information about their cases and to remit payments online.

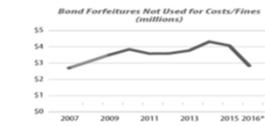
Through the "Show-Me Courts" initiative, and with the assistance of a recent grant from the U.S. Department of Justice, the supreme court is investing greater resources in improved case management technologies. These technologies will improve the accessibility and convenience of the municipal divisions. A recently added feature, "Track This Case," enables individuals with cases in courts using the state case management system to sign up for email notifications of court appearances and payment plan dates.

It is hoped that this will reduce the number of missed appearances and, thus, the number of warrants issued. These applications should be made available to many more municipal courts over the next few years.

Substantial efforts by the state judiciary, the Missouri Association of Municipal and Associate Circuit Judges, the Missouri Association for Court Administration, the Missouri Municipal Judge Education Committee, and the Missouri Municipal Clerk Education Committee are in progress to improve training for municipal judges and court clerks and to enforce compliance with continuing-education requirements for municipal judges. In addition to these state-level efforts, many municipal judges in the St. Louis metropolitan area have formed their own Municipal Court Improvement Committee to improve court-operating practices at the local level. Many cities have recalled large numbers of outstanding warrants related to older violations and to delinquent fines and fees.

The Future of Reform

Issues relating to fines and fees will continue to impact Missouri's courts. A legal and political culture, which has developed over several decades, cannot be changed overnight, and rare is the "reformation" that fails to prompt a "counter-reformation." Even as recently adopted reforms are now being implemented, the political aspects of these issues remain very much with us. Municipal governments continue to face difficult economic pressures, with few options for seeking new revenues to support basic services. Municipal case filings and court revenues have declined significantly over the past two years. Reduced collections of fines and court fees will force budgetary reductions in many cities, unless the lost revenues can be offset from other sources. However, the political environment in most communities remains hostile to imposing new or increased taxes, particularly for general revenue purposes.



* Most current data from the Missouri Statewide Municipal Division (may be updated before publication).

The cities are already exerting pressure upon the state legislature to roll back the recent statutory reforms. Many in law enforcement and city government now contend that the lower ranges of punishment, coupled with the procedural restrictions on enforcement of fines and costs, have not only negatively impacted municipal budgets, but also effectively eliminated any meaningful deterrent against violation of municipal ordinances. Bills have been pre-filed for 2017, seeking to eliminate the prohibition on the charging of fees associated with community service and to increase the base municipal court costs. Additional legislative proposals to undo the reforms of 2015 and 2016 are anticipated.

Moreover, the legislative branch sometimes sends mixed signals. Only one year before adopting the major municipal court reform legislation restricting the authorized amounts of fines for many ordinance violations, the Missouri General Assembly had passed a major overhaul of the state criminal code. This legislation, which went into effect January 1, 2017, doubled—and for lower-level offenses, more than doubled—the authorized fine amounts that may be assessed for many state felony and misdemeanor offenses. Future legislatures may be receptive to similar arguments regarding municipal fines.

Another recent trend is a growing legislative inclination to enact new court costs to offset expenses of court operations, including special costs for expensive capital projects.

Those who support such new costs contend that this may be the only way to fund necessary court operations when the political climate is hostile toward any sort of tax proposition.

Meanwhile, court actions challenging various aspects of statutory reform are working their way through the system. A legal challenge to the limitations on the percentage of revenue cities may derive from fines was argued before the Supreme Court of Missouri on November 11, 2016, and remains pending as of this writing (*City of Normandy et al. v. Nixon et al.*, No. SC95624). A declaratory judgment action is pending in St. Louis County Circuit Court, challenging the methodology for enforcement of the excess-revenue limitations (*Municipal League of Metropolitan St. Louis v. Galloway*, No. 16SL-CC02681).

The external environment is also in flux. Under the previous federal administration, the United States Department of Justice took an aggressive approach to issues related to the collection of fines and fees, and adopted a litigation position that sought to pressure cities to reform their police and municipal court practices and to give much greater weight to an offender's ability to pay. However, it cannot yet be ascertained what level of interest the current administration may have in these matters, nor what, if any, litigation positions the Department of Justice may take over the next few years. The attitude and level of interest toward these issues on the part of Missouri's newly elected governor and attorney general also remain unclear at this time.

Issues involving fines and fees continue to play out in a rapidly changing environment, with many competing interests "at the table." Under the leadership and direction of the state supreme court, Missouri's trial courts will continue to seek the appropriate balancing of these interests, improving their own performance and fulfilling their obligations in a manner faithful to the law and accountable to those whom the courts serve.

NATIONAL TASK FORCE ON FINES, FEES AND BAIL PRACTICES

PRINCIPLES ON FINES, FEES, AND BAIL PRACTICES

Introduction

State courts occupy a unique place in a democracy. Public trust in them is essential, as is the need for their independence, accountability, and a service-oriented approach in all they do.

Important questions have arisen over the last several years concerning the manner in which courts handle the imposition and enforcement of legal financial obligations and about the ways court systems manage the release of individuals awaiting trial. Local, state, and national studies and reports have generated reliable, thorough, and news-worthy examples of the unfairness, inefficiency, and individual harm that can result from unconstitutional practices relating to legal financial obligations and pretrial detention.

As a way of drawing attention to these issues and promoting ongoing improvements in the state courts, in 2016 the Conference of Chief Justices and the Conference of State Court Administrators established the National Task Force on Fines, Fees, and Bail Practices (the “National Task Force”). The goals of the National Task Force are to develop recommendations that promote the fair and efficient enforcement of the law; to develop resources for courts to use to ensure that no person is denied their liberty or access to the justice system based on race, culture, or lack of economic resources; and to develop policies relating to the handling of legal financial obligations that promote access, fairness, and transparency. The National Task Force’s deliverables can be found on its web-based Resource Center. At this site are bench cards, policy papers from state and national groups and National Task Force partner organizations; interactive maps; and links to important fines, fees, bail-related policy, planning, and practice materials, including links to information about pilot programs dealing with fines, fees, and bail practices.

The National Task Force is now pleased to offer its **Principles on Fines, Fees, and Bail Practices**. Developed with input from a variety of stakeholders, these principles are designed to be a point of reference for state and local court systems in their assessment of current court system structure and state and local court practice. The principles can also be used as a basis for developing more fair, transparent, and efficient methods of judicial practice regarding bail practices and the imposition and collection of legal financial obligations.

The National Task Force's 34 principles each fall into one of the following seven categories:

Structural and Policy-Related Principles

- Governance Principles
- Transparency Principles
- Fundamental Fairness Principles
- Pretrial Release and Bail Reform Principles

Fines, Fees and Alternative Sanctions Principles

- Accountability Principles

The National Task Force expects these principles to be refined over time as jurisdictions put them into practice and the court community gains insight into the strategies associated with their implementation.

Structural and Policy-Related Principles

Principle 1.1. Purpose of Courts. The purpose of courts is to be a forum for the fair and just resolution of disputes, and in doing so to preserve the rule of law and protect individual rights and liberties. States and political subdivisions should establish courts as part of the judiciary and the judicial branch shall be an impartial, independent, and coequal branch of government. It should be made explicit in authority providing for courts at all levels that, while they have authority to impose legal financial obligations and collect the revenues derived from them, they are not established to be a revenue-generating arm of either the executive or legislative branch of government.

Principle 1.2. Establishment of Courts. The authority for establishing any court or its jurisdiction should be clearly established in the constitution or laws of the state or, if such authority is delegated to a political subdivision, in ordinances duly adopted by it. The authority to create courts should reside exclusively with the legislative branch of government or with the people through a constitutional amendment, except as otherwise provided by law.

Principle 1.3. Oversight of Courts. Each state's court of last resort or its administrative office of the courts should have knowledge of every court operating within the state and supervisory authority over its judicial officers.

Principle 1.4. Access to Courts. All court proceedings should be open to the public, subject to clearly articulated legal exceptions. Access to court proceedings should be open, as permissible, and administered in a way that maximizes access to the courts, promotes timely resolution, and enhances public trust and confidence in judicial officers and the judicial process. Judicial branch leaders should increase access to the courts in whatever manner possible, such as by providing flexibility in hours of service and through the use of technology innovations, e.g., online dispute resolution where appropriate, electronic payment of fines and costs, online case scheduling and rescheduling, and email or other electronic reminder notices of court hearings.

Principle 1.5. Court Funding and Legal Financial Obligations. Courts should be entirely and sufficiently funded from general governmental revenue sources to enable them to fulfill their mandate. Core court functions should generally not be supported by revenues generated from court-ordered fines, fees, or surcharges. Under no circumstances should judicial performance be measured by, or judicial compensation be related to, a judge's or a court's performance in generating revenue. A judge's decision to impose a legal financial obligation should be unrelated to the use of revenue generated from the imposition of such obligations. Revenue generated from the imposition of a legal financial obligation should not be used for salaries or benefits of judicial branch officials or operations, including judges, prosecutors, defense attorneys, or court staff, nor should such funds be used to evaluate the performance of judges or other court officials.

Principle 1.6. Fee and Surcharge: Nexus to the "Administration of Justice." While situations occur where user fees and surcharges are necessary, such fees and surcharges should always be minimized and should never fund activities outside the justice system. Fees and surcharges should be established only for "administration of justice" purposes. "Administration of justice" should be narrowly defined and in no case should the amount of such a fee or surcharge exceed the actual cost of providing the service. The core functions of courts, such as personnel and salaries, should be primarily funded by general tax revenues.

Principle 1.7. Court Facilities. Court facilities should be provided for and operated in a manner that ensures an impartial and independent judiciary.

Principle 1.8. Court Management and Staffing. Courts should be operated in a manner that ensures an impartial and independent judiciary. Court staff should not be managed or directed by officials in either the executive or legislative branch.

Principle 1.9. Judicial Officers Exclusively Within Judicial Branch. All judges, judicial officers, and other individuals exercising a judicial or administrative function in support of judicial proceedings should be members of the judicial branch of government. Such individuals should also be independent of management by or direction from officials in the executive or legislative branch. All judges and judicial officers, including those serving in a court established by a political subdivision, should be subject to the authority of the court of last resort or the administrative office of the courts, bound by the state's code of judicial conduct, and subject to discipline by the state's judicial conduct commission or similar body.

Principle 1.10. Accessible Proceedings, Assistance for Court Users, and Payment Options. Court proceedings, services provided by the clerk's office, other assistance provided to court users, and methods for paying legal financial obligations should be easily accessible during normal business hours and during extended hours whenever possible. Judicial branch leaders should consider providing 24/7 access to online services, without any additional fees other than those reasonable and necessary to support such services.

Governance Principles

Principle 2.1. Policy Formulation and Administration. All states should have a well-defined structure for policy formulation for, and administration of, the state's entire court system. All such guidance and authority shall extend to local courts of limited or specialized jurisdiction.

Principle 2.2. Judicial Selection and Retention. Judicial officers should be selected using methods that are consistent with an impartial and independent judiciary and that ensure inclusion, fairness, and impartiality, both in appearance and in reality. In courts to which judges are appointed and re-appointed, selection and retention should be based on merit and public input where it is authorized. Under no circumstances should judicial retention decisions be made on the basis of a judge's or a court's performance relative to generating revenue from the imposition of legal financial obligations.

Principle 2.3. Statewide Ability to Pay Policies. States should have statewide policies that set standards and provide for processes courts must follow when doing the following: assessing a person's ability to pay; granting a waiver or reduction of payment amounts; authorizing the use of a payment plan; and using alternatives to payment or incarceration.

Transparency Principles

Principle 3.1. Proceedings. All judicial proceedings should be recorded, regardless of whether a court is recognized in law as a "court of record."

Principle 3.2. Financial Data. All courts should demonstrate transparency and accountability in their collection of fines, fees, costs, surcharges, assessments, and restitution, through the collection and reporting of financial data and the dates of all case dispositions to the state's court of last resort or administrative office of the courts. This reporting of financial information should be in addition to any reporting required by state or local authority.

Principle 3.3. Schedule for Legal Financial Obligations. The amounts, source of authority, and authorized and actual use of legal financial obligations should be compiled and maintained in such a way as to promote transparency and ease of comprehension. Such a listing should also include instructions about how an individual can be heard if they are unable to pay.

Principle 3.4. Public Access to Information. Except as otherwise required by state law or court rule, all courts should make information about their rules, procedures, dockets, calendars, schedules, hours of operation, contact information, grievance procedures, methods of dispute resolution, and availability of off-site payment methods accessible, easy to understand, and publicly available. All "Advice of Rights" forms used by a court should be accessible.

Principle 3.5. Caseload Data. Court caseload data should reflect core court functions and be provided by each court or jurisdiction to the court of last resort or administrative office of the courts on a regular basis, at least annually. Such data should be subject to quality assurance reviews. Case data, including data on race and ethnicity of defendants, should be made available to the public.

Fundamental Fairness Principles

Principle 4.1. Disparate Impact and Collateral Consequences of Current Practices. Courts should adopt policies and follow practices that promote fairness and equal treatment. Courts should acknowledge that their fines, fees, and bail practices may have a disparate impact on the poor and on racial and ethnic minorities and their communities.

Principle 4.2. Right to Counsel. Courts should be diligent in complying with federal and state laws concerning guaranteeing the right to counsel as required by applicable law and rule. Courts should ensure that defendants understand that they can request court-appointed counsel at any point in the case process, starting at the initiation of adversarial judicial proceedings. Courts should also ensure that procedures for making such a request are clearly and timely communicated.

Principle 4.3. Driver’s License Suspension. Courts should not initiate license suspension procedures until an ability to pay hearing is held and a determination has been made on the record that nonpayment was willful. Judges should have discretion in reporting nonpayment of legal financial obligations so that a driver’s license suspension is not automatic upon a missed payment. Judges should have discretion to modify the amount of fines and fees imposed based on an offender’s income and ability to pay.

Principle 4.4. Cost of Counsel for Indigent People. Representation by court-appointed counsel should be free of charge to indigent defendants, and the fact that such representation will be free should be clearly and timely communicated in order to prevent eligible individuals from missing an opportunity to obtain counsel. No effort should be made to recoup the costs of court-appointed counsel from indigent defendants unless there is a finding that the defendant committed fraud in obtaining a determination of indigency.

Pretrial Release and Bail Reform Principles

Principle 5.1. Pretrial Release. Money-based pretrial release practices should be replaced with those based on a presumption of pretrial release by least restrictive means necessary to ensure appearance in court and promote public safety. States should adopt statutes, rules, and policies reflecting a presumption in favor of pretrial release based on personal recognizance, and such statutes should require the use of validated risk assessment protocols that are transparent, do not result in differential treatment by race or gender, and are not substitutes for individualized determinations of release conditions. Judges should not detain an individual based solely on an inability to make a monetary bail or satisfy any other legal financial obligation. Judges should have authority to use, and should consider the use of, all available non-monetary pretrial release options and only use preventative detention for individuals who are at a high risk of committing another offense or of fleeing the jurisdiction.

Principle 5.2. Bail Schedules. Fixed monetary bail schedules should be eliminated and their use prohibited.

Principle 5.3. Pre-Payment or Non-Payment. Courts should not impose monetary bail as prepayment of anticipated legal financial obligations or as a method for collecting past-due legal financial obligations.

Fines, Fees, and Alternative Sanctions Principles

Principle 6.1. Legal Financial Obligations. Legal financial obligations should be established by the state legislature in consultation with judicial branch officials. Such obligations should also be uniform and consistently assessed throughout the state, and periodically reviewed and modified as necessary to ensure that revenue generated as a result of their imposition is being used for its stated purpose and not generating an amount in excess of what is needed to satisfy the stated purpose.

Principle 6.2. Judicial Discretion with Respect to Legal Financial Obligations. State law and court rule should provide for judicial discretion in the imposition of legal financial obligations. States should avoid adopting mandatory fines, fees, costs, and other legal financial obligations for misdemeanors and traffic-related and other low-level offenses and infractions. Judges should have authority and discretion to modify the amount of fines, fees and costs imposed based on an individual's income and ability to pay. Judges should also have authority and discretion to modify sanctions after sentencing if an individual's circumstances change and their ability to comply with a legal financial obligation becomes a hardship.

Principle 6.3. Enforcement of Legal Financial Obligations. As a general proposition, in cases where the court finds that the failure to pay was due not to the fault of the defendant/respondent but to lack of financial resources, the court must consider measures of punishment other than incarceration. Courts cannot incarcerate or revoke the probation of a defendant/respondent for nonpayment of a legal financial obligation unless the court holds a hearing and makes one of the following findings: 1) that the defendant's/respondent's failure to pay was not due to an inability to pay but was willful or due to failure to make bona fide efforts to pay; or 2) that even if the failure to pay was not willful or was due to inability to pay, no adequate alternatives to imprisonment exist to meet the State's interest in punishment and deterrence in the defendant's/respondent's particular situation.

Principle 6.4. Judicial Training with Respect to Ability to Pay. Judges should receive training on how to conduct an inquiry regarding a party's ability to pay. Judges also should have discretion to impose modified sanctions (e.g., affordable payment plans, reduced or eliminated interest charges, reduced or eliminated fees, reduced fines) or alternative sanctions (e.g., community service, successful completion of an online or in-person driving class for moving violations and other non-parking, ticket-related offenses) for individuals whose financial circumstances warrant it.

Principle 6.5. Alternative Sanctions. Courts should not charge fees or impose any penalty for an individual's participation in community service programs or other alternative sanctions. Courts should consider an individual's financial situation, mental and physical health, transportation needs, and other factors such as school attendance and caregiving and employment responsibilities, when deciding whether and what type of alternative sanctions are appropriate.

Principle 6.6. Probation. Courts should not order or extend probation or other court-ordered supervision exclusively for the purpose of collecting fines, fees, or costs.

Principle 6.7. Third Party Collections. All agreements for services with third party collectors should contain provisions binding such vendors to applicable laws and policies relating to notice to defendant, sanctions for defendant's nonpayment, avoidance of penalties, and the availability of non-monetary alternatives to satisfying defendant's legal financial obligation.

Principle 6.8. Interest. Courts should not charge interest on payment plans entered into by a defendant, respondent, or probationer.

Accountability Principles

Principle 7.1. Education and Codes of Conduct. Continuing education requirements for judges and court personnel on issues relating to all relevant constitutional, legal, and procedural principles relating to legal financial obligations and pretrial release should be enacted. Codes of conduct for judges and court personnel should be implemented or amended, as applicable, to codify these principles.

December 2017

Wednesday, May 23, 2018
2:20 – 3:20 in the Granada Room

Reinstatement Revisited (1 hr CLE)

Hardy Menees, City of St. John Prosecuting Attorney

Session Summary

Municipal judges will be advised how a specialty court is tackling the mounting problem of suspension/revocation of licenses and the multi-jurisdictional impact that suspension and revocation of licenses creates.

Wednesday, May 23, 2018
3:30 – 4:20 in the Granada Room

Legislative Update (1 hr CLE)

Attorney Rich AuBuchon, Moderator

Session Summary

Panel of Missouri State Legislators

Speaker Bio

Rich AuBuchon

Rich AuBuchon is the owner of the AuBuchon Law Firm, LLC in Jefferson City, Missouri. AuBuchon specializes in advocacy within all forums of Missouri state government. Rich represents numerous clients in court, before the Missouri legislature and within state and local administrative agencies.

AuBuchon has a strong lobbying advocacy background having served as the General Counsel for the Missouri Chamber of Commerce & Industry, Inc. His political experience was earned while working on the senior staff for Governor Matt Blunt and as Chief of Staff & General Counsel for Lt. Governor Peter D. Kinder. AuBuchon honed his management and government experience while running the Office of Administration, the business arm of Missouri government. This lobbying, political and management background is all based on strong litigation skills learned while litigating in complex cases throughout Missouri and the western United States.

Rich AuBuchon is an experienced lawyer and lobbyist and is proud to be a strong advocate for businesses in Missouri regardless of forum.

Wednesday, May 23, 2018
4:30 – 5:00 in the Granada Room

YourSTLCourts.com (0.6 hrs CLE)

Laura Kinsell-Baer, President of St. Louis CivicTech Data Collaborative

Session Summary

Ms. Kinsell-Baer will present information on an application that will allow access to municipal court records into one, no cost, mobile friendly online portal where citizens and attorneys can access ticket and warrant information along with court contact information and procedures.

Thursday, May 24, 2018

8:30 – 10:00 and 10:10 – 11:40 in the Granada Room

From the Clouds to the Weeds (1.8 hrs CLE)

From the Clouds to the Weeds Continued with Q & A (1.8 hrs CLE)

Judges Frank Vatterott, Douglas Beach, Michael Gunn,
Keith Cheung, and Kevin Kelly

Session Summary

8:30 – 10:00; 1.8 hrs CLE

Host Judge Frank Vatterott will present a view from the clouds – how new laws, Supreme Court Rules, standards and local court rules fit together. Judge Vatterott will present and discuss Court Operating Order #4, which is offered to be adopted as part of local court rules or by individual municipal divisions.

Now the weeds - Judge Vatterott will also present his “Supplemental Rules of Procedure” for consideration to be adopted in municipal divisions, which complements Court Operating Order #4, and is specifically designed to comply with procedures required by Minimum Operating Standards and to assist in court management.

10:10 – 11:40; 1.8 hrs CLE

Judge Vatterott continues his presentation with panelists Presiding Judge Douglas Beach of the 21st Circuit (St. Louis County), Judges Mike Gunn, Keith Cheung and Kevin Kelly, to review their recommended practices to comply with the MOS. Judge Beach will explain his future role as municipal division court monitor throughout the State of Missouri and what he might expect from your court.

Judge Vatterott has also prepared a number of tough questions on MOS compliance which will be tackled by the panelists.

Speaker Bios

Frank J. Vatterott

A.B. 1970 University of Notre Dame

J.D. 1974 St. Louis University

Lawyer, Vatterott Harris PC.

Municipal Judge: 1980 to the Present

26 Previous Presentations – MMACJA Conference Attendees

Douglas R. Beach

Douglas R. Beach was appointed Associate Circuit Court Judge for St. Louis County Missouri in 2005 and appointed to the Circuit Court by Governor Jay Nixon in 2010. Elected Presiding Judge 2017. Judge Beach had been assigned to the Family Court since he was appointed to the bench in 2005. Presiding Judge 2017, Distinguished Service Award from National Center for State Courts, President of National Association of Presiding Judges, was an incorporator of the City of Chesterfield in 1988 and served as the City Attorney for 17 ½ years before his appointment to the bench. He was in the private practiced law in St. Louis being named in the Best Lawyers of America; is a Fellow of the American Academy of Matrimonial Lawyers; Missouri Bar; Massachusetts Bar; St. Louis County Bar; Past President; St. Louis Metropolitan Bar Assn; member of the Women’s Lawyers Association, Hispanic Bar Association and Lawyers Association: Board Member, AFCC; Board Member of Children’s Home Society; Program Committee for Kids in the Middle; receiving “Champion of Kid’s Award”; Recipient of the Ellen Cowell Leadership Award 2018 for improving lives of families; Outstanding Young Lawyer, St. Louis County Bar; in 2011 he undertook the coordination of the effort to have the St. Louis County voters vote on a 100 million dollar bond issue for the replacement of the Family Court building and the renovation of the Civil Courts building and supervised the construction; recently recognized by Legal Advocates for Abused Women and the Crime Victim Advocacy Center; started the Veterans Treatment Courts in St. Louis County. Judge Beach received his law degree from New England School of Law (Cum Laude) in 1973. He retired from the United States Marine Corps Reserve as a Lieutenant Colonel were he served as Judge Advocate.

Michael Gunn

Michael Gunn graduated from St. Louis University School of Law in 1968. He is Past President of The Missouri Bar, the Bar Association of Metropolitan St. Louis, the Lawyers Association of St. Louis, the St. Louis Bar Foundation and the Missouri Lawyer Trust Account Foundation (IOLTA). He is presently a member of the Board of Directors of the Missouri Municipal and Associate Circuit Judges Association and was proud to serve on the St. Louis County Special Committee on Improvements of

the Municipal Courts. His service to the City of Manchester, first as Prosecuting Attorney and now as Judge, has been continuous since May of 1970.

Kevin Kelly

B.S. Missouri Valley College (Marshall, MO), 1975

J.D. St. Louis University, 1978

Judge Kelly is a municipal judge in St. Louis County, Missouri. Currently he serves the cities of Cool Valley, Hazelwood and Maryland Heights. Judge Kelly has been the judge for the city of Cool Valley from 1982 through 1988 and from 1992 to 2018. He has served as the judge for the city of Maryland Heights from 1995 to 2018 and he has served the city of Hazelwood from 2003 to 2018. He also had served as the prosecuting attorney for the City of Dellwood from 1981 to 2013. He began the practice of law as an Assistant Prosecuting Attorney for St. Charles County, and later served as an Assistant Prosecuting Attorney in St. Louis County.

He is the recipient of the 2004 Dudley C. Dunlop Distinguished service award given by the St. Louis County Bar Association for distinguished and unselfish service to the Organized Bar and the community.

Judge Kelly was the president of the Missouri Municipal and Associate Circuit Judges Association in 2001-2002. He has served as a member of the board of directors since 1994 and is currently a member of the President's Advisory Committee. Judge Kelly served as a member of the St. Louis County Municipal Work Group Committee which guided the implementation of changes for the municipal court divisions in St. Louis County.

Judge Kelly is on the board of directors of Civic Tech and Data Collaborative-St. Louis currently serving as secretary. He was the only municipal judge to be selected to serve on Missouri Governor Jay Nixon's 2009 DWI Summit and in 2015-16 he served on the Office of State Court Administrators Ad Hoc Workgroup on Indigency Standards.

Judge Kelly is an alumnus of the National Judicial College in Reno, Nevada. He received his Juris Doctorate from St. Louis University School of Law.

**MISSOURI MUNICIPAL AND ASSOCIATE CIRCUIT JUDGES ASSOCIATION
ANNUAL CONFERENCE
MAY 24, 2018, 8:40 A.M. – 11:40 A.M.**

FROM THE CLOUDS TO THE WEEDS

**HOW WE GOT TO WHERE WE ARE TODAY IN OUR POST-FERGUSON
MUNICIPAL DIVISIONS**

WHAT WE NEED TO DO TO COMPLY

- I. **INTRODUCTION**– What this session is about – Judge Frank Vatterott.

- II. **A VIEW FROM THE CLOUDS** – Recent History of Municipal Division Reform – Judge Frank Vatterott
 - A. Bail Bond Reform – 1966 – Robert F. Kennedy
 - B. Ferguson and its astounding effect on city courts nationwide – examples of relevant published articles
 - C. Actions of Department of Justice/other States – recent repeal of 2016 DOJ “Dear Colleague” letter written after “Ferguson” regarding fines and indigency
 - D. Actions by Missouri Legislature
 - i. Senate Bill 5 (2015)
 - ii. Senate Bill 572 (2016)
 - iii. New Bills (2018)
 - E. Actions by Supreme Court of Missouri
 - i. Supreme Court Rule 37.65 (2015) – requirement of stay of execution on fine assessed if defendant does not have present means to pay fine
 - ii. Supreme Court Local Court Rule 69.01 (2016) – Determination of Indigent Status in Municipal Division– creating “Statement of Financial Condition”
 - iii. Supreme Court Rule 37.04 Appendices A, B, C and D (2016)
 - iv. Supreme Court of Missouri establishment of protocols for presiding judges of the circuits for municipal division supervision (last version June 30, 2017)
 - v. Creation of Supreme Court Committees – Missouri Municipal Division Work Group (2015), Commission on Racial on Ethic Fairness (2015), and Implementation Committee, to Implement Municipal Division Work Group (2016)

III. IN THE WEEDS – Your Court’s implementation of actions of the Legislature and the Supreme Court of Missouri

- A. Local Court Rule 69.01 – Overview – Protocols – Court Monitors. An example – St. Louis County Special Municipal Court Committee - Judges Beach and Vatterott
- B. Court Operating Order #4-Annotated and discussion – Judge Vatterott
- C. Recommended Practices to implement MOS and AT
 - i. Parts I & II – Judges Beach and Gunn
 - ii. Parts III & IV – Judges Beach, Cheung and Kelly
- D. Compliance Checklist (pre-visit checklist for PJ), several checklists for Judges and clerks.

IV. PROPOSED SUPPLEMENTAL COURT RULES INCLUDING MOS REQUIRED PROCEDURES – to complement Division Operating Rule at #4 – Judge Vatterott

- A. Introduction – need for such a rule
- B. Review of draft of Supplemental Court Rule which includes MOS required procedures
- C. Additional helpful documents, including sample procedures

V. QUESTIONS AND ANSWERS TO COMPLY WITH TROUBLESOME PROVISIONS OF STATUTES, RULES AND MOS AND OUR NEW WORLD OF MUNICIPAL DIVISION COURTS – Judge Vatterott, Moderator

Panelists – Judge Doug Beach
Judge Keith Cheung
Judge Kevin Kelly
Judge Mike Gunn



Municipal Lawyer

THE JOURNAL OF LOCAL GOVERNMENT LAW

**Lessons from Ferguson:
Rededicating Local Courts to
Procedural Fairness**

**The EEOC's Enforcement Priorities:
What Municipalities Need to Know**

**Hydraulic Fracturing and
Local Government:
Battle in the Shale Fields**

**Amicus: First Amendment Focus:
Stemming the Tide of *Reed***

**Code Enforcement: Enter at Your
Own Risk**

**ListServ: Is "Stick 'em up!"
Protected Free Speech?**

**Inside Canada: From Sidewalk Ice
To Contested Hiring—
Recent Decisions of Interest**

**Cases: Taxing Online Travel
Companies, Withholding Municipal
Surveillance Video, and More**



Lessons From Ferguson: Rededicating Local Courts To Procedural Fairness And The Rule Of Law

By: Ryan Kellus Turner, Texas Municipal Courts Education Center and Benjamin Gibbs, Juris Doctor Candidate, Baylor Law School



LESSONS FROM FERGUSON

How much do you know about Ferguson, Missouri?

If you are like most Americans, what you know about the subject is limited to what you gleaned from the cable news networks: on August 9, 2014, Officer Darren Wilson shot and killed 18-year-old Ferguson resident Michael Brown. The incident set off a year of protests that placed a community of 20,000 people at the center of a vigorous debate about the relationship between police and African Americans, the militarization of law enforcement, and the use of force doctrine.

In less than two years, what began as a discussion about criminal justice policy evolved into a national dialog on social justice and economic inequality. In response to the shooting, the U.S. Department of Justice (DOJ) conducted an investigation into the policing practices of the Ferguson Police Department (FPD). In March 2015, the DOJ announced that the FPD had engaged in misconduct by discriminating against African Americans

and applying racial stereotypes in a “pattern or practice of unlawful conduct.”¹

While the 100-page DOJ report focused primarily on FPD law enforcement shortcomings, it also described how practices in the Ferguson Municipal Court imposed substantial and unnecessary barriers to indigent defendants, eroded community trust, undermined the FPD, and exacted a devastating toll on Ferguson and its residents:

St. Louis County’s municipal courts [including the Ferguson Municipal Court] didn’t kill Michael Brown. But they were a major contributor to the outrage and distrust that was on display in Ferguson following Brown’s death. Activists now contend that local courts throughout the nation are no different from the Ferguson Municipal Court and are operating “debtors’ prisons.”²

In March 2016, the DOJ issued a letter to state and local courts regarding their legal obligations with respect to the enforcement of fines and fees. That letter put all courts on

notice that the “feds are joining the fight” as part of a broader campaign against what Attorney General Loretta Lynch called “the criminalization of poverty.”

Missouri municipal courts were sued for unjust jail sentences, referred to by defense counsel as “poverty violations.”³ Civil rights attorneys around the country soon adopted a strategy to force reform in courts that allegedly targeted the poor: aggressively file lawsuits and publicize them in the media (i.e., impact litigation). Civil rights lawyers brought suits in New Orleans; Rutherford County, Tennessee; Biloxi and Jackson, Mississippi; Benton County, Washington; and Alexander City, Alabama.⁴ In Texas, federal courts have dismissed lawsuits against the City of Austin and the City of Amarillo and, as of date, a motion to dismiss is pending in a suit against the City of El Paso.⁵

In September 2016, the National Consumer Law Center in collaboration with the Criminal Justice Policy Program at Harvard Law School published *Confronting Criminal Justice Debt: A Guide for Litigation*. It is a valuable resource for municipal lawyers seeking to better understand various related legal issues (civil and criminal).

For municipal attorneys, Ferguson and the increased use of impact litigation raises the question, “What if this was your hometown—is there something you could do to prevent a similar tragedy?” Fortunately, the DOJ report provides insights that may help other cities throughout the United States avoid a comparable experience.

A. LESSON ONE: Focus (Refocus) on the Proper Role of Local Courts

A court is authorized to generate revenue incidentally through the imposition of fines and despite rhetoric to the contrary, there are strong policy arguments for expanded use of fines and other monetary sanctions in the American criminal justice system. Fines offset criminal justice costs and are cheaper to administer than jails and prisons. Offenders are potentially spared the criminalizing effects of incarceration and the long-term stigmatization that reduces income earning potential.

If, however, a court is viewed by government primarily as a source of revenue (as was the case in Ferguson),⁶ the integrity of the judicial system is at grave risk. This is particularly true for municipal courts, with which the public interacts (whether as a

party, juror, witness, and so on) more than all other courts combined.⁷ In the wake of Ferguson-inspired lawsuits, now is an ideal time to remind local officials and employees that judicial independence best serves the interests of the public and the interests of government. It not only ensures that the public has access to fair and impartial proceedings, it is also a primary reason why local governments are not held legally responsible for the decisions of local judges.⁸

Do your city and county have the right attitude about municipal and justice courts?

RIGHT ANSWER: Public officials and employees view local courts as being essential, independent arbiters of justice. Courts are viewed as institutions necessary to the fair enforcement of laws that preserve public safety and promote quality of life in the community.

WRONG ANSWER: Judges assess their own job performance based on revenue generation. Courts are viewed as profit centers and judges viewed as debt collectors in robes. Citations are an IOU. When defendants fail to appear in court, their presumption of innocence ceases to exist. Similarly, once an arrest warrant is issued, the defendant is no longer presumed innocent, despite never having entered a plea. Local government depends on revenue from the court in order to balance its budget. The court is more focused on revenue than public safety or quality of life. In a diagram of the local government structure, the court is under the finance department.

Which did you choose? To quote Indiana Jones and the Last Crusade, "You must choose, but choose wisely." Ferguson, as the nation now knows, "chose poorly." The question now is what kind of choices will your local and state officials make?

There is nothing new about the tension between the express and implicit functions of courts that impose fines as punishment and collect court costs.⁹ This is not the first time that imposition of fines at the local government level has been called into question on a national level.¹⁰ What is new, however, is the degree of public attention that is being drawn to "court costs" and other fees and surcharges that accompany fines.

Understandably, for most citizens there is no meaningful distinction between "fines," "court costs," and "fees." Regardless of the

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label, each entails money coming out of a defendant's pocket. Legally, however, it is important that the legislature, the governor, and all members of the judiciary can distinguish "fines" from other legal constructs involving the payment of monies.

The distinctions are becoming increasingly important. In the context of a criminal case:

Fines – are assessed following conviction to punish a defendant for violating a law;

Court Costs – are prescribed by the legislature, determined on a case-by-case basis and varied in relation to the activities involved in the course of the case; and

Fees – are amounts charged for a service by a governmental entity.¹¹

With noted exceptions, the media has done little to delve into such distinctions or to increase public awareness of how state-mandated court costs and fees are actually utilized.¹² Nationally, advocacy groups capitalize on this oversight by grouping criminal justice obligations (and the enforcement of lawful criminal court judgments) with private consumer debt (which they contend are enforced through illegal predatory collection practices). Public awareness of these distinctions is increasingly important, particularly amidst claims that municipal courts are turning jails into "debtors' prisons."¹³

To be clear, the public has long supported the imposition of "fines" (a form of retribution and punishment) for common criminal offenses (regardless of a defendant's socio-economic class). What is unclear is whether the public supports, or is even aware, that "court costs" are being used to pay for governmental expenditures which are debatably not related to the

criminal justice system, let alone the matter that landed the defendant in court.¹⁴ **LESSON TWO: How the Ferguson Municipal Court Harmed the Community** The DOJ report and letter provide insights that may prevent other American cities from witnessing similar tragedies. In finding that the Ferguson Municipal Court imposed substantial and unnecessary barriers to resolving simple municipal code violations, the DOJ identified various troublesome practices:

1. Procedural deficiencies created a lack of transparency regarding rights and responsibilities;
2. In-court appearances were often needlessly required for code violations;
3. Driver's license suspensions were unnecessarily prolonged by the court, making it difficult to resolve a case and imposing substantial hardship;
4. Even offenses not requiring an in-person court appearance were complicated by additional obstacles; and
5. High fines, coupled with legally inadequate ability-to-pay determinations and insufficient alternatives to immediate payment, imposed a significant burden

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Benjamin Gibbs is a third year law student at Baylor University in Waco, Texas. He received his B.A. in Broadcast and Mass Communications from Southwest Texas State University. Prior to attending law school, he worked as a court clerk and a juvenile case manager for the City of Austin and the City of Huntsville. In 2015, he was awarded a Texas Municipal Courts Fellowship.

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on people living in or near poverty.¹⁵ DOJ also reported that the Ferguson Municipal Court imposed unduly harsh penalties for missed payments or appearances, using arrest warrants to secure payment and exacting onerous bond requirements for release from the Ferguson City Jail.¹⁶

LESSON THREE: Ferguson-Related Legislative Reforms

Nine months after Michael Brown's death, the Missouri legislature passed S.B. 5 (effective August 28, 2015), which, among other things, authorized payment plans, community service for indigent defendants, capped the amount of revenue that municipalities can collect in traffic cases, prohibited jail sentences for common traffic offenses, and abolished the offense of failure to appear for traffic violations.

The Ferguson Commission Report entitled "Forward through Ferguson: A Path toward Racial Equity" was issued on September 14, 2015. The 197-page report includes four sets of "calls to action" to guide legislation and community action in improving racial equality in the region.¹⁷ The Ferguson Commission calls for the elimination of incarceration for all minor offenses, for such offenses to be decriminalized, and fines for such offenses to be collected in the same manner as civil debts. While the report does not define "minor offenses," anecdotally it includes traffic offenses (e.g., Driving While License Suspended, Expired License Plates, No Insurance, and Speeding). To avoid assessing a fine or fee a person cannot afford, the Commission suggests that municipal courts should be required to determine a defendant's ability to pay at the defendant's first court appearance and all subsequent hearings.

GOING FORWARD: ASSESSING NEEDS AND PERILS

The events in Ferguson, the shooting of Tamir Rice in Cleveland, the suicide of Sandra Bland in Waller County, Texas, and the subsequent series of violent police and community interactions around the nation seemingly put us at a flashpoint in American legal history. Advocates for reforming America's criminal justice system, such as the American Civil Liberties Union (ACLU), deserve the lion's share of credit for increasing public awareness of the plight of the indigent

in American courts.

Real change, including in the criminal justice system, seldom occurs from the top down and it never occurs when people merely observe and remain idle. It occurs from the bottom up—when people stand up and speak out against injustice. Two examples of how real change came about involve cases that began at the local level and were argued all the way to the U.S. Supreme Court.

These two decisions remain of paramount importance to the civil liberties of indigent defendants and are at the heart of the debate involving local courts:

- *Tate v. Short* (1971) - The Equal Protection Clause of the 14th Amendment prohibits states from imposing a fine as a sentence and automatically converting it to a jail term solely because the defendant is indigent and cannot pay the fine in full.¹⁸
- *Bearden v. Georgia* (1983) - A sentencing court cannot properly revoke a defendant's probation for failure to pay a fine and make restitution, absent evidence and findings that he was responsible for the failure or that alternative forms of punishment were inadequate to meet the State's interest in punishment and deterrence.¹⁹

These two decisions can be construed to stand for the propositions that (1) the 14th Amendment requires that defendants accused of fine-only offenses be provided "alternative means" of discharging the judgment to avoid incarceration; and (2) converting a fine and/or court costs into a term of confinement without a judicial inquiry into the reasons for nonpayment and whether nonpayment was willful violates notions of fundamental fairness. In essence, a defendant who is indigent may only be committed to jail after being afforded an alternative means of discharging fines and costs.

A. Assessing Needs

Before leaping to action, lawmakers would be wise to understand the problems facing courts and defendants. Some of those challenges, and some potential solutions, include the following:

1. A Call to Judicial Action

Judges are not immune to the human tendency to form opinions based on their own experiences. As Dr. Steven Covey explains in

the "5th Habit" of his book, *The 7 Habits of Highly Effective People*, people can look at the same thing from completely different perspectives because they understand "autobiographically." In order to effectively handle Ferguson-related issues, it is important for the judiciary to understand what organizations like the ACLU are claiming is happening in municipal courts in America. The ACLU's written statement before the U.S. Commission on Civil Rights hearing on Municipal Policing and Courts is particularly illuminating (March 18, 2016).²⁰ What is reported to have occurred in courts in Ohio, Georgia, Mississippi, and Washington is very disturbing.

The key to preventing this kind of misconduct is increased awareness and vigilance. Leadership on these issues is needed at all levels of the judiciary and at all levels of government. Change will not occur if local judges merely observe and remain idle.²¹

The good news is that leadership efforts are underway. For example, less than six months after the DOJ Ferguson Report was published, the Texas Municipal Courts Education Center (TMCEC) launched "Lessons from Ferguson," an on-line and live-training education awareness campaign for judges, court staff, prosecutors, and peace officers. Near the one year anniversary of the release of the DOJ Ferguson report, TMCEC began an on-line initiative called "Shared Solutions: Fines, Costs, and Fees," an on-line resource to help courts prepare local forms and handouts to help defendants understand their rights and responsibilities, and the court's procedures.

Similarly, national organizations like the Conference of Chief Justices and the Conference of State Court Administrators (COSCA) created a national task force on fines, fees, and bail practices. In September 2016, COSCA published a policy paper detailing specific policies and practices that courts can adopt to minimize the negative impact of legal financial obligations while ensuring accountability for individuals who violate the law.

2. The Role of Education

Education of voters is the best way to ensure that bad judges are neither elected nor appointed to the office. Education of judges and municipal officials is equally important. As previously explained, there is nothing wrong with local governments retaining

finer, but such revenue must be viewed as an incidental byproduct of justice. Courts should not be viewed by local or state governments as profit centers. Legislation is not required in order for judges to share best practices, such as the use of “safe harbor” and other techniques aimed at reducing the number of people arrested. Judges can be taught to use technology such as the living wage calculator²² to assist them in determining whether a defendant is indigent.

3. Collaboration on Public Policy—An Example

Last year, the Center for Public Interest Law at the University of Texas facilitated two stakeholder conversations on collections, fines, and fees. A wide range of key stakeholders, including members of the judiciary, state and regional government representatives, civil rights advocates, and public policy experts were invited. The goal of the conversations was to identify shared priorities with an eye toward the 85th Texas Legislature in 2017.

Consensus is possible. The stakeholder conversation revealed that among differing opinions there is ample room for agreement on matters of public policy. Four particularly promising initiatives are presented here:

a. Better Tools for Determining Indigence

How is a judge to know if a defendant is indigent? This has long remained an unanswered question. Judges need tools and standards for determining if a defendant sentenced to pay a fine and court costs is indigent. While the legislature should not mandate a rigid test, which would likely have unintended consequences, it should facilitate the development of standards to assist judges in making such determinations.

b. Expand the Meaning of “Alternative Means” for Indigent Defendants and Access to Community Service

Currently, under Texas law, alternative means consists of installment payments, community service, and for children, tutoring in lieu of community service.²³ Within the bounds of the Code of Judicial Conduct, judges should be given more leeway as to what else might constitute “alternative means.” By conceptualizing a broader meaning of “community service,” the Legislature could authorize mentoring,

Just as it is wrong for judges to make sweeping generalizations about indigent defendants, it is wrong for critics to make similarly sweeping generalizations about the law, courts, and judges. State laws differ. As a consequence, so do municipal courts. This is important and often overlooked by the national media.

job training, and other means that benefit the defendant and society.

c. Broaden the Use of “Show Cause” Hearings

To comply with one of the requirements of *Bearden*, Chapter 45 of the Texas Code of Criminal Procedure already requires courts to give defendants an opportunity to explain themselves at a “show cause” hearing. This is intended to avoid the prospect of possible arrest for failure to submit proof of completion of a driving safety course, or failure to submit proof of compliance with the terms of deferred disposition.²⁴ It is an oversight in Texas that there is no similar statutory requirement that defendants be afforded an opportunity to “show cause” prior to the issuance of a *capias pro fine*. Similarly, defendants, particularly if they are indigent, after the imposition of judgment should statutorily be provided an opportunity to request a hearing before the court where their financial circumstances can be considered. Defendants should have the ability to access courts regardless of financial condition and the posting of a bond or other form of security should not be required.

d. Time Payment of Fees

Installment payments are a type of “alternative means” contemplated in *Tate v. Short*.²⁵ Indigent defendants should not necessarily have to pay more in court costs, as is currently required by Texas law,²⁶ simply because they cannot pay the total balance of all fines, costs, and restitution within 30 days.

B. Perils to Progress

Despite the success of stakeholder conversations in identifying promising public policy

reforms, efforts to change laws in Texas and elsewhere may be endangered for two reasons:

1. The Danger of Sweeping Generalizations. Municipal courts have increasingly been subject to a steady barrage of mostly negative media coverage. Advocacy groups tend to welcome such public clamor because it has the potential to influence public opinion and pave the way for changes in public policy. However, it is possible, particularly in Texas, that sensational and inaccurate headlines coupled with sweeping generalizations could derail reform efforts.

Consider the following headline from *BuzzFeed* in October 2015:

“THEIR CRIME: BEING POOR. THEIR SENTENCE: JAIL. People in Texas get thrown in jail just because they can’t afford their traffic tickets.”²⁷

To set the record straight, it is not a crime to be poor in Texas, and no one in Texas is sentenced, let alone thrown in jail, for being poor. People alleged to have committed criminal traffic offenses are more often issued citations in lieu of being taken before a magistrate. Just because people receive citations does not mean they are guilty or even that they will pay a fine or court cost. In Texas, everyone who receives a citation is presumed innocent and has the right to be tried by a jury of his peers.

In an age where it pays to play to people’s biases, digital ink costs nothing and clickbait has proven to be profitable. Content aimed at generating advertising revenue comes at the expense of accuracy. This appears particularly true when it comes to headline writing. In the age of Facebook and Twitter, success is measured by the number of reads, shares, likes, and re-tweets and makes it easy to lose sight of what has traditionally been considered the attributes of good journalism.²⁸

Just as it is wrong for judges to make sweeping generalizations about indigent defendants, it is wrong for critics to make similar sweeping generalizations about the law, courts, and judges. State laws differ. As a consequence, so do municipal courts. This is important and often overlooked by the national media. Although most states have municipal courts, these courts are not governed by a single set of laws. Thus, it is improper to attribute the statutorily authorized acts of one municipal court in one state to all municipal courts in

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the United States.

Municipal court jurisdiction in America varies widely. While some municipal courts have jurisdiction over fine-only misdemeanors (e.g., Texas²⁹), others have jurisdiction over misdemeanor offenses punishable by a sentence of jail (e.g., Mississippi³⁰ and Missouri³¹). Municipal courts in states like Texas are part of the state judiciary; state law governs most facets of their existence. In states like Missouri, prior to what happened in Ferguson and changes to state law in 2015, municipal courts were predominantly vestiges of municipal government and operated in the shadows of state laws.³² Accordingly, when assessing courts and their treatment of indigent defendants, the laws of each state must be considered independently.

Likewise, when discussing *Argersinger v. Hamlin* (1971),³³ *Scott v. Illinois* (1979),³⁴ and other Supreme Court decisions relating to the right to counsel, it is important to distinguish between different types of misdemeanor sentences and not make sweeping generalizations. Defendants in Texas accused of Class C misdemeanors (offenses punishable by fine only) have the right to counsel. However, a sentence consisting only of the imposition of fine and costs is not a deprivation of liberty. Commitment to jail for willful nonpayment or failure to discharge through alternative means is not the same as a jail sentence and does not trigger the right to court-appointed counsel.

Criticisms aimed exclusively at local courts are misdirected. It is important to distinguish judicial acts from judicial discretion. Judges have legal and ethical obligations to follow the law. The law does not always allow judicial discretion. Nevertheless, since Ferguson, judges have been widely criticized for complying with laws they did not create. Court costs being too high and particular offenses which should not be criminal, for example, are not issues the judiciary can solve. These are legislative matters.

Bad judges are not indicative of the judiciary. The inappropriate acts of a judge or a court in any state should be punished. They should not be attributable to all judges and all courts in that state (let alone throughout the country). All states have a process for handling judicial misconduct. Judges who disregard or ignore laws which

serve as safeguards for indigent defendants should not be on the bench.

High-flung rhetoric and divisive dysphemisms are nothing new. More than two decades ago in *Bearden*, the Court warned that the issues “cannot be resolved by resort to easy slogans or pigeonhole analysis.”³⁵ In the context of the “criminalization of poverty” and other hyperbole, the danger of such sweeping generalizations is that critical consumers of information are left with the responsibility of separating facts from opinions and distinguishing isolated incidents from normal practices. This can have unintended consequences. When key decision-makers become fatigued, deceived, and divided along ideological lines, effective reforms are less likely.

2. The Danger of Inverse Discrimination

The solution to discrimination in the legal system is not replacing it with a different type of discrimination. Proposals aimed at making indigent defendants categorically immune to legal penalties do not advance the cause of equal protection under law, they undermine it. Amidst all the hoopla about “debtors’ prisons” and touting of the holding in *Tate v. Short*, part of the *Tate* decision is regularly overlooked.

The State is not powerless to enforce judgments against those financially unable to pay a fine; indeed, a different result would amount to inverse discrimination since it would enable an indigent to avoid both the fine and imprisonment for nonpayment whereas other defendants must always suffer one or the other conviction.³⁶

Citing *Williams v. Illinois* (1970),³⁷ the Court, in qualifying its mandate that alternative means be provided to indigent defendants, acknowledged the existence of a valid state interest in enforcing payment of fines. The Court also emphasized that its holding did not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay a fine who refuses or neglects to do so. Nor was the *Tate* decision to be understood “as precluding imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant’s reasonable efforts to satisfy the fines by those means.”³⁸ In reiterating the holdings of *Williams* and *Tate*, the Court, in *Bearden v. Georgia*, also “recognized limits on the principle of protecting indigents in the criminal justice system.”³⁹

Following Ferguson and the DOJ report,

such limits may be put to the test in state legislatures and in local governments. What constitutes “alternative means” may be getting turned on its head. In the emerging canon of modern “debtors’ prison” literature, seldom do writers acknowledge: “The *Bearden* line of cases thus endeavors to shield criminal justice debtors making a good faith effort to pay, while leaving willful nonpayment unprotected.”⁴⁰

Rather, as Professor Neil Sobol at Texas A&M School of Law explains, “given the return of debtors’ prisons as well as the historical concerns that led to calls for their abolition, it is time to implement more effective alternatives to reduce the incarceration of individuals who are unable to pay legal financial obligations.”⁴¹

Professor Sobol describes three general classes of alternatives proposed by criminologists and legal professors:

- a. abolishing monetary sanctions;
- b. basing fines on defendants’ earnings; and
- c. developing “a more effective system for enforcing existing laws designed to prevent incarceration of indigents.”⁴²

These proposed alternatives are susceptible to several criticisms:

First, “alternative means” does not mean eliminating punitive consequences for criminal behavior on the basis of socioeconomic status. That is tantamount to inverse discrimination. Under *Bearden*, “alternative means” are “alternative punishments.”⁴³

Second, while custom-tailored fines are preferable, the Constitution does not require a fine be custom-tailored to avoid disproportionate burdens on low-income defendants. In *San Antonio Independent School District v. Rodriguez* (1973), the Court, citing *Williams* and *Tate*, stated that it had “not held that fines must be structured to reflect each person’s ability to pay in order to avoid disproportionate burdens. Sentencing judges may, and often do, consider the defendant’s ability to pay, but in such circumstances they are guided by sound judicial discretion rather than by constitutional mandate.”⁴⁴ In *San Antonio ISD*, the Supreme Court “expressly held that poverty is not a suspect classification and that discrimination against the poor should only receive

rational basis review.”⁴⁵ This holding has been extended in cases decided after *Williams* and *Tate*.⁴⁶

Third, in the context of court-ordered fines and court costs, “alternative means” can entail either a non-monetary substitute or, as the Court stated in *Tate*, “a procedure for paying fines in installments.”⁴⁷ “Alternative means” do not, however, prevent the lawful incarceration of indigents.

This is not the first time the status of a defendant has been the rallying cry of reformers, nor is it the first time municipal courts in Texas have been caught in the maelstrom. *Powell v. Texas*,⁴⁸ holding that Texas law criminalizing public intoxication did not constitute cruel and unusual punishment, began in the Austin Municipal Court and was decided by the Supreme Court in 1968. This is also not the first time people have argued that society loses its moral justification for punishing poor criminal defendants when it refuses to remedy the conditions of inequity and that poverty should be a defense to non-violent crimes, victimless crimes, and “crimes of poverty.”⁴⁹

Society cannot allow people to act only in accord with their own subjective moral code. Equal justice under law means that no person, regardless of socioeconomic status, is exempt from the rule of law. Pursuing public policy reforms to improve the lives of people who live in poverty does not have to entail asking society to make choices that are contrary to other compelling interests (e.g., public safety). Unquestionably, justice must be seasoned with mercy. Criminal justice, however, is not social justice. This is not to say that restorative justice cannot play a role, but criminal law is retributive and does not necessarily advance social welfare.

III. A DIFFERENT “FERGUSON EFFECT”

The “Ferguson effect” is the proposition that increased scrutiny of law enforcement officers has led to an increase in crime rates across major metropolitan cities in the United States. Perhaps, however, there is a different kind of “Ferguson effect”—an effect that local govern-

Unquestionably, justice must be seasoned with mercy. Criminal justice, however, is not social justice. This is not to say that restorative justice cannot play a role, but criminal law is retributive and does not necessarily advance social welfare.

ments reconsider what, until recently, was the proper and lawful use of police powers. Consider the following examples:

- A proposed law in Philadelphia would permit police to issue civil citations instead of criminal summonses for certain low-level offenses. The legislation “would decriminalize certain violations such as disorderly conduct, refusing to disperse, and public drunkenness.”⁵⁰
- In New York City, the police will no longer arrest people for minor infractions such as drinking alcohol in public, urinating in public, or littering in Manhattan. The District Attorney’s Office will no longer prosecute most “quality of life” violations.⁵¹
- The Mayor and City Council of New York are working on a plan to purge “needless warrants” for “small crimes.”⁵²

Most of these kinds of reform seem aimed at “Broken Windows” policing, and are not without controversy. Against criticism that “Broken Windows” is discriminatory and being used to target minorities, one of the authors of the theory, George L. Keeling, maintains that it is misunderstood by critics, has been misused by some in law enforcement, and continues to be needed. Keeling asserts that quality of life crimes are not victimless; they harm whole neighborhoods, and in New York City, the Broken Window approach has saved lives – most of them minority – cut the jail population, and reknit the social fabric.⁵³

The consequence of switching-up police power tactics is not entirely understood. San Francisco, a city known

for a tradition of official empathy for the downtrodden, is now divided over whether to respond with more muscular law enforcement or stick to its forgiving attitudes. One member of the local government says, “We are not going to criminalize people for being poor,” while another says that San Francisco at times is a “consequence-free” zone.⁵⁴ The debate in San Francisco seems all too familiar.

Conclusion

Since 1791, the 10th Amendment has articulated that powers not expressly delegated to the Federal Government are reserved to the states.⁵⁵ These powers include the states’ authority to regulate behavior and enforce order within their boundaries for the betterment of the health, safety, morals, and general welfare of their inhabitants.⁵⁶

Regardless of whether these powers are exercised under the auspices of criminal or civil law, the 14th Amendment prohibits states and local governments from “enforcing the law” while violating the most important individual safeguards contained in the Bill of Rights.

In the wake of the events in Ferguson, it is not just notions of equal protection and due process that are in question; it is the fundamental use of police powers. Our society regularly endeavors to strike a sound balance between individual and societal interests. The question is how we can better serve the interests of the poor while maintaining public safety and order in our communities. Do we need more laws or do we need to do a better job of enforcing the ones we have? The lessons from Ferguson are an opportunity for municipalities—judges, lawmakers, and local government attorneys—throughout the nation to rededicate local courts to both procedural fairness and upholding the rule of law. It is not a binary choice.

Notes

1. U.S. Dep’t of Justice, *Investigation of the Ferguson Police Department*, 9-15, 62-78 (March 4, 2015).
2. *Id.*
3. Aja Romano, *Missouri Municipal Courts Sued for Unjust Jail Sentences*, THE DAILY DOT—THE KERNAL (February 10, 2015), <http://www.dailydot.com/politics/ferguson-lawsuit-poverty-violations-jail/>; Joseph Shapiro, *Civil Rights Attorneys Sue Ferguson Over “Debtors’ Prisons,”* NPR MORNING EDITION (February 8, 2015), <http://www.npr.org/sections/codeswitch/2015/02/08/384332798/civil-rights-attorneys-sue-ferguson-over-debtors-prisons>

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Lessons from Ferguson Cont'd from page 11

4. Joseph Shapiro, *Lawsuits Target "Debtors' Prisons" Across the Country*, NPR MORNING EDITION (OCTOBER 21, 2015), <http://www.npr.org/2015/10/21/450546542/lawsuits-target-debtors-prisons-across-the-country>; Rick Anderson, *Debtors Prison a Thing of the Past? Some Places in America Still Lock Up the Poor*, LA TIMES (June 8, 2016), <http://www.latimes.com/nation/la-na-debtors-prison-20160607-snap-story.html>.
5. *Harris v. City of Austin*, No. A-15-CA-956-SS, 2016 U.S. Dist. LEXIS 33694, at *1 (W.D. Tex. 2016); Robert Stein, *City Sued Over Municipal Fines Policy*, AMARILLO GLOBE-NEWS (January 15, 2016), <http://amarillo.com/news/crime-and-courts/2016-01-15/city-sued-over-municipal-fines-policy>; Kendall Taggart and Alex Campbell, BUZZFEED NEWS, *El Paso Sued Over Jailing For Unpaid Tickets*, EL PASO TIMES (April 20, 2016), <http://www.elpasotimes.com/story/news/2016/04/20/el-paso-sued-over-jailing-unpaid-tickets/83277736/>.
6. Dep't of Justice, *supra*, at 9-10.
7. RYAN KELLUS TURNER AND W. CLAY ABBOTT, MUNICIPAL JUDGES BOOK (Texas Municipal Courts Education Center 5th ed. 2014) at I-3.
8. A local judge acting in his or her judicial capacity is not considered a local government official whose actions are attributable to the local government. *Davis v. Tarrant County*, 565 F.3d 214, 227 (5th Cir. 2009) citing *Krueger v. Reimer*, 66 F.3d 75, 77 (5th Cir. 1995). However, when judges are not acting independently, but effectuate official policies or customs that violate constitutional rights, municipalities face liability including monetary damages and injunctive relief. *Board of County Commissioners v. Brown*, 520 U.S. 397 (1997).
9. Turner and Abbott, *supra*, at I-31. The express function of such courts is to preserve public safety, protect quality of life, and deter further criminal behavior. The implicit function is revenue generation. In Texas, municipal courts generated more than \$681 million in 2013. The tension between the express function and implicit function (which when viewed in the proper perspective is an incidental benefit) has long been a source of conflict between municipal courts and city councils. *Id.* at I-32.
10. Consider *Ward v. Village of Monroeville*, 409 U.S. 57, 60 (1972), where a conviction was invalidated because the mayor faced a "possible temptation" created by his "executive responsibilities for village finances."
11. Carl Reynolds and Jerry Hall, Conference of State Court Administrators, 2011-2012 *Policy Paper: Courts are Not Revenue Centers* 2 (2011).
12. Eric Dexheimer, *Hard-Up Defendants Pay as State Siphons Court Fees for Unrelated Uses*, AUSTIN AMERICAN STATESMAN (March 3, 2012); Eric Dexheimer, *Even Court Officials Find Fees Hard To Untangle*, AUSTIN AMERICAN STATESMAN (March 3, 2012); and Dan Feldstein, "Loser Fees" Taking Place of New Taxes, HOUSTON CHRONICLE (March 5, 2006).
13. Texas Appleseed, *Debtors' Prisons*, <https://www.texasappleseed.org/debtors-prisons> (last visited June 16, 2016).
14. In Texas, for example, court costs may be applied to no fewer than 14 different cost centers, many of which have nothing to do with the actual costs of operating a court. While lawyers have argued that such costs are actually taxes, the collection of which violates separation of powers, in *Peraza v. State*, 467 S.W.3d 508 (Tex. Crim. App. 2015), the court held that as long as the statutory assessment reasonably relates to the costs of administering the criminal justice system, it is not a tax in violation of separation of powers.
15. U.S. Dep't of Justice, *supra*, at 43-55.
16. *Id.* at 55-58.
17. The Ferguson Commission, *Forward Through Ferguson: A Path Toward Racial Equality* 30 (2015).
18. *Tate v. Short*, 401 U.S. 395, 397-401 (1971).
19. *Bearden v. Georgia*, 461 U.S. 660, 664-674 (1983). While *Bearden* does pertain to fines and fees, its application to offenses punishable by the imposition of a fine is less straightforward than one may imagine. It should come as no surprise that there is still debate about *Bearden*, as commentators have observed that states do not necessarily agree on its application.
20. Nusrat Choudhury, American Civil Liberties Union, *Written Statement of the American Civil Liberties Union Before the United States Commission on Civil Rights* (2016).
21. Ed Spillane, *Judges Can Fix the System: Here is How*, JUDICATURE (Winter 2016) at 52.
22. Bourree Lam, *The Living Wage Gap: State by State*, THE ATLANTIC (Sept. 15, 2015); MASS. INST. OF TECH., *Living Wage Calculator*, <http://livingwage.mit.edu/> (June 20, 2016).
23. Tex. Code Crim. Proc., art. 45.041, art. 45.049, and art. 45.0492.
24. Tex. Code Crim. Proc., art. 45.051(i)-(k) and art. 45.051(c-1)-(d).
25. *Tate v. Short*, 401 U.S. 395, 400 n.5 (1971).
26. Tex. Loc. Gov't Code, § 133.103.
27. Kendall Taggart, Alex Campbell, *In Texas It's a Crime to be Poor*, BUZZFEED (October 7, 2015), <https://www.buzzfeed.com/kendalltaggart/in-texas-its-a-crime-to-be-poor>.
28. See Jeffrey Dvorkin, *Why Click-Bait Will Be the Death of Journalism*, PBS Newshour (April 27, 2017), <http://www.pbs.org/newshour/makingsense/what-you-dont-know-about-click-bait-journalism-could-kill-you/>.
29. See Tex. Code Crim. Proc., art. 4.14.
30. Miss. Code Ann., § 21-23-19 (2013).
31. Mo. Rev. Stat., §§ 77.590, 79.470 (2015).
32. See Dep't of Justice, *supra* note 7.
33. See 407 U.S. 25, 37 (1972). (holding that, absent a knowing and intelligent waiver, no person may be imprisoned for any of fense ... unless he was represented by counsel at his trial) (emphasis added).
34. See 440 U.S. 367 (1979). Affirming, *Argersinger* drew a bright line between incarceration (as part of a sentence) and the mere threat of incarceration (separate from a sentence). As the Court explained in *Scott*, "[t]he central premise of *Argersinger* - that actual imprisonment is a penalty different in kind from fines or the mere threat of imprisonment - is eminently sound and warrants adoption of actual imprisonment as the line defining the constitutional right to appointment of counsel." *Id.*, at 373. Emphasis added.
35. 461 U.S. at 666-667.
36. See *Tate*, 401 U.S. at 399 (1971).
37. 399 U.S. 235, 244 (1970).
38. *Tate*, 401 U.S. at 400-01 (1971) (emphasis added).
39. *Bearden*, 461 U.S. at 664-65 (1983).
40. Note: *State Bans on Debtors' Prisons and Criminal Justice Debt*, 129 HARV. L. REV. 1024, at n. 22 and 1026 (2016).
41. Neil L. Sobol, *Article: Charging the Poor: Criminal Justice Debt & Modern Day Debtors' Prisons*, 75 MD. L. REV. 486, 524.
42. *Id.* at 524-532. Additionally, Sobol proposes his own hybrid approach. *Id.* at 532-540.
43. *Bearden*, 461 U.S. at 674.
44. 411 U.S. 1, 21-22 (1973).
45. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES (3d ed. 2006) at 786.

46. See, e.g., *Harris v. McRae*, 448 U.S. 297, 323 (1980).
47. *Tate*, 401 U.S. at 671 n. 5. It is also important to note that “[t]he State is free to choose from among the variety of solutions already proposed and, of course, it may devise new ones.” *Id.* at 671.
48. See 392 U.S. 514 (1968). The Supreme Court rejected the principal that “[c]riminal penalties may not be inflicted upon a person for being in a condition he is powerless to change.” *Id.* at 533.
49. Michele Estrin Gilman, *The Poverty Defense*, 47 U. Rich. L. Rev. 495 (January 2013).
50. Joseph Ax, *Philadelphia, Eying Democratic Convention, to Decriminalize Minor Offenses*, Philadelphia Inquirer (June 8, 2016) http://www.philly.com/philly/news/politics/dnc/20160607_Reuters_L1N18ZIVA_Philadelphia_eying_Democratic_convention_to_decriminalize_minor_offenses.html.
51. Dareh Gregorian, *Littering, Public Urination and Other Minor Offenses in Manhattan Will Lead to Summons and Not Arrest*, New York Daily News (March 1, 2016) <http://www.nydailynews.com/new-york/nyc-crime/minor-offenses-manhattan-no-longer-result-arrests-article-1.2549474>.
52. Jennifer Fermino, *Mayor de Blasio, City Council Working on Plan to Purge NYPD Warrants for Small Crimes*, N.Y. Daily News (February 12, 2016) <http://www.nydailynews.com/news/politics/mayor-council-purge-old-warrants-small-crimes-article-1.2530407>.
53. George L. Kelling & William J. Bratton, *Why We Need Broken Windows Policing*, City J., Winter 2015.
54. Thomas Fuller, *San Francisco Torn as Some See ‘Street Behavior’ Worsen*, N.Y. Times (April 24, 2016) [http://mobile.nytimes.com/2016/04/25/us/san-francisco-torn-as-some-see-street-behavior-worsen.html?referer="](http://mobile.nytimes.com/2016/04/25/us/san-francisco-torn-as-some-see-street-behavior-worsen.html?referer=).
55. See U.S. Const., amend. X.
56. Since 1948, it has been well-settled law in Texas that driving an automobile on public roads is not a constitutionally-protected right, but a privilege. *Taylor v. State*, 151 Tex. Crim. 568, 569, 209 S.W.2d 191, 191 (1948); *Naff v. State*, 946 S.W.2d 529, 531 (Tex. App.—Fort Worth 1997); *Ex parte Arnold*, 916 S.W.2d 640, 642 (Tex. App.—Austin 1996). This privilege is subject to reasonable regulation under the State’s police power in the interest of the welfare and safety of the general public. *Naff*, 946 S.W.2d at 533.

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Amicus Cont'd from page 15

or message conveyed on those sites. The limitations imposed by the statute are based not upon speech contained in or posted on a site, but instead focus on whether functions of a particular Website are available for use by a minor. (368 N.C. 380, at 386)

Because it concluded that the law was content-neutral, the court applied intermediate scrutiny. It found that the statute was “carefully crafted” by prohibiting registered sex offenders from accessing websites where they could gather information about minors, while still allowing them to use websites “exclusively devoted to speech,” including instant messaging services and chat rooms and websites where users must be at least 18 years old to maintain a profile. In this respect, North Carolina had sought to distinguish its statute from similar statutes in Indiana and Louisiana that did not allow registered sex offenders to use chat rooms and messaging services and were subsequently struck down.

The dissent took issue with the majority’s characterization of the law as one regulating conduct and not speech and it also indicated that under *Reed* there was a “strong argument” that the statute was “content-based because it prohibits registered sex offenders from accessing some websites, but not others, based on the content that appears on the sites . . .”

The issue before the Supreme Court, as characterized in the petition for certiorari, is whether, under the court’s First Amendment precedents, a law that makes it a felony for any person on the state’s registry of former sex offenders to “access” a wide array of websites – including Facebook, YouTube, and NY Times.com – that enable communication, expression, and the exchange of information among their users, if the site is “know[n]” to allow minors to have accounts, is permissible, both on its face and as applied to petitioner, who was convicted based on a Facebook post in which he celebrated dismissal of a traffic ticket, declaring “God is Good!”

Although this case involves a state statute, it is directly applicable to local governments as it is a case involving the First Amendment / speech issues, and the North Carolina Supreme Court discussed *Reed* in its decision. IMLA therefore views this as a case that warrants participation as an amicus and will be joining the SLLC brief in this case. And as with *Expressions*, IMLA’s arguments will depend on what the petitioner and other amici argue. This case has the potential to broaden

the application to *Reed* into laws that regulate conduct and not just speech. That being said, it seems likely that the Court will determine that this regulation limits speech and does not pertain just to conduct. Assuming that is the case, IMLA hopes to be able to persuade the Court to push more laws and regulations into the realm of intermediate scrutiny under *Reed* by arguing that this is a content-neutral regulation.

See *State v. Packingham*, 368 N.C. 380, 777 S.E. 2d 738 (2015).

Lower Court First Amendment / Reed Cases
In addition to the foregoing Supreme Court cases, IMLA has also been involved in a number of cases in the lower federal and state courts involving important *Reed* issues. IMLA believes the *Reed* decision is of such importance to our members, that we filed an amicus brief in a federal district court case (which is extremely unusual as IMLA almost exclusively files briefs at the appellate levels). Because this case could easily become persuasive authority in a post-*Reed* world, IMLA believes our members deserve a voice in helping to shape the outcome of these cases.

Thomas v. Schroer, a case out of the Western District of Tennessee, involves the constitutionality of the core provisions of the Tennessee Highway Beautification Act (which is modeled on the Federal Highway Beautification Act), including local authority to regulate billboards. The issues in this case include: 1) whether the distinction between offsite signs and onsite signs is content-based; and 2) whether government signs are government speech.

Shortly after the *Reed* decision came down, the district court judge granted the plaintiff’s preliminary injunction, concluding that the plaintiff was likely to succeed on the merits regarding its argument that the provision of the law distinguishing between on premise and off-premise signs was a content-based distinction.

The law in this area after *Reed* is still in its infancy, and IMLA wants to ensure that local governments’ interests are represented in these cases. Because IMLA believes this case could pose a threat to billboard regulation across the country as it could be used as persuasive authority elsewhere, IMLA participated as an amicus in this case at the district court level.

See *Thomas v. Schroer*, No. 2:13-cv-02987 (W.D. Tenn. Sept. 13, 2016).

IMLA’s legal advocacy program is just one of the benefits of IMLA membership. To learn more about the legal advocacy program, contact Amanda Kellar at akellar@imla.org.

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LESSONS FROM FERGUSON ON INDIVIDUAL DEFENSE
REPRESENTATION AS A TOOL OF SYSTEMIC REFORM

BETH A. COLGAN*

ABSTRACT

This Article investigates the relationship between the decisions by lawmakers to use municipal and criminal systems to generate revenue and the lack of access to individual defense representation by using the Ferguson, Missouri, municipal court as a case study. The Article chronicles the myriad constitutional rights that were violated on a systemic basis in Ferguson's municipal court and how those violations made the city's reliance on the court for revenue generation possible. The Article also documents how the introduction of individual defense representation, even on a piecemeal basis, played a role in altering Ferguson's system of governance. Using this case study, the Article examines the way litigating individual cases and seeking the enforcement of constitutional rights can alter the cost-benefit of using courts to generate funds by both increasing system expenses and decreasing revenues. Further, individual case litigation alters the cost-benefit of using courts as revenue generators by forcing officials to take a public position on municipal court practices, thereby informing and changing the public debate on crime policy. The Article posits that while individual defense representation will have the greatest systemic effects in systems like Ferguson's, where there

* Assistant Professor of Law, UCLA School of Law. I wish to thank Barbara Babcock, W. David Ball, Stuart Banner, Rachel Barkow, Paul Butler, Devon Carbado, Sharon Dolovich, Ingrid V. Eagly, Lawrence M. Friedman, Bernard E. Harcourt, Christopher Kutz, Máximo Langer, Kaipo Matsumura, Tracey L. Meares, Erin E. Murphy, Richard M. Re, Daniel C. Richman, Andrea Roth, Joanna C. Schwartz, David Alan Sklansky, Carol S. Steiker, Robert Weisberg, Jordan Blair Woods, and Stephen C. Yeazell for their generous and insightful comments. This Article was also greatly improved through the UCLA Criminal Scholars Forum and the Stanford Law School Criminal Justice Roundtable. Finally, I wish to thank Alexandria Ruiz and Oscar Figueroa for excellent research assistance.

Order dated December 23, 2014, re: Rule 37.65 Fines, Installment or Delayed Payments -- Response to Nonpayment



SUPREME COURT OF MISSOURI

en banc

December 23, 2014
Effective July 1, 2015

In re:

Repeal of subdivision 37.65, entitled "Fines, Installment or Delayed Payments – Response to Nonpayment," of Rule 37, entitled "Statutory and Ordinance Violations and Violation Bureaus," and in lieu thereof adoption of a new subdivision 37.65, entitled "Fines, Installment or Delayed Payments – Response to Nonpayment," of Rule 37, entitled "Statutory and Ordinance Violations and Violation Bureaus."

ORDER

1. It is ordered that effective July 1, 2015, subdivision 37.65 of Rule 37 be and the same is hereby repealed and a new subdivision 37.65 of Rule 37 adopted in lieu thereof to read as follows:

37.65 Fines, Installment or Delayed Payments – Response to Nonpayment

(a) When a fine is assessed and it appears to the judge that the defendant does not have at that time the present means to pay the fine, the judge shall order a stay of execution on the payment of the fine and:

- (1) Grant the defendant a specified period of time within which to pay the fine in full, or
- (2) Provide for the payment of the fine on an installment basis under such terms and conditions as the judge may deem appropriate.

(b) The judge may issue an order to show cause, consistent with Rule 36.01(b), for the defendant to appear in court at a future date in the event the fine is not paid in the time specified by the judge. In the event the defendant fails to appear at that future date, the court may issue a warrant to secure the defendant's appearance for a hearing on the order to show cause.

(c) If a defendant defaults in the payment of the fine or any installment thereof, the judge may issue an order to show cause why the defendant should not be held in contempt of court. The judge shall issue a summons for the defendant's appearance on the order to show cause unless the defendant was ordered to appear at a future date as provided in Rule 37.65(b). If the defendant fails to appear on the summons, the court may then issue a warrant to secure the defendant's

appearance for a hearing on the order to show cause. The summons may be served by the clerk mailing it to the defendant's last known address by first class mail.

(d) If following the show cause hearing the judge finds the defendant intentionally refused to obey the sentence of the court or to have made a good faith effort to obtain the necessary funds for payment, the judge may confine the defendant for a term not to exceed thirty days for contempt of court. If the judge finds that the failure to pay the fine is excusable, the judge shall enter an order allowing the defendant additional time for payment, or may modify the method of payment or waive the collection of all or part of any unpaid portion of the fine.

(e) Upon default in the payment of a fine or any installment thereof, the fine may be collected by any means authorized by law for the enforcement of money judgments.

2. It is ordered that notice of this order be published in the Journal of the Missouri Bar.
3. It is ordered that this order be published in the South Western Reporter.

Day – to – Day

MARY R. RUSSELL
Chief Justice

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Order dated September 19, 2016, in re: Model Local Rule 69.01 - Determining Indigent Status in Municipal Division Cases



SUPREME COURT OF MISSOURI

en banc

September 19, 2016

In re: MODEL LOCAL RULE 69.01 - DETERMINING INDIGENT STATUS IN MUNICIPAL DIVISION CASES

ORDER

1. The Court hereby approves for distribution the following model local rule:

69.01 DETERMINATION OF INDIGENT STATUS

(a) A person seeking permission to proceed as an indigent in a municipal division case shall submit to the court the following "Statement of Financial Condition."

STATEMENT OF FINANCIAL CONDITION

Name: _____ Case Number: _____

Address: _____

Your Age and Date of Birth: _____

Phone Number: _____ (Is it OK to text you at this number? Yes/No)

1) If you plead guilty or are found guilty, can you pay your fines and costs today? Yes/No

If you answered "No," why not? _____

If you answered "No" to Question #1, or if you want the court to consider your financial situation, please answer the following questions and provide the following information:

2) Are you currently in the custody of the Children's Division or DYS? Yes/No

3) Have you spent a night in jail during the past year because you were unable to post a bond?

Yes/No If "Yes," how much was your bond? \$ _____

4) Are you receiving public assistance? Yes/No If "Yes," please tell us what type of public assistance you are receiving (for example, food stamps, TANF, Medicaid, housing assistance, other types of public assistance): _____

5) Please list the following income from the **previous month** for your **entire household**:

Take home pay for the month including overtime and bonuses: _____

Social security income (including social security disability): _____

Workers' compensation income: _____

Unemployment income: _____

Retirement income: _____

All other income: _____

Total: _____

6) How many people live in your household? _____

7) Do you have cash, bank accounts, or any other assets, including vehicles or real estate free of debt, that totals more than \$5,000? Yes/No If "Yes," what type?

If you are facing the possibility of jail time and cannot afford to hire a lawyer, you are entitled to have a lawyer appointed by the court to represent you.

Do you want a lawyer to represent you in this case? Yes/No

Can you afford to hire a lawyer to represent you in this case? Yes/No

Are you asking the court to give you some more time to hire a lawyer? Yes/No

Are you asking the court to appoint a lawyer for you today? Yes/No

The above information is true and correct to the best of my knowledge under penalty of law.

Applicant

[The above form is for the Judge's use and does not replace the Legal Aid Application.]

(1) Is in the custody of the Children’s Division or the Division of Youth Services; or

(2)(A) Has unencumbered assets totaling under \$5,000, and

(B) Has total household monthly income below 125% of Federal Poverty Guidelines, which currently are:

- 1 household person: \$1,237
- 2 household persons: \$1,668
- 3 household persons: \$2,100
- 4 household persons: \$2,531
- 5 household persons: \$2,962
- 6 household persons: \$2,715
- 7 household persons: \$3,393
- 8 household persons: \$4,258

[Add \$433 for each additional person]

2. The state courts administrator shall provide copies of this order to every presiding circuit court judge and such other persons as the administrator deems appropriate.
3. It is ordered that notice of this order be published in the Journal of the Missouri Bar.
4. It is ordered that this order be published in the South Western Reporter.

Day – to – Day

PATRICIA BRECKENRIDGE
Chief Justice

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Clerk Handbooks

Supreme Court Rules

Subject:	Rule 37 - Statutory and Ordinance Violations and Violation Bureaus	Section/Rule:	37.04
Topic:	Supervision of Courts Hearing Ordinance Violations	Publication / Adopted Date:	May 14, 1985
		Revised / Effective Date:	July 1, 2017

37.04 Supervision of Courts Hearing Ordinance Violations

The presiding judge of the circuit shall have general administrative authority over the judges and court personnel of all divisions of the circuit court hearing and determining ordinance violations within the circuit. Municipal divisions shall operate in substantial compliance with the minimum operating standards set out in Appendix A of this Rule 37.04. The judges of all such divisions shall be subject to the rules of the circuit court that are not inconsistent with this Rule 37.

(Adopted May 14, 1985, eff. Jan. 1, 1986. Amended December 23, 2003, eff. July 1, 2004. Amended Sept. 20, 2016, eff. July 1, 2017.)



Clerk Handbooks

Supreme Court Rules

Subject:	Rule 37 - Statutory and Ordinance Violations and Violation Bureaus	Section/Rule:	37.04A
		Publication / Adopted Date:	September 20, 2016
Topic:	Appendix A - Supervision of Courts Hearing Ordinance Violations	Revised / Effective Date:	November 1, 2016

Appendix A

Minimum Operating Standards for Missouri Courts: Municipal Divisions

Minimum Operating Standard # 1: Municipal divisions shall ensure that when individuals must be held in jail in the interests of justice, this is done strictly in accordance with the principles of due process of law.

The municipal division is in compliance with the following requirements of section 479.360.1, RSMo:

- o Procedures exist to prevent defendants from being held longer than 48 hours on minor traffic violations and 72 hours on other violations without being heard by a judge in person, by telephone, or via video conferencing.
- o The municipal division has made reasonable efforts to communicate to local law enforcement the 24-hour rule: "Defendants in municipal custody shall not be held more than twenty-four hours without a warrant after arrest." See also section 544.170.1, RSMo.
- o Confinement to coerce payment of fines and costs is utilized only if found in contempt of court after compliance with Rule 37.65.
- o No additional charge is issued for failure to appear for a minor traffic violation.

← procedure I

The municipal division has a duty judge available at all times to rule promptly upon warrants, bail and conditions of pretrial release, and other matters, without undue delay.

Bond schedules are utilized **only** for persons arrested without a warrant and held no longer than 24 hours pursuant to sections 479.360.1(2) and 544.170.1, RSMo; Rule 37.17.

Warrants are issued **only** upon a finding that reasonable grounds exist to believe that the defendant will not appear upon a summons or that the accused poses a danger to a crime victim, the community, or any other person. Rule 37.43(b).

Warrants are signed **only** by judges unless the exception of a **specific** warrant ordered by a judge to be signed by a clerk is applicable. Rule 37.45(b)(6).

← PROCEDURE II

The municipal division has procedures in place to ensure that when a case is dismissed by the prosecuting attorney or otherwise finally resolved, or when the circumstances that justified issuance of a warrant no longer exist, the judge recalls and cancels any outstanding warrants in that case as soon as

practicable.

- The municipal division has procedures in place to ensure that the recall and cancellation of outstanding warrants is communicated to law enforcement by the clerk without delay.
- No person is sentenced to confinement on "minor traffic violations" or "municipal ordinance violations" with the exception of violations: involving alcohol or controlled substances; endangering the health or welfare of others; or involving eluding or giving false information to a law enforcement officer. Section 479.353(2).
- Due process procedures of Rule 37.65 are strictly followed before confining defendants for failure to pay fines and costs. Section 479.353(3).

Minimum Operating Standard # 2: Municipal divisions shall inquire of defendants and allow them to present information about their financial condition when assessing their ability to pay and establishing payment requirements for monies due.

The Municipal division is in compliance with the following requirements of section 479.360.1, RSMo:

← Procedure III

- o Procedures exist to inquire of defendants and allow them to present evidence about their financial condition in assessing their ability to pay and establishing payment requirements.
- o Alternative payment plans are utilized. See also Rule 37.65(a)(1)(2).
- o Community service is utilized with no fee assessed to the defendant.

← Procedure IV

- Stay of execution procedures exist for defendants to pay fines and costs within a specified period of time or to make installment payments. Rule 37.65(a)(1)(2).
- If probation fees are assessed, the municipal division does so in compliance with sections 549.525.2, 559.604, and 559.607, RSMo, including consideration of factors exempting a probationer from part or all of the standard monthly probation fee of \$30 to \$50 per month. The municipal division advises offenders of the right to request individualized consideration of exemption from paying probation fees and surcharges under these statutes.

Minimum Operating Standard # 3: Municipal divisions shall not condition an indigent defendant's access to a judicial hearing or the granting of probation upon the payment of fines or fees.

- If a defendant files an application for trial *de novo*, the payment of the statutory trial *de novo* fee shall be waived if the defendant qualifies as indigent.
- If the defendant requests a jury trial, the cause shall be transferred to the circuit court without prepayment of fees.
- The municipal division does not make the granting of probation conditional upon the payment of anything other than authorized fees or deny probation because of the inability of the defendant to pay authorized probation fees and surcharges.

Minimum Operating Standard # 4: Municipal divisions shall neither assess nor collect unauthorized fines, costs, or surcharges.

- Fines and costs assessed on minor traffic violations do not exceed \$225.00. Section 479.353(1)(a).
- Fines and costs assessed on "municipal ordinance violations" as defined at section 479.350(4) meet the mandatory maximum schedule of section 479.353(1)(b).
- Fines assessed on other ordinance violations do not exceed the maximum amount authorized by state law and the city code.
- Only court costs (fees, miscellaneous charges, and surcharges as defined at section 488.010) authorized by state statute are assessed. The OSCA bench card on municipal court costs shall be used as a reference. Sections 479.260.1, 479.360(5), and 488.012, RSMo; COR 21.01.

- DPC (Dismissal on Payment of Costs) is not permitted. Section 479.353(5), RSMo; COR 21.01(c).
- Court costs are not assessed against indigent defendants. Section 479.353 (4)(5).
- The municipal division is in compliance with the following requirements of section 479.360.1, RSMo:

- o Community service is utilized with no fee assessed to the defendant.

Minimum Operating Standard # 5: All municipal judges shall be lawfully selected, lawfully authorized to act in specific cases, and adequately prepared for their duties through appropriate training and continuing education.

- All judge(s) serving in a municipality- full-time, part-time, substitute, and provisional- are selected pursuant to municipality's ordinance or charter before serving. Section 479.020.1. *↓ Procedure*
- The municipal division has a mechanism in place to check for judicial conflicts prohibited by Rule 37.53(b)(2), and the judge recuses in all instances when required to do so pursuant to this rule.
- Upon successful change of judge requests and recusals, the procedural requirements of Rule 37.53(d) and section 479.230, RSMo are followed.
- Following applicable law, the judge follows rules cutting off or limiting their authority to act in a case once a motion to disqualify, motion for jury trial, or motion for trial *de novo* is filed.
- When a trial *de novo* request has been filed, the municipal division certifies the file to circuit court within 15 days.
- Lawyer judges shall obtain the following required training and continuing education, and provide documentation thereof to the presiding circuit judge:

- o Orientation course completed within 12 months after beginning service. Rule 18.05(d)
 - o Five hours of judicial CLE completed annually. Rule 18.05(a).
 - o Two hours of judicial ethics CLE completed annually. Rule 18.05(b).
 - o CLE compliance form is submitted to the circuit court presiding judge.
 - o If substitute/provisional judges preside, names and CLE compliance forms have been provided to the circuit court presiding judge.

- Non-lawyer judges shall obtain the following required training and continuing education, and provide documentation thereof to the presiding circuit judge:

- o Course of instruction administered by the MJEC completed within 6 months after selection. Rule 18.04; section 479.020, RSMo.
 - o 15 hours of judicial CLE completed annually with the exception of the first reporting year as described at Rule 18.05(d). Rule 18.05 (a).
 - o Two hours of judicial ethics CLE completed annually. Rule 18.05(b).
 - o CLE compliance form is submitted to the circuit court presiding judge.
 - o If substitute/provisional judges preside, names and CLE compliance forms have been provided to the circuit court presiding judge.

Minimum Operating Standard # 6: Municipal divisions shall be operated in a manner reasonably convenient to the public and in facilities sufficient to the purpose.

- Courtrooms are suitable and meet due process requirements for all court attendees. Section 479.060.1.
- The municipal division is in compliance with the following requirements of section 479.360.1, RSMo:

- The courtroom is open to the public of all ages and large enough to reasonably accommodate the public, parties, and attorneys.
- For minor traffic violations, procedures exist for electronic payment or payment by mail.

Procedure VI

The municipal division allows payments online and makes available free, online access to information about pending cases, outstanding warrants, and scheduled municipal division dockets.

OR

The municipal division is actively pursuing court automation to achieve compliance with allowing payments online and making available free, online access to information about pending cases, outstanding warrants, and scheduled municipal division dockets.

Minimum Operating Standard # 7: Municipal divisions shall be operated in a manner that upholds the constitutional principles of separation of powers and the integrity of the judiciary as a separate and independent branch of government.

Clerks of court and other nonjudicial personnel do not perform any functions that constitute an actual or apparent conflict of interest with the impartial performance of their judicial duties. Work performed on behalf of law enforcement or the prosecuting attorney is one example of an actual or apparent conflict of interest.

Clerks of court and other nonjudicial personnel, when performing court related functions, work solely under the direction and supervision of the municipal judge, the circuit clerk, or another officer of the judicial branch as to the work to be performed and the manner in which it is to be done.

Judges, clerks of court, and other nonjudicial personnel are not subject to informal pressure, formal discipline, firing, or threats of non-retention or non-reappointment at the conclusion of a term of office by officers and administrators of the municipal government resulting from the performance of judicial duties in a manner that upholds the independence of the judiciary.

Judges, clerks of court, and other nonjudicial personnel are not subject to informal pressure, formal discipline, firing, or threats of non-retention or non-reappointment at the conclusion of a term of office by officers and administrators of the municipal government that are designed to encourage

or require the municipal division to operate in such a way as to maximize the municipal revenues derived from municipal division operations or to meet specified revenue targets without regard to whether such goals or targets are communicated formally or informally to court personnel.

Municipal division facility's exterior and interior signage, design, functionality, and other factors convey an appearance to the public that it is a separate and independent branch of government.

Minimum Operating Standard # 8: Municipal divisions shall be operated in accordance with the constitutional principles and legal requirements of open courts and open records.

The municipal division is in compliance with the following requirements of section 479.360.1, RSMo:

- The courtroom is open to the public of all ages and large enough to reasonably accommodate the public, parties, and attorneys.

- The municipal division has a municipal clerk available at least 30 hours per week during regular business hours and court sessions to whom the person can pay fines and from whom the person can obtain information about charges, payments and court operations. The clerk should be available in person during these hours in an office open and accessible to the public and may perform other functions for the municipality that do not constitute an actual or apparent conflict with the impartial performance of judicial duties. In the event the municipal division does not have sufficient staff to have a clerk available for all of the 30 hours in person, the clerk may instead be made available for

up to 15 of the 30 hours to provide information about charges, payments and court operations through live communication by telephone, email, or other means of electronic communication.

- Proceedings in the municipal division are open to the public of all ages unless the municipal division orders otherwise in a particular circumstance for good cause shown.
- Courtroom facility is sufficient for the purpose of a courtroom. Courtroom is open to the public of all ages and large enough to reasonably accommodate the public, parties, and attorneys. The facility chosen for court takes into consideration the safety and comfort of the public, parties, and lawyers. The facilities chosen uphold the integrity and independence of the judiciary as a separate branch of government.
- The municipal division allows members of the public and the news media access to open municipal division records in accordance with Court Operating Rules (COR) 2 and 4 and other relevant law.

Adopted Sept. 20, 2016, eff. Sept. 20, 2016. Amended Nov. 1, 2016, eff. Nov. 1, 2016)

Minimum Operating Standard # 9: Municipal divisions shall advise litigants of their rights in court.

Procedure VII

- Standardized procedures exist to assure that defendants are given advice of rights pursuant to Rules 37.47, 37.48, 37.50, and 37.58.
- The municipal division provides a "Notice of Rights in Municipal Division," in a form approved by or substantially similar to that approved by the Supreme Court, to all defendants. This notice of rights is displayed prominently wherever the municipal clerk transacts business with the public and in the facility where proceedings in the municipal division are held. This notice of rights in municipal division is made available as a handout for those appearing before the municipal division and is displayed on each public information website operated by the municipal division or on behalf of the municipal division.
- Announcements by the judge that are intended for the benefit of all present can be heard throughout the courtroom or are communicated adequately in other ways. Such announcements are also communicated to those waiting outside the courtroom or otherwise made available to them when they come into the courtroom.

Minimum Operating Standard # 10: Municipal divisions shall be well managed and accountable to the law, with appropriate oversight of municipal division operations provided by the circuit court presiding judge of the judicial circuit.

- By January 1st and July 1st of each year every municipal judge, substitute or provisional judge certifies to the presiding circuit judge compliance with the minimum operating standards by completing the "Minimum Operating Standards Form" and submitting it to the presiding circuit judge.
- The municipal division has a functional clerk's office that organizes and preserves the judicial records of the municipal division in a prudent and organized manner and in compliance with applicable laws and supreme court rules.
- The municipal division has a functional clerk's office that handles bookkeeping and money handling obligations of the municipal division in a prudent and organized manner and in compliance with the current recommendations of the Office of State Courts Administrator and the Missouri state auditor.
- Judge has certified substantial compliance with section 479.360.1(1 to 10), RSMo, and provided signed certification to the governing body in compliance with the state auditor's rules and procedures. Section 479.360.1 and .2. Additionally, the judge complies with the following provisions of section 479.360.1, RSMo:
 - o Procedures exist to prevent defendants from being held longer than 48 hours on minor-traffic violations and 72 hours on other violations without being heard by a judge in person, by telephone, or via video conferencing.
 - o The municipal division has made reasonable efforts to communicate to local law enforcement the 24-hour rule: "Defendants in municipal custody shall not be held more than twenty-four hours

without a warrant after arrest." See also section 544.170.1, RSMo.

- o Confinement to coerce payment of fines and costs is utilized only if found in contempt of court after compliance with Rule 37.65.
- o The municipal division inquires of defendants and allows them to present information about their financial condition when assessing the defendants' ability to pay and establishing payment requirements for monies due.
- o The courtroom is open to the public of all ages and large enough to reasonably accommodate the public, parties, and attorneys.
- o Alternative payment plans are utilized. See also Rule 37.65(a)(1)(2).
- o Community service is utilized with no fee assessed to the defendant.
- o For minor traffic violations, procedures exist for electronic payment
- o or payment by mail.
- o No additional charge is issued for failure to appear for a minor traffic violation.

Municipal Divisions should also be familiar with and comply with the provisions set forth below:

Chapter 479, RSMo

AT #1

- If holding administrative hearings, the municipal division is authorized to do so. Section 479.011.1.
- Judge serves as a judge in no more than five municipalities. Section 479.020.9. Judge is under the age of 75 years. Section 479.020.7.
- Municipality has notified circuit clerk of the municipal division's existence.
- Section 479.030.1.
- Nonjudicial personnel have been provided to ensure proper functioning of the municipal division. Section 479.060.1.
- Fines and costs collected are paid into the municipality's treasury at least monthly. Section 479.080.1
- A monthly list of cases with required detail is provided within 10 days of the end of each month to the municipality. Section 479.080.1
- Judge has received instruction on laws related to intoxicated-related traffic offenses. Section 479.172.1.
- A written policy for reporting intoxication-related traffic offenses to the central repository has been **adopted** and **provided** to OSCA and the highway patrol. Section 479.172.1 and 2.
- Semiannual disposition report of intoxication-related traffic offenses provided to the circuit court *en bane*. Section 479.172.3.

Supreme Court Rule 37

AT #2

- Informations are signed by the prosecutor. Rule 37.35(a).
- The violation bureau schedule of fines and costs is prominently posted at the place where fines are to be paid. Rule 37.49(d).
- The municipal division has taken reasonable steps to ensure that, where applicable, the schedule of fines and costs is provided to an accused at the same time as a violation notice. Rule 37.33(b).
- If a violation bureau has been adopted, it processes only those violations authorized by Rule 37.49(c).
- The municipal division utilizes a written "Waiver of Counsel" substantially in the form of Form 37.C. Rule 37.58(d).

AT #3

Open Records and Other Recordkeeping Matters (article I, § 14, Constitution of Missouri; Court Operating Rules 2, 4 and 8; sections 483.065, 483.075, 483.082, RSMo)

- The municipal division maintains complete and accurate records of municipal division proceedings, including warrants outstanding, bonds posted, case files and dispositions.

- The municipal division ensures that the proper disposition of all cases is documented on the municipal division dockets or backer sheets and that all municipal division dockets or backer sheets are signed by the municipal judge, if required by law.
- The municipal division ensures that an information signed by the prosecuting attorney is filed for each ordinance violation to be prosecuted. In addition, the municipal division ensures that the prosecuting attorney signs all tickets and reviews and approves all amended and dismissed tickets.
- The municipal division ensures that the proper disposition of cases is documented in manual and electronic records and sufficient documentation is maintained to support all case actions.
- The municipal division ensures that warrants are signed by a municipal judge or by the court clerk/administrator only when directed by the municipal judge for a specific warrant and ensures that warrants are issued timely.
- The municipal division has established procedures to generate monthly reports of municipal division activity, and the municipal division submits these reports timely to OSCA and to the city in accordance with state law, COR 4.28 and 4.29, and section 479.080.3, RSMo. *Procedure VIII*
- The municipal division regularly backs up computer data and ensures it is stored in a secure off-site location and its recovery is tested on a regular, predefined basis.
- The municipal division requires unique user identifications and passwords for each employee and passwords that are confidential and periodically changed. The municipal division ensures that user access is periodically reviewed and unnecessary access, including that of terminated users, is removed timely as well as reviews user access to data and other information resources to ensure access rights are commensurate with current user job responsibilities. *AT #4*

Financial and Bookkeeping (section 483.075.1, RSMo)

- The municipal division segregates accounting duties to the extent possible. If it is not possible to segregate duties, the municipal division ensures that documented periodic independent or supervisory reviews of municipal division records are performed.
- The municipal division ensures that accurate records are maintained to account for all payments received and deposited, receipts are posted accurately and timely, and the method for payment is indicated on all receipts. Checks and money orders are endorsed immediately upon receipt. Additionally, if manual receipts are in use, the municipal division ensures that manual receipt slips are timely entered in the computerized system and the numerical sequence of manual receipt slips is accounted for properly.
- In addition, the municipal division ensures that voided transactions are properly documented and approved.
- The municipal division reconciles the composition of receipts to the composition of deposits, and deposits all monies intact and timely.
- The municipal division performs monthly bank reconciliations, resolves reconciling items, and makes appropriate, documented adjustments to accounting records timely.
- The municipal division prepares monthly lists of liabilities and reconciles the lists to the bank account and/or city fund balance, promptly investigates and resolves differences, and has established procedures to review the status of liabilities to determine the appropriate disposition of funds held.
- The municipal division has developed procedures to ensure the monthly distributions are properly calculated and disbursed timely. *Procedure IX*
- The municipal division has established procedures to routinely generate and review the accrued costs list for accuracy and properly follows up on all amounts due.
- The municipal division obtains signed payment plans from all defendants and ensures payment plans are established in the case management system in accordance with court operating rules where applicable.
- The municipal division ensures that adequate documentation is maintained to support all adjustment transactions and ensures that an independent review and approval of these transactions is performed and documented.
- The municipal division maintains the change fund at an established amount and periodically counts

and reconciles the monies on hand to the authorized balance.

- The municipal division maintains bond coverage for all personnel with access to municipal division monies.
- The municipal division ensures that all bond receipts are recorded and deposited timely and intact.
- The municipal division has developed procedures and records to identify applicable violations and the associated fines and court costs revenues for the purposes of the revenue calculations required by section 479.359, RSMo et seq, and the municipal division provides this information to the city.

↑ Procedure IX

Trial de novo Procedure

- When a case record is certified to the circuit court upon filing of a request for trial *de novo*, all funds received in connection with the case, any bonds, and the record are transferred within 15 days.
- Once a case has been certified to circuit court, the municipal division does not act on that case unless and until the case is remanded back to that municipal division.

Minimum Operating Standards Form (Submitted Semiannually to Presiding Circuit Judge)

By January 1 and July 1 of each year, every Municipal Judge, Substitute Judge, or Provisional Judge shall certify to the Presiding Circuit Judge of the County compliance with the Minimum Operating Standards by completing the following form.

Municipal Division

Municipal Judge

Any Substitute or Provisional Judges

Address where municipal division is held

Dates and times where municipal division is held

Municipal division Phone Number

Judge Contact Number

Judge Email

Clerk Email

I, _____, certify that this municipality complies with the following minimum operating standards together with all other minimum operating standards as approved by the Supreme Court of Missouri:

- Judge has received instruction on laws related to intoxicated-related traffic offenses. Section 479.172.1.
- A written policy for reporting intoxication-related traffic offenses to the central repository has been adopted and provided to OSCA and the highway patrol. Section 479.172. 1 and 2.
- A copy of this written policy for reporting intoxication-related offenses to the central repository has been provided to the presiding circuit judge.
- Warrants are signed by the judge or by a clerk of the court when directed by the judge for a specific warrant. Rule 37.45
- Judge complies with Rule 37.47: Initial Proceedings before the Judge, including:
 - o Arraignment as soon as practicable if defendant has not satisfied conditions for release
 - o Judge shall inform the defendant of the:
 - Ordinance violation charged,
 - Right to retain counsel,
 - Right to request the appointment of counsel if defendant is indigent and there is a possibility of a jail sentence,
 - Right to remain silent,
 - Fact that anything that the defendant says may be used against him or her.
- Judge complies with Rule 37.48: Arraignment
 - o Arraignment shall be conducted in open court.
 - o Judge reads the information to the defendant or states the substance of the charge.
 - o Municipal division calls upon the Defendant to plead there to.
 - o Defendant shall be afforded a reasonable time to examine the charge before defendant is called upon to plead.
- Judge complies with Rule 37.50: Right to Counsel
 - o If conviction for an ordinance violation could result in confinement, the judge advises the defendant of the right to counsel and willingness of the judge to appoint counsel to represent the defendant.
 - o Upon a showing of indigency, judge appoints counsel to represent the defendant.
 - o Judge allows the defendant to proceed without counsel if the judge finds that the defendant has knowingly, voluntarily, and intelligently waived the right to counsel.
 - o If it appears during the proceedings that because of the gravity of the ordinance violation charged and other circumstances that failure to appoint counsel may result in injustice, the judge then appoints counsel. Judge gives said counsel reasonable time to prepare.

Choose one of the following:

o The municipal division allows payments online and makes available free, online access to information about pending cases, outstanding warrants, and scheduled municipal division dockets. The municipal division website is _____

OR

o The municipal division is actively pursuing court automation for compliance with payments online and making free, online access to information about pending cases, outstanding warrants, and schedule municipal division dockets is scheduled to be in place by _____ (estimated date).

- Courtroom facility is sufficient for the purpose of a courtroom.
- o Courtroom is open to the public of all ages and large enough to reasonably accommodate the public, parties, and attorneys.
 - o The facility chosen for the municipal division takes into consideration the safety and comfort of the public, parties, and lawyers.
 - o The facilities chosen shall uphold the integrity and independence of the judiciary as a separate branch of government.
- Following applicable law, the judge relinquishes jurisdiction over a case when a motion to disqualify, motion for jury trial, or motion for trial de novo is filed.
- When a case is transferred to circuit court, the transfer occurs within 15 days. D Judge has certified substantial compliance with section 479.360.1(1 to 10), RSMo, and provided signed certification to the governing body in compliance with the state auditor's rules and procedures. Section 479.360.1 and 2. Additionally, the judge complies with the following provisions of section 479.360.1:
- o Procedures exist to prevent defendants from being held longer than 48 hours on minor traffic violations and 72 hours on other violations without being heard by a judge in person, by telephone, or via video conferencing.
 - o The municipal division has made reasonable efforts to communicate to local law enforcement the 24-hour rule: "Defendants in municipal custody shall not be held more than twenty-four hours without a warrant after arrest." See also section 544.170.1, RSMo.
 - o Confinement to coerce payment of fines and costs is utilized only if found in contempt of court after compliance with Rule 37.65.
 - o The municipal division inquires of defendants and allows them to present information about their financial condition when assessing their ability to pay and establishing payment requirements for monies due.
 - o The courtroom is open to the public of all ages and large enough to reasonably accommodate the public, parties, and attorneys.
 - o Alternative payment plans are utilized. See also Rule 37.65(a)(1)(2).
 - o Community service is utilized with no fee assessed to the defendant.
 - o For minor traffic violations, procedures exist for electronic payment or payment by mail.
- Municipal division provides to the municipality adequate information for the municipality to determine excessive revenue calculations to the state auditor.
- If judge is a lawyer, complete Section A. If judge is non-lawyer, complete Section B.

Section A

- If judge is a lawyer, the lawyer has completed each of the following:

- o MJEC orientation course within 12 months after beginning service. Rule 18.05(d).
- o Five hours of judicial CLE annually. Rule 18.05(a).
- o Two hours of judicial ethics CLE annually. Rule 18.05(b).
- o CLE compliance form is submitted to the circuit court presiding judge.
- o If substitute/provisional judges preside, names and CLE compliance forms have been provided to the circuit court presiding judge.

Section B

If judge is a non-lawyer judge, he or she has completed each of the following:

- o Course of instruction administered by the MJEC within six months after selection. Rule 18.04; section 479.020, RSMo.
- o 15 hours of judicial CLE annually. Rule 18.05(a).
- o Two hours of judicial ethics CLE annually. Rule 18.05(b).
- o CLE compliance form is submitted to the circuit court presiding judge.
- o If substitute/provisional judges preside, names and CLE compliance forms have been provided to the circuit court presiding judge.

Judge has read the Supreme Court's "Minimum Operating Standards for Missouri Courts: Municipal Divisions" and substantially complies with the remaining minimum operating standards.

Judge has attached to this certification the following:

- o Semiannual disposition report of intoxication-related traffic offenses provided to the circuit court *en banc*,
- o Substantial compliance certification with section 479.360.1(1 to 10),
- o CLE compliance forms.

I hereby certify that my municipal division has complied with all of the above minimum operating standards terms.

Date Signature



Clerk Handbooks

Supreme Court Rules

Subject:	Rule 37 - Statutory and Ordinance Violations and Violation Bureaus	Section/Rule:	37.04B
		Publication / Adopted Date:	November 16, 2016
Topic:	Appendix B - Code of Conduct for Municipal Division Personnel	Revised / Effective Date:	January 1, 2017

Appendix B
Code of Conduct for Municipal Division Personnel

This code of conduct applies to all full-time, part-time and temporary court system employees for municipal divisions, who are identified in this code as "court professionals."

Code of Conduct 1: Avoiding Impropriety and the Appearance of Impropriety in All Activities.

1.1. Performing Court Duties

A court professional shall faithfully carry out all appropriately assigned duties striving at all times to perform the work diligently, efficiently, equitably, thoroughly, courteously, honestly, truthfully and with transparency.

A court professional shall carry out properly issued court orders and rules, not exceeding the court professional's authority.

A court professional shall make every reasonable effort to act in a manner consistent with his or her judge's obligations under the Missouri Code of Judicial Conduct found at Supreme Court Rule 2.

1.2. Avoiding Impropriety

A court professional shall avoid both impropriety and the appearance of impropriety.

A court professional shall avoid improper influences from business, family, position, party, or person.

A court professional shall avoid activities that would impugn the dignity of the court.

1.3. Bias, Prejudice, and Harassment

A court professional shall perform his or her duties without bias or prejudice.

A court professional shall not, in the performance of his or her duties, by words or conduct, manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status.

A court professional shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, including but not limited to race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status, against parties, witnesses, lawyers, or others.

These restrictions do not preclude court professionals from making legitimate reference to personal factors or characteristics, when they are relevant to an issue in a proceeding.

1.4. Respect of Others

A court professional shall treat litigants, coworkers and all others interacting with the court with dignity, respect and courtesy.

1.5. Involvement in Actions Before a Court

A court professional shall notify their supervisor of the court whenever he or she, anyone in his or her family, or anyone with whom he or she has a close personal relationship has been arrested, named as a party, or is otherwise formally involved in any action pending in any court.

1.6. Avoiding Privilege

A court professional shall use his or her official position solely for its intended purpose.

A court professional shall not use his or her position (intentionally or unintentionally), to secure unwarranted privileges or exemptions for oneself or others.

A court professional shall not dispense special favors to anyone, whether or not he or she was offered remuneration.

1.7. Assisting Litigants

A court professional shall be responsive to inquiries regarding standard court procedures, but shall not give legal advice unless it is required as part of one's official position.

Code of Conduct 2: Performing the Duties of Position Impartially and Diligently.

2.1. Independent Judgment

A court professional shall avoid relationships that would impair one's impartiality and independent judgment.

A court professional shall be vigilant of conflicts of interest and ensure that outside interests are never so extensive or of such nature as to impair one's ability to perform court duties.

2.2. Personal Relationships

A court professional shall recruit, select, and advance personnel based on demonstrated knowledge, skills, abilities, and bona fide work-related factors, not on favoritism.

A court professional shall avoid appointing, assigning, or directly supervising, a family member, or

attempting to influence the employment or advancement of a family member.

Where circumstances dictate that one must work directly with a family member, a court professional shall report the circumstance to their supervisor or the court, regularly assess the situation, and take remedial action at the earliest time practicable.

2.3. Misconduct of Others

A court professional should expect fellow professionals to abide by this code of conduct.

A court professional shall report to their supervisor or the court the behavior of any court professional who violates this code including, but not limited to, potential conflicts of interest involving one's duties and attempts to inappropriately influence one in performing one's duties.

2.4. Attempts at Influence

A court professional shall immediately report to their supervisor or the court any attempt to compel one to violate this code of conduct.

2.5. Properly Maintain Records

A court professional shall not inappropriately destroy, alter, falsify, mutilate, backdate or fail to make required entries on any records within the court's control.

2.6. Legal Requirements

A court professional shall maintain the legally required confidentiality of the court, not disclosing confidential information to any unauthorized person, for any purpose.

A court professional shall properly provide confidential information that is available to specific individuals authorized to receive such by reason of statute, court rule or administrative policy.

2.7. Discretion

A court professional shall be respectful of litigants, the public, applicants and employees' personal lives; disregard information that legally cannot or should not otherwise be considered; use good judgment in weighing the credibility of Internet data; and be cautious about verifying identities.

A court professional shall treat personal or sensitive information with the same discretion that one would wish others to have if one were involved in a similar case.

2.8. Proper Use of Public Resources

A court professional shall use the resources, property and funds under one's official control judiciously and solely in accordance with prescribed procedures.

Code of Conduct 3: Conducting Outside Activities to Minimize the Risk of Conflict with Official Position.

3.1. Outside Business

The court is a court professional's primary employment. A court professional shall avoid outside activities, including outside employment, business activities, even subsequent employment and business activities after leaving judicial service, that reflect negatively upon the judicial branch and on one's own professionalism.

A court professional shall notify their supervisor or the court prior to accepting work or engaging in business outside of one's court duties.

A court professional shall not request or accept any compensation or fee beyond that received from their employer for work done in the course of their public employment.

However, court professionals may engage in outside employment as long as it does not conflict with the performance of their official responsibilities or violate this code of conduct.

3.2. Compensation and Post Employment Restrictions

During or following one's employment with a court, a court professional shall not represent a commercial interest to, or do business with, that same court unless both the employment and commercial interest are fully disclosed to and approved by the court's appropriate management authority.

3.3. Avoiding Gifts

A court professional shall not solicit, accept, agree to accept, or dispense any gift, favor, or loan either for oneself or on behalf of another based upon any understanding, either explicit or implicit, that would influence an official action of the court.

3.4. Financial Disclosure

A court professional shall dutifully disclose all financial interests and dealings required by law, rule, or regulation.

Code of Conduct 4: Refraining from Inappropriate Political Activity.

4.1. Refraining from Inappropriate Political Activity

A court professional retains one's right to vote and is encouraged to exercise it as a part of citizenship.

Engaging in any political activity is done strictly as a private citizen and only in accordance with state law or court rules.

A court professional shall participate only during non-court hours, using only non-court resources. A court professional shall not use one's position or title within the court system to influence others.

Unless a court professional is elected to one's court position, one shall campaign during non-work hours or take an unpaid leave of absence upon declaring one's intent to run for office.

If elected, a court professional shall resign one's post with the court unless one is holding a political office that clearly does not hold a conflict of interest, nor does it interfere with one's ability to perform one's court duties.

(Adopted Nov. 16, 2016, eff. Jan. 1, 2017)

If you are a non-U. S. citizen

If you do not have the proper documentation to be in the United States, you should know that a guilty plea or conviction may result in your deportation, denial of admission to the United States, or you may be denied naturalization under United States law. You may wish to speak with an attorney, especially before entering a guilty plea to any charges.

If you need ADA accommodations

You have rights under the Americans with Disabilities Act (ADA). For example, if you or a witness are deaf or hearing impaired, you have the right to request assistance, including an interpreter. For help, please contact the court's ADA coordinator. A list of ADA coordinators can be found at <http://www.courts.mo.gov/page.jsp?id=180>.

If you need help with other ADA disabilities, please call (573)751-4377 or send an email to access2justice@courts.mo.gov.

While in the courtroom, please:

Stay seated until your case is ready to be heard by the judge.
Do not smoke or consume food or drink.
Silence any phones or pagers, and remain quiet.
Do not sleep or disrupt the court proceedings.

My next court date is _____ at _____ am/pm.

Your Missouri Municipal Courts

Know your rights (see pages 2-4)

- Right to trial
- Right to know when the court is open
- Right to attend court
- Right to an attorney
- Right to release pending hearing
- Right to have a judge decide if you can afford a lawyer or afford to pay fines
- Right to a court-appointed attorney
- Right to access court records
- Right to request a different judge

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Overview of Municipal Courts 1
 Rights in Municipal Court 2
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Trial Process

1. The case is ready to be heard by the judge.
2. Witnesses are given an oath to testify.
3. The city’s witnesses explain their version of what happened.
4. You or your attorney can ask questions of the City’s witnesses.
5. You may testify and call witnesses to explain your version of what happened.
6. The city prosecutor may question you and your witnesses, if you and your witnesses testify.
7. The judge makes the decision.

Punishments and Fines

If you plead guilty or are found guilty, you may face the following punishments or fines:

1. Minor traffic violations—up to \$225 total fine and costs.
2. Housing, zoning or building code violations—up to \$200 total fine and costs for the first violation in a year, \$275 for the second violation in a year, \$350 for the third violation in a year, and \$450 for the fourth and any subsequent violation in a year.
3. All other municipal code violations—up to \$_____ fine plus costs.
4. In addition to these fines and costs, certain violations may result in jail time. Such violations include any violation involving alcohol or drugs, violations endangering the health or welfare of others, or giving false information to a police officer. You may face up to a year in jail.

You may be able to pay your fines by mail, online, or in person instead of appearing in court. Please check with the clerk of the municipality in which your case is located or go online at www._____ to get information on how you can pay fees and fines in the municipality.

Right to Trial

If you plead not guilty, your case will be scheduled for trial. Because of the number of cases the court hears each month and the need to have the officer and any witnesses present, your case cannot be heard that night. You will be given a future court date for trial.

When your case is scheduled for trial, it will be in the same municipal court in which you appear, UNLESS you request a jury trial. A request for a jury trial should be made by written motion 10 days prior to the scheduled trial date. If the motion is timely, your case will be sent to the presiding judge of the circuit court for a new trial date with a jury.

1. At trial, you have a right to testify or remain silent. If you remain silent, it is not considered an admission of guilt. If you testify, the judge may consider any statement you make in deciding your guilt or innocence.
2. At trial, you have the right to ask questions of witnesses testifying against you.
3. You have a right to require witnesses to come to trial and testify with a subpoena.
4. If you are found not guilty, the case ends.
5. If you are found guilty, you can accept the decision or appeal to the circuit court. If you appeal your case, you will be granted a new trial before a different judge. The request for appeal must be made within 10 (ten) days of the court's decision and cannot be extended for any reason. You can appeal even if you are not able to pay. Complete details of the appeal procedure can be found at www.mocourts.com. You may also ask the clerk for information on the process.

OVERVIEW OF MUNICIPAL COURTS

Municipal courts are authorized by the Missouri Constitution and are part of the circuit courts. They are open to the public. The purpose of these courts is to provide you with a place to obtain a fair and impartial trial on any alleged violation of a city ordinance. While this is a general overview of your rights in municipal court, each individual court may have local rules that may apply to your case. Please check with your local municipal court for the local court rules.

Municipal courts are a court of law established to protect the rights of all citizens. If there is anything you do not understand, do not hesitate to ask the judge any questions.

RIGHTS IN MUNICIPAL COURT:

Right to know when the court is open

Every municipal court has different hours it is open. It is important that you check the court's website or call the court's clerk to determine when it is open. A comprehensive listing of the websites and phone numbers for all municipal courts in Missouri can be found at

<http://www.courts.mo.gov/mcw/findacourt/muniDivisionList.htm>

Right to attend court

Municipal courts in Missouri are open to the public.

Right to release pending hearing

If you are in jail for a municipal court charge, you have the right to be released unless the court decides you need to be in jail for the protection of the community. If the court orders your release from jail, there may be conditions on your release, including bail.

Right to access court records

If you have a case in municipal court, you have the right to see the court records for your case. This includes records that show charges, court rulings, fines, and other information for your case.

Right to an attorney

You have the right to be represented by an attorney and may hire one at any time. When you first appear in court, you can ask to postpone the hearing one time so you can hire an attorney. However, you are not required to have an attorney represent you. You may represent yourself.

Right to have a judge decide if you can afford a lawyer or pay fines

If you want an attorney, but cannot afford one, you can ask that the judge decide if you qualify for a court-appointed attorney. You may be required to fill out paper work about your finances as a part of this process.

You can also request the judge to decide if you are able to pay court fines or to be granted an alternative sentence. You may be required to fill out paper work regarding your finances as a part of this process.

Right to a court-appointed attorney

If you show you cannot afford an attorney, and the city is seeking to put you in jail, the court will provide an attorney to represent you.

Right to request a different judge

You may request a change of judge for any reason within ten (10) days after you enter your initial plea. If it is past the ten (10) days, then you must show cause why the judge should be changed.

In addition, a judge may decide he or she cannot hear the case if they have a conflict of interest in the case or the judge will appear as the prosecuting attorney in a neighboring county where the prosecuting attorney will serve as judge.



**LAWFUL ENFORCEMENT OF LEGAL FINANCIAL OBLIGATIONS
A BENCH CARD FOR JUDGES**

Courts may not incarcerate a defendant/respondent, or revoke probation, for nonpayment of a court-ordered legal financial obligation unless the court holds a hearing and makes one of the following findings:

1. The failure to pay was not due to an inability to pay, but was willful or due to failure to make bona fide efforts to pay; or
2. The failure to pay was not the fault of the defendant/respondent and alternatives to imprisonment are not adequate in a particular situation to meet the State's interest in punishment and deterrence.

If a defendant/respondent fails to pay a court-ordered legal financial obligation but the court, after opportunity for a hearing, finds that the failure to pay was not due to the fault of the defendant/respondent, but rather due to lack of financial resources, the court should consider alternative measures of punishment rather than incarceration. *Bearden v. Georgia*, 461 U.S. 660, 667-669 (1983); *State ex rel. Fleming v. Mo. Bd. of Prob. & Parole*, 515 S.W.3d 224 (Mo. banc 2017). Punishment and deterrence can often be served fully by alternative means to incarceration, including an extension of time to pay, reduction of the amount owed, or community service. *Bearden*, 461 U.S. at 671.

Court-ordered legal financial obligations (LFOs) include all discretionary and mandatory fines, costs, fees, state assessments, and/or restitution in civil and criminal cases.

1. Adequate Notice of the Hearing to Determine Ability to Pay¹

Notice should include the following information:

- a. Hearing date and time;
- b. Total amount claimed due;
- c. That the court will evaluate the person's ability to pay at the hearing;
- d. That the person should bring any documentation or information the court should consider in determining ability to pay;
- e. That incarceration may result only if alternate measures are not adequate to meet the State's interests in punishment and deterrence or the court finds that the person had the ability to pay and willfully refused;
- f. Right to counsel²; and
- g. That a person unable to pay can request payment alternatives, including, but not limited to, community service and/or a reduction of the amount owed.

2. Meaningful Opportunity to Explain at the Hearing²

The person must have an opportunity to explain:

- a. Whether the amount charged as due is incorrect; and
- b. The reason(s) for any nonpayment (e.g., inability to pay).

3. Factors the Court Should Consider to Determine Willfulness³

- a. Income, including whether income is at or below 125% of the Federal Poverty Guidelines (FPG)⁴

For 2016, 125% of FPG is:	
\$14,850 for an individual;	\$30,375 for a family of 4;
\$20,025 for a family of 2;	\$35,550 for a family of 5;
\$25,200 for a family of 3;	\$40,725 for a family of 6.

- b. Receipt of needs-based, means-tested public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or veterans' disability benefits (Such benefits are not subject to attachment, garnishment, execution, levy, or other legal process);

¹ Rule 37.65(b)(c); Rule 36.01(b); section 558.006 RSMo (formerly section 560.031 RSMo).

² Section 479.360.1(4); Rule 37.04, Appendix "A," Minimum Operating Standard #2.

³ See *Bearden v. Georgia*, 461 U.S. 660 (1983); *State ex rel. Fleming v. Mo. Bd. of Prob. & Parole*, 515 S.W.3d 224 (Mo. banc 2017).

⁴ U.S. Dep't of Health & Human Servs., Poverty Guidelines, Jan. 26, 2016, (<https://aspe.hhs.gov/poverty-guidelines>).

- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the person is homeless, incarcerated, or resides in a mental health facility;
- e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;
- f. The person's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
- g. Other LFOs owed to the court or other courts;
- h. Whether LFO payment would result in manifest hardship to the person or his/her dependents; and
- i. Any other special circumstances that may bear on the person's ability to pay.

4. Findings by the Court

The court should find, on the record and/or by docket entry, that the person was provided prior adequate notice of:

- a. Hearing date/time;
- b. Failure to pay an LFO is at issue;
- c. The right to counsel*;
- d. The defense of inability to pay;
- e. The opportunity to bring any documents or other evidence of inability to pay; and
- f. The opportunity to request an alternative sanction to payment or incarceration.

After the ability to pay hearing, the court should also find on the record that the person was given a meaningful opportunity to explain the failure to pay.

If the Court determines that incarceration must be imposed, the Court should make findings about:

1. The financial resources relied upon to conclude that nonpayment was willful;⁵ or
2. If the defendant/respondent was not at fault for nonpayment, why alternate measures are not adequate, in the particular case, to meet the State's interest in punishment and deterrence.⁶

Alternative Sanctions to Imprisonment That Courts Should Consider When There is an Inability to Pay⁷

- a. Reduction of the amount due;
- b. Extension of time to pay;
- c. A reasonable payment plan or modification of an existing payment plan;
- d. Credit for community service (*Caution:* Hours ordered should be proportionate to the violation and take into consideration any disabilities, driving restrictions, transportation limitations, and caregiving and employment responsibilities of the individual);
- e. Credit for completion of a relevant, court-approved program (e.g., education, job skills, mental health or drug treatment); or
- f. Waiver or suspension of the amount due.

*Case law establishes that the U.S. Constitution affords indigent persons a right to court-appointed counsel in most post-conviction proceedings in which the individual faces actual incarceration for nonpayment of a legal financial obligation, or a suspended sentence of incarceration that would be carried out in the event of future nonpayment, even if the original sanction was only for fines and fees. *See Best Practices for Determining the Right to Counsel in Legal Financial Obligation Cases.*

⁵ See, for example, *State v. Jackson*, 610 S.W.2d 420 (Mo. App. 1980).

⁶ *Bearden*, 461 U.S. at 672, *Fleming*, 515 S.W.3d at 232.

⁷ Section 479.360.1 (8)(9) RSMo; Rule 37.04, Appendix "A," Minimum Operating Standard #2, #4; section 558.006 RSMo (formerly section 560.031 RSMo).

PROTOCOLS FOR PRESIDING CIRCUIT COURT JUDGES IN
SUPERVISING MUNICIPAL DIVISION JUDGES

(a) To assist in the supervision of each circuit's municipal divisions, the presiding circuit judges are encouraged to invite each municipal division judge to attend at least one of the circuit's court en banc meetings each year.

(b) In fulfilling their obligation to supervise municipal divisions within their circuit, the presiding circuit judge shall:

(1) Adopt a circuit court rule governing the operation of its municipal divisions and reporting obligations from the municipal divisions to the presiding circuit judge;

(2) Provide education, support, and direction to the municipal divisions;

(3) Verify annually each municipal division's substantial compliance with applicable circuit rules and minimum operating standards; and

(4) Submit to the clerk of the Supreme Court of Missouri by February 1 and August 1 of each year each judge's executed minimum operating standards form referenced in Appendix A to Rule 37.04 and to provide a list of any judges or divisions that did not return the form for the most recent reporting period.

(c) The presiding circuit judge has the authority to take prompt and appropriate action in regard to the municipal division itself, to the municipal judge, or both, as appropriate, if the annual review or other information brought to the attention of the presiding circuit judge indicates that the municipal division or judge is having difficulty substantially complying with the law and minimum operating standards. If the presiding circuit judge is unable to obtain substantial

compliance voluntarily or believes that the noted deficiencies are serious or continuing, he or she shall immediately give written notice to the clerk of the Supreme Court of Missouri of the identified noncompliance/deficiencies.

(d) The presiding judge, with the assistance of the clerk of the Supreme Court, shall prepare a plan for remediation of the identified concerns and, until the plan for remediation is fully implemented, shall keep the clerk apprised in writing, at least once every 60 days, of the municipal division's success in coming into substantial compliance with the plan.

(e) If the circumstances appear to the presiding judge or the clerk or judges of the Supreme Court to require more immediate and decisive action in the interests of justice, any or all of them may take appropriate action with regard to the noncompliant municipal division. By way of example, this could include directives for necessary changes in operations with appropriate deadlines for compliance; consultation with the governing authorities of the municipality; reassignment of all cases pending in the division to another judge or to multiple judges as may be necessary to handle the case load; suspension of the division's operations until sufficient remediation of the identified noncompliance/deficiencies has been accomplished; reporting the municipal judge to the appointing authority for that judge or to the Commission on Retirement, Removal and Discipline; or other appropriate action within the constitutional authority of the presiding circuit judge or the Supreme Court of Missouri.

NOTE: This Order is intended as a template for courts to use in implementing a local municipal division operating rule and local court rules. It contains informational notes within the body of the order which should be deleted before signing the final order. Other sections may contain several options where those that do not apply should be deleted, and/or blanks which must be filled in before signing the final Order.

**IN THE CIRCUIT COURT OF _____ COUNTY, MISSOURI
_____ JUDICIAL CIRCUIT**

MUNICIPAL DIVISION – THE CITY OF _____

MUNICIPAL DIVISION OPERATING ORDER #4

Including Eight Local Court Rule provisions

Superseding Court Operating Orders #1, #2 and #3

Effective Date – _____, 2018

**Background and Purpose of Division Operating Order #4
and Eight Applicable Local Court Rules**

A. This Division Operating Order (“*DOO*”) #4 compiles those applicable statutes, Supreme Court Rules, Supreme Court Operating Rules, and standards, as are effective as of September 30, 2016, including relevant sections of Supreme Court Rule 37.04, entitled “Supervision of Courts Hearing Ordinance Violations,” including Appendix A, the Minimum Operating Standards for Missouri Courts: Municipal Divisions (“*MOS*”). This Order shall supersede Court Operating Orders #1, #2 and #3, which are hereby rescinded. The term “Municipal Division” shall be referred to herein as “Division.”

B. This Order is intended to include in one consolidated Division Order, such relevant statutes, rules and standards, to provide for and achieve procedural fairness, order and convenience for those who appear before this Division. This Order is intended to apply, as is appropriate to do so to abide by the law imposed on the Court, to all Court personnel, officers of the Court, attorneys, and litigants, including without limitation the Judge, Court Administrator, Clerk of Court, Prosecuting Attorney, Prosecuting Attorney’s Clerk, Bailiff, and security personnel.

C. This Order is not intended to supersede, supplant, or alter any Missouri Supreme Court Rule, including the *MOS*, or any local circuit court rule adopted which governs the operations of a municipal division and reporting obligation, as provided in the “Protocols for Presiding Circuit Court Judges Supervising Municipal Court Judges” adopted by the Supreme Court in November, 2016. All the provisions of this Order shall be subordinate to Missouri Supreme Court Rules, Missouri statutes, and local circuit court rules, which may differ than the provisions of this Order.

D. This Order also includes in Part I, Section B, several local circuit court rules, which are not technically “operating orders” or “operating rules.” The term “Court Administrator” as used in Part I, Section B, and elsewhere, also applies to those Divisions

“Municipal Divisions” of the Circuit Court, not “Municipal Courts.”

*“Supplemental Rules” are suggested to be adopted along with *DOO*#4. These are included in the materials and designed to complete the management plan for your court.*

*Missouri Supreme Court published revised protocols for its PJs on 6/30/17. One requires the PJ to adopt a local Circuit Court rule covering its municipal divisions. *DOO*#4 was developed from this protocol requirement. It is part of the Local Court Rule in the 21st Circuit, Rule 69.01.*

which utilize the term "Court Clerk." The Term "Division Clerk" shall also be considered synonymous, when that term is used in place of "Court Administrator" or "Court Clerk." The same is true for "Deputy Court Administrators," "Deputy Division Clerks, or "Deputy Court Clerks," which are the same position.

PART I – ADMINISTRATION OF MUNICIPAL DIVISION

A. General Administrative Procedures.

1. General Duties of Court Administrator. Court Administrator shall ensure that the Court regularly communicates with the Circuit Clerk and the Presiding Judge on all relevant matters, including the Division's existence. The Court Administrator shall comply with the standards set forth in "Open Records and other Recordkeeping Matters" contained in the MOS, following MOS #10. Such standards shall include maintenance of complete and accurate records of all Division proceedings, including warrants outstanding, bonds posted, case files and dispositions. All documentation "backer sheets" shall be signed by the Judge. The Court Administrator shall ensure that Division's computer data is backed-up, stored in secure offsite locations, and that passwords are kept confidential and periodically changed. Courts using the statewide case management system shall follow any published security guidelines.

There are four additional sections of Rule 37.04, which follow the ten numbered MOS standards. They will be referred to herein and in materials as AT#1, AT#2, AT#3, and AT#4. (AT stands for "Afterthoughts.")

2. Case Numbering and Case Indexing. Case index records shall be maintained on all municipal cases. Judgment index records shall be maintained on all municipal judgments. Case indexes shall be maintained for each case filed, including traffic or non-traffic violations. The index shall include the full name of the defendant, case number, date the case was filed with the court, and the case disposition. Confidential cases shall be accessible only by authorized personnel.

"Backer sheets" on dockets should be signed by the Judge "if required by law" AT#3.

Cases filed by the prosecutor shall be assigned a unique number by the Division. The numbering system shall be that used by the Office of State Court Administrator ("OSCA") or that computer software vendor approved by the State Judicial Records Committee. All forms used by the Division shall be numbered sequentially and accounted for, including tickets, summons, complaints, receipt slips, bond forms, and payment agreements. (Source: §§483.065, 483.075, and 483.082 RSMo; Supreme Court Operating Rule ("COR") 4.04.; payment agreement source State Auditor recommendation, Municipal Clerk Manual ("Clerk Manual") Section 1.1c.)

AT#3 – prosecutors must sign all informations.

3. Violation Bureau Schedule – Posting and Availability to Accused. The Judge shall, from time to time, appoint a Court Administrator to be the Violation Bureau Clerk. This shall be by a separate order. The Violation Bureau Schedule shall list and process only those violations authorized by Supreme Court Rule 37.49(c). It shall be prominently displayed at the place where fines are to be paid. The Court Administrator shall periodically communicate with the police department to ensure, where applicable, the schedule of fines and costs payable through the Violation Bureau is provided to an accused at the same time as a violation notice. (Source: Supreme Court Rules ("SCR") 37.49 and 37.33(b).)

Court administrators point out no rule requires sequential numbers for payment agreements. However, the State Auditor does so recommend. (Obviously easier to determine if one is missing, per State Audits. See, AT#2)

An example of a schedule of fines for police to give to those stopped with traffic tickets is included in materials. Rule 37.33(b) is not new, but frequently overlooked.

4. Budget. The Court Administrator shall communicate regularly with the Judge and the City Finance Department (“City”) regarding any budget issues involving the Division. Any budget disputes shall be resolved through a settlement conference with the Presiding Judge, if necessary. The Court Administrator shall work with the City to identify associated fines and costs revenues for the purpose of the revenue calculations required by law. (Source: Mo. Constitution, Article II; §479.359 RSMo; COR 13.) *AT#4 requires your Court to work with the City to establish the percentage of income calculation. The City shall prepare the calculations to send to the State Auditor.*

5. Advising Litigants of Their Rights in Court. The Court Administrator shall take necessary steps to ensure that defendants are given advice of rights pursuant to the SCR and MOS #9, including a “Notice of Rights in Municipal Division” form as approved by the Supreme Court. (Source: SCR 37.47, 37.48, 37.50, and 37.58; MOS #9.) *The official “Notice” form is now contained in Rule §37.04, Appendix D.*

6. Compliance with Certifications and Reports to Auditors – Highway Patrol. The Court Administrator shall communicate with Missouri State Highway Patrol (“MSHP”), OSCA, and the Regional Justice Information System (“REJIS”) to be compliant with their policies and management agreements regarding information, including terminal operations. The Court Administrator shall communicate with the Judge and with the City to facilitate compliance with requirements of other agencies with respect to the information systems provided to the Division. *Justice information systems usually require contracts with your City Court. Confer with your Court Administrator and keep a copy of it in the Court file.*

B. Applicable Local Circuit Court Rules.

NOTE: The following eight provisions are not “operating orders,” but in the nature of local court rules, are included here for convenience.

1. Court Administrator. The Court Administrator (or, as known in some Divisions, the “Court Clerk” or “Division Clerk”), shall be the chief administrator of the Division. The Court Administrator and all Deputy Clerks, shall be responsible for the orders contained in Parts I, II and III, except when such orders are applicable only to the Judge, to the Prosecuting Attorney, to the Prosecuting Attorney’s Clerk, or to other personnel other than the Court Administrator. The Court Administrator shall, when applicable, cooperate with the City to assist the Court Administrator to effectuate applicable provisions of this Order. To the extent not prohibited by the MOS, or other relevant law or rule, the Court Administrator shall cooperate with the Prosecuting Attorney’s Clerk, the police department, and the City. *Judge and Court Administrator should review AT#3 to confirm the Court Administrator’s duties. (They are more detailed than one might think.)*

2. Minor Traffic Violations – Special Rule. The Court Administrator shall clearly mark the jacket or outside of case files which fall under the current definition of “Minor Traffic Violations” (“MTVs”) so that the Division may readily recognize such cases when handling the file. The Court Administrator shall communicate with the Division, and with the Prosecuting Attorney’s Clerk and Prosecuting Attorney, so that all court personnel are aware of the limitations with respect to fines, costs, and other conditions imposed upon the Division by legislation. (Source: §§479.353 and 479.360 RSMo.) *Note: SCR 37.04, Appendix B “Code of Conduct” is an important document to review with your Court Administrator, once a year. Section 1.6 of the Supplemental Rules requires you create a “Clerk Compliance Agreement.”*

3. Municipal Ordinance Violations – Special Rule. Fines and costs assessed on a “Municipal Ordinance Violation” (as defined by law) shall not exceed the *No rule on this – but a suggested practice so judge and PA can easily identify “MTV” and “MOV” violations on court file jackets.*

mandatory maximum schedule set forth by statute. The Court Administrator shall clearly mark the Division files, to report any previous relevant violations of "Municipal Ordinance Violations" ("MOV's") so that the Court may not impose a fine in an amount which exceeds the mandatory maximum schedule. (Source: §§479.350(4) and 479.353(1)(b) RSMo.)

4. Segregation of Duties. The Court Administrator shall abide by MOS #7 and, as applicable, take all steps necessary to segregate the duties of the Prosecuting Attorney and law enforcement from that of the Court Administrator. The Court Administrator and the Prosecuting Attorney's Clerk shall cause there to be separate filing systems for prosecutor-related documents and communications, from those documents and communications under the authority of the Court Administrator.

Supplemental Rules are designed to comply with MOS#7. MOS #7 uses the term "separation of powers" rather than "segregation of duties."

5. Hours of Court Administrator's Office. The Court Administrator shall communicate regularly with the Division and with the City so that the Court Administrator's office is open and accessible to the public for the required number of hours per week, or the Court Administrator is available, all in accordance with MOS #8.

Hours of office: The Court hours should be in the Supplemental Rules and on your website.

6. Confidential and Closed Records.

- a. Identify Records. The Court Administrator shall identify all Division records that contain confidential information and maintain all confidential records in accordance with those procedures set forth in Chapter 5 of the then current Clerk Manual. The Court Administrator shall permit closed records to be inspected by the defendants, courts, and those agencies as are set forth in Section 610.120 RSMo. The Court Administrator shall identify all Court records (including docket entries for cases that have been nolle prossed, dismissed, Substance Abuse Traffic Offender Program ("SATOP"), or the defendant found not guilty) that contain confidential information. The Court Administrator, on behalf of the Judge, shall request the City provide adequate and secure file cabinets for the retention of confidential records and closed files. The Court Administrator shall comply with laws regarding confidentiality of identifying information contained in Court documents regarding victims of sexual or domestic assault, or stalking. (Source: §§566.226, 610.105 and 610.120 RSMo; Section 5.1 of Clerk Manual.)

- b. Confidentiality of SATOP Programs. If the Division orders the defendant to participate in a SATOP program, the Court Administrator shall file all documents received from the program provider in the case file, and all documents relating to the program assessment, assignments and completion shall remain confidential. (Source: 42 CFR Part 2, 42 U.S.C. 290 dd-3.)

7. Record Retention and Destruction. The Court Administrator shall retain all Division records unless there shall be an order signed by the Presiding Judge of the Circuit Court to destroy same. The Court Administrator shall follow

AT#3: Check with Court Administrator to establish and maintain regular

COR 8 and the City shall cooperate with the Court Administrator to follow a regular schedule to destroy and/or transfer cases eligible for transfer or destruction in accordance with COR 8. The Court Administrator shall abide by those recommended procedures set forth in Chapter 5 of the then current Clerk Manual. All requests to destroy or transfer records shall be signed by the Presiding Judge. (Source: COR 8; Section 5.2 of Clerk Manual.)

destruction schedule. Judge might consider placement in your Supplemental Rules.

8. Conflicts. In order to comply with the requirements and spirit of MOS #5, the Judge, in cooperation with the Court Administrator shall, as far as practicable, manage a conflict plan enacted by the Judge, in order to ensure there are no judicial conflicts as prohibited by SCR. The Judge shall recuse himself/herself in all instances when required to do so. Further, the Division, Court Administrator, and other non-judicial personnel shall not perform any functions which constitute an actual or apparent conflict of interest with the impartial performance of their duties. (Source: SCR 37.53(b)(2); MOS #5 and #7.)

The "conflict" described in the new Rule 37.53(b)(2) is limited. It does not actually appear that MOS#5 relates to conflicts in general—such as a plan suggested here to review the docket ahead of time to make sure a judge doesn't represent a defendant on civil matters. This process is beyond the scope of MOS#5.

C. Reporting Requirements of the Municipal Division.

1. Reporting to the City. Unless substituted with the report required under COR 4.28, within the first ten (10) days of each month, the Court Administrator shall submit to the City Clerk copies of the dockets of all cases heard during the preceding month by the Division and those cases in which there was an application for a trial de novo. If a record is closed under Chapter 610, RSMo., the Court Administrator shall not include the name of the defendant in the monthly report. For all cases that are nolle prossed, dismissed, or those in which the defendant is found not guilty, the Court Administrator shall supply all the required information, but black out the defendant's name. The Court Administrator may, pursuant to the authority in COR 4.29, substitute submission of the dockets to the City Clerk with the report required to be sent to OSCA under COR 4.28. (Source: §§479.080.1 and 479.080.3 RSMo, COR 4.28 and 4.29; Section 1.4 of Clerk Manual.)

AT#1.

Most courts file the OSCA report with the City, not the redacted docket.

2. Reporting to the Department of Revenue.

- (a) Case Disposition. The Court Administrator shall report case disposition information on all moving traffic violations, alcohol and drug-related traffic offenses, including suspended imposition of sentence, all convictions while driving a commercial motor vehicle, including commercial driver's license holders driving a personal vehicle, to the Missouri Department of Revenue ("DOR"). The Court Administrator shall abide by the "Case Processing Procedures" found in Chapter 3 of the then current Clerk Manual published by OSCA. The Court Administrator shall ensure that the disposition is received by the DOR within seven (7) days of the disposition. If defendant requests a trial de novo within the ten (10) day period after judgment against defendant, then the DOR shall not receive the disposition. (Source: §§302.225.1 and 577.051 RSMo; Section 1.4 of Clerk Manual.)

NOTE: For the judge authoring the order, three options for reporting are listed below. Retain only the appropriate section [minus text in brackets] that applies to the type of case management system operating in the Division. The other sections, as well as this note, should be deleted.

[1. Divisions Using Automated Case Management System Approved for Statewide Use]

The Court Administrator shall insure the accuracy of data entered into the automated case management system approved for statewide use by the State Judicial Records Committee, so that OSCA can automatically extract required reporting information to electronically provide to the DOR. In an effort to comply with this requirement, the Court Administrator shall actively review and correct data errors identified through the case management system's problem logs.

[2. Divisions Using an Automated Case Management System Approved for Local Use and Approved for Electronic Reporting to the Department of Revenue]

The Court Administrator shall insure the accuracy of data entered into the automated case management system and ensure required reporting information is transmitted electronically in a format approved by the DOR.

[3. Divisions Not Using an Automated Case Management System or Using an Automated System Not Approved for Electronic Submission to Department of Revenue]

The Court Administrator shall complete the report by submitting a completed "Abstract of Court Record," portion of the Uniform Citation, or by submitting a completed "Record of Conviction" form referenced in SCR form 37.B – *Record of Conviction*. (Source: SCR 37.B.)

- (b) Crime Victims Compensation Fund. The Court Administrator shall cause a \$7.50 Crime Victims Compensation Fund ("CVC") surcharge to be assessed on all non-moving and moving traffic violations and all other non-traffic municipal ordinance violations, unless the case has been dismissed, or costs have been waived due to the Division finding the defendant indigent. The Court Administrator shall forthwith cause the CVC charge to be reported to the DOR and disbursed as follows:

95% (\$7.13 of each fee) shall be sent to the DOR no less than monthly and 5% (\$.37 of each fee) to the general fund of the City in accordance with IV.C, *infra*. (Source: §§488.5339 and 595.045.6 RSMo.)

The Court Administrator shall be familiar with and abide by those provisions set forth in Sections 4.2 and 4.3 of the then current Clerk Manual.

- (c) Abuse and Lose Procedures. In the event that the Judge shall enter an order suspending or revoking the defendant's driving privileges under the Abuse and Lose law, the Court Administrator shall, within ten (10) days of the order, send any Missouri license surrendered to the

According to DOR, there has never been a high percentage of judges

Division, along with the certified copy of the Order of Suspension on the official DOR form, to the DOR. The Court Administrator shall follow those procedures regarding Abuse and Lose reporting as set forth in Section 3.8 of the then current Clerk Manual. (Source: §§577.500 through 577.505 RSMo.)

sending Abuse and Lose orders or licenses to the DOR.

- (d) Failure to Appear or Pay – License Suspension. The Court Administrator shall notify defendants within ten (10) days of that defendant’s failure to dispose of a moving traffic violation, that the Division will order the DOR to suspend that defendant’s license in thirty (30) days, if the charges are not disposed of or fully paid. This provision shall not apply to Minor Traffic Violations as defined in Section 479.353 RSMo (2015). For such violations for which a notice may be sent to defendants, such notification shall not be sent until a summons has been mailed to the defendant and defendant thereafter shall fail to appear. On non-Minor Traffic Violation cases that apply, the Court Administrator shall send the Failure to Appear or Pay Traffic Violation (F.A.C.T.) form to the DOR when a defendant has failed to appear on a court date after a summons has been issued to the defendant, when the defendant fails to appear on a subsequent court date to which the case has been continued, or, when the defendant, without good cause, fails to pay any fine or costs assessed against him or her.

The Court Administrator must send F.A.C.T. forms to the DOR – still required for non-MTV violations.

Upon payment of all fines and costs, or, if earlier ordered by the Judge, a compliance notice on forms approved by the DOR shall be issued to the defendant, and the Court Administrator shall forthwith advise the DOR of such compliance. (Source: §§302.341 and 427.353 RSMo; Section 3.5 of Clerk Manual.)

- (e) Withholding Renewal of License. In the event a defendant shall fail to appear when ordered, and without being first granted a continuance, and appropriate summons to follow the failure to appear, the Court Administrator shall notify the DOR within ten (10) days of the failure to appear, by using the “Lieu of Bail” form provided by the DOR, except such notification shall not be required if the Court Administrator has utilized the notification procedures set forth in Paragraph 5, *supra*. When the case is disposed of, the Court Administrator shall report the disposition as on any other traffic case. (Source: §544.045.4 RSMo; Section 3.5 of Clerk Manual.)

This notification is required by statute, but ignored by some judges. It remains a viable option to get defendants into court after the license suspension law was curtailed. See (d) above.

- (f) Non-Resident Violator Program. In the event a defendant who is not a resident of Missouri fails to appear, the defendant shall be notified by regular mail and given a specific amount of time to dispose of the traffic ticket before notification is made to the DOR. If defendant fails to comply, the Court Administrator shall forward the Non-Resident Violator Compact (NVRC) Form provided by the DOR, to the Compact Administrator at the DOR. This provision shall be in effect for non-resident defendants from all other states in the United States which are members of the Non-Resident Violator Compact. (Source: §544.046 RSMo; Sections 3.5 and 3.6 of Clerk Manual.)

The statute requires compliance but this is frequently overlooked. Check with your Court Administrator to confirm compliance.

(g) Driver Improvement Programs. In the event that the Judge has ordered a non-CDL holder defendant to complete the Driver Improvement Program, the Court Administrator shall send notice of its completion to the DOR within fifteen (15) days of Program completion. The Court Administrator shall not send any notice of the Driver Improvement Program if the moving traffic violation has been amended to a non-moving violation by the Prosecuting Attorney. (Source: §302.302 RSMo; Section 3.7 of Clerk Manual.)

Each judge is required to permit internet-based traffic schools which are approved by the Missouri Safety Center at UCM. Many courts fail to abide by this requirement.

(h) Ignition Interlock Device. When the Judge shall order the use of an ignition interlock device (“IID”), the Court Administrator shall forthwith send the Order to install the IID to the DOR properly executed, containing the requirements for the period of the use of the IID. (Source: §§577.600 through 577.614 RSMo; Section 3.2 of Clerk Manual.)

3. Reporting to OSCA.

NOTE: For the judge authoring the order, three options for reporting are listed below. Retain only the appropriate section [minus text in brackets] that applies to the type of case management system operating in the Division. The other sections, as well as this note, should be deleted.

[1. Divisions Using Automated Case Management System Approved for Statewide Use]

The Court Administrator shall insure the accuracy of data entered into an automated case management system approved for statewide use by the State Judicial Records Committee, so that OSCA can automatically extract required reporting information as provided by COR 4.28. In an effort to comply with this requirement, the Court Administrator shall actively review and correct data errors identified through the case management system and filing and disposition exception reports. (Source: COR 4.28; Section 1.4 of Clerk Manual.)

[2. Divisions Using an Automated Case Management System Approved for Local Use]

The Court Administrator shall insure that required reporting information is transmitted either electronically or manually in a format according to provisions of COR Rule 4.28. The Court Administrator shall insure the accuracy of data entered in the case management system. This information shall be submitted to OSCA no later than the 15th day of each month, with data completed from the previous month’s Division activity. (Source: COR 4.28; Section 1.4 of Clerk Manual.)

[3. Divisions Not Using an Automated Case Management System]

The Court Administrator shall complete and deliver the “Municipal Division Summary Reporting” form to OSCA no later than the 15th day of each month, with data completed from the previous month’s Division activity. This data shall be delivered by e-mail or fax to OSCA on the then current form provided by OSCA. The Court Administrator shall complete the form in accordance

with the instructions submitted from time-to-time by OSCA, and as contained in the then current Clerk Manual. A copy of the OSCA form shall be submitted to the Judge each month. (Source: COR 4.28; Section 1.4 of Clerk Manual.)

4. Reporting to the MSHP (Criminal History Reporting including Intoxication-Related Traffic Offenses, "Fingerprint Cards").

The Court Administrator shall report to the MSHP any violations of municipal ordinances involving alcohol or drug related driving offenses or any violations deemed to be "comparable ordinance violations" as defined by Section 43.503 RSMo and as listed in the Missouri State Charge Code Manual. The Court Administrator shall report violations without undue delay or within 30 days of case disposition.

Your Court Administrator should maintain a list of "fingerprinting" charges.

At any court appearance for any reportable offense, the Court Administrator shall inform the Division that the defendant needs to be fingerprinted and photographed, if not already obtained. The order for fingerprints shall contain the offense, charge code, date of offense and any other information necessary to complete the reporting.

For any reportable violation, the Court Administrator shall report to the MSHP a record of all charges filed, including all those added subsequent to the filing of the case, amended charges, and all final dispositions of cases where the central repository has a record of an arrest. The Court Administrator shall abide by reporting requirements found in Sections 1.4 and 3.3 of the then current Clerk Manual. (Source: §§479.172, 43.503 RSMo; Sections 1.4 and 3.3 of Clerk Manual.)

Dispositions that must be reported to the MSHP are:

- Not guilty, dismissed, nolle prossed or acquittal
- Plea of guilty or finding of guilt
- Suspended imposition of sentence
- Suspended execution of sentence
- Probation
- Conditional sentences
- Sentences of confinement

NOTE: For the judge authoring the order, two options for reporting are listed below. Retain only the appropriate section [minus text in brackets] that applies to the type of case management system operating in the Division. The other sections, as well as this note, should be deleted.

[1. Divisions Using Automated Case Management System Approved for Statewide Use]

The Court Administrator shall insure the accuracy of data entered into an automated case management system approved for statewide use by the State Judicial Records Committee, so that OSCA can automatically extract required reporting information and forward it to the MSHP. In an effort to comply with this requirement, the Court Administrator shall actively review and correct data errors identified through the case management system's problem log

reports. (Source: §§ 43.503 and 43.506 RSMo; Sections 1.4 and 3.3 of Clerk Manual.)

[2. Divisions Using an Automated Case Management System Approved for Local Use or a Manual Case Management System]

The Court Administrator shall insure that required reporting information is transmitted manually by completing and sending to the MSHP the Prosecutor Action and/or Court Action Segment(s) of the State Criminal Fingerprint Card, which contains an Offense Cycle Number (OCN), pursuant to Section 43.506 RSMo. (Source: §§ 43.503 and 43.506 RSMo; Sections 1.4 and 3.3 of Clerk Manual.)

The Court Administrator shall provide any information received by the Division Administrator to the Judge, so that the Judge shall comply with the statutory requirement to receive “adequate instruction on the laws related to intoxication-related traffic offenses.” (Source: §479.172.1 RSMo.)

5. Reporting Intoxication-Related Traffic Offenses to Circuit Court en Banc

The Court Administrator shall prepare a report twice annually, by June 30th and December 31st, which shall include, but shall not be limited to, the total number and disposition of every intoxication-related traffic offense adjudicated, dismissed or pending in that Division. The Division shall submit said report to the Circuit Court en Banc. The report shall include the six-month period beginning January 1st and ending June 30th and the six-month period beginning July 1st and ending December 31st of each year. The report shall be submitted to the Circuit Court en Banc no later than sixty (60) days following the end of the reporting period. The Judge shall attach the same report to the Presiding Judge in accordance with I.C.7. of this Order by January 1st of the year, recognizing that there is no sixty (60) day period to submit the report following the end of the reporting period as there is for the report to the Circuit Court en Banc. (Source: §479.172.3 RSMo; MOS; Section 1.4 of Clerk Manual.)

AT#1 also requires this report. Some courts have delayed the December 31st report to the PJ because they'd have to file it before the year is actually up, so they won't have the correct annual percentages to report.

NOTE: For the judge authoring the order, two options for reporting are listed below. Retain only the appropriate section [minus text in brackets] that applies to the type of case management system operating in the Division. The other sections, as well as this note, should be deleted.

[1. Divisions Using Automated Case Management System Approved for Statewide]

Unless instructed by the circuit court to provide additional information or report in a different manner, the Court Administrator shall run the Report.net reports described in Chapter 1 of the then current Clerk Manual and complete the “Municipal Division Summary Reporting Form.” The Court Administrator shall send the “Municipal Division Summary Reporting Form” along with a cover letter to the Presiding Circuit Judge to meet the semi-annual reporting requirement to the Circuit Court en Banc.

[2. Divisions Using an Automated Case Management System Approved for Local Use or a Manual Case Management System]

Unless instructed by the circuit court to provide additional information or report in a different manner, the Court Administrator shall use the “Municipal Division Summary Reporting Form” that is submitted monthly to OSCA to meet the semi-annual reporting requirement to the Circuit Court en Banc. The Court Administrator shall make copies of each month’s report for the required reporting period and send along with a cover letter to the Presiding Circuit Judge.

6. Reporting to OSCA and MSHP (Intoxication-Related Traffic Offense Written Policy)

The Court Administrator shall provide a signed copy of this Order to the MSHP and OSCA at the addresses shown below. If any revisions are made to this Order, the Court Administrator shall provide a revised copy to the MSHP and OSCA. (Source: §479.172 RSMo; Section 1.4 of Clerk Manual.)

Addresses and facsimile numbers where copies shall be sent are:

Office of State Courts Administrator
Attention: Court Services Division, DWI Reporting Policy
P.O. Box 104480
2112 Industrial Drive
Jefferson City, Missouri 65110
Fax: 573-522-5961

Missouri State Highway Patrol
Criminal Justice Information Services Division
P.O. Box 9500
Jefferson City, Missouri 65102
Email: mshpcjis@mshp.dps.mo.gov

AT#1 requires this as well as § 479.172.1 RSMo.

This provision is written to comply with the statute requiring a written policy.

7. Reporting to the Presiding Circuit Judge. The Court Administrator shall meet with the Judge to review the “Minimum Operating Standards Form” to be submitted semi-annually to the Presiding Circuit Judge, to ensure compliance with the items to be certified in such Form. (Source: MOS #10.)

In addition to the MOS checklist form, there is an MCC-1 form to be signed by the judge to be filed at the same time. The City files another form also – showing the percentage of court income to city income.

8. Reporting to State Auditor. The Court Administrator shall meet and confer with the Judge to ensure that the City shall timely file with the State Auditor, together with the City’s report due under Section 105.145 RSMo, the City’s certification of its substantial compliance signed by the Judge with the Division procedures set forth in Section 79.360.1(1)(10) RSMo. The Court Administrator and the Judge shall meet periodically to review the provisions of Section 479.360(1) in order to ensure compliance with the State Auditor requirements.

The City Auditor must prepare this report and give a copy to the judge and court.

9. Reporting to Judge. The Court Administrator shall assemble the reports submitted to DOR, the MSHP, OSCA, the Presiding Circuit Judge, and the State Auditor, and maintain same in a file for periodic review by the Judge, so that the Judge is aware that all reporting requirements have been complied with for the previous period.

This report is in a checklist which is in the materials, suggested by Judge Bill Buchholz.

10. Reporting to the Department of Insurance. The Court Administrator shall report all unsatisfied judgments against bail bond agents and sureties, and subsequent satisfactions of those judgments, to the Department of Insurance. The Court Administrator shall utilize those procedures set forth in the Clerk Manual. (Source: § 374.763 RSMo; Section 2.3 of Clerk Manual.)

This is frequently ignored – but shouldn't be.

D. Fines, Division Costs, Surcharges and Fidelity Bonds.

1. General Rules.

- (a) The Court Administrator shall utilize his/her best efforts so that on each case adjudicated by the Judge, the Judge's appropriate fines are assessed and general Division costs are assessed only in the amounts set forth by statute or ordinance. These shall include CVC surcharges, police officer standard and training commission ("POST") surcharges, law enforcement training fine ("LETF") surcharges, recoupment, and other legal surcharges as set forth by law and city ordinance. Those fines and costs that shall be collected shall be remitted timely to the City, and to the DOR respectively, in accordance with this Order. (Source: MOS #4.)

Class-action lawsuits have been filed in the last few years over unauthorized Municipal Division costs and fees.

- (b) The Court Administrator shall use the OSCA Cost Card on municipal division costs as a reference. Dismissal upon payment of costs shall not be permitted. Division costs shall not be assessed against indigent defendants, as per law. (Source: §479.353(4)(5) RSMo; MOS #4.)

The current statute requiring free community service is controversial. It is difficult to comply with fairly.

- (c) The Division shall be in compliance with the then current statutes regarding community service utilization and its costs or fees. (Source: §479.360.1 RSMo; MOS #2 and #4.)

- (d) The Court Administrator shall have present at all times in the courtroom sufficient copies of procedural forms so as to allow defendants to present evidence of their financial condition in assessing their ability to pay, and for the Division to establish payment plans. The Court Administrator shall have other forms as available from OSCA to comply with requirements by law. (Source: §479.360.1 RSMo; Rule 37.65; MOS #2.)

Note 37.04, Appendix D, "Lawful Enforcement of Legal Financial Obligations: a Bench Card for Judges" should be understood. Appendix D should be on the bench with the judge.

2. Overpayment. The Court Administrator is not required to refund any overpayment of court costs of less than \$5.00. The Court Administrator is not required to pursue collection of underpayments of court costs of less than \$5.00. Any overpaid court costs may be retained by the City for operation of the Division. The Court Administrator shall pay such overpaid funds to the City on a regular basis.

Use the official "Statement of Financial Conditions" form published by the Supreme Court for the defendant who states they cannot pay the fine and cost.

(Source: Court Cost: City Ordinance; CVC: §§488.5339. and 595.045 RSMo; POST: §488.5336 RSMo; LETF: §488.5336 RSMo.; Overpayments/Underpayments: §488.014.RSMo.)

3. Receipts for Payment of Fines, Division Costs and Surcharges. The Court Administrator shall issue a pre-numbered receipt for all collections and

This is also required in AT#4.

provide such a receipt to the payer if payment is made in person, and retain a duplicate copy of the receipt in the receipt book or maintain the receipt in an approved automated system. In the event that the automated system is unavailable, manual receipts shall be issued and the payment shall be accounted for immediately following the restoration of the automated system. If payment is made by mail, the Court Administrator shall file the original copy of the receipt with the case file information, or maintain the original receipt in a pre-numbered receipt book or approved automated system cross-referenced with the docket entry, unless the payer requests the receipt be returned by mail, and provides a self-addressed, stamped envelope. (Source: COR 4.53 and Section 4.5 of Clerk Manual.)

4. Electronic Payments. The Court Administrator shall communicate with the City to create an appropriate system to allow court payments online and further, to make available free, online access to information about pending cases, outstanding warrants and scheduled Division dockets. (Source: MOS #6.)

"Electronic Payments" required only for convictions on MTVs and MOVs. See SAC#10 and Supplemental Rules.

5. General Compliance with Recommended Accounting Procedures for Municipal Divisions; Deposit of Fines, Costs, Surcharges and Bonds to be placed into Applicable Accounts.

- (a) The Court Administrator shall follow those recommended accounting procedures for municipal divisions as set forth in Section 4.5 of the Clerk Manual. The Court Administrator shall cooperate with the City to comply with the provisions of law limiting the percentage of revenue from Municipal Ordinance Violations and Minor Traffic Violations for reporting purposes. (Source: §479.359, RSMo.)

The Court should have a procedure in place to determine the percentage of revenue from MOVs and MTVs for reporting purposes.

- (b) The Court Administrator shall deposit all fines, costs, surcharges and bonds collected in the Division's or City's bank accounts on a daily basis, or when the amount on hand reaches \$100.00, if not on a daily basis. The Court Administrator shall, to the extent possible, work jointly with the City to effectuate all deposits by delivery of same for deposit by police officers or other city personnel. The Court Administrator shall cause specific surcharges, including, but not limited to, CVC, POST, LETF, police recoupment, and, if applicable, domestic violence and inmate security surcharges, to be placed as separate line items or in separate accounts and to be remitted to the proper entity or account no less than monthly. (Source: COR 21; Section 4.5 of Clerk Manual; MOS "Open Records and Other Recordkeeping Matters" and "Financial and Bookkeeping" provisions.)

These requirements are in AT#3 and COR 21.

6. Fidelity Bonds. The Court Administrator shall request the City to maintain fidelity bonds, in an amount established by the City, in consultation with its auditors, covering the Court Administrator and all other personnel who handle collection or deposit of fines, court costs and surcharges related to the Division. The Court Administrator shall obtain a copy of the declaration sheets of any such bonds obtained by the City to keep in the Division

AT#4 requires "bond coverage." Check this with your Court Administrator.

permanent files. (Source: Section 4.5 of Clerk Manual; MOS "Financial and Bookkeeping" provisions.)

E. Surety Bonds and Confinement.

1. **Bond Qualifications.** The Court Administrator shall keep a list of those sureties who have qualified to post surety bonds. No person shall be accepted as a surety on any bail bond unless he or she is licensed by the Department of Insurance. (Source: SCR 37.29 and §374.710 RSMo.)

No lawyer, elected or appointed official or municipal or state employee shall be accepted as a surety on any bond unless related to the defendant.

2. **Cash Bond Schedule.** Any cash bond schedule approved by the Judge shall provide for procedures to comply with law. Such procedures shall include, but not limited to the following:

- (a) Procedures to prevent defendants from being held longer than 48 hours on Minor Traffic Violations and 72 hours on other violations without being heard by the Judge in person, by telephone or via video conferencing.
- (b) Procedures for the Court Administrator and others requiring reasonable efforts to communicate to the city police department the "24 hour Rule," as described in Section 544.170.1 RSMo, relating to the right to review of conditions for release when no "conditions for release" have been imposed.
- (c) Procedures for the Court Administrator to communicate with the Judge and with the city police that there shall be no confinement to coerce payment of fines and costs, except after compliance with SCR 37.65.

(Source: §§479.360.1, 479.360.2, 544.170.1 RSMo; SCR 37.1, 37.20 and 37.65; MOS #1.)

3. **Unclaimed Bond Funds and other Funds.** The Court Administrator shall follow those procedures set forth in the then current Clerk Manual to pay to the State Treasurer's Office Unclaimed Property Division, all funds unclaimed for three (3) years and cash bonds unclaimed for one (1) year, from the date the bond was due back to a person. The Court Administrator shall send a letter of notification and otherwise reasonably attempt to contact the person and return the funds. Said report shall be sent to the State Treasurer's Office by November 1st of each year, and the Court Administrator shall remit said unclaimed funds with the report. The Court Administrator shall request the City assist in processing, reporting and remitting to the State Treasurer. (Source: §§447.532, 447.539, and 447.595 RSMo; Section 4.4 of Clerk Manual.)

Bond schedules are still permitted, but you should be familiar with limitations per case law. See Supplemental Rules for language about limited use of Court bonds. Also, carefully review MOS#1 as to the limited use of bond schedules. Sample procedure forms are included in the materials.

Note – the Court needs written procedures to comply with this requirement in the materials. See Supplemental Rules.

This required procedure is sometimes put on the back burner.

F. **Warrants.**

1. The Court Administrator shall follow those procedures and guidelines concerning warrants as directed by the Judge, and in compliance with MOS #1. The Court Administrator shall ensure that warrants are signed only by the Judge, unless the exception of a specific warrant ordered by a Judge shall be signed by the Court Administrator is applicable. The Court Administrator shall ensure that when a case is dismissed by the prosecuting attorney or otherwise finally resolved, or when the circumstances that justified issuance of a warrant no longer exist, that the Judge is informed to cancel any outstanding warrants in that case as soon as practicable. (Source: SCR 37.45.)
2. The Court Administrator shall work with the Judge to create procedures to ensure that the recall and cancellation of all outstanding warrants is communicated to the police department by the Court Administrator without delay. The Court Administrator shall coordinate with the police department and the Judge to make sure there is a duty judge available at all times to rule promptly upon warrants, bails, conditions, and pretrial release, and other matters. (Source: Chapter 2 of Clerk Manual; MOS #1.)

See the examples of procedural forms in the materials following the Supplemental Rules to comply with this requirement of MOS#1.

Examples of procedure are included in the materials following the Supplemental Rules.

- G. **Administrative Search Warrants.** The Court Administrator shall keep the application and any supporting affidavits, and a copy of all search warrants issued by the Judge in the records of this Division. (Source: Chapter 542 RSMo; Section 2.11 of Clerk Manual.)

[NOTE: Section G is only applicable for Divisions that have city ordinances allowing the issuance of administrative search warrants.]

- H. **Accounting Procedures.** The Court Administrator shall to the fullest extent possible, abide by those accounting procedures as are mandated by law, and in particular as are set forth in Chapter 4 of the then current edition of the Clerk Manual. (Source: §§479.080, 479.350, 479.353, 479.359, 483.075, and 483.082 RSMo; Chapter 610 RSMo; SCR 37; MOS "Financial and Bookkeeping" provisions; COR 4, 8 and 21.)

The Clerk Manual has detailed accounting of practices required under these statutes and rules.

In particular, the Court Administrator shall work with the Judge and the City, to ensure that the "Financing and Bookkeeping" provisions of MOS are abided by as far as can be practicably accomplished.

AT#4 Rules of Accounting are the same as in the Clerk Manual.

- I. **Marriage Records.** If the Judge performs marriages, the Court Administrator shall communicate with parties desiring to have a marriage solemnized by the Judge. The Court Administrator shall require that the parties provide a marriage license and a Certificate of Marriage blank form to the Court at least ___ days [NOTE: Number of days should be entered by local court based on local need] before a scheduled wedding, to ensure adequate review of such license.

The Court Administrator shall assist the Judge in completing the license and the Certificate of Marriage. The Court Administrator shall retain a full record of the solemnization performed by making a copy of the completed marriage license and a copy of the executed Certificate of Marriage, and keeping both documents in a permanent binder or folder. The Court Administrator shall cause the executed

marriage license return to be sent to the appropriate licensing official as soon as possible, but not later than 10 days after the marriage is performed. (Source: §§451.110 through 451.130 RSMo, COR 14)

PART II – ORDERS REGARDING OPEN DIVISION AND EXCEPTIONS

A. General Rule.

1. Division Shall be Open to the Public. The Division courtroom shall be open to the public of all ages and large enough to reasonably accommodate the public, parties and attorneys. The Court Administrator and Judge should take reasonable steps if it appears that longer hours or additional court dates are required to meet this provision. (Source: §479.360.1 RSMo; MOS #8.)
2. Opening of Division Doors. Division personnel shall open the doors to the courtroom at least one hour prior to the commencement of the Division's docket, unless a different order of the Division shall specify otherwise.
3. No Refusal of Entry. Division personnel shall not refuse entry by any person, whether defendant or other person, except and unless such person shall be in violation of any published dress code, is acting in an inappropriate manner, or if such entrance would violate the Fire Code. Division personnel shall have the right to ask persons entering the courtroom if they are a defendant or visitor, but only for purposes of directing where to sit, or to mark a name off the docket. Division personnel shall have the right to check purses, camera bags, and similar items.
4. The Division's website and general correspondence shall not state that certain persons are prevented from attending any session of Division, except that there may be reference stating that those not in compliance with any published dress code adopted by the Division will not be admitted.

Review Recommended Practices, Part 1, and Supplemental Rules. You should include the hours the Court is open in your Supplemental Rules.

Suggested provision only, not in the MOS or other rules. You may consider placing this in the Supplemental Rules.

See MOS#6.

There are apparently still several Municipal Division websites stating children are not permitted in the courtroom.

- ### **B. Exceptions and Limitations to the Above General Rules Regarding Open Division.** The Division recognizes and shall abide by the provisions of Sections 476.170, 479.060, 479.360 and 479.060 RSMo and MOS #8, requiring that the courtroom be open to the public of all ages and large enough to reasonably accommodate the public, parties and attorneys. The following are limited exceptions to this General Rule, as set forth in Paragraphs 1 through 5 below:

These exceptions developed here from court cases. This is a suggestion – no rule or statute on this – but it would be best to include these exceptions.

1. Disruptive Persons. If any person attending a Division session shall become disruptive in any manner, including, but not limited to, talking in anything other than a respectful whisper, creating other noise, not remaining seated, or in any other way becoming disruptive as observed by the Division personnel, that person shall be first cautioned by Division personnel, and if the offensive conduct is not immediately corrected, removed from the courtroom. The name of any defendant associated with the disruptive person shall be recorded. The defendant may be allowed to stay outside until the Judge permits re-entry to take up defendant's case.
2. Persons under the Clear Influence of Alcohol or Drugs. If any person attending a court session shall appear to Division personnel to be clearly under

MOS#8 permits closure of Court "in particular circumstances for good cause shown."

MOS#8 contains provisions for a judge to

the influence of alcohol and/or drugs, that person shall be, if a defendant, asked for his or her name and then be asked to leave the courtroom. The defendant shall be asked to remain outside the courtroom for determination by the Division whether to continue the matter or take other action. If the affected person is not a defendant or witness in a trial, that person shall be removed from the courtroom.

consider "safety" in closing or limiting access to the courtroom.

3. Appropriate Attire. When a person who desires to enter the courtroom does not meet any published dress code adopted by the Division, Division personnel shall require that said person leave the courtroom until such time as the person is appropriately dressed to meet the Code, or the Judge may continue the case upon request of the Prosecuting Attorney or defendant.

The Supplemental Rules include specific dress code requirements.

4. Overcrowding in Violation of the Fire Code. In the event of large attendance, bailiffs, police officers and other Division personnel shall count the persons present in the courtroom and shall limit access so as not to be in violation of the Fire Code. The number of persons who may be present in the courtroom without violation of the Fire Code is _____.

Check with City or Fire Protection District Fire Marshal for capacity.

When it appears to the Division during any single Division session, that there will be more persons attempting to enter the courtroom than are permitted under the Fire Code, then the Division shall take such appropriate action as would be consistent with all legal and constitutional requirements.

5. Children. Subject to the right of the public of all ages to attend Division sessions, the Division may limit the presence of children unaccompanied by an adult. This shall not apply to persons under the age of seventeen (17) who are present in the courtroom as a defendant. For children sixteen (16) and under, the Division shall be open except as follows:

This limitation is authorized per MOS#8.

- (a) When a child becomes noisy or will not remain seated, the parents or guardians of that child will be asked to remove said child or children. The bailiff or police officer shall record the name of the defendant associated with the child, and ask that the defendant and children remain in the hallway or outside the courtroom until their name is called on the docket. At such time as the defendant's name is called, the bailiff shall summon the family, including children, who may then enter the courtroom for purposes of arraignment or other business with the Division.
- (b) The Division may exclude children if the nature of a matter being heard may be, in the Division's discretion, inappropriate for children.

(Source: §§476.170, 479.060, 479.360 and 479.060 RSMo; MOS #8.)

- C. Closing of the Courtroom. Other than closure to those persons as set forth in Sections B.1 – 5, if the Judge, Prosecuting Attorney or defense counsel desires to close the courtroom during any particular motion or trial, the Division will conduct a brief hearing on whether to enter an order to close the proceedings. Guidelines for such closure shall be as follows:

This provision complies with MOS#8.

Follow these guidelines when you consider closing the courtroom.

1. The proponent of closure must present a showing of a compelling interest for such closure and where that need is based upon a right other than the accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right.
2. Anyone present in the courtroom when the closure motion is made, must be given an opportunity to object to the closure.
3. The proposed method for curtailing open access shall be in the least restrictive means available for protecting the threatened person's interest.
4. This Division will weigh the compelling interest of the proponent of closure and the public.
5. The order shall be no broader in its application or duration than necessary to serve its purpose.

See: State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (Wash. 1995) and State v. Salazar, 414 S.W.3d 606 (Mo. App. 2013)

See Supplemental Rules.

- D. **Retention of Rights.** The Judge retains the right to post and enforce additional rules of conduct in order to maintain the integrity and decorum of the courtroom, not to conflict with MOS #8.

PART III – OTHER GENERAL RULES

A. **Fax and Electronic Memoranda.**

1. This Division shall be always open for purposes of receiving faxes, electronic entries of appearance and motions. Notwithstanding, entries of appearances and motions for continuances shall be submitted for any particular court session no later than twenty-four (24) hours prior to the scheduled court date.
2. Requests for warrant recall may be submitted by fax.

The Circuit Courts require Clerks to accept faxes-unclear as to municipal divisions. It appears this is a better practice for quicker access to the Division by defense lawyers.

- B. **Access to Division Files.** Members of the public, news media and attorneys of record shall have access to open Division records. There shall be an exception that requests to review files not on the docket must be made prior to the start of Division docket proceedings. The Court Administrator shall not be required to pull files not on the docket during Division sessions unless there is sufficient time to do so. (Source: Chapter 610 RSMo; COR 2 and 4; MOS #8.)

The limitation on pulling files during court is a practical solution. Some courts may feel differently.

- C. **Access required by ADA.** Pursuant to the American with Disabilities Act, this Division shall provide, based on expressed needs, auxiliary aids or services to interpret any proceeding for a person who is deaf or hard of hearing. This requirement applies to a person who is a party, juror, witness, spectator, or a juvenile whose parent, guardian or foster parent is deaf or hard of hearing if the juvenile is brought to any proceeding. (Source: §§476.750-476.766 RSMo.)

Check with City on compliance with ADA.

SO ORDERED:

DATE _____

Judge, City of _____

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ST LOUIS COUNTY, MISSOURI

RECOMMENDED PRACTICES

Under

Local Court Rule 69.01- Operations of Municipal Divisions

INTRODUCTION

The St. Louis County Committee on Municipal Divisions has developed the below suggestions for complying with the new Local Court Rule 69.01 and with complying with Supreme Court Rule 37 as the same effects the operation of Municipal Divisions as well as their interactions with their respective municipalities and police departments. The Committee has attempted to assist all personnel, whether court, prosecutor, administrative, municipal or police, by keeping these recommendations in the same order as the Rule itself. It should also be observed that Rule 69.01 was adopted in such a fashion so as to keep the same order as the Minimum Operating Standards as declared by the Missouri Supreme Court.

PART I. COURTROOM, CLERK'S OFFICE, RECORDS, SEPARATION OF POWERS

A. Courtroom – Physical Requirements.

1. All courtrooms shall be suitable and meet due process requirements for all court attendees. Section 479.060.1.

Recommended Practice:

A reasonable survey needs to be undertaken to ascertain the following:

1. All American with Disabilities Act requirements are met.
2. The square footage of your courtroom.
3. The maximum capacity consistent with fire regulations.
4. The maximum capacity consistent with:
 - a. Court space requirements – bench, prosecutor, bailiff, other staff, etc.
 - b. Comfortable accommodation of attendees – seated or standing.
 - c. Other
5. Review historical data regarding docket sizes and attendees.
6. If there is consistently insufficient space to accommodate attendees, then other considerations may be necessary:
 - a. Consider other space available for the court.
 - b. Additional dockets or court dates to reduce average docket size.
 - c. Staggered dockets
 - d. Provisional judge.
 - e. Other

2. All courtrooms shall be open to the public of all ages and large enough to reasonably accommodate the public, parties, and attorneys, unless the court orders otherwise in a particular circumstance for good cause shown.

Recommended Practice:

The court should have in place its own rule clearly setting out that the court is open and under what specific exceptions would apply to non-application of the rule. See Local Court Rule 69 and Court Operating Order #4.

3. The court facility's exterior and interior signage, design, functionality and other factors shall convey an appearance to the public that it is a separate and independent branch of government.

Recommended Practice:

1. If there is direct signage on the courtroom which could cause confusion with the public as the fact that the building or portion of building where court proceedings are held are anything but a courtroom, immediate action should be taken by the judge to interact with the city to make such building or signage corrections so as to eliminate any such misperception.
2. Bailiff, whether a police officer or not, should not be in uniform but dressed in such a manner to avoid a public perception that the bailiff is part of the police, i.e. coat and tie.
3. Bailiff should not interact with the prosecutor in any way that would convey to the public that the officer is working for or with the prosecuting attorney.
4. Uniformed officer or officers may be present for court security.

4. The violation bureau schedule of fines and costs shall be prominently posted at the place where fines are to be paid. Rule 37.49(d).

Recommended Practice:

A framed chart or sign should be posted immediately outside of the area where court fines and costs may be paid, setting out clearly the violation bureau schedule as adopted by the division. This signage must be reviewed periodically to reflect any changes which may have been adopted by the court. Recommended Practice to "tickle" this review for at least every 6 months and notify the judge of compliance.

5. The courtroom facility shall be sufficient for the purpose of a courtroom. The facility chosen for court shall take into consideration the safety and comfort of the public, parties, and lawyers. The facility chosen shall uphold the integrity and independence of the judiciary as a separate branch of government.

Recommended Practice:

The courtroom should look, in all regards, like a courtroom and be held in a facility that is consistent with courtroom decorum. This should include the following:

- a. A judge's elevated bench
- b. Separate tables for prosecutor and defense lawyer.
- c. Payments and payment arrangements outside of courtroom.
- d. Prosecutor separate from the judge.
- e. Bailiff may be close enough in proximity to provide security but should not be on the bench with the judge.

6. Members of the public and the news media have access to open municipal division records in accordance with Court Operating Rules (COR) 2 and 4 and other relevant law.

Recommended Practice:

The Judge and Court Administrator/Clerk should adopt a written procedure, and instruct court personnel on the rule and procedure, to respond to requests for court records. The Judge's rule and procedure should be compliant with Supreme Court Operating Rules 2 and 4. With respect to administrative records, the rule should incorporate those exceptions to open records set forth in Chapter 610, including cases that have been nolle prossed, dismissed, the defendant found not guilty, or a sentence suspended on the record and the probation terminated, personnel records, and requests made under the Sunshine Law.

B. Clerk's Office – General.

1. The court division shall have a functional clerk's office that organizes and preserves the judicial records of the court in a prudent and organized manner and in compliance with applicable laws and Supreme Court rules.

Recommended Practice: See Court Operating Rule 4. Access restricted to court personnel and computer access restricted under Sup R. 37.04

2. The division shall have a municipal clerk available at least 30 hours per week during regular business hours and court sessions to whom the person can pay fines and from whom the person can obtain information about charges, payments and court operations. The clerk should be available in person during these hours in an office open and accessible to the public and may perform other functions for the municipality that do not constitute an actual or apparent conflict with the impartial performance of judicial duties. In the event the court does not have sufficient staff to have a clerk available for all of the 30 hours in person, the clerk may instead be made available for up to 15 of the 30 hours to provide information about charges, payments and court operations through live communication by telephone, email, or other means of electronic communication.

Recommended Practice: In cooperation with the municipality, sufficient and knowledgeable court personnel should be calendared so as to fulfill the obligations created under the operating standards. As stated herein, other city personnel can be utilized for court operating procedures as long as those other employees have nothing to do with the prosecutor's office, law enforcement, or having any authority over previously stated entities.

C. Open Records, Recordkeeping. Each municipal division shall:

1. Maintain complete and accurate records of court proceedings, including warrants outstanding, bonds posted, case files and dispositions.
2. Ensure proper disposition of all cases is documented on the court dockets or backer sheets and that all court dockets or backer sheets are signed by the municipal judge, if required by law.
3. Ensure that information signed by the prosecuting attorney is filed for each ordinance violation to be prosecuted. In addition, the court shall ensure that the prosecuting attorney signs all tickets and reviews and approves all amended and dismissed tickets. Rule 37.49(d).
4. Document proper disposition of cases in manual and electronic records and ensure that sufficient documentation is maintained to support all case actions.
5. Maintain procedures to generate monthly reports of court activity. The court shall submit these reports timely to OSCA and to the city in accordance with state law, COR 4.28 and 4.29, and section 479.080.3, RSMo.
6. Maintain regular computer data backup procedures and ensure such data is stored in a secure off-site location and also test its recovery on a regular, predefined basis.
7. Ensure unique user identifications and passwords are required for each employee. Ensure passwords are confidential and periodically changed. Ensure user access is periodically reviewed and unnecessary access, including that of terminated users, is timely removed. Review user access to data and other information resources to ensure access rights are commensurate with current user job responsibilities.
8. Segregate accounting duties to the extent possible. If not possible to segregate duties, the court shall ensure that documented periodic independent or supervisory reviews of court records are performed.
9. Maintain accurate records to account for all payments received and deposited, that receipts are posted accurately and timely, and that the method for payment is indicated on all receipts. All checks and money orders are endorsed immediately upon receipt. If manual receipts are in use, the court shall ensure that manual receipt slips are timely entered in the computerized system and the numerical

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sequence of manual receipt slips is accounted for properly. The court shall ensure that voided transactions are properly documented and approved.

10. Perform reconciliation of the composition of receipts to the composition of deposits, and deposit all monies intact and timely.

11. Perform monthly bank reconciliations, resolve reconciling items, and make appropriate, documented adjustments to accounting records timely.

12. Prepare monthly lists of liabilities and reconcile the lists to the bank account and/or city fund balance, and promptly investigate and resolve differences. The court shall establish procedures to review the status of liabilities to determine the appropriate disposition of funds held.

13. Develop procedures to ensure the monthly distributions are properly calculated and disbursed timely.

14. Establish procedures to routinely generate and review the accrued costs list for accuracy and properly follow up on all amounts due.

15. Obtain signed payment plans from all defendants granted such plans. Ensure that payment plans are incorporated in the case management system in accordance with court operating rules where applicable.

16. Notify the circuit clerk of its court's existence. Section 479.030.1.

17. Provide sufficient nonjudicial personnel to ensure proper functioning of the court. Section 479.060.1.

18. Ensure all fines and costs collected shall be paid into the municipality's treasury at least monthly. Section 479.080.1.

19. Provide a monthly list of cases with required detail within 10 days of the end of each month to the municipality. Section 479.080.1.

20. Adopt a written policy for reporting intoxication-related traffic offenses to the central repository and provided same to OSCA and the highway patrol. Section 479.172.1 and 479.172.2. Court Operating Rule #1 shall suffice for this purpose.

21. Provide a semiannual disposition report of intoxication-related traffic offenses to the circuit court *en banc*. Section 479.172.3.

22. Maintain adequate documentation to support all adjustment transactions and ensure an independent review and approval of these transactions is performed and documented.

23. Maintain a change fund at an established amount and periodically counts and reconciles the monies on hand to the authorized balance.

24. Maintain bond coverage for all personnel with access to municipal division monies.

25. Ensure all bond receipts are recorded and deposited timely and intact.

26. Develop procedures and maintain records to identify applicable violations and the associated fines and court cost revenues for purposes of the revenue calculations required by Section 479.359 RSMo et seq., and provide this information to the city.

Recommended Practice: Due to the responsibilities with regard to court records, the judge, as the person ultimately responsible for proper compliance, must interact with court personnel and municipal officials to ensure that there is thorough and competent training on the requirements and, as significant, a procedure in place to ensure that the record keeping responsibilities are being met pursuant to Rule, Statute, and best practice.

D. Separation of Powers. Each court shall comply with the following requirements:

1. Administrators and clerks of court and other nonjudicial personnel, when performing court-related functions, shall work solely under the direction and supervision of the municipal judge, the circuit clerk, or another officer of the judicial branch as to the work to be performed and the manner in which it is to be done.

Recommended Practice: The judge should engage in a discussion with city officials regarding the personnel assigned to court and prosecutorial duties. All steps should be taken to ensure that there is no conflict, actual or apparent, in the performance of their respective duties.

2. Clerks of court and other nonjudicial personnel shall not perform any functions that could constitute an actual or apparent conflict of interest with the impartial performance of their judicial duties.

Recommended Practice:

- A. Begin by defining the tasks performed by the clerks associated with any court work.**
- B. Identify which are court functions and which are prosecutorial.**
- C. If you have not done so, designate a clerk or clerks for prosecutorial functions. These clerks, although city employees, are answerable to the prosecutor and are not considered "court" personnel.**
- D. Immediately ensure that court functions are properly designated to the proper clerk.**

- E. Remember that, although the prosecutor is part of the executive branch, the judge has the continuing obligation to make sure that court functions are being properly performed.
- F. Develop the proper protocols for defense counsel interaction with the court and the prosecutor. Post the proper protocols on the division's website and outside the court room and have copies available for distribution.

3. Judges, clerks of court, and other nonjudicial personnel shall not be subject to informal pressure, formal discipline, firing, or threats of non-retention or non-reappointment at the conclusion of a term of office by officers and administrators of the municipal government resulting from the performance of judicial duties in a manner that upholds the independence of the judiciary.

Recommended Practice: A written policy should be created, and promulgated to both court and city personnel, stating that improper contact with court personnel regarding pending court matters is prohibited and that any such contact must be reported to the judge immediately.

4. Judges, clerks of court, and other nonjudicial personnel shall not be subject to informal pressure, formal discipline, firing, or threats of non-retention or non-reappointment at the conclusion of a term of office by officers and administrators of the municipal government that are designed to encourage or require the court to operate in such a way as to maximize the municipal revenues derived from municipal division operations or to meet specified revenue targets without regard to whether such goals or targets are communicated formally or informally to court personnel.

Recommended Practice: Municipal judges have the obligation under statute to create the court's budget and need to discuss that budget with the city. However, the judge should not engage in any discussion with the city with regard to the city's general financial obligations. However, as the limitations under the "Mack's Creek" law, SB5 and SB572 must be adhered to, the judge must be comply with the court's income reporting requirements. Prosecutor and Prosecutor Clerk salaries and expenses should not be included in the court's budget.

PART II. GENERAL COURTROOM PROCEDURES

A. Rights of Defendants. Each court shall comply with the following requirements:

1. Establish standardized procedures to assure that defendants are given advice of rights pursuant to Rules 37.47, 37.48, 37.50, and 37.58.

Recommended Practice: At the commencement of each court session the Judge should be making an opening statement that should include these defendant's rights and court procedure.

2. Provide a "Notice of Rights," in a form approved by or substantially similar to that approved by the Supreme Court, to all defendants. This notice of rights shall be displayed prominently

wherever the clerk of the court transacts business with the public and in the facility where court proceedings are held. This notice of rights shall be made available as a handout for those appearing before the court and is displayed on each public information website operated by the court or on behalf of the court.

Notice of Rights in the Municipal Division Notice must be available as a handout to defendants appearing before the municipal division, displayed on the wall next to the clerk's window, in the courtroom (large poster size display in large font or an electronic sign) and on the municipal court's website.

Recommended Practice: A handout must be prepared and made available to each defendant in attendance in the court. See Rule 37.04, Appendix C.

3. The judge's statement should be spoken into a microphone that can be heard in the courtroom as well as in the hall. The court's announcement should be available when persons enter the courtroom and have not had the opportunity to hear the judge's statement. This can be accomplished by having the announcement run continuously on an electronic sign in the courtroom and in the hall.

4. Ensure announcements by the judge intended for the benefit of all present are made in such a manner to that they can be heard throughout the courtroom or are communicated adequately in other ways. Such announcements shall also be communicated to those waiting outside the courtroom or otherwise made available to them when they come into the courtroom.

Recommended Practice:

The court should start on time – not early and not late. It is not necessary to repeat general notice of rights to latecomers but if there are oral notices given during the course of the court session, the judge should ensure, as is reasonably possible, that no defendant's rights suffer from their failure to be on time.

5. Utilize a written "Waiver of Counsel" substantially in the form of Form 37.C. Rule 37.58(d).

Recommended Practice: Anytime that conviction of a charge court result in confinement and the defendant wishes to proceed Pro Se a Waiver of Counsel must be signed and entered into the court record.

B. Other General Rules. Each court shall comply with the following requirements:

1. Ensure reasonable steps are taken so that, where applicable, the Violation Bureau schedule of fines and costs is provided to an accused at the same time as a violation notice. Rule 37.33(b).

Recommended Practice:

Prepare a document or mailing envelope that includes, at minimum, the fine schedule, payment method options and instructions, the division's address and contact information, the division's website, and any applicable court procedures. Provide law enforcement with copies of the prepared document or mailing envelopes to be provided to the defendant with the violation notice.

2. Ensure any violation bureau established by the court processes only those violations authorized by Rule 37.49(c).

3. Ensure no additional charges shall be issued for failure to appear for a minor traffic offense.

Recommended Practice:

1. Review all present charges to ensure that no "failure to appear" charges presently exist on charges where such a charge is prohibited. If any exist, they should be dismissed or nolle prossed.
2. Discuss with the prosecutor the restrictions on issuing any such charge except where permitted by law

PART III. ARRAIGNMENT, PLEAS, FINANCIAL CONDITION INQUIRIES, INDIGENCY, PAYMENT PLAN, ON-LINE

A. Fines, Costs, Surcharges, Indigency. Each court shall comply with the following requirements:

1. Fines and costs assessed on "minor traffic violations", as defined in Section 479.353(1)(a), shall not exceed \$225.00.

Recommended Practice:

Any city ordinance or practice contrary to these limitations must be eliminated. Request the city attorney to do a review of all city ordinances which could come into conflict with this limitation. Adjust all set city fines to be consistent with this limitation.

2. Fines and costs assessed on "municipal ordinance violations" as defined at Section 479.350(4) shall not exceed the mandatory maximum schedule of section 479.353(1)(b).

Recommended Practice:

Any city ordinance or practice to the contrary must be eliminated. Review the statute. Also, see the above recommendation for review of city ordinances.

3. Fines assessed on other ordinance violations shall not exceed the maximum amount authorized by state law and the city code.

Recommended Practice:

Clerks must be made aware of the statutory and ordinance restrictions. The judge should memorialize in writing a notice to the clerk setting out the specific amounts in the statutes as well as the city ordinances.

4. Only court costs (fees, miscellaneous charges, and surcharges as defined at section 488.010) authorized by state statute shall be assessed. The OSCA bench card on municipal court costs shall be used as a reference. Sections 479.260.1, 479.360(5), and 488.012, RSMo; COR 21.01.

Recommended Practice:

In the past, small additional charges for sending letters, warrant charges, etc. have crept into usage by municipal courts. The judge and the clerk must assure that only those costs authorized by law are assessed.

5. "Dismissal on Payment of Costs" [DPC] shall **not** be permitted. Section 479.353(5), RSMo; COR 21.01(c).

Recommended Practice:

If a defendant has been found guilty or has pled guilty and the court believes that the defendant should pay a fine and costs for the city having to bring the charge to begin with, the court can assess a fine and costs, enter into an agreement that imposition of sentence is suspended for a brief period. However, the rules with regard to assessing fines or costs to people who are found indigent would apply.

6. Court costs shall **not** be assessed against indigent defendants. Section 479.353(4)(5).

Recommended Practice:

See B (5) above and Local Court Rule 69

7. No fee shall be assessed to the defendant for the use of community service, in compliance with the requirements of Section 479.360.1, RSMo.

Recommended Practice:

- a. **Develop or find a list of 501(c)(3) organizations who are willing to work with such defendants and supply that list the defendants; or,**
- b. **Inquire of the city as to public work available to the defendant; or,**
- c. **Develop both resources.**
- d. **Ensure that reasonable time for the defendant to complete the required hours of service.**

B. Defendant's Rights to Present Evidence of Inability to Pay. Each court shall comply with the following requirements:

1. Procedures shall be established for the judge to inquire of defendants and allow them to present evidence about their financial condition to assess their ability to pay and establishing payment requirements. The court shall ensure the indigence form provided by the Supreme Court is used in the determination of indigence.

Recommended Practice:

1. **If the defendant has pled guilty or been found guilty, the court should announce to the defendant what the stated fine and costs are (per VB schedule or ordinance) or what fine and costs might be if not already set, and inquire of the defendant if the defendant, given time, could pay the possible fine and costs.**
2. **If the defendant states at that time that he or she will be able, given time, to pay the expected fine and costs, then the court shall immediately impose the fine and costs. Payment in installments will remain available to the defendant.**
3. **If the defendant states at that time that he or she will be unable, even given time, to pay the expected fine and costs, then the court shall inquire as to the financial ability of the defendant to pay the expected amount. If it is determined that the defendant is unable to pay the usual or anticipated fines and costs, then the court shall adjust the fine and costs accordingly, to an amount that the defendant can, given time, pay or the court shall order other disposition of the matter as would serve justice, including, but not limited to, alternative community service, suspended imposition of sentence or suspended execution of sentence. Community service is always an alternative.**
4. **Indigence guidelines promulgated by the Supreme Court must be used.**
5. **Any final determination that the defendant is or is not indigent must be based upon the indigence forms and criteria under Supreme Court Rule.**
6. **In order to comply with Rule 37 and R.S. Mo 479.360, Municipal Divisions should have signage or other visual displays, such as power points displays or videos at the entrance to the court and/or in the court room which notify defendants of their right to present evidence of their financial condition and have such evidence taken into account by the court in determining fines, costs and related payment issues.**
7. **The Municipal Division Judge in her or his opening remarks should reiterate that each defendant has the right to present evidence of their financial condition and have such evidence taken into account when determining fines, costs and related payment issues.**

8. If a defendant wants to present evidence of their financial condition, the Judge, Prosecutor and Court staff should direct the defendant to fill out the Statement of Financial Condition form Recommended by the Missouri Supreme Court.
9. The defendant should present the Statement of Financial Condition to the Judge and present evidence of her or his financial condition to the Judge.
10. Statement of Financial Condition forms should be available in the Clerk's office, in court, and at any payment window. Any defendant, who, after the fine and costs is assessed, wants to present evidence of their financial condition to the Judge, should be directed to fill out the Statement of Financial Condition and allowed to speak with the Judge that night in a timely manner.
11. At any further hearings, such as a Rule 37.65 Show Cause For Failure to Pay hearing, a defendant shall be allowed to present any evidence regarding their financial condition to the Judge, including the Statement of Financial Condition.
12. To the extent that any defendant has agreed to pay her or his assessed fines and costs in installments, the Municipal Division should enter a stay of execution on any fines and costs that are assessed. Such stay of execution shall be conditioned upon the defendant's compliance with the installment agreement. If the defendant fails to comply with said installment agreement, then a show cause order shall be issued by the court.

2. Ensure stay of execution procedures are in place whereby defendants may pay fines and costs within a specified period or make installment payments. Rule 37.65(a)(1)(2).

Recommended Practice: See C below.

C. Alternative Payment, Community Service, Probation, Payment Plans. Each court shall comply with the following requirements:

1. Alternative payment plans shall be available for utilization. Rule 37.65(a)(1)(2).

Recommended Practice: Have a written payment agreement, signed by the defendant and made part of the court record, setting out the specific terms of any payment requirements, including times and amounts, as well as the repercussions of not meeting the agreed terms.

Not only should the court offer extensions of time to pay and payment schedules, alternative community service and probation, but these options should be included in the information provided to all defendants in the court notice and judge introductions. In addition, if the defendant after

entering into an alternative pay plan has a financial problem in paying under said plan they, shall be given an opportunity to present any evidence regarding their financial condition to the judge.

2. The granting of probation shall not be conditioned upon the payment of anything other than authorized fees on that case. Probation shall not be denied because of the inability of the defendant to pay authorized probation fees and surcharges.

Recommended Practice: It should be noted that program fees for programs required by law or to which the defendant has agreed and which the defendant has the ability to pay, are authorized fees.

3. Any probation fees assessed shall be in compliance with Sections 549.525.2, 559.604, and 559.607, RSMo, including consideration of factors exempting a probationer from part or all of the standard monthly probation fee of \$30 to \$50 per month. The court shall advise offenders of the right to request individualized consideration of exemption from paying probation fees and surcharges under these statutes.

D. Payment On-Line. Each court shall comply with the following requirements:

Ensure procedures exist to allow payments online. The court shall make available to the defendant, free, online access to information about his or her pending cases, outstanding warrants, and scheduled court dockets.

OR

Actively pursue court automation to achieve compliance with allowing payments online and making available to the defendant, free, online access to information about his or her pending cases, outstanding warrants, and scheduled court dockets.

Recommended Practice: Work with the city's technical department or independent service provider to create and manage the payment-on-line service. The on-line service must operate within the confines of rule and statute as any other court procedure.

E. Trial De Novo, Jury Trial, Change of Judge. Each court shall comply with the following requirements:

1. The judge shall follow rules cutting off or limiting his or her authority to act in a case once a motion to disqualify, motion for jury trial, or motion for trial *de novo* is filed.

2. If a defendant files an application for trial *de novo*, the fee for trial *de novo* request shall be \$30.00. The payment of the statutory trial *de novo* fee shall be waived if the defendant qualifies as indigent. The court shall determine if the defendant qualifies as indigent.

3. When a trial *de novo* request has been filed, the court shall certify the file to the circuit court within 15 days. The court shall ensure that when a case record is certified to the circuit court upon filing of a request for trial *de novo*, all funds received in connection with the case, any bonds, and the record, shall be transferred within 15 days.

4. If the defendant requests a jury trial, the cause shall be transferred to the circuit court without prepayment of fees.

5. Once a case has been certified to circuit court, the court shall not act on that case unless and until the case is remanded to that court.

6. Upon successful change of judge requests and recusals, the procedural requirements of Rule 37.53(d) and Section 479.230, RSMo shall be followed.

Recommended Practice: Standardized, written procedures should be developed so that these requirements are understood and followed by all court personnel. Recommended Practice may be to have court personnel notify the judge each time a trial *de novo* or request for jury trial is filed.

PART IV. DEFENDANTS IN CUSTODY, BONDS, WARRANTS and SENTENCING

A. Defendants in Custody. Each court shall comply with the following requirements:

1. Procedures shall exist to prevent defendants from being held longer than 48 hours on minor traffic violations and 72 hours on other violations without being heard by a judge in person, by telephone, or via video conferencing.

Recommended Practice: The court should work with the police department by way of education and official notice regarding time limits and actions required. Further, the judge should ensure that all police personnel are aware of procedures in the event of arrest including, in addition to the time limits, methods of contact with the judge. Also, the police need to be informed that if the time limits are not met, the defendant must be released. A written order should be provided to the police listing the procedures to be used for defendants in custody of municipal charges.

It is incumbent upon the Police Department to keep an accurate record of the date and time any defendant is taken into custody. If the defendant is in custody on a municipal violation or warrant [a “municipal defendant”], then the Police Department should notify the Municipal Court that the defendant is in custody, along with the date and time the defendant was taken into custody and the Municipal Court should maintain an accurate record of such information.

2. The court shall make reasonable efforts to communicate to local law enforcement the 24-hour rule: "Defendants in municipal custody shall not be held more than twenty-four hours without a warrant after arrest." Section 544.170.1, RSMo.

Recommended Practice: The "24-hour rule" needs to be part of the education and official notice Recommended above.

If it appears to the Police Department that any municipal defendant may be held in their custody for a period longer than 24 hours, then, prior to the expiration of said 24-hour period, Police or Court personnel shall notify the Judge or provisional Judge with a report on such municipal defendant in custody and a hearing held within said 24-hour period wherein the judge can set terms of release for said municipal defendant. If there has been no such hearing within the said 24-hour period, then the municipal defendant shall be released.

3. Confinement to coerce payment of fines and costs shall be utilized if the defendant is found in contempt of court, after compliance with Rule 37.65.

Recommended Practice: All court personnel need to be educated on the strict requirements of Rule 37.65 and should advise the judge of any attempt to arrest such a defendant so that the judge can assure that all such requirements have been met.

4. There shall be a duty judge available at all times to rule promptly upon warrants, bail and conditions of pretrial release, and other matters, without undue delay.

Recommended Practice: All modern contact methods should be available to court and police personnel including, but limited to, home phone, office phone, cell phone, text and email information of judge and, if applicable, provisional judge.

B. Bond Schedules. The municipal division shall ensure bond schedules be utilized only for persons arrested without a warrant and held no longer than 24 hours pursuant to sections 479.360.1(2) and 544.170.1, RSMo. Rule 37.17.

C. Warrants.

1. Warrants shall be issued only upon a finding that reasonable grounds exist to believe that the defendant will not appear upon a summons or that the accused poses a danger to a crime victim, the community, or any other person. Rule 37.43(b).

Recommended Practice: Warrants should be last resort. There should be a written determination of the factual basis for the belief that the defendant will not appear (e.g. having ignored a signed “unsecured bond” agreement to appear); or, what danger exists if the defendant is not apprehended immediately.

2. All warrants shall be signed only by judges unless the exception of a specific warrant ordered by a judge to be signed by a clerk is applicable. Rule 37.45(b)(6).

Recommended Practice: Always have the judge sign except in the case of a real emergency. If the clerk is signing, then specific factual situation need to be memorialized.

3. When a case is dismissed by the prosecuting attorney or otherwise finally resolved, or when the circumstances that justified issuance of a warrant no longer exist, the judge shall recall and cancel any outstanding warrants in that case as soon as practicable.

Recommended Practice: A written policy and personnel education should be undertaken and followed in the event of any resolution, dismissal or other reason why the warrant needs to be recalled, withdrawn or cancelled.

Before any case file is closed in which a municipal warrant had been issued, a teletype or warrant cancellation from MULES/REJIS should be attached to the file indicating that any and all warrants were recalled. Cancelled paper warrants should be attached to the file if the Municipal Division uses paper warrants. The Judge should require that court personnel perform an active warrant audit at least monthly to determine if there is a need for any such active warrant which should be recalled.

4. The recall and cancellation of outstanding warrants shall be communicated to law enforcement by the clerk without delay.

Recommended Practice: A written policy and personnel education, including police, should be ordered regarding the importance of notification and the meaning of cancelled or recalled warrants.

5. Due process procedures of Rule 37.65 shall be strictly followed before confining defendants for failure to pay fines and costs. Section 479.353(3).

Recommended Practice: A written policy and personnel education should be undertaken regarding the requirements under Rule 37.65.

To insure that all required procedures have been followed, before any Municipal Judge issues an order confining a defendant for failure to pay fines and/or costs, the Municipal Court should use a checklist, which should include, but not necessarily be limited to, the following:

- **Terms of payment agreement and payment history;**
- **Date on which nature of default occurred and the nature of the default in the payment or an installment thereof;**
- **Date show cause order was entered;**
- **Date summons issued;**
- **Date warrant issued if defendant fails to appear on the summons;**
- **Detail facts showing defendant intentionally refused to obey the sentence or failed to make a good faith effort to obtain the necessary funds for payment. [Question – who has burden of proof in such a “show cause” hearing?]**
- **Date of sentence not to exceed 30 days.**

D. Sentencing. No person shall be sentenced to confinement on “minor traffic violations” or “municipal ordinance violations” with the exception of violations: involving alcohol or controlled substances; endangering the health or welfare of others; or involving eluding or giving false information to a law enforcement officer. Section 479.353(2).

Recommended Practice: This should be part of the general knowledge of the judge and prosecutor.

PART V. JUDGES’ QUALIFICATIONS, REGULATIONS and DUTIES

A. Qualifications.

1. All judge(s) serving in a court municipality - full-time, part-time, substitute, and provisional - shall be selected pursuant to municipality’s ordinance or charter before serving. Section 479.020.1.

Recommended Practice: Although most judges will assume that the city followed its own ordinance requirements, this is not a given and the judge should review both the ordinance and the procedure followed for the judge’s appointment or election. This should also be done for any provisional judge.

2. A judge may serve as a judge in no more than five municipalities. Section 479.020.9.

Recommended Practice: If there is an issue with regard to this and in particular serving in a provisional or part-time capacity, the judge should submit written inquiry to the Commission on Retirement, Removal and Discipline of judges [2190 South Mason Road, Suite 201, St. Louis, Missouri 63131 - (314) 966-1007 (phone) (314) 966-0076 (fax).

3. A judge shall not have attained age of 75 years. Section 479.020.7.

Recommended Practice: At least six (6) months prior to a judge reaching mandatory retirement age, she or he should notify the city or cities where she or he sits, of her or his mandatory retirement so as to provide ample time for the city to properly identify and select a replacement judge without negatively impacting court efficiency.

4. All lawyer judges shall obtain the following required training and continuing education, and provide documentation thereof to the presiding circuit judge:

- a. Orientation course completed within 12 months after beginning service. Rule 18.05(d).
- b. Five hours of judicial CLE completed annually. Rule 18.05(a).
- c. Two hours of judicial ethics CLE completed annually. Rule 18.05(b).
- d. CLE compliance form is submitted to the circuit court presiding judge.
- e. If substitute/provisional judges preside, names and CLE compliance forms have been provided to the circuit court presiding judge.
- f. Instruction on laws related to intoxicated-related traffic offenses. Section 479.172.1.

Recommended Practice: It may be useful to join the Missouri Municipal and Associate Judges Association (MMACJA) and utilize the organization for questions, CLE requirements and other benefits.

B. Duties of Judge, Generally.

1. The court shall have a mechanism in place to check for judicial conflicts prohibited by Rule 37.53(b)(2), so the judge recuses himself/herself in all instances when required to do so pursuant to this rule.

Recommended Practice: If the judge serves as prosecuting attorney in any other court, the judge needs to be aware of any and all lawyers who have matters before the court. The clerk should provide the judge with a list of all attorneys presently having matters and the judge must review these in the context of Rule 37/.53(b)(2). This should be done on the first date following the entry of appearance of any attorney on a matter in the city, if sooner. No action should be taken in any matter unless and until this review has been completed in that matter.

2. If holding administrative hearings, the court shall be authorized by law to do so.
Section 479.011.1.

Recommended Practice: If the court is presented with any administrative hearing duty, the judge should immediately review the statutes and ordinances with regard to the court's ability to do so.

C. **Compliance with Minimum Standards.** By January 1 and July 1 of each year, each judge of a court shall certify to the presiding judge of his/her compliance with Minimum Operating Standards by completing the following form:

Recommended Practice: At least one (1) month prior to the date that certification is due to the presiding judge, the judge should meet with court personnel and begin the process of reviewing court compliance with each and every requirement under the MOS. This inquiry should, of necessity, review the policies and practices of the court, the police and the prosecuting attorney vis-à-vis their obligations under the MOS.

Any deficiencies identified must be addressed immediately and safeguards put in place that the MOS are understood and complied with at all times.

Municipal Division Pre-Visit Presiding Judge Checklist
(Based off of Supreme Court Rule 37.04, Appendix A & the Minimum Operating Standards (MOS))

MOS #1:

- No additional Failure to Appear (FTA) charge on Minor Traffic Violations (MTV). 479.350 & 479.360 RSMo
- No FTA fee on any charge.
- Duty Judge on call at all times. Rule 37.04
- Warrants are signed by the Judge unless the Court Administrator is directed to do so by a signed Order on a specific case, in a specific situation. No blanket orders for Court Administrator or Clerk to sign warrants. Rule 37.45
- Warrant recall procedure includes the Judge issuing an Order, verbally or written, for the clerk to recall the warrant unless following the disposition of a case, recording the issued Order as a docket entry on the docket sheet or docket entry in the case management system, and forwarding a copy of the Order the law enforcement to be cancelled in REJIS or MULES. (Court Clerks and Administrators should not have access to REJIS or MULES for any purpose.) Rule 37.04

MOS #2:

- Defendants are allowed to present evidence of their financial condition when assessing fines or probation, if the division charges a probation fee. 479.360 RSMo
- Payment plans are allowed. Payment Plans are signed by the defendant and court personnel, made a part of the court record by docket entry on the docket sheet or docket entry into the case management system, and payment review hearings are scheduled as dictated by the payment plan. 479.360 RSMo
- Recommendations are requested from and issued to the defendant or defense counsel by the Municipal Prosecuting Attorney. Upon a recommendation being offered the defendant should be notified of a court date by the court leaving enough time for the defendant and/or defense counsel time to consider the offer and respond. Once the plea offered is signed by the Municipal Prosecuting Attorney and defendant and/or defense counsel the plea agreement must be presented to the Judge for approval or denial of the agreement in open court (SCR 37.58), unless the case is disposed without a court appearance by consent of the Judge, Prosecutor, and defendant or defense counsel pursuant to SCR 37.57. If the case is disposed without a court appearance there should be a clear, written procedure of how this is to be done and on which charges this practice would apply.

MOS #3:

- The \$30 filing fee for Trial de Novo is waived if the defendant is found to be indigent. Rule 37.04
- No filing fee is collected upon certification to the Circuit Court for jury trial. Rule 37.04

MOS #4:

- Fines and Court Costs combined collected on any MTV charge do not exceed \$225. 479.353 RSMo
- Fines and Court Costs combined collected on any Municipal Ordinance Violation (MOV) do not exceed the statutory limits. 479.353 RSMo
- Fines and Court Costs collected on any charge other than MTV and MOV do not exceed the maximum amount authorized by state law or city code. 479.353 RSMo
- No fines or costs are assessed on dismissed cases. 479.353 RSMo & COR 21.03
- Court Costs are not assessed against defendants found to be indigent. 479.353 RSMo
- No fees are assessed for community service. 479.360 RSMo

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- The patrolling entity provides a list of fines and courts costs assessed for those charges eligible to be disposed through the Violations Bureau. Rule 37.49 & 37.33

MOS #5:

- All certified cases are transferred to the Circuit Court with 15 days of the Order to certify. Rule 37.04

MOS #6:

- Online and in-person payments are not accepted by the court until the Municipal Prosecutor signs and/or issues the charging document to the court and a case is created. Rule 37.35

MOS #7:

- The Court Clerk does not share duties with the Prosecutor Clerk or Police Clerk.
- The Court Clerk(s) office(s) are clearly separate and distinguished from any City Offices, the Prosecutor's and Prosecutor Clerk's Offices, and the Police Department.
- Court personnel (clerks and court security) are under the administrative authority of the Municipal Judge while performing court duties.
- The court budget is separate from that of the city and does not include any Prosecutor costs.
- The entry to the Municipal Division is clearly marked and visible.
- Payment windows and payment options are clearly posted and visible.
- Hours of operation and contact information are clearly posted and visible.
- All signage displays a clear division between branches of government.

MOS #8:

- The Court Clerk is available at least 30 hours a week to receive payments and answer questions on case information and court operations. In lieu of the clerk being available at least 30 hours the clerk must be available at minimum 15 hours a week in the office and 15 hours by live electronic communication. 479.360 RSMo
- A written policy should exist for responding to requests for court records in accordance with Court Operating Rule (COR) 2.
- The courtroom gives the appearance of a courtroom.
- The courtroom is open to the public.
- The courtroom is large enough to accommodate all parties and attorneys.
- The courtroom is handicap accessible in accordance with ADA regulations.

MOS #9

- The Notice of Defendant's Rights are posted in the courtroom, website, and are available for defendants to take. Rules 37.47, 37.48, 37.50, & 37.58
- The Notice of Defendant's Rights are in the form of, or similar to, those issued by the Missouri Supreme Court on June 30, 2017 in SCR 37.04, Appendix C. Rule 37.04

MOS #10:

- Written procedures exist for defendants not being held for longer than 24, 48, and 72 hours according to their charge and issued to law enforcement. 479.360 RSMo
- Reports are provided to the municipality, OSCA, and the State Auditor pursuant to statute and rule.
- The Municipal Judge presides over no more than 5 Municipal Divisions. 479.050 RSMo

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SCR 37:

- The Municipal Prosecutor signs all charging documents prior to a case being created. Rule 37.35
- The Violations Bureau fines schedule is posted where payments are processed. Rule 37.49
- A Waiver of Counsel is signed by all defendants that chose to represent themselves in cases that a conviction could result in confinement and made part of the court record by docket entry or entry into the case management system. Rule 37.58

COR 2/4/8 (483.065, 483.075 & 483.082 RSMo):

- Any electronic case management systems are backed up regularly.
- A case and judgement index is maintained pursuant to COR 4.
- All dispositions are signed by the Judge.
- All dispositions of charges reportable to the Department of Revenue are reported within 7 days from the date of disposition. 302.010, 302.225,
- All Offense Cycle Number (OCN) Cards (Fingerprint Cards) are submitted to the Missouri State Highway Patrol as required.

Financial/Bookkeeping (483.075 RSMo):

- A yearly internal or external audit of the Municipal Division is completed.
- Any manual receipts are printed with sequential numbers and the receipt numbers are recorded with the payment as a part of the court record.
- All bank accounts are reconciled monthly.
- All appropriate funds are disbursed monthly.
- All applicable funds are transferred to the municipality's general fund at least monthly.
- Excess Revenue calculations are reported to the State Auditor pursuant to statute. ?

Questions and Notes:

- The clerk(s) have access to the Court Information Center (CIC) to have access to record of conviction statistics.
- The clerk(s) have an active iNotes account.

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT**

MUNICIPAL DIVISION – THE CITY OF _____

**SEMI-ANNUAL CHECKLIST FOR THE PRESIDING MUNICIPAL
JUDGE AND THE COURT ADMINISTRATOR**

1. _____ The court has established a procedure and has notified the police department of the city of _____ to prevent defendants from being held longer than 48 hours on minor traffic violations and 72 hours on other violations without being heard by a judge.
2. _____ The court has established a procedure and has notified the police department of the city of _____ that defendants in municipal custody shall not be held more than twenty-four hours without a warrant after arrest.
3. _____ The court has not confined a person to coerce payment of fines and costs except pursuant to a finding of contempt of court following a show cause hearing and due process was provided in accordance with S. Ct. Rule 37.65.
4. _____ The court has advised the prosecuting attorney that no charge of failure to appear may be filed with the court if the underlying violation is a minor traffic violation.
5. _____ A duty judge has been available at all times during the past six months.
6. _____ The court has/has not set a bond schedule utilized only for those persons arrested without a warrant and held no longer than 24 hours.
7. _____ The court only issued warrants upon a finding pursuant to S. Ct. Rule 37.43(b).
8. _____ The judge signs all warrants except as when clerk has been authorized on an individual case.
9. _____ The court has in place a written procedure to recall or cancel warrants as soon as practicable when so ordered by the judge and that any such order is communicated to law enforcement without delay.
10. _____ The court has a procedure to allow defendants to present evidence of their financial condition when assessing the defendant's ability to pay and arranging payment plans in accordance with S. Ct. Rule 37.65 (a)(1)(2).
11. _____ Alternative community service is available to defendant without cost.
12. _____ The court assesses probation fees on an individual basis after advising the defendant their right to request exemption of such fees.
13. _____ Upon application for trial de novo, fees are waived for indigent defendants and the case has been transferred to the circuit court within 15 days along with any bonds.

14. _____ Upon timely application for a jury trial, the court has transferred all cases to the circuit court along with any bonds.
15. _____ Probation is not denied or conditioned upon payment of anything other than authorized fees or the defendant's inability to pay said fees.
16. _____ The court has not assessed a fine including court costs in excess of \$225.00 for minor traffic violations and the court has not assessed a fine and court costs in excess of the sums authorized in Section 479.353(1)(b) for municipal ordinance violations under Section 479.350(4) and the court has assessed only fines and court costs as authorized by state law and by the city ordinances.
17. _____ The court has only assessed court costs as defined in Section 488.010.
18. _____ No case has been dismissed upon payment of court costs and no defendant who has been determined to be indigent has been assessed court costs.
19. _____ All municipal judges serving the municipality have been selected in accordance with the city's ordinance or charter.
20. _____ The court has a written policy to check for judicial conflicts, and upon a finding of such conflict, the judge has recused himself/herself.
21. _____ The court has a procedure in place that upon receipt of a change of judge request or upon recusal that appropriate action is taken pursuant to S. Ct. Rule 37.53(d) and Section 479.230 R.S.Mo, and the court takes no further action.
22. _____ The judge has completed the orientation course within 12 months of beginning service (if applicable) *or for non-lawyer judge the judge has completed a course of instruction administered by the MJEC within 6 months of selection*; has completed 5 hours (15 hours for non-lawyer judge) of judicial CLE annually; has completed 2 hours of judicial ethics CLE annually; and has provided suitable compliance form to the presiding judge of the circuit.
23. _____ The violation bureau schedule of fines and costs is prominently posted at the place where fines are paid.
24. _____ The court has established procedures for electronic payment or payment by mail for minor traffic violations.
25. _____ The court has established procedures for electronic payments and for on-line access to court information about pending cases, warrants and court dockets.
26. _____ The court has instructed the court personnel, the city management and the police department in regard to the separation of powers and the importance of the independence of the judiciary and the judicial personnel.
27. _____ The court has instructed the city management that the court personnel should not be subject to informal pressure, formal discipline, firing or threats of non-retention or non-reappointment based upon the performance of the employee's judicial duties, and the court has

instructed the city management that the city management is not to encourage the court to operate to maximize revenues or to meet specified revenue targets.

28. _____ The courtroom facility and exterior and interior signage upholds the integrity and independence of the judiciary as a separate branch of the government and the courtroom is of sufficient size to accommodate the public, parties and attorneys and is open to the public.

29. _____ The court administrator's office is open and accessible to conduct court business at least 30 hours per week. *(The court administrator's office is open and accessible to conduct court business 30 hours per week, a maximum of 15 of which the court administrator or a designee is available through live communication by telephone, email, or other means of electronic communication.*

30. _____ The court administrator and his/her assistants have complied with Court Operating Rules (COR) 2 and 4 and relevant law in regards to access to court records.

31. _____ The court has procedures to provide defendants notice of their rights pursuant to S. Ct. Rule 37 and the "Notice of Rights in Municipal Division" form and said rights are displayed prominently wherever the court administrator conducts court business and on the court's website.

32. _____ The court, at each court session, provides a procedure to advise defendants of their rights.

33. _____ The court has signed the certification form for compliance with Section 479.360.1 and .2 for the most recent fiscal year for the municipality.

34. _____ The judge serves in no more than five municipalities and is under the age of 75 years.

35. _____ The judge has notified the circuit clerk of the municipal division's existence.

36. _____ The court has been provided documentation that fines and costs collected are transferred to the municipal treasury monthly, and that a list of cases has been provided to the municipality within 10 days of the end of each month.

37. _____ The court has adopted a written policy for reporting intoxicated-related traffic offenses to the central repository and a copy provided to OSCA and the highway patrol.

38. _____ The court has provided semi-annually the disposition report of intoxication-related offenses to the circuit court en banc.

39. _____ The court has instructed the court administrator to only accept informations signed by the prosecuting attorney.

40. _____ The municipal court has contacted the police department to request that each defendant be provided the schedule of fines and costs at the same time that the defendant receives notice of the violation(s).

41. _____ The violation bureau which has been adopted includes only those violations authorized by S. Ct. Rule 37.49(c).

42. _____ The court has a "Waiver of Counsel" form for use when applicable.
43. _____ The court maintains accurate records for municipal division proceedings and insure proper disposition of all cases is documented and such documentation is maintained.
44. _____ The court in the past six months has generated monthly reports to OSCA as required by state law.
45. _____ The court regularly backs up computer data and said data is stored off-site and its recovery is tested on a regular basis.
46. _____ Each employee has unique user identification and passwords that are confidential and periodically (_____ days) changed. The court periodically reviews user access and removes those whom no longer are authorized to have access.
47. _____ The court accounting duties are segregated pursuant to the attached duties. (See attached list of segregated duties).
48. _____ The court administrator or designee maintains accurate records of deposits and deposits are timely made (*daily, twice a week, weekly*) and method of payments are indicated on receipts.
49. _____ The court administrator has reconciled the receipts and deposits daily and reconciles bank statements monthly.
50. _____ The court administrator has a checklist to assure all funds and reports are provided to the municipality in a timely fashion.
51. _____ The court administrator has a procedure to review accrued costs and to properly follow up on all amounts due.
52. _____ The court obtains signed payment plans from all defendants and maintains a record of same in the court file or electronically.
53. _____ The court administrator maintains and reconciles daily a change fund.
54. _____ All court employees whom have access to money have bond coverage.
55. _____ The court administrator ensures all bond receipts are recorded and deposited timely and intact.
56. _____ The court has developed a procedure and records to identify applicable violations and associated fines and court costs revenues for the purpose of revenue calculations required by Section 479.359 R.S.Mo.

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT**

MUNICIPAL DIVISION – THE CITY OF _____

MONTHLY REPORT FROM THE COURT ADMINISTRATOR

COMES NOW _____, Court Administrator for the City of _____ and verifies the following to the Municipal Judge with attached reports.

1. The court currently has _____ outstanding warrants.
2. All warrants which have been recalled or cancelled during the past month have been communicated to law enforcement without delay.
3. A copy of all reports submitted to the Office of the State Court Administrator (OSCA) are attached including but not limited to the monthly case load summary required by COR 4.09. This report was sent to OSCA in the following format _____ (COR 4.28).
4. A copy of the report to the Clerk of the Municipality with information as required under 479.080.3 RSMo. is attached.
5. A copy of checks remitted to POST and Crime Victims Compensation Funds are attached as well as how those amounts were calculated.
6. A list of all accrued costs is attached the follow up suggested for all amounts due are as follows: _____.
7. Verification of monthly bank account reconciliation.
8. Verification of the amount allocated to revenue from minor traffic violations under 479.359 RSMo. for the prior month.

This form shall be submitted on or before the 15th of the month reporting the activity for the prior month.

DATED: _____
_____ Court Administrator

DATED: _____
_____ Presiding Judge of Municipality
Acknowledges receipt and review

A Journey OF TEN-THOUSAND Steps

THE MOST COMMON INSTANCES OF NON-COMPLIANCE

1. Judges not reporting compliance with the Minimum Operating Standards as required by rule.
2. Interior and exterior municipal division signage and functionality fail to convey that the judicial branch is separate and independent from the other branches of government within the division's facility.
3. Courtroom is not open to public of all ages, convenient, accessible to all persons; docket sizes too large for the space provided to hold court.
4. Notice of Defendant's Rights not provided to all defendants, posted in court, and on website.
5. Overlapping court clerk, prosecutor/prosecutor clerk, and law enforcement duties and workspaces.
6. Clerks of the court operating under the supervision and direction of city officials when acting in their capacity as the court clerk.
7. No division website, either a website independent of the municipality's website or imbedded in the municipality's website, or website not updated.
8. Free, online access to information regarding pending cases, outstanding warrants, and scheduled dockets not available.
9. Online payment or payment by mail options not available.
10. Payment plans not being allowed.
11. Failure to provide adequate assessment of indigency, community service alternatives.
12. Clerks utilizing law enforcement systems for any purpose.
13. Fines and costs assessed exceeding the statutory limits.
14. Violations Bureau fine schedule not posted prominently where fines are to be paid.
15. Missing monthly bank reconciliations.
16. Certified cases not being transferred to the Circuit Court within 15 days.
17. Non-compliance with judges' required training and education per rule 18.
18. Provisional and substitute judges not reporting as required.
19. Not reporting intoxicated-related offenses for the current time period.
20. Judges and prosecutors put under pressure to increase revenues.

**SUPPLEMENTAL
RULES OF PROCEDURE, RULES OF
DECORUM
AND ADMINISTRATIVE RULES FOR
CIRCUIT COURT OF
_____ COUNTY, MISSOURI
_____ MUNICIPAL
DIVISION**

Effective:

**SUPPLEMENTAL RULES OF PROCEDURE, RULES OF
DECORUM,
AND ADMINISTRATIVE RULES FOR CIRCUIT COURT OF
_____ COUNTY, MISSOURI**

_____ MUNICIPAL DIVISION

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Chapter 1

PURPOSE, GENERAL COURT OFFICE AND COURTROOM RULES AND PROCEDURES

1.1 Purpose and Scope

These rules shall be known as the Supplemental Rules of Procedure, Rules of Decorum and Administrative Rules ("Rules") for the Circuit Court of _____ County, Missouri, Municipal Division, City of _____ ("this Court").

These Rules have been promulgated to supplement Court Operating Order #4 ("COO #4") with procedures and rules which are particular to this Court. These Rules are designed to comply with and abide by all statutes, Supreme Court Rules ("SCR"), in particular Rule 37.04, which contains the Minimum Operating Standards ("MOS"), the four statute-based sections of the MOS after MOS #10, hereinafter referred to as AT1, AT2, AT3 and AT4, the Code of Conduct for Municipal Division Personnel ("Code of Conduct" SCR 37.04, Appendix B), COO #4, and other provisions relating to municipal divisions. The MOS mandate that there be established nine certain specific "procedures" in each municipal division, which are included in these Rules, in Chapter 9. These nine procedures are referenced throughout the chapters of these Rules, and are published in Chapter 9.

SCR 37.04 requires municipal divisions "operate in substantial compliance with the Minimum Operating Standards which are included in Rule 37.04 as Appendix A." These Rules shall implement the provisions of the MOS to apply to this particular Court. If there are any variations in these Rules from those in the Missouri statutes or the SCR, including the MOS, these Rules shall be subordinate to such statutes, rules or standards.

For brevity's sake, the Court Administrator of this Court shall be known in these Rules as the "Clerk." The assistant court clerks shall be obligated, when appropriate, to the same duties as the Clerk. Similarly, the Provisional Judge shall have the same duties and rights as this Court's Presiding Judge.

1.2 Court Office; Judge Always On Call

A. Calendar. This Court shall, at least one year in advance, publish this Court's dates and times for the upcoming year. The current docket shall be available to the public for each Court session as soon as it is published. (*Source: MOS #8*)

B. Judge's Availability. A judge shall be generally available to preside over Court and emergency hearings, and a duty judge to rule promptly upon warrants, bail and conditions of pretrial release, and other matters, without undue delay. When this Court's Presiding Judge is not available, it shall be the policy of this Court to alert the Provisional Judge to hold Court or to be on call as duty judge. If neither the Presiding nor the Provisional Judge is available, or a conflict of interest exists, the Judge or city official, if a judge is not available, shall file a request with the Presiding Judge of the Circuit Court to appoint a special judge. (*Source: MOS #1*)

1.3 **Court Office Hours of Operation, Always Open for Certain Purposes, Court Days Opening**

A. Business Hours; Always Open for Certain Purposes. The Court Office shall be open and accessible to the public from _____ a.m. to _____ p.m. Monday through Friday, for the purpose of paying fines and providing information, with the exception of City-observed holidays or if closed due to inclement weather or other emergency ordered by the Mayor or other appropriate City official. Notwithstanding, the Court shall be deemed always open for the purpose of filing proper papers, issuance and return of process, making of motions, applications and orders, in accordance with SCR 37.10. (*Source: MOS #8*)

B. Opening of Courtroom on Court Days. The Court will open on the day of Court at _____ .m. to begin check-in of defendants. If additional dates or times other than the scheduled Court shall be necessary, the same shall be published on the bulletin board outside of Court and on the Court's website. (*Source: MOS #8*)

1.4 **Courtroom Rules.**

A. Open to All. The Courtroom is open to the public of all ages. It shall have sufficient seating to reasonably accommodate the public, parties, and attorneys. No one will be excluded except those persons described as permitted to be excluded in COO #4, Part IIB, or excluded for other good cause shown. (*Source: MOS #8*)

B. Signage. The Judge and the Clerk shall communicate with the City to assure that the Court's exterior and interior signage, design, functionality, and other factors shall clearly convey the appearance to the public that the Court is a separate and independent branch of government. (*Source: MOS #7 and MOS #8*)

- C. Americans with Disabilities Act. The Judge and Clerk shall receive certification from the City that the entrances and exits to the Courtroom facilities, and the Courtroom itself, comply with the requirements of the Americans with Disabilities Act. (*Source: MOS #6*)
- D. Bench and Seating for Prosecutors and Defendants and Lawyers. The Judge's bench shall be elevated from other seating in the Courtroom. The Prosecutor shall occupy a separate table and seating area away from the bench. The defendant (and defendant's counsel) shall occupy another table and seating area away from the bench and separated from the table occupied by the Prosecutor. (*Source: MOS #8*)
- E. Bailiff and Security. This Court's Bailiff shall be suitably dressed, but shall not wear clothing which in any way could cause the impression that the Bailiff is a part of the police department of the City or any other law enforcement unit. The police department shall provide security with uniformed personnel. (*Source: MOS #7*)
- F. Rights in Court and Court Procedures – Information.

"Notice of Rights". The form approved by the Missouri Supreme Court entitled "Notice of Rights for Defendant's Appearing in Municipal Divisions" ("Notice of Rights") shall be prominently displayed in the Court Office so that it can be read by persons outside the Clerk's window or at the place that the Clerk transacts business with the public. SCR 37.04, Appendix C. (*Source: MOS #9*)

The Notice of Rights shall be made available as a handout to those appearing in the Courtroom. The Notice shall be included in the Court's website as provided in these Rules. (*Source: MOS #9*)

SEE PROCEDURE VII

1.5 Court Office Rules

- A. **Maintenance of Records; Financial and Bookkeeping Duties of Clerk**. The Clerk shall maintain and preserve complete and accurate records, and shall abide by all provisions of COO #4, Part I – Administration of Municipal Division, Part A, General Administrative Procedures. The Clerk shall regularly review COO #4 to comply with all administrative procedures, local court rules, recordkeeping, and reporting requirements presented in COO #4, and all the financial bookkeeping and other requirements that are included in AT3 and AT4, including back-up of computer data and use of passwords as suggested in the AT. These

Rules are intended to supplement, but not supplant, the requirements in COO #4, § 483 RSMo and in Court Operating Rules 2, 4 and 8. (*Source: AT3*)

B. **Website.** The Court shall manage its own website, which the Court shall maintain as part of the City's website, or as a separate website that may be linked from the City's website. The Court website shall continuously maintain up-to-date information, including the following:

- i. address, court phone number, and hours of court;
- ii. courtroom procedures;
- iii. free on-line access to information regarding pending cases, outstanding warrants and scheduled municipal dockets, to the extent the court has access to court automation.
- iv. delayed payment and payment plans, including payment by electronic means;
- v. community service;
- vi. Notice of Rights;
- vii. Statement of Financial Condition, approved by the Missouri Supreme Court in SCR 69.01.

(*Source: MOS #6, MOS #9*)

C. **Electronic Payments or Payment by Mail.** The Court shall maintain a system so that payments may be made online or by mail for those cases, including "Minor Traffic Violations" as that term is defined in § 479.350(3) RSMo ("Minor Traffic Violations"), permitted by law to be paid out of Court without appearance, and for those cases in which a judgment has been entered and fine and costs are due. (*MOS #6*)

SEE PROCEDURE VI

D. **Violation Bureau.** The Court's Violation Bureau Schedule of Fines and Costs shall process only those violations authorized under SCR 37.49(c). The Schedule shall be posted prominently on the wall outside the Court Office, or another appropriate place where fines are to be paid, so the public can clearly read the Schedule at all times. (*Source: SCR 37.49(d), AT2*)

E. **Separation of Functions-Clerks and Other Nonjudicial Personnel.**

- i. **Conflicts of Interest.** The Clerk and all other nonjudicial personnel of this Court shall not perform any functions that constitute actual or apparent conflict of interest with the impartial performance of their judicial duties. Clerks of the Court may perform other functions for

the City that do not conflict with judicial duties, but may not perform any work on behalf of the City police department nor the Prosecuting Attorney. The Clerks of the Court and other nonjudicial personnel when performing Court-related functions work solely under the direction and supervision of the Judge, the Circuit Court, and other appropriate officers of the judicial branch, as to the work being performed and the manner in which it shall be done. (*Source: MOS #7*)

- ii. The Judge, the Clerks, and other nonjudicial personnel shall report to the appropriate official any perceived informal pressure, formal discipline, firing or threats of non-retention or non-reappointment at the conclusion of term of office by any officer or administrator of the City designed to encourage or require the Court to operate in such a way as to maximize the municipal revenues of the Court, or to meet specified revenue targets. Notwithstanding, the Judge and Clerk may discuss with the City anticipated Court-related budget items each year to comply with Missouri law. (*Source: MOS #7*)

F. **Separate Filing Systems, Files and Work.** The Clerk shall follow guidance from the Presiding Circuit Judge, and the appointed court monitors, regarding separation of offices, files and duties between the Clerk's Office and the and the Prosecuting Clerk's Office. To the extent possible, there shall be separate filing systems for the Clerk's Court-related documents and Prosecutor-related documents. The Clerk and the Prosecutor's Clerk shall communicate with one another to effectuate the separation of their offices, files and duties, in order to achieve the goal of separation of powers and the integrity of the judiciary as a separate and independent branch of government. The Clerk shall attend periodic educational meetings to assist in complying with this provision, and shall at all times be familiar with and abide by MOS #7 and other related rules. (*Source: MOS #7*)

Chapter 2

GENERAL RULES OF PROCEDURE AND DECORUM IN THIS COURT

2:1 Opening Procedure.

Officers of this Court (with the exception of the Judge) and all other participants shall promptly enter the Courtroom before the scheduled time for each Court session. Complete order and silence shall be observed.

Promptly upon the scheduled time for the Court session to begin, the Bailiff shall direct all persons to their seats and shall cause the Courtroom to come to order. As the Judge enters the Courtroom, the Bailiff or the Clerk shall state: "All Rise."

While everyone is still standing, the Bailiff or Clerk shall announce:

"The Municipal Division of the Circuit Court of _____ County, City of _____ is now in session, the Honorable Judge _____ presiding. There will be quiet in the Courtroom. No smoking, eating or drinking will be permitted. If you have a cellphone or pager, please turn it off at this time. You may be seated."

During opening announcements, the Judge shall present an overview of the Notice of Rights and advise defendants that if they have a question about those rights, to ask them before they come before the Judge. The Judge shall refer specifically to the Notice of Rights form which shall be available as a handout to all defendants. All announcements by the Judge that are intended for the benefit of all present, shall be communicated adequately so as to be heard throughout the Courtroom, and to the extent possible, such announcements are also communicated to those waiting outside the Courtroom or otherwise made available to them when they come into the Courtroom. (*Source: MOS #9*)

SEE PROCEDURE VII

2.2 Recess.

When the Judge announces a recess, the Bailiff or Clerk shall state: "All Rise." All shall remain standing until the Judge leaves the Courtroom, whereupon the Bailiff shall announce: "The Court is now in recess."

In reconvening after a recess, the Bailiff or Clerk shall call the Courtroom to order and request everyone to rise as the Judge enters, and shall state: "Court is again in session. Please be seated."

2.3 General Rules of Decorum.

In the Courtroom, there shall be:

- A. no smoking, use of tobacco products, including snuff, chewing tobacco, vapor or e-cigarettes;
- B. no eating of food, drinking of beverages, or chewing and/or popping of gum;

- C. no inappropriate attire, including short shorts, tank tops, sleeveless shirts, low pants with undergarments showing, or inappropriate "message" shirts;
- D. no audible cell phones, pagers, or other electronic devices;
- E. no bottles, cups or beverage containers except water, pitchers and cups, or as otherwise permitted by the Judge, for use by officers of the Court;
- F. no loud noises;
- G. no propping of feet on tables or chairs;
- H. no noise or talking that interferes with Court proceedings;
- I. no animals except service animals;
- J. no standing in the Courtroom, including in front of the Bailiff or in front of the bench, except when addressing the Court or by direction of the Judge, or as necessitated by the business of the Court;
- K. no gestures, facial expressions, or sounds indicating approval or disapproval of a ruling of the Court or a comment of a witness;
- L. no unattended children under 15 in the Courtroom;
- M. no hats or head coverings, including scarves, bandanas or do-rags, worn in the Courtroom unless such items are religious in nature;
- N. no person other than the Presiding Judge, a peace officer or a security guard employed by the City and on duty, who has a current appropriate license, shall possess a weapon in the Courtroom.

This Court may exclude children, even if attended, only after following the provisions of COO #4 listing those appropriate occasions in which children will be removed from the Courtroom. Unless ordered strictly in compliance with the provisions of COO #4, children may remain in the Courtroom with their parents, regardless of age.

The Judge, the attorneys, Clerks, courtroom Bailiffs and other officers of the Court will refer to and address other Court officers and other participants in the proceedings respectfully and impersonally, as by using appropriate titles and surnames rather than first names.

All officers of the Court should dress appropriately for Court sessions. Attorneys who are not dressed in attire that is customarily expected of officers of the Court, shall be asked to leave the Courtroom and return when dressed appropriately.

2.4 **Conduct – Judge, Attorneys and Municipal Division Personnel.**

- A. Judge. At all times, the Judge shall abide by the Code of Judicial Conduct applicable to municipal divisions, and in particular, shall disclose any possible judicial conflicts prohibited by SCR 37.53(b). The Judge shall immediately recuse himself/herself in all instances when required to do so

pursuant to SCR 37.53(b) and by all other applicable judicial ethics rules.
(Source: MOS #5)

SEE PROCEDURE V

Each judge in this Court shall complete all annual required judicial CLE, including judicial ethics CLE, and file the CLE compliance form as required by rule. Each judge shall also complete and timely submit the required semi-annual official MOS certification form to the Presiding Circuit Judge.
(Source: MOS #5)

- B. Code of Conduct for Municipal Division Personnel. All full-time, part-time and temporary employees of the Court shall be familiar with and abide fully with the Code of Conduct. The Judge, Clerk, and all other clerks associated with the Court shall periodically review and together discuss the provisions of the Code of Conduct with the goal of substantial compliance.
- C. Attorneys, Including the Prosecuting Attorney. Attorneys shall observe the letter and spirit of the Canons of Ethics, including those dealing with discussion of cases with representatives of the media and those concerning improper *ex parte* communications with the Judge.
- i. Attorneys shall advise their clients and witnesses of this Court's Rules of Decorum that may be applicable.
 - ii. All objections, arguments, and other comments by attorneys shall be directed to the Judge and not to opposing attorneys.
 - iii. Attorneys shall not approach the bench without leave of Court and shall not lean on the bench.

2.5 **Appearance Required of All Attorneys, Pro Se Defendants and Witnesses.**

Prompt Appearance Required by Parties Attending Court. All parties shall be prompt in attending to all Court business and shall be in Court in time for announcements. The Prosecutor and defendant shall appear as required by law. All witnesses subpoenaed shall be present for trials.

2.6 **Interpreters, Visual Aids and Audio Aids.**

A motion or a request for an interpreter for hearing-impaired parties pursuant to the Americans with Disabilities Act, or a request for a foreign

language interpreter pursuant to Title VI of the Civil Rights Act of 1964, shall be moved or requested as soon as practicable, but no later than when a plea is entered. Any parties seeking to use video or audio aids must provide their own necessary equipment and provide that request in writing to this Court.

CHAPTER 3

PRE-TRIAL RELEASE AND BOND POLICY

3.1 Pre-Trial Release Policy

A. General Pre-Trial Release.

No person detained or charged with an ordinance violation from the City shall be held more than 24 hours under any circumstances without a warrant having been issued for the person's arrest. (*Source: MOS #1*)

This Court has adopted Procedure I, attached to these Rules and a true copy of such Procedure shall be on file with the City police department confirming that defendant in municipal custody shall not be held more than 24 hours unless they have been charged by the City, and held by a warrant to answer to such offense. (*Source: MOS #1 and § 544.170.1 RSMo*)

The procedure set forth in attached Procedure I shall further be discussed periodically among the Court, the Prosecuting Attorney and members of the police department, so that strict adherence to the law shall be observed and communication between Court officials and the police department is always open.

SEE PROCEDURE I

This Court shall not require a bond on any charge for which a warrant has not been issued. Notwithstanding that bond schedules are authorized by SCR 37.17, this Court does not utilize a bond schedule. Bonds, if used, shall be set solely by the Judge in individual cases, when appropriate and necessary, in accordance with Rule 37, the MOS, and these Rules.

B. Applications for a Bond.

In accordance with provisions of Rule 37, in particular Rule 37.15, and upon oral or written application by a police officer or other public official or from the Prosecuting Attorney, the Judge shall consider sufficient facts to show probable cause that an ordinance violation has been committed, and whether or not there are reasonable grounds for the Judge to believe that the defendant will not appear upon the summons, or a showing has been made that the person poses a danger to a crime victim, the community or any other person.

The Judge will determine the least restrictive bond conditions necessary to assure the defendant will appear at a future court date, or to protect

crime victims, the community and other persons. The Judge shall issue specific written orders stating the conditions of release imposed and the conditions shall be given to the defendant by means of an approved form or approved bond form. (*Source: MOS #1*)

SEE PROCEDURE I

**CHAPTER 4
GENERAL RULES REGARDING TRAFFIC
AND ORDINANCE CASES**

4.1 Filing Cases.

Informations shall be signed by the Prosecuting Attorney, and shall be filed for each ordinance violation to be prosecuted. The Clerk shall be responsible to see that the Prosecuting Attorney has signed all tickets and informations before filing the same with the Court, and that the Prosecuting Attorney reviews and approves in writing all amended and dismissed tickets and other charges. (*Source: AT2 and AT3*)

4.2 First Appearance; Waiver of Appearance; Payments Other Than in Court Office; Information to Accused at Time of Stop.

A. Appearance. Unless otherwise directed, defendants shall appear in the Court on the date and time written on the citation or summons. Subsequent appearances will be as scheduled by this Court.

B. Waiver of Appearance. Defendants who wish to plead guilty to those violations permitted by SCR 37.49(c) to be paid out of Court in the Violations Bureau shall not be required to appear in this Court. (*Source: MOS #6*)

C. Payments by Website, in Person or Mail – Information to Persons Charged with Traffic Violations. Eligible payments may be made through the Court website, in person or by mail. Offenses payable without a Court appearance shall be listed on the Violations Bureau Schedule. The Clerk shall communicate with the police department to assure that traffic officers shall, with each traffic stop, provide persons charged with a written schedule of fines in the Violation Bureau, instructions on how to pay by mail, online or in person, and include payment envelopes. The Clerk shall also prepare a documents to be given by the police department to alleged traffic violators to include information regarding community service, traffic school, payment plans, submission of

Statement of Financial Condition, and all information required by this Rule to be on the website of the Court. (Source: MOS #6 and AT2)

4.3 **Setting Cases.**

All "Not Guilty" pleas will be scheduled for trial as promptly as practicable. The Judge is responsible for setting hearings and trials in Court. A plea of "not guilty" may be filed with the Clerk on or before the court date on the citation or summons, and may be made in person or by mail, to the Court and the Prosecutor. The Court shall allow such pleas electronically if approved by the Judge.

The Clerk is herein authorized to permit one continuance per party, excluding cases where there has been a failure to appear, or when the case has already been set for trial. All other continuances shall be approved and/or granted only by the Judge.

A. Arraignment Docket.

Arraignment shall be conducted in open court. The Judge shall read the information to the defendant, or state the substance of the charge and call upon the defendant to plead. Each defendant in this Court will be afforded reasonable time to examine the charge before defendant is called upon to plead. (Source: SCR 37.48)

B. Procedures Regarding Defendant's Rights When Appearing Under Warrant.

This Court shall follow those procedures set forth in SCR 37.47 when a person arrested under a warrant for an ordinance violation is brought before the Court. As set forth more fully in Section 6.4 of these Rules, defendants shall have the right to present evidence of their financial condition assessing their ability to pay and establish payment requirements. Defendants shall be given the right to request alternative payment plans when appropriate, community service when appropriate, appointment of counsel when required under Rule 37.47.

SEE PROCEDURE III

C. Trial Before This Court.

Defendants who plead not guilty and request a trial in the Court thereby acknowledge that there are no juries authorized in the municipal divisions, and are waiving the defendant's right to a jury by requesting

the trial be in this Court. A case once set for trial shall not be continued without authority of the Judge. When defendant has no counsel, this Court shall, in those cases in which a jail sentence may be imposed, utilize a written "Waiver of Counsel" form substantially in the form of Form 37.C, SCR 37.58(d).

D. Certification for Jury Trial.

When a defendant pleads not guilty to a municipal violation, defendant may request a jury trial. A request for jury trial is to be made by motion filed at least 10 days prior to any scheduled trial date. If the designation of trial date occurs less than 10 days before trial, the application may be filed at any time prior to trial. The Judge relinquishes jurisdiction over the case once the request is filed. If the defendant requests a jury trial, the case shall be transferred to the Circuit Court without prepayment of fees. The following procedures shall be followed by the Clerk once a motion for jury trial is filed:

- i. Pursuant to Rule 37.61, all requests for trial by jury shall be made by written motion signed by the defendant, and shall be filed with this Court at least 10 calendar days prior to the scheduled trial date in accordance with Missouri Supreme Court Rule. Upon receipt of any such motion, this Court shall promptly set the motion for hearing. It shall be the responsibility of the defendant or defendant's counsel to provide all paperwork to this Court including fingerprint cards were required by statute upon filing this request for certification of a case.
- ii. If the motion is sustained, a certified copy of all papers filed in the case, including any bond paperwork, and any cash or other property given as security upon any such bond, and fingerprint cards shall be filed with the Clerk of the Circuit Court within fifteen (15) calendar days from the granting of the motion. The filing shall include the filing memorandum provided by the Clerk of the Circuit Court. Any missing or omitted documents including fingerprint cards where required by law will result in the filing being returned to this Court for correction and proper submission.
- iii. Any charge that requires fingerprinting shall require that the fingerprinting be completed prior to the file being transferred to the Clerk of the Circuit Court. The Judge may rule on the motion, but any ruling shall include the requirement for fingerprinting to be completed prior to the transfer of the court file. Failure on the part of the defendant to comply with this Court's Order for Fingerprinting shall result in the denial, without prejudice, of the motion.

- iv. Upon certification of the case to the Associate division any outstanding warrants on any case being certified for jury trial shall be recalled prior to transfer to the Circuit Clerk's office. At the time of the certification if the municipality desires that a new warrant be issued by the Associate Division, it shall be the responsibility of the municipal Prosecuting Attorney to petition for such a warrant.
- v. This Court shall follow any additional rules set forth in Local Court Rule 69.3 regarding procedures required with respect for a jury trial.

4.4 **Plea of Guilty and Punishment.**

Defendants may enter a plea of "guilty" at any time, with or without a plea agreement. The "Waiver of Counsel" shall be signed in cases in which the Judge may impose a jail sentence. Defendants shall have the right to address the Judge regarding punishment, including any explanation which may or may not affect any sentence.

Defendants' options after a plea of guilty (or finding of guilty) are set forth in Chapter 6 of these Rules regarding presenting evidence of financial conditions, payment alternatives, community service and other matters described in that Chapter.

SEE PROCEDURE III

4.5 **Appointment of Counsel.**

- A. Fine Only Offenses – No Court-Appointed Counsel. The Court will not appoint an attorney for an indigent defendant who is charged with a fine-only offense, or one in which the Prosecutor has represented to the Court that the Prosecutor's Office will not ask the Court to sentence a defendant to jail if convicted.
- B. When Counsel Shall be Appointed. The Court shall designate one or more Court-appointed attorneys, who have been assigned cases in which the Prosecutor has represented to the Court, or the Judge has determined, may result in incarceration upon conviction. The Court shall appoint such attorneys in accordance with Court policies made from time to time in accordance with compensation arrangements with the City. Nothing in this provisions shall prevent a defendant from executing a "Waiver of Counsel" form after determining to proceed without counsel.

4.6 **Change of Judge.**

- A. Jurisdiction is Relinquished. The Judge shall relinquish jurisdiction on the case once a motion for change of judge is granted.
- B. When there is a Provisional Judge Available. If a Provisional Judge is available to hear the case, the case will be heard by said judge.
- C. When there is no Provisional Judge Available. If there is no Provisional Judge available, or if it is proper that no judges of this Court shall hear the case, then the clerk shall provide notice to the Presiding Judge of the Circuit Court to request assignment of a special judge to hear the case.
- D. Clerk's Procedures When Motion is filed in this Court.
- vi. Date file stamp the motion for a change of judge.
 - vii. Make a docket entry indicating the motion or application for change of judge was filed and the date of filing.
 - viii. Forward the motion or application to the judge and set the case for hearing.
 - ix. Serve all parties by regular mail with copies of the motion or application and notice of the time of the hearing.
 - x. Make appropriate docket entries indicating copies of the motion or application and notice of hearing were mailed to all parties.
 - xi. If the motion is granted by the Judge, notify the presiding judge and request assignment of a judge to hear the case.
- vii. Note on the case record the name of the judge and the action taken to have a new judge assigned. Once a judge is assigned, record the assignment and date on the case record.
- viii. Serve all parties by regular mail with copies of the order, if issued.

4.7 **Motions.**

- A. Motions for Continuance. Motions for continuances, after the first such continuance has been granted, shall require reasonable basis in fact and shall not be granted for purposes of delay, but rather to ensure that justice is done.

- B. Motions to Withdraw. Any attorney who has previously made an appearance on behalf of a defendant, shall continue to be considered by this Court as the attorney of record for that defendant, until and unless a motion to withdraw as counsel shall be filed by that attorney, with appropriate letter of notification to the defendant, and such motion is granted by this Court.
- C. Other Motions. Motions as authorized under Rule 37 may be taken up by the Judge as soon as practicable after being brought to the Judge's attention.

Chapter 5

TRIAL PROCEDURES, TRIAL DE NOVO

5.1 Pleadings

Pleadings shall be the information and the plea to the charge.

5.2 Trial Order

Trials in this Court shall follow the procedures required in SCR 37.62.

5.3 Trial de Novo

Upon the filing of timely motion for trial de novo, the Judge shall cease his/her authority to act on the case unless and until the case has been remanded to this Court. (*Source: MOS #5*)

- A. Right to a Trial de Novo. The right to a trial de novo shall be in accordance with SCR 37, and shall be filed within the time frame set forth in that Rule. The Judge shall not order an extension of time upon filing for the application. The statutory trial de novo fee shall be waived if the defendant is determined to be indigent pursuant to the qualifications set forth on the Supreme Court approved form, Statement of Financial Condition. The Clerk shall transfer to the associate circuit court, along with any fees paid and the application within 15 days. (*SCR 69.01(a)(Source: MOS #5)*)
- B. Stay of Execution. The timely filing of an application for trial de novo or review shall suspend the execution of the judgment of this Court. (*SCR 37.72*)

- C. Record to be Transmitted. Within 15 days, the Clerk shall forward forward to the Circuit Clerk, the following:
- i. Date file stamp the application for trial de novo with the date the application is received.
 - ii. Collect a \$30.00 application fee and issue a receipt to the party, unless the defendant has completed an affidavit of indigency.
 - iii. Make a notation or entry on the backer sheet of the Trial de Novo filed, using the File Stamp Date and the filing date.
 - iv. Make a notation of deletion of the case disposition, any probation or other program recorded, and any sentence on the back sheet.
 - v. Prepare and maintain a copy of the case record.
 - vi. Forward the following to the circuit clerk:
 - a. the application for trial de novo.
 - b. the certified record and all related documents, including the original, signed citation, or information.
 - c. the \$30.00 trial de novo fee or if applicable, an affidavit of indigency.
 - d. any bond given as security in the case.
 - e. a copy of the fee sheet, cost bill, or documentation indicating the municipal court costs assessed with the original disposition.
 - f. a request to the circuit clerk to advise this Court on disposition if the case is required to be closed pursuant to § 610.105 RSMo and to inform this Court of the amount of fine and costs assessed by the circuit court.
 - vii. The Clerk shall maintain a procedure so as to communicate case information to and from the circuit/associate division to this Court.
- The Clerk shall be regularly in contact with the circuit/associate division clerk on the outcome of the trial de novo.

- viii. If the violation is point assessable, forward to DOR form 4704. Request for Record Revision to stay the points
- ix. Upon notification from the circuit court of the disposition of the case, add or adjust court costs on the municipal court's case to agree with the municipal cots assessed by the circuit court at disposition.
- D. Withdrawal of Application for Trial de Novo. If the defendant withdraws the request for trial de novo, or if before the trial begins, the circuit court enters a finding that the defendant abandoned the trial de novo, the case shall be remanded to this Court for execution of judgment. (SCR 37.72)

CHAPTER 6

FINES, COURT COSTS, FEES, PAYMENT PLANS, PROBATION, COMPLIANCE WITH THE MINIMUM OPERATING STANDARDS

6.1 Maximum Fines.

- A. General. This Court shall not fine any person more than the maximum fine set forth in City Ordinance or by State statute, whichever is less. (Source: MOS #4)
- B. Special Rule for Minor Traffic Violations. Minor Traffic Violations, defined in § 479.350(3) RSMo shall not be assessed fine and cost in excess of \$225.00. (Source: § 479.353(1)(a) and MOS #4)
- C. Municipal Ordinance Violations. Municipal ordinance violations, as defined in § 479.350(4) RSMo ("Municipal Ordinance Violations"), committed within a 12 month period beginning with the first violation shall not be assessed a fine and cost exceeding those set forth by law as follows:
- i. \$200.00 1st violation
 - ii. \$275.00 2nd violation
 - iii. \$350.00 3rd violation
 - iv. \$450.00 4th and subsequent offenses
- (Source: §479.353(1)(b) RSMo)

The Prosecuting Clerk shall maintain adequate records and shall advise the Prosecutor of the number, if any, of prior violations by the defendant related to Municipal Ordinance Violations within the previous 12 month period, and the Judge shall be made aware of any violations after a plea of guilty for purposes of sentencing. (Source: MOS #4)

6.2 **Court Costs**

The City's court costs shall be assessed only by authority of City Ordinance and as specifically authorized by State statute. The current OSCA Benchcard on municipal court costs shall be used as a reference. Court costs shall not be assessed for any case that has been dismissed, or when a determination of indigency has been determined, based upon standards set by the Missouri Supreme Court, including Statement of Financial Condition. (*Source: MOS #4*)

6.3 **Payments by Mail, in Person or by Electronic Means**

- A. The Court shall accept payment by mail, in person, or by electronic means, for all offenses listed on the Violations Bureau Schedule as approved and signed by the Judge. If an offense is not listed on the Court's adopted Violations Bureau Schedule, but there has been a judgment entered by the Judge, including a fine and costs assessment, and in addition when the defendant has signed the approved installment or delayed payment agreement form, the payment shall be accepted by mail, in person, or by electronic means.
- B. Plea Agreements. Irrespective of the nature of the original or amended offense charged, if pursuant to a plea agreement reached between a defendant (and/or a defendant's lawyer, if applicable) and the City Prosecutor, and approved by the Judge, such payment shall be accepted in person, by mail, or by electronic means.

SEE PROCEDURE VI

6.4 **Payment Plans, Delay in Payment, Order to Show Cause**

- A. Stay of Execution Procedure. The Judge shall inquire of each defendant about that defendant's ability to pay. Defendants shall be allowed the right to present evidence about their financial condition and assessing their ability to pay to establish payment requirements. The Court shall utilize the Supreme Court approved Statement of Financial Condition form to determine indigency. When a fine is assessed, and it appears to the Judge that the defendant does not have at that time the present means to pay the fine, the Judge shall order a stay of execution on the payment of the fine, and:
- i. Grant the defendant a specified period of time within which to pay the fine in full; or

- ii. Provide for the payment of the fine on an installment basis under such terms and conditions as the Judge may deem appropriate; or
- iii. Utilize community service with no fee assessed to the defendant.
(Source: MOS #2 and SCR 37.65)

SEE PROCEDURE III

B. Procedures in SCR 37.65 – Order to Show Cause, Default, Confinement.

This Court shall utilize the procedures set forth in SCR 37.65 for due process procedures when there has been a failure to appear on a show cause order, or default in the payment of a fine. This Court shall not deviate from the provisions of that Rule.

6.5 Community Service.

The Court shall have available community service plans, which may be utilized as a condition of probation, as a sentencing option, or in lieu of a fine or jail sentence or both. No fees shall be assessed to a defendant for utilizing community service, including its use to satisfy a judgment.
(Source: MOS #2)

The Clerk shall develop and maintain a list of local nonprofit organizations, including 501(c)(3) organizations, and that list shall be available to all defendants for which the Judge has authorized community service. If the City shall provide community service as an option, the Clerk shall direct the defendant to the proper party at the City for performance of community service, if authorized by the Judge. (Source: MOS #2)

6.6 No Detention or Arrest Due to Inability to Pay.

No defendant shall be arrested or detained for any length of time solely on the basis of defendant's inability to pay fines and/or costs. Notwithstanding, the Court may order the arrest of the defendant if found in contempt of court after the Judge has complied with the provisions of SCR 37.65, as set forth in Section 6.4 of these Rules. (Source: MOS #1)

6.7 Credit for Time Served to Satisfy Fines, Court Costs and Fees.

The Judge may allow credit for time served in any jail facility, but no credit for time served shall be allowed for Minor Traffic Violations and Municipal Ordinance Violations as each is defined by statute, or for parking or seat belt

violations that authorize only fines, not jail time, if convicted. The credit for time served shall satisfy fines, court costs and fees to the extent allowed by the Judge. Defendants who are found guilty, or who plead guilty, may receive credit for time served at the rate to be determined on a case-by-case basis, and to be applied to the fine, court costs and any fees owed.

6.8 **Granting of Probation, Probation Fees.**

- A. Defendants in General. Probation fees shall be assessed only in compliance with MOS #2 and Missouri authorizing statutes cited in that standard. The Judge shall consider all factors exempting a probationer from part of all of any standard monthly probation fees authorized by statute. The Court shall advise defendants of the right to request individualized consideration of exemption from paying probation fees and surcharges under relevant statutes. (*Source: MOS #2*)
- B. Indigent Defendants. The Judge shall not make the granting of probation conditional upon the payment of anything other than authorized fees, nor deny probation because of the inability of a defendant determined to be indigent to pay authorized probation fees and surcharges. (*Source: MOS #3*)

CHAPTER 7 FAILURE TO APPEAR, SUMMONS, WARRANTS, PROCEDURES REQUIRED BY MOS

7.1 **Failure to Appear on Initial Court Date or a Courtesy Continuance**

- A. When Defendant Fails to Appear – Summons to be Issued. A summons shall be issued on all cases in which the defendant fails to appear on the initial assigned court date, or on a subsequent court date after one courtesy letter to the defendant has been sent, and defendant fails to appear at that next scheduled court date as set in the courtesy letter. The Judge shall solely determine whether or not to send the courtesy letter.
- B. Summons. The summons shall include all contents that are included in SCR 37.42.

7.2 **When Defendant Fails to Appear After Issuance of Summons**

The Judge shall review the case to determine if:

- A. Sufficient facts are stated to show probable cause that an ordinance violation has been committed, and the Court thereafter finds there are reasonable grounds for the Judge to believe that the defendant will not appear upon the summons, or that there has been a showing that the accused poses a danger to the victim or the community or any other person. (Source: SCR 37.43(b) and MOS #1)
- B. If the Judge so finds, an order for the court to issue a warrant for the arrest of the defendant will be entered on the case file, including the amount of any bond set by the Judge. (Source: SCR 37.43)
- C. Warrants shall be signed ONLY by the Judge unless the exception of a SPECIFIC warrant ordered by the Judge to be signed by the Clerk is applicable. (Source: SCR 37.45(b)(6) and MOS #1)
- D. Appearance Under Warrant Before the Judge. When a person is brought before the Judge after a warrant has been issued, the Judge shall inform the defendant each of his/her rights as are specifically listed in SCR 37.47(b).

7.3 **Notification to Judge When Defendant is Taken Into Custody on Warrant**

Court staff shall notify the Judge as soon as possible, but not more than 24 hours after a defendant has been taken into custody on a warrant. No defendant shall be held longer than 48 hours on warrants issued after Minor Traffic Violations, and no longer than 72 hours on other violations, without being heard by a judge of this Court in person, by telephone, or via video conferencing. (Source: MOS #1)

SEE PROCEDURE I

7.4 **Dismissal – Recall Warrant**

- A. When Case Is Dismissed By Prosecutor Or Otherwise Resolved – Warrant Recalled. When a case is dismissed by the Prosecuting Attorney or otherwise finally resolved, or when the circumstances that justified issuance of a warrant no longer exist, the Judge shall order the Clerk to cause the recall and cancel any outstanding warrants in that case as soon practicable. (Source: MOS #1)

SEE PROCEDURE II

B. Order to Cancel Warrant. Upon receipt of the Judge's order to recall warrant, the Clerk shall cause to be issued an order to cancel warrant and shall forward without delay such order by hand delivery or fax to the police department for cancellation. (*Source: MOS #1*)

SEE PROCEDURE II

7.5 No Additional Charge

No additional charge of Failure to Appear shall be issued on a Minor Traffic Violation as is defined in § 479.350(3) RSMo. (*Source: MOS #1*)

**CHAPTER 8
CONFINEMENT, WHEN, AND COLLECTION OF FINE WHEN
DEFENDANT IS IN DEFAULT**

8.1 Minor Traffic and Municipal Ordinance Violations - Restrictions

No person shall be sentenced to confinement on "Minor Traffic Violations" as defined in in § 479.350(3) RSMo or "Municipal Ordinance Violations" as defined in in § 479.350(4) RSMo". There shall be an exception to the foregoing when the defendant been found guilty or pleads guilty of a Minor Traffic Violation which involves alcohol or controlled substances, endangering the health and welfare of others, including eluding or giving false information to the law enforcement officer. (*Source MOS #1*)

8.2 When Judge May Sentence Defendant to Confinement.

A Judge may sentence a defendant to confinement after failure to pay a fine, but only after the Judge has strictly followed the due process procedures set forth in SCR 37.65.

8.3 Collection of Fine When Defendant is in Default.

Upon default in the payment of a fine or any installment thereof, the fine may be collected by any means authorized by law for the enforcement of money judgments. (*Source: SCR 37.65*)

Chapter 9

**PROCEDURES MANDATED BY SCR 37.04(A),
MINIMUM OPERATING STANDARDS**

9.1 **Introduction.**

This Court has identified nine separate "procedures" (as that term is used in the MOS) which are required by the MOS to "exist," and are referenced in MOS #1 through #9 or in AT1 through AT4. This Chapter first lists each of those specific procedures numbered I through IX for ease of identification.

Procedures I through IX are attached as exhibits to these Rules. They are so attached because these procedures are particular to this Court, and it is anticipated that in the future, circumstances may dictate amendments or changes to one or more of the these procedures to be in accordance with case law, or new rules or standards. The Judge may replace the language of procedures in these Rules when appropriate.

The following are the required procedures as identified in the MOS and AT.

9.2 **Procedures.**

MOS Required Procedure I

"Procedures exist to prevent defendants from being held longer than 48 hours on Minor Traffic Violations and 72 hours on other violations without being heard by a judge in person, by telephone, or via video conferencing." (Source: MOS #1)

THIS COURT'S PROCEDURE I IS ATTACHED

MOS Required Procedure II

"Procedures in place to ensure that when a case is dismissed by the Prosecuting Attorney or otherwise finally resolved, or when the circumstances that justified issuance of warrant no longer exist, the Judge recalls and cancels any outstanding warrants in the case as soon as practicable."

"The municipal division has ensure that the recall and cancellation of outstanding warrants is communicated to law enforcement by the clerk without delay." (Source: MOS #1)

THIS COURT'S PROCEDURE II IS ATTACHED

MOS Required Procedure III

"Procedures exist to inquire of defendants and allow them to present evidence about their financial condition in assessing their ability to pay and establish a payment requirements." (Source: MOS #2)

THIS COURT'S PROCEDURE III IS ATTACHED

MOS Required Procedure IV

"Stay of execution procedures exist for defendants to pay fines and costs within a specified period of time or to make installment payments. See attached Procedure."

THIS COURT'S PROCEDURE IV IS ATTACHED

MOS Required Procedure V

"The municipal division has a mechanism in place to check for judicial conflicts prohibited by Rule 37.53(b)(2), and the judge recuses in all instances when required to do so pursuant to this rule."

THIS COURT'S PROCEDURE V IS ATTACHED

MOS Required Procedure VI

"Procedures exist for electronic payments or payments by mail." (Source: MOS #6).

THIS COURT'S PROCEDURE VI IS ATTACHED

MOS Required Procedure VII

"Standardized procedures exist to assure that defendants are given advice of rights pursuant to SCR Rules 37.47, 37.48, 37.50, and 37.58." (Source MOS #9)

THIS COURT'S PROCEDURE VII IS ATTACHED

MOS Required Procedure VIII

"This Court has established procedures to generate monthly reports of municipal division activity, and the municipal division submits these reports timely to OSCA and to the city in accordance with state law. (COR 4.28 and 4.29, § 479.080.3 RSMo)" (Source: AT3)

THIS COURT'S PROCEDURE VIII IS ATTACHED**MOS Required Procedure IX**

The Court has developed procedures to ensure the monthly distributions are properly calculated and distributed timely. (Source: AT4)

The Court has established procedures to routinely generate and review the accrued cost list for accuracy and properly following up on all amounts due. (Source: AT4)

The Court has developed procedures and records to identify applicable violations and associated fines and court costs revenues for the purpose of revenue calculation required by statute and the Court provides this information to the City. (Source: AT4)

THIS COURT'S PROCEDURE IX IS ATTACHED

PROCEDURE 1

PROCEDURE II

PROCEDURE III

PROCEDURE IV

PROCEDURE V

General. The Judge shall recuse himself/herself when the Judge is related to any defendant, or when the Judge has an interest in the case, or the Judge previously has been counsel in the case.

In the event that the prosecuting attorney of the City also regularly serves as a judge in another municipal division in this county, before whom the Judge of this City regularly acts as a prosecuting attorney, the Judge shall recuse himself from all appropriate cases. (*Source: SCR 37.53(b) and MOS #5*). The Judge shall notify the Clerk that in the event that the situation described in this paragraph is present, that he/she will recuse from participating in any such cases. (*Source: MOS #5*)

PROCEDURE VI

This Court's procedures for electronic payments are set forth in detail in Chapter 1, Section 1.5(c) and in Chapter 6, Section 6.3(a).

The link for access to the Court's online payment system is _____

See also attached _____.

PROCEDURE VII

This Court shall utilize the Notice of Rights for Defendants Appearing in Municipal Divisions, which is found in SCR 37.04, Appendix C. This notice shall be available to defendants as follows:

- A. sufficient copies shall be available in the Court office for any defendant who comes to the Court office on business;
- B. on the Court's website;
- C. in the Courtroom on court dates;
- D. given to defendants when stopped for traffic violations by the police department;
- E. reviewed in the Judge's opening announcement as discussed in Section 2.1 of these Rules.

PROCEDURE VIII

PROCEDURE IX

F:\WPDATA\MMACJA.Judge.FJV\2018\Supp Local Rules of Proc.docx

Examples

Procedure I

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
MUNICIPAL DIVISION, CITY OF MARYLAND HEIGHTS**

OPERATING ORDER FOR PRISONER PROCESSING

- A. Prisoners arrested on a warrant for the City of Maryland Heights Municipal Court will not be held in the Maryland Heights Police Department's holdover longer than forty-eight (48) hours unless otherwise ordered or approved by the Municipal Court.
- B. If an arrest is made without a warrant and a warrant is not obtained within twenty-four hours, the prisoner must be released at or prior to the twenty-four mark.
- C. If a prisoner being held on a Maryland Heights Municipal warrant is also wanted by other municipal agencies the following procedure will be followed. When the Maryland Heights warrant is resolved the first agency must be notified immediately. If that department has not responded and took custody of the prisoner at the 12-hour detention time the next agency should be contacted. If neither agency picks up their prisoner within 24 hours from when the first agency was notified the prisoner will be released.
- D. If a prisoner wanted by another agency for a felony warrant, federal detainer or misdemeanor warrant by agencies that are outside of St. Louis County has not been picked up by the twenty-four mark, that prisoner shall be released or transferred to the St. Louis County Department of Welfare, whichever is appropriate for the situation. The St. Louis County Department of Welfare will accept prisoners that are wanted by other agencies if a felony warrant, federal warrant or federal detainer has been issued. They will also accept prisoners wanted on misdemeanor warrants by agencies that are outside of St. Louis County. Officers may call the intake desk at St. Louis County at 314-615-7098 to verify prior to conveyance that the prisoner will be admitted.
- E. If a warrant is issued on a Maryland Heights case for a state felony or misdemeanor, that prisoner will be conveyed to St. Louis County Department of Welfare at or prior to the twenty-four mark.
- F. Prisoners in custody pursuant to an initial arrest warrant issued by the Maryland Heights Municipal Court must have the opportunity to be heard by a judge in person, by telephone, or video conferencing as soon as practicable and **not later than forty-eight (48) hours** on minor traffic violations and **not later than seventy-two (72) hours** on other violations and, if not given that opportunity, are released.

A minor traffic violation is defined as a municipal ordinance violation that does not involve an accident or injury, that does not involve the operation of a commercial motor vehicle, and for which the department of revenue is authorized to assess no more than four points to a person's driving record upon conviction. Minor traffic violation shall exclude a violation for exceeding the speed limit by more than nineteen miles per hour or a violation occurring within a construction zone or school zone.

Back to Index

1. Prisoners in municipal custody shall not be held more than twenty-four hours without a warrant after arrest;
 2. Any prisoner who is in custody on a Maryland Heights municipal warrant and cannot post bond shall be offered the opportunity to be heard by the municipal judge. The shift commander or his designee shall be responsible for contacting the municipal judge by phone daily between 8:00 - 9:00 am, and 4:00 - 5:00 pm, or at times as provided by the municipal judge. A phone conference should be initiated between the prisoner and the municipal judge. The municipal judge will decide if the prisoner will continue to be held; bond reduced, released on their own recognizance or transferred to the St. Louis County Department of Welfare. The shift commander or his designee will be responsible for documenting the judge's decision on the judge contact form.
 3. If the prisoner has been taken into custody within 12 hours of a scheduled municipal court session and cannot post bond the prisoner shall remain in custody and shall appear before the judge prior to the conclusion of said court session.
 4. Any prisoner who is in physical distress or has a communicable disease who is unable to post bond may be released upon their own recognizance.
- G. When a Maryland Heights warrant exists (excluding minor traffic violations), and when ordered by the municipal judge the prisoner shall be taken to the St. Louis County Department of Welfare and held for the time designated by the judge, providing that they have had the opportunity to be heard by a judge. The officer should make sure that the intake clerk is clear on the amount of time the prisoner is to be held, and make sure this time is noted on the booking sheet copy.

SO ORDERED:

_____, Judge

Dated

WARRANTS – COURT POLICY/PROCEDURES

Pursuant to Senate Bill 5, the Chesterfield Court has established the following procedures for warrants and the new 24/48/72 hour hold.

New Procedures on “Warrantless” Arrest and Bonds: 24 HOURS

The Court shall not require a bond on any charge for which a warrant HAS NOT been issued. Thus, the bond schedule will be considered invalid (or moot) as of this date.

Pursuant to Missouri Supreme Court Rule 37.15 “Any person arrested for an ordinance violation **shall be entitled to be released from custody pending trial.**” Therefore, on any new arrest, regardless of the charge, the defendant should be released after booking on the summons and/or ticket with a court date. DWI’s can still be held for the “sober period” before releasing. If, for any reason, the arresting officer feels a bond should be set, they will need to contact the prosecuting attorney first to issue the charge, then the judge should be contacted to issue the warrant. Most likely Nancy or Tonia will then be contacted by the judge to do the actual warrant for the judge to sign. The judge will then set the bond amount and/or conditions of release. This has to be done within the 24 hours of a new arrest or the defendant should be released.

Warrants on a Minor Traffic Violation: 48 HOURS

The Court, upon issuing a warrant on a Minor Traffic Violation (MTV) will note on the warrant that it is an MTV. The bond amount will be set by the judge and will be on the warrant.

Upon posting the bond, the original bond sheet with the bond is placed in the bond box. The yellow copy of the bond sheet is given to the defendant with the new court date listed on it.

NOTE: We now have a strict 48 hour “hold” on these types of warrants. The new law says a defendant has the right to see and/or speak to a judge **as soon as practicable BUT must be released by 48 hours.** WE PROMOTE THE USE OF RELEASING THEM ON A SUMMONS AS SOON AS POSSIBLE WHEN IT IS DETERMINED THAT THEY WILL NOT BE ABLE TO OBTAIN AND/OR POST THEIR BOND!! FILL OUT THE WHITE AND YELLOW SUMMONSES ATTACHED AND GIVE THE DEFENDANT THE YELLOW ONE WITH THE NEW COURT DATE. CHECK WITH THE DEFENDANT IF THEIR ADDRESS HAS CHANGED AND CHANGE IT IF NECESSARY ON THE WHITE SUMMONS THAT WILL COME BACK TO THE COURT WITH THE WARRANT.

Warrants on all other type of violations: 72 HOURS

The Court (Judge), upon issuing a warrant on all other type of violations, will set the appropriate bond amount. The Court may have a notation from the judge on the warrant that states this defendant has failed to appear before on this charge. The note (in red) will say “Call Judge to possibly hold for bond, defendant has FTA X _____ on same charge.”

NOTE: We now have a strict 72 hour "hold" on these type of warrants. The law says a defendant has the right to see and/or speak to a judge **as soon as practicable BUT must be released by 72 hours. You also have the option of accepting a lower bond amount if they can come up with any type of money. Minimum bond of \$50.00 - \$100.00 is authorized by the judge.** As stated above, we promote the use of releasing them on a summons as soon as possible, BUT IF IT IS A "PROBLEM" DEFENDANT, YOU SHOULD ATTEMPT TO CONTACT THE JUDGE (OR OUR PROVISIONAL JUDGE). The judge may either come in to speak with the defendant or speak to them by phone to determine if they should be released or he may authorize holding them on the bond. Please attempt to call the judge to see if he wants to come in and do a "bond hearing" on the defendant or he may also wish to speak with the defendant via phone or skyping.

After speaking with a judge, he may authorize that the defendant be held on a bond, but without speaking to a judge, DO NOT simply send them to County without at least contacting someone in the Court. **Please note, if you have any questions do not hesitate to contact Nancy or Tonia, but they do not have the authority to hold someone for Court! Only a judge may authorize that so try calling the Judge first!**

CITY OF
LADUE

Municipal Court

Directive to Police Chief

Please find attached a new directive regarding the confinement of individuals by the Ladue Police Department. The changes are a result of the enactment of Senate Bill 5.

First, in all cases involving Minor Traffic Violations (MTVs), defined under subsection 479.350 R.S.Mo. and generally as all non-moving and moving violations from 0-4 points, exceptions being those cases involving an accident or injuries, a commercial motor vehicle, construction or school zone violations and speeding over 19mph the speed limit, the defendant should be issued a citation and released. Unless there is a valid warrant or probable cause to believe a non-MTV has been committed, no one should be taken into custody simply for a MTV.

Second, in the event there is just cause to take someone into custody for a charge(s) out of Ladue and the arresting officer believes that there is sufficient probable cause to charge the subject and the circumstances dictate that a bond should be set, the officer must prepare a probable cause statement and convey it to the prosecutor for the issuance of charges. Bear in mind there are only two circumstances under which the officer should be requesting a warrant on a municipal charge. (1) The subject poses a danger to a person or the community; or (2) there is a strong likelihood that the subject will not return to Court on their own volition to dispose of their case (i.e. a solicitor from California). If the prosecutor believes that a charge should issue and that a bond be set, he must contact me for the issuance of a warrant where I will set a bond. This all must be done within 24 hours. In the event I issue a warrant and set a bond, I must be contacted within 48 hours of issuing the warrant unless the subject has made bond. Officers may still book and release a subject on citation without the need for a warrant so long as the offense being charged is not simply a MTV (i.e., DWI, DWR etc...).

Third, if an individual is taken into custody on a warrant from another jurisdiction, I would suggest that you immediately notify the jurisdiction wanting that individual and make sure that the individual is not held in our custody in excess of 24 hours on their behalf.

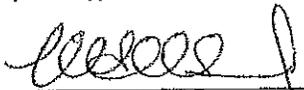
Finally, all bond schedules that I have previously set are hereby set aside. I will designate a bond on each case on an individual basis. If an arrestee claims to be indigent I am to be notified immediately and I will then see the individual or release him or her as soon as practicable, in all cases no longer than 24 hours.

For individuals arrested on a warrant and who cannot post the bond, I need to be contacted within 48 hours. In all cases, I may be contacted in the event the individual wishes to post a bond in an amount less than the designated amount of the bond.

In ability or failure to make contact with myself, Judge Vatterott or the Judge or the St. Louis County Duty Judge shall not justify holding a prisoner in excess of the time limits stated above. Contact information is Judge Keith Cheung 314-578-3340, Provisional Judge Frank Vatterott 314-517-6588 or Prosecutor Jim Towey 314-651-5097.

Please instruct your officers accordingly and feel free to call me if you have any questions.

Respectfully,



Keith Cheung, Municipal Judge

12/19/17

Date

CITY OF TOWN AND COUNTRY
POLICE DEPARTMENT

SPECIAL ORDER

Special Order Topic: Order from Municipal Judge
Special Order Number: 2017-05
Effective Date: 08/17/17
Revised Date:
Expiration Date: TBD
Certification:

Effective immediately, Judge Andrea Niehoff has issued the following Order related to bonds and arrest warrants. This Order shall supersede any conflicting policies or orders of the Court.

ORDER

Effective date: August 17, 2017

INFORMATION REGARDING BONDS AFTER COURT ISSUED SUMMONS

This information pertains to warrants issued after a defendant has been issued a summons and has failed to appear in court. The Court will be using three types of bonds; personal recognizance, unsecured bonds, and cash bonds. All warrants will be designated with the type of bond authorized. Any change in the type of bond must be authorized by the Judge, either as indicated in writing in the warrant issued by the Judge, or by verbal approval of the Judge. The Judge may be reached through the Court Administrator, Sharon Orlando, during City Hall hours or after hours at (texting is okay). The Judge, Andrea Niehoff may also be reached directly by: cell 314-973-7876 (texting is okay), work 314-539-7943, or email janiehoff@sbcglobal.net.

Preferred hours of contact are during normal business hours on weekdays and weekends from 8:30 am-10:30 pm. Please keep in mind the hours a defendant has been held when attempting to contact the Court Administrator or the Judge, noting that waiting for a return call may take additional time.

****All defendants must be provided with a new court date prior to release.****

METHODS OF POSTING BONDS

PERSONAL RECOGNIZANCE BONDS

Personal recognizance bond: Defendant is released on his/her written promise to appear at all Court proceedings. An approved bond form and next court date shall be executed and signed by the defendant prior to release.

UNSECURED BONDS

Unsecured bond: Defendant is released on his/her written promise to appear at all Court proceedings **AND** to pay the Court the full amount of the monetary bond set by the Court in the event he/she fails to appear as promised. An approved bond form and next court date shall be executed and signed by the defendant prior to release.

For these types of bonds, no defendant shall be held for more than 8 hours, unless releasing the defendant may pose a danger to that defendant or others.

CASH ONLY BONDS

Cash only bonds will be specifically designated by the Judge. Any reduction in the bond must be approved by the Judge.

1. Police Officers and Court Clerks shall accept cash, certified check, money orders or approved credit cards for cash bonds. If a certified check or money order is collected it shall be for the exact amount of the bond. ***Personal checks will not be accepted when posting bond.***
2. When a cash bond is posted the receipt shall be made in the name of the defendant. All bond money shall be considered by the Court as belonging to the defendant. If the defendant is found guilty, all assessments against the defendant, such as fines, court costs, warrant fees, and any other related court costs ordered by the Judge will be deducted from the cash bond before any money is refunded to the defendant or assignee. A third party may claim any refundable money at the conclusion of the charges only if the defendant has properly assigned the defendant bond receipt to that third party.
3. If a cash bond is not posted within 15 hours, the Court Clerk or the Judge shall be notified. No defendant will be held for more than 20 hours without notice to the Judge.

****All defendants must be provided with a new court date prior to release.****

ORDER REGARDING ARREST WARRANTS

In all instances, wherein a subject is arrested, booked, and charged with a municipal ordinance violation, the subject shall be released from custody on the person's own recognizance. If it appears to the arresting officer that the promise to appear is not sufficient to reasonably ensure the appearance of the subject or that the subject poses a danger to the crime victim, the community, or any other person, the officer shall request the Judge of the Municipal Court of the City of Town and Country consider imposition of conditions of release.

Any Defendants remaining in custody and unable to post bond, shall have an opportunity to be heard by the judge in person or by telephone as soon as practicable but not later than 20 hours. If not given that opportunity, they are ordered released on their own recognizance.

During normal business hours, Officers will contact the Court Administrator, Sharon Orlando, regarding the setting of bond. During non-business hours, the On-Duty Supervisor will contact the Judge at 314-973-7876.

Examples

Procedure II

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21ST JUDICIAL CIRCUIT
TOWN AND COUNTRY MUNICIPAL DIVISION

MEMORANDUM FROM THE JUDGE

December 5, 2017

On all cases where the Judge authorize warrant recalls or cancellations, the court administrator must cancel the warrant in the court system and inform the police department immediately, without delay.

Upon the closure of any case, for any reason, any outstanding warrant will be promptly canceled in the court system and the police department shall be notified immediately.

SO ORDERED:


Judge, Andrea Niehoff

ST. LOUIS COUNTY CIRCUIT COURT
CHESTERFIELD MUNICIPAL DIVISION

690 CHESTERFIELD PARKWAY WEST
CHESTERFIELD, MISSOURI 63017-0760
Phone: (636) 537-4718
Fax: (636) 537-4795

RICK BRUNK
Municipal Judge

NANCY MORR, C.C.A.
Court Administrator

TONIA POWELL
Asst. Court Administrator

TAMMY BROOKS
Court Assistant

ST. LOUIS COUNTY CIRCUIT COURT
CHESTERFIELD MUNICIPAL DIVISION
WARRANT CANCELLATION PROCEDURES

It is hereby ordered that the following procedures shall be followed for any warrant cancellation thru the court.

- Authority is given to the court staff to cancel any warrant when an attorney enters their appearance as long as it is the first time the case has gone warrant and the defendant is not currently in custody.
- Authority is given to the court staff to cancel any warrant for a defendant when they come to the court office with a bond of \$100.00 during working hours OR if they owe outstanding fines, a payment of \$100.00 is made. If a payment, a new payment plan shall then be given. Upon posting said bond, a new court date shall then be given.
- Authority is given to the court staff to inform any defendant who contacts the court about an outstanding warrant that the defendant may appear on any court date to see the judge and the judge shall then cancel the warrant.
- No defendant that appears voluntarily at the court office with an outstanding warrant from this court shall be arrested on said warrant.
- Requested by the Prosecuting Attorney

The clerk shall immediately fill out an Order to Recall Warrant and take it over to the Police Department for cancellation. Authority is given to the court staff to sign said order when one of the above conditions are met. Judge will then review and sign at the earliest opportunity.

All warrants that come back to the Court from the Police Department showing that they have been cancelled shall have a copy of the cancellation printout attached to the warrant and placed with the court file.

SO ORDERED, this 6th day of June, 2017



Rick Brunk, Municipal Judge
Chesterfield Municipal Division

**ST. LOUIS COUNTY CIRCUIT COURT
CHESTERFIELD MUNICIPAL DIVISION**

ORDER TO RECALL WARRANT

City of Chesterfield

Warrant Number: _____

vs.

Court ORI: MO095881J

The Court orders the warrant for the arrest of the above defendant be recalled pursuant to the action listed below:

- Posted a bond at court office
- Paid the fine associated with this warrant
- Attorney entered and recall was granted
- Defendant appeared in court
- Request from Prosecuting Attorney
- Other: _____
- _____
- _____

This ordered was delivered to the Chesterfield Police Department by:

- Hand Carried/Delivered
- Electronically transmitted

_____/_____/_____
Date

Court Staff

So Ordered, on:

_____/_____/_____
Date

Rick Brunk, Municipal Judge

To Law Enforcement:

Return this order along with the warrant and REJIS printout showing the cancellation to the Court.

Warrant Recall Procedure

The following steps must be taken when recalling a warrant.

Send an email to dispatch (mhdispatch@marylandheights.com) telling them to recall the warrant. You can use the snip tool to copy the defendant's information and mail directly. Dispatch will recall the warrant and put the warrant and cancellation notice in the Court box in dispatch.

The case file is then placed in the vertical tray at the far left end of the payment counter.

If the case is being paid in full then put the WR code in the additional disposition field.

If the case is being continued enter WR as a line item in the disposition field.

We will pick up all papers from the court box in dispatch at least on a daily basis. The warrant and cancellations will be matched with the court file and be filed appropriately. It is imperative that the files be matched with cancellations. Any files that do not have a cancellation must be researched immediately.

CITY OF
LADUE

Municipal Court

ORDER OF THE COURT

The Court Administrator is hereby directed to take the following steps to ensure that warrants are timely cancelled upon order of the Court.

In all cases where there is a final disposition either by way of dismissal from the Prosecutor or the Court, or upon any final resolution of the case, the Court Administrator shall immediately ascertain whether there is an outstanding warrant associated with the case. In the event there is an outstanding warrant, the Court Administrator shall notify the Judge and is hereby authorized to cancel said warrant, unless otherwise instructed by the Judge. Upon cancellation of the warrant, the Court Administrator shall immediately notify the Ladue Police Department to advise and confirm that the warrant has been cancelled.

So Ordered:

Keith Cheung, Municipal Judge

Date

PROCEDURE FOR DISMISSED/DISPOSED CASES BY PROSECUTOR

1. Upon the entry of a dismissal or resolution of a case initiated by the prosecuting attorney, the prosecuting attorney files a memorandum with the court.
2. The court clerk matches the memorandum with the court file(s).
3. The court clerk reviews the court file to determine if there are any outstanding warrants arising from the case(s).
4. The court clerk notifies the judge if so and the judge approves the cancelation of any outstanding warrants.
5. Procedures outlined for cancellation of outstanding warrants is then followed.

Examples

Procedure III

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
MUNICIPAL DIVISION, CITY OF FLORISSANT**

**ADMINISTRATIVE ORDER REGARDING FINES, INSTALLMENTS AND
ABILITY TO PAY**

NOW, pursuant to Missouri law, Missouri Supreme Court Rules, and the Local Rules of the Twenty-First Circuit Court of the State of Missouri, the Court hereby enters the following order to clarify the policy of the Municipal Division and to provide for its efficient operation and administration.

I. Imposition of Fines: when imposing fines, the Court will exercise its discretion in accordance with the following general guidelines.

- A. In determining the amount and method of payment of a fine, the Court will, insofar as practicable and in light of all the circumstances, proportion the fine to the burden that payment of the fine will impose on the defendant in view of the defendant's financial resources.
- B. If, at the time a fine is assessed it appears to the Court that the defendant does not have the present means to satisfy the amount assessed, the Court may issue an order allowing the defendant additional time for payment, reducing the amount of the time or of each installment, or revoking the time of the unpaid portion in whole or in part.
- C. The Court will consider alternatives to fines in every case, as the circumstances merit. For example, the Court should consider allowing the defendant to perform community service in a manner proportional to the fine that the court would otherwise impose for the same or similar offense.

II. Instalments: In ordering when a defendant shall pay any fine, the Court will exercise its discretion in accordance with the following general guidelines.

- A. In every case, the Court will consider allowing the defendant to pay a fine in installment payments.
- B. In determining the installment schedule, the Court shall consider all the circumstances of the case, including the defendant's financial resources.
- C. Unless otherwise appropriate in the circumstances of a particular case, the Court will not order a defendant to pay a fine or some portion thereof any sooner than four weeks from the date judgment is entered. The Court, at its discretion in light of circumstances, may allow a defendant to pay at a later date.

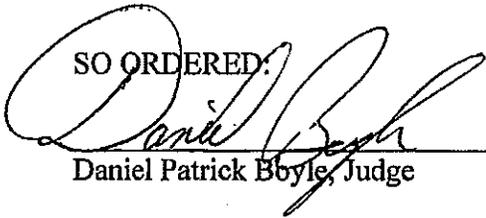
III. Opportunity for a Defendant to Prove Lack of Financial Resources

- A. The Court will consider a defendant's financial resources only if the defendant proves the defendant's financial resources to the satisfaction of the Court.
- B. Every defendant will be provided a reasonable opportunity to prove the defendant's financial resources and ability to pay a fine.
- C. In every case where the defendant submits evidence or argument to the Court about the defendant's financial resources, the City of Florissant may introduce evidence, cross-examine the defendant's witnesses, and otherwise present the City's position concerning the defendant's financial resources and ability to pay a fine.

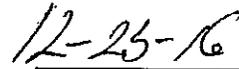
IV. Application and Enforcement

- A. This Order applies to every case in the Municipal Division unless otherwise provided herein.
- B. This Order does not apply to any plea bargain, settlement, or other resolution to which defendant and the City of Florissant agree.
- C. Other than specifically set forth herein, this Order does not limit the appropriate exercise of the Court's discretion to impose judgment and otherwise rule in accordance with the unique circumstances of each case.

SO ORDERED:



Daniel Patrick Boyle, Judge



Date

IN THE CIRCUIT COURT of ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT
STATE OF MISSOURI
VALLEY PARK MUNICIPAL DIVISION
POLICY REGARDING INDIGENCY

Defendants shall be advised by way of the Judge's Opening Statement of their rights, including but not limited to, their right to present information concerning their financial condition and ability to pay fines and court costs. Defendants shall be provided a printed copy of "Defendant's Rights" when they enter the courtroom. (Defendant's Rights are also distributed at the TVB and posted on the court web site). The court shall have printed signage and/or a looping video which includes Defendant's Rights regarding indigency.

The Judge shall inquire of the Defendant's ability to pay when fines and costs are assessed. In the event Defendant requests the same, after having been fully advised of their rights, Defendant may complete an Affidavit of Financial Condition Form which may be utilized by the Judge to make a determination as to indigency in accordance with the Supreme Court Order adopting new Model Local Rule 69.01(b).

In the event the Defendant is determined to be indigent the court may waive the fines and court costs; reduce the fines and costs; offer community service; order some form of alternative sentencing; or some combination of the above.

In the event the Judge finds the Defendant to be indigent, the case will be closed by an Order to Revoke or Commute Fines and Costs.

No court costs will be charged to the Defendant if they are found to be indigent.

The Defendant will be advised of the disposition of their case(s) and will receive a copy of the Court Order.

Any personal financial information provided by the Defendant shall be destroyed by the court staff.

See Bench Card-Financial Condition

**PROCEDURE TO ALLOW DEFENDANTS THE OPPORTUNITY
TO PRESENT INFORMATION ABOUT THEIR FINANCIAL CONDITION**

1. Defendant is advised that if they do not believe they will be able to pay the fines and costs assessed no matter how much time they are given; they may request to fill out the Statement of Financial Condition approved by the Missouri Supreme Court.
2. Defendant completes the form, front and back, and presents the signed copy to the Judge.
3. Judge reviews the form with the defendant.
4. Upon completion of review and based upon the responses from the defendant, the court determines if, in accordance with the Missouri Supreme Court guidelines set out in Rule 37.04 Appendix D.
5. If the defendant qualifies, the court makes a determination as to the appropriate amount of hours of Alternative Community Service the defendant should be required to complete to satisfy the judgment of the court.
6. Defendant is provided a list of agencies where the ACS can be performed and is further advised they may complete the ACS at other non-profitable, charitable locations.
7. Defendant is provided a log sheet to provide the agency to provide proof of the ACS hours and instructions to verify the completion of the hours assigned.

PROCEDURE FOR APPLICATION FOR APPOINTED ATTORNEY

1. If the defendant advises the court that they are unable to afford an attorney to represent them, the court asks the prosecuting attorney to review the file to determine if the city is seeking a jail sentence should the defendant plead or be found guilty.
2. If the city is seeking a jail sentence, the defendant is provided a financial statement to complete fully and signs the statement.
3. The court reviews the financial statement with the defendant.
4. Upon completion of review and based upon the responses from the defendant, if the court determines that the defendant is indigent, the court appoints an attorney to represent the defendant.
5. The court bases this initial determination on the guidelines set out in Missouri Supreme Court Rule 37.04 Appendix D, but also considers other information as well as the seriousness of the charge(s).

Procedures for Assessing Ability to Pay

Upon a plea and/or finding of guilty the Judge inquires of the defendant's employment status and/or ability to pay the fine the Judge is anticipating levying. If the defendant response indicates a lack of employment or an inability to pay the anticipated fine, the defendant is given the option of community service or to pay the anticipated fine in monthly installments of between \$25 and \$50. In cases in which the defendant informs the court of an inability to pay a fine and to perform community service, the Judge will assess only a nominal fine of under \$10.

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI
MUNICIPAL DIVISION

INDIGENCY SCREENING FORM

CONFIDENTIAL

Name _____

Address _____

City _____ State _____ Zip _____

1. Place an "x" next to any of the following types of assistance you receive:

- | | |
|---|---|
| <input type="checkbox"/> Welfare | <input type="checkbox"/> Poverty Related Veterans' Benefits |
| <input type="checkbox"/> Food Stamps | <input type="checkbox"/> Temporary Assistance for Needy Families |
| <input type="checkbox"/> SSI | <input type="checkbox"/> Refugee Settlement Benefits |
| <input type="checkbox"/> Medicaid | <input type="checkbox"/> Aged, Blind or Disabled Assistance Program |
| <input type="checkbox"/> Pregnant Women Assistance Benefits | |
| <input type="checkbox"/> Other – Please Describe _____ | |

2. Do you work or have a job? yes no. If so, take-home pay: \$ _____

Occupation: _____ Employer's name & phone #: _____

3. Do you have a spouse who lives with you? yes no Does she/he work? yes
 no If so, take-home pay: \$ _____

Employer's name: _____

4. Do you and/or your spouse receive unemployment, Social Security, a pension, or workers' compensation? yes no

If so, which one? _____ Amount: \$ _____

5. Do you receive money from any other source? yes no If so, how much? \$ _____

6. Do you have children residing with you? yes no. If so, how many? _____

7. Including yourself, how many people in your household do you support? _____

8. Do you own a home? yes no. If so, value: \$ _____ Amount owed: \$ _____

9. Do you own a vehicle(s)? ___yes ___no. If so, year(s) and model(s) of your vehicle(s): _____ Amount owed: \$ _____
10. How much money do you have in checking/saving account(s)? \$ _____
11. How much money do you have in stocks, bonds, or other investments? \$ _____
12. How much are your routine living expenses (rent, food, utilities, transportation) \$ _____
13. Other than routine living expenses such as rent, utilities, food, etc., do you have other expenses such as child support payments, court-ordered fines or medical bills, etc.? If so, describe: _____
14. Do you have money available to hire a private attorney? ___yes ___no
15. ***Please read and sign the following:***

I understand the court may require verification of the information provided above. I agree to immediately report any change in my financial status to the court.

I certify under penalty of perjury that the above is true and correct.

Signature Date

City State

FINANCIAL STATEMENT AND AFFIDAVIT OF INDIGENCY

Date: _____ Case(s): _____

Court: __North __South __West Date of plea/conviction: _____

Name: _____

Address: _____ PHONE: _____

Are you a U.S. Citizen? __Y __N

__Married __Single Children __Y __N Number of Children Living w/ you _____

Do you pay/receive child support? __Y __N

Are you a student? __Y __N If yes, where? _____

Are you employed? __Y __N If yes, where? _____

Do you receive Social Security benefits? __Y __N

Other income \$ _____

Total monthly income \$ _____

Have you served in the military? __Y __N If yes, when? _____

Do you receive VA benefits? __Y __N

I hereby certify that all information provided is true to the best of my knowledge.

Signature

IN THE MUNICIPAL COURT OF OVERLAND
DIVISION OF THE 21ST JUDICIAL CIRCUIT
STATE OF MISSOURI

Procedure for Court Ordered Indigent Defendants

COURT ORDER - 8/24/17

Attached is a copy of the Financial Statement the Overland Municipal Court will use in deciding indigency. Each defendant will be given a copy of this form to fill out and a new court date. A hearing will be set on the next court docket for the defendant to bring in his/her financial statement, and discuss any other concerns with the Judge. The Judge will make a ruling on this/or take it under advisement if he/she feels the need to take time to examine all the paperwork provided.

So Ordered:

Ma us-Keul
[Signature]
Rebecca Kappa

ST. LOUIS CIRCUIT COURT

MUNICIPAL DIVISION

CITY OF OVERLAND

2410 GOODALE, 2ND FLOOR * OVERLAND, MO. 63114

314-428-1223

STAY OF EXECUTION ON JUDGMENT –BOND OF DEFENDANT

CASE NO. _____

DATE _____

PAYMENT PLAN REQUIRES A \$50.00 A MONTH MINIMUM PAYMENT

**If you do not pay your payment you must appear before the judge.

WHEREAS, judgment having been rendered against the undersigned
defendant on the above date in the amount of \$ _____
for good cause shown, it is hereby ordered and entered of record that a stay of
execution is hereby granted to said defendant on judgment until
_____ (court date) upon the giving of his bond
at which time defendant is to surrender himself in compliance with this order
staying execution.

SO ORDERED:

Municipal Judge

BOND

Defendant having applied to the Court for said stay of execution of the
Court Judgment herein, Defendant hereby makes this bond stating the he/she will
personally appear and surrender himself/herself in execution upon such judgment

ON THE DAY MENTIONED, at 6:00 P.M., and failing to do so, will cause his/her arrest unless the monthly payment is made before 4:30 p.m. on the day of court.

Defendant Signature

Street Address

City, State, Zip Code

Witness to Signature:

PLEASE NOTE....IF YOU HAVE NOT MADE YOUR PAYMENT FOR THIS MONTH BY 4:30 P.M. ON THE COURT DATE, YOU WILL BE REQUIRED TO APPEAR IN COURT AT 6:00 P.M.

VIOLATION BUREAU IS OPEN MONDAY -- FRIDAY 8:00 A.M. TO 4:30 P.M. FOR PAYMENTS.

Examples

Procedure IV

**IN THE CIRCUIT COURT of ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT
STATE OF MISSOURI
CREVE COEUR MUNICIPAL DIVISION
POLICY REGARDING INSTALLMENT PAYMENTS**

All Defendants have a right to payment arrangements/installment payments. It is within the discretion of the Judge as to the terms of these arrangements.

Once payment of fines and court costs have been assessed the Defendant will be advised of their right to present information regarding their financial condition and ability to pay. If the Defendant waives that right, fines and costs shall be assessed and are due in full.

In the event the Defendant request time to pay, the Municipal Judge shall determine with the defendant if a payment date for balance in full is being requested or if there exists the need for an installment payment plan. If the Municipal Judge feels that a payment agreement via installments is in the best interest of the defendant's needs, the Judge shall order a payment agreement be established. The Municipal Court shall utilize the state payment agreement, with its show cause provision, for installment plans with established court dates serving as payments dates. The Defendant may pay the installment payments as Ordered and no court appearance is required. In the event the Defendant does not pay as Ordered, a court appearance is required. The court may have a hearing to determine if they will be held in contempt of court for not adhering to the installment plan or given additional time to pay. Alternative sentencing, including Community Service may be an option in lieu of paying fines and court costs. The Court may, in its discretion, stay execution/revoke/commute fines and costs.

Electronic payments shall be accepted for payments made pursuant to an installment plan.

PROCEDURES FOR PAYMENTS ON COURT NIGHT

1. After the fines have been assessed, the defendant is asked if they are able to pay the total amount tonight.
2. If defendant is able to pay, they are directed to the clerk to make payment and to obtain a receipt.
3. If defendant is unable to pay the full amount, but is able to make a partial payment, the court notes the amount to be paid this evening.
4. If the defendant advises the court that they will be able to pay the remaining balance in full by a certain date, the court prepares a payment slip with the amount and date for payment in full and defendant signs a copy and is given a show cause order with the amount due and the date for payment or appearance to show cause why payment has not been made.
5. If the defendant advises the court that they will be able to make monthly payments (rather than full payment by a certain date), the court prepares a payment slip with the amount and date for the next partial payment and defendant signs a copy and is given a show cause order with the amount due on the next date which serves as a court date to show cause why they have been unable to make the partial payment.
6. If the defendant is not able to make any payment, after inquiry by the court and upon determination that the defendant has the ability to pay, steps 4 – 6 are then followed.

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI, FERGUSON MUNICIPAL DIVISION
**COST BILL – SHOW CAUSE ORDER
PAYMENT AGREEMENT**

I agree to pay the fines and cost that have been assessed against me in the sum of \$ _____
Payment must be received **ON** or **BEFORE 4:00 PM on 2/2/2018**. If payment is not received, you **MUST PERSONALLY APPEAR** in Court on Monday 02/05/2018 at 6 PM to show cause why you should not be held in contempt of court for failure to pay as ordered by the Court.
Even if you are unable to make a payment, you must appear in court to **SHOW CAUSE** why you are unable to pay. If you fail to appear a warrant will be issued for your arrest.
Each monthly payment will be due on the first Friday of each Month. If payment is not made you will need to appear in court on the following Monday at 6 PM
You can mail money order payment to the Municipal Court, 222 S Florissant Rd, Ferguson, MO 63135 or pay online at Trafficpayment.com. You can also make a payment over the phone by calling 1-800-444-1187.

Defendant's Signature _____ Date _____
I hereby acknowledge I understand the above Order and have received a copy of said Order.

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI, FERGUSON MUNICIPAL DIVISION
**COST BILL – SHOW CAUSE ORDER
PAYMENT AGREEMENT**

I agree to pay the fines and cost that have been assessed against me in the sum of \$ _____
Payment must be received **ON** or **BEFORE 4:00 PM on 02/02/2018**. If payment is not received, you **MUST PERSONALLY APPEAR** in Court on Monday 02/05/2018 at 6:00 PM to show cause why you should not be held in contempt of court for failure to pay as ordered by the Court.
Even if you are unable to make a payment, you must appear in court to **SHOW CAUSE** why you are unable to pay. If you fail to appear a warrant will be issued for your arrest.
Each monthly payment will be due on the first Friday of each month. If payment is not made you will need to appear in court on the following Monday at 6 PM
You can mail money order payment to the Municipal Court, 222 S Florissant Rd, Ferguson, MO 63135 or pay online at Trafficpayment.com. You can also make a payment over the phone by calling 1-800-444-1187.

Defendant's Signature _____ Date _____
I hereby acknowledge I understand the above Order and have received a copy of said Order.

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI
CITY OF OLIVETTE

CITY OF OLIVETTE,)	
)	
Plaintiff,)	
)	Case No.
vs.)	
)	
)	
Defendant.)	

AGREEMENT TO PAY

I, _____ hereby acknowledge that I am liable and indebted to the Court in the amount of \$ _____. I have told the Court that I am ready, willing and able to pay said sum to the Court in installments, in the following manner:

Payment Dates	Payment Amount	Payment Dates	Payment Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I understand that the payments are due on the above date(s) specified, until the sum owed is paid in full. Further, I understand the following payment conditions:

- (1) I understand there is no grace period on the payments
- (2) All payments must be paid by 4:00 p.m. on the date stated.
- (3) I am obligated to immediately advise the court of any change in address, telephone number or employment
- (4) Neither the Judge or Clerk will grant an extension by phone
- (5) Failure to comply with the payment schedule will result in the entire balance being due to the Court.

In the event I do not fully comply with the Court order regarding installment payments, I agree to appear in court on the payment date to show cause, if any, why I did not comply with the Court order and why I should not be held in contempt of Court.

Failure to make a scheduled payment and failure to appear to show cause on the payment date will result in a warrant for my arrest.

ACKNOWLEDGMENT

I have read and understood the terms of this agreement. I understand and agree that should I fail to make the above payments according to the schedule set forth, legal action will be taken against me by the Court for the entire balance. I further understand that should I fail to make payments as set forth above, the Court may report said failure to the Department of Revenue for purposes of collection.

Defendant _____ Date _____

Address: _____

Phone Number: _____

Employer: _____

ORDER TO SHOW CAUSE IN EVENT OF NON-COMPLIANCE

In the event you do not fully comply with the Court order regarding installment payments, then you will notify the Court in advance of the payment date (s) and make a court appearance on the day the payment was due, to show cause, if any, why you did not comply with the Court order, and why you should not be held in contempt of Court.

ATTEST:

Clerk of the Court

Judge Paul J. D'Agrosa

Date: _____

Date: _____

Following the assessment of a fine, the defendant is asked if they are making a payment or if they need a payment plan. If making payment in full the defendant is referred to the cashier's window. If the defendant requests a payment plan, a payment agreement is completed. If the defendant states that they are unable to afford the payments, and /or requests to complete Community Service, at no cost to the defendant, a Motion and Affidavit in Support of Request to Proceed as a Poor Person is provided for the defendant to complete.

Judge or Division: BLACK JACK	Case Number:
Defendant's Name: .	
Date of Birth: SSN:	Driver's License Number: Cell: Phone:

PAYMENT OPTIONS &/ OR AGREEMENT TO PROCEED AS A POOR PERSON

I,-----, acknowledge that I owe the Black Jack Municipal Court the amount of \$_____

Back to Index

1. **PAYMENT DUE IN FULL:** I agree to pay the court the full balance of \$_____ on or before _____ Failure to make the required payments, further actions may be taken against me by the court to collect the unpaid fines and costs

OR

2. **PAYMENT PLAN:** I agree to the following payment schedule in the amount of \$_____ on or before _____ of each month to be paid in full by _____. Failure to pay in full on the date _____

If I fail to make the required payments, further actions may be taken against me by the court to collect the unpaid fines and costs.

I understand that the payments are due as agreed to above. I understand the following payment conditions:

1. **All payments must be made by 4:30pm on the due date.**
2. **I am obligated to immediately advise the court of any change in address, telephone number,**

I understand these actions will be taken without further notice.

I understand that payments may be made by mail; however, the risk of loss of payment in the mail is upon me and not the court. Payments by mail are mailed to: **Black Jack Municipal Court, 12500 Old Jamestown Rd. Black Jack, Mo. 63033.**

Also, payments may be made in person at the same address, Monday thru Friday, 8:30am to 4:30pm, except for holidays.

The court accepts the following payment methods: cash, money order, debit, credit Card or cashier's check
NO PERSONAL ARE BUSINESS CHECKS.

If you have any questions, please call the court at 314-355-0400 ext 102.

OR

3. AGREEMENT TO PROCEED AS A POOR PERSON: I agree to accurately complete the Motion and Affidavit in Support of Request to Proceed as a Poor Person. Upon successful completion, the judge will review the Motion and Affidavit in Support of Request Proceed as a Poor Person.

_____ The Court, having considered the Motion and Affidavit in Support of Request to proceed as a Poor Person, finds that the defendant has sufficient funds or assets with which to pay the fines and costs in this action, and therefore, the motion is denied.

_____ The Court, having considered the Motion and Affidavit in Support of Request to Proceed as a Poor Person, finds that the defendant is without sufficient funds or assets with which to pay the fines and costs in this action, and therefore, is granted leave to proceed as a poor person.

Upon finding the defendant may proceed as a poor person.

_____ The court authorizes the defendant to complete community service. Community Service is set at \$10.00 per hour. All fines and costs assessed are: \$_____. Defendant will complete _____ hours of community service by ___/___/_____ and file a certificate of completion with the municipal court administrator. Failure to complete required community service by date indicated, will result in the fines and costs being reinstated. Credit will be given for community service completed.

_____ The court authorizes the defendant to complete attendance at an approved social program. Participation and successful completion of approved social program must be completed by ___/___/_____ and file a certificate of completion with the municipal court administrator by ___/___/_____. Failure to complete required social program by date indicated, will result in the fines and costs being reinstated.

_____ The judge, based upon the financial conditions of the defendant, agrees to reduce the fines to:
\$_____

I HAVE READ AND UNDERSTAND THE ABOVE.

Defendant's Signature

Date

Judge/Clerk

Date

Black Jack DIVISION
12500 Old Jamestown Rd.
Black Jack, MO. 63033
314-355-0400

IN THE 21ST JUDICIAL CIRCUIT COURT ST. LOUIS, MISSOURI

Examples

Procedure VIII

**IN THE CIRCUIT COURT of ST. LOUIS COUNTY, MISSOURI
21st JUDICIAL CIRCUIT
STATE OF MISSOURI
CREVE COEUR MUNICIPAL DIVISION
POLICY REGARDING FINANCIAL REPORTING**

The Creve Coeur Municipal Court shall conduct all financial procedures in accordance with those rules as set forth in Municipal Court Operating Rule 4, Chapter 4 of the Missouri Court Clerk Manual and any generally accepted accounting practices as established by the Missouri State Auditor in conjunction with those suggested practices as reasonably feasible as presented by the annual City independent audits.

NOTE: City audit practices shall be considered in all efforts to work in conjunction with those established by the State of Missouri and those practices set forth by the Missouri Supreme Court and Office of the State Court Administrator, but shall not supersede mandated practices as established by local and state rule and law.

Due to the length and number of general accounting rules, reference is made to financial practices as set forth in Municipal Court Operating Rule 4 and Chapter 4 of the Missouri Court Clerk Manual. A copy of Rule 4 is retained in the Creve Coeur Municipal Court Operations Manual and as accessible to those with access to the Missouri Court Information Center.

.IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

21ST JUDICIAL CIRCUIT

MUNICIPAL DIVISION-CITY OF OVERLAND

Date: 8/24/17

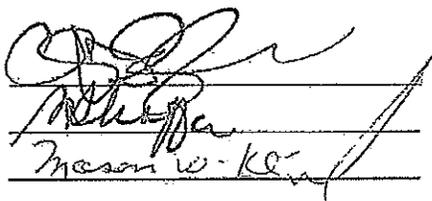
SPECIAL COURT OPERATING ORDER

Monthly Reports to City/State/Presiding Judge

The Overland Municipal Court will produce a monthly report for the City of Overland, and the State of Missouri. This report will reflect the amount of fines and cost pay to the court for the prior month, The Municipal Court Administrator will also rectify the bail bond account with City Hall the first of each month. The Court Office will maintain a balanced bail bond account for review each month.

This report shall be filed with the City/State within 10 days of the beginning of each month. A six month report to the Presiding Judge must be sent January and July pursuant to 577, 006 RSMo.

So Ordered:



Mason W. King

Monthly Reports Court Clerks Need to Do

- 1-Once a month you will need to provide the City Council, City Clerk, CA, and Mayor a copy of the previous months financial report.
- 2-Each month you will need to provide the State of Missouri –Office of State Court Administrators. This report details court information, Monthly caseload, and warrant information, as well as financial . This report is tied to Grant Money each Police Department Receives.
- 3-Once a year (normally around March) you will receive and have to fill out a Judicial Finance Commission Report (477.600 RSMo.). This is a report detailing what each person makes that works for the court, rent, telephone, and other things you might need to pay for. This is report is tied to Grant Money the Police Departments receives.
- 4-Presiding Judge Report. Each January and July the court is required to send the last 6 months State reports to the Presiding Judge. This is for Intoxication =Related Traffic Offenses Case information pursuant to 577-006 RSMo.
- 5-This report is Revised RSMo. 302.341 it is to the state to show that the Municipal Court does not collect more than 30 percent of the General Fund Revenue in fines and cost. If the City did collect more than 30% of is General Fund Revenue, the City would have to turn that differnc over to the State of Missouri.

Examples

Procedure IX

MONTHLY DISTRIBUTION POLICY
ST. LOUIS COUNTY CIRCUIT COURT
WILDWOOD MUNICIPAL DIVISION

The following procedures will be followed when the monthly report is prepared and all disbursements are requested from the Department of Finance,

- The Court Administrator shall run the monthly financial report thru the court's software by the 8th of each month for the prior month.
- The Court Administrator shall compare the totals of said report with the daily financial reports created for the daily deposits. The court software (INCODE) breaks down income reports by payments for MTV's vs. other type of payments.
- If any discrepancies are found, the Court Administrator shall immediately check for the error.
- Upon balancing these reports, the Court Administrator shall prepare the monthly report (the OSCA Municipal Summary Report) and submit requests for payments to other agencies (cvc, let, domestic shelter fees)
- A copy of these requests and the corresponding checks are mailed to the agencies by the Department of Finance on a monthly basis.
- A copy of the OSCA Municipal Summary Report is submitted to the Mayor and City Council on a monthly basis.

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI
TWENTY-FIRST JUDICIAL CIRCUIT
PINE LAWN MUNICIPAL DIVISION**

**MONTHLY REVENUE
PROCEDURES**

Before the 10th day of each month, the Court department will run a Cognos Report from the 1st day of the previous month to the 1st day of the current month. The report is created by the JIS case management system providing monthly caseload information, total excess revenue, disbursements and verification of other revenue not subject to the excess revenue percentage. A copy of this month and disbursement checks printed by JIS are to be given to the City Clerk before the 10th of each new month.

The fines & CTC column total added to the above four entries must equal the court deposit for that day or days.

You must distinguish between bond applied money and bond forfeiture. Bond forfeitures are deposited into the general account in the ledger sheets. Bond applied also gets recorded in the general ledger up front. It then goes into our court money/deposit. This can be a part of your general deposit. Any "other" amounts on the court report get deposited under the code 04300.1 (court fines).

At the end of the month court clerk will give you a form (4583) made out for the Missouri Department of Revenue. Take the amount shown under "Total Amount". Make a check for this to the Mo. Dept. of Revenue and mail it to the address shown at the top. You also must make a check payable to Budget Director, Mo. Dept. of Public Safety for the amount shown on the half slip of paper. Mail it to the address shown at the bottom. In Quickbooks the Mo Dept of Revenue vendor is listed as: Missouri Dept of Revenue, and you use account 15400. The Budget Director vendor is listed as: Treasurer State of Missouri, and the account you use is 15500.

The money amount shown on the Crime Victim/Training Summary Report in the middle of the form under TRAINING gets transferred into the training account. Also, under the CRIME VICTIMS section, the "Amount to City" gets put into the Training Fund. This is done by making a General Journal Entry. (See this section under Quickbooks Journal Entries, Training Fund). Then be sure to actually transfer the money online in the bank accounts. You can check my sample to see where each amount goes.

DACOM

We pay for the leases on the Police copier and City Hall copier in one payment now, which makes it slightly cheaper than paying them separately. 210906 is the Police Dept, 213111 is City Hall, and this copy machine is Lanier LD625C. A monthly bill for \$383.75 goes for standard lease payments. \$251.60 is recorded under City Hall Leases 26200. \$132.15 gets recorded under Police Dept Leases 37300. We also must pay for any extra copies used during the month or supplies ordered. The City Hall copier is machine id 31321. The Police copier is machine id 20737. A representative for Da-Com is John Reeb at 314-358-8186 cell or 314-442-2800 x 130 office.

To scan a document into the copy machine:

Choose Document Server

Scan New

Choose File Name

Type the file name

OK (top right)

Start (and feed the document through the document feeder).

If you wish to print a document already saved:

Choose File List

Choose the file by name

Choose Printing Screen

DEPOSITS/LEDGER

When you make a deposit, make sure that court clerk and admin assistant both check the amounts if possible. The court deposit (as mentioned above) must equal the total of the entries listed above. After you prepare the general account deposit, break it down according to account. There is a sheet made up to do this. This total must equal the general deposit. Then you can enter it into QuickBooks by account. Again, the total in QuickBooks must equal your deposit slip. Enter the amount in the green ledger sheet in the Deposits column.

ST. JOHN MUNICIPAL COURT

St. Louis County - 21st Circuit - St. John Division

11

8944 ST. CHARLES ROCK RD SUITE 200
ST. JOHN, MISSOURI 63114
PHONE (314) 427-8700, #6
FAX (314) 427-6112

OFFICE
MUNICIPAL JUDGE

PROCEDURES FOR MONTHLY DISTRIBUTIONS

Daily cash receipt summary is balanced in courts from Fee detail report for Monies Collected report.

Daily cash receipt summary is entered into city's accounting software. Monies collected for Crime Victims Fund, Domestic Violence Fund, and peace Officers Training Fund are recorded into separate liability accounts in the City's general ledger.

At the end of the month, the city's liability accounts for Funds listed above are reconciled to the Monthly Municipal Division Summary Reporting form for the month just ended.

The City's liability accounts are cleared for the total amount collected in the month just ended by issuing a check to the appropriate entity.

**BRENTWOOD MUNICIPAL DIVISION
21ST CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI**

PROCEDURES FOR DISBURSEMENT OF COURT COSTS

REJIS' IMDSPlus software calculates the appropriate disbursement of the court costs by account number on each bank deposit. The finance clerk for the City of Brentwood will input the bank deposit information into the accounting Fundware software. Disbursement of funds will be done by the finance clerk, with the approval of the Court Administrator, as outlined by the most updated court costs card issued by the State of Missouri.

*As Referenced in the Municipal Clerk Manual – Courts without JIS – Chapter 4 – Financial Responsibility

The City of Brentwood collects and disburses for the following including the law enforcement arrest costs currently set at \$85.00 by the Chief of Police for the City of Brentwood.

Clerk Fee (Court Operating Rule 21.01(a) (5) Sections 479.260 and 488.012 RSMo)

Municipal Clerks with a Municipal Judge Hearing Municipal Cases

A \$12.00 clerk fee shall be assessed for all municipal cases filed before a municipal judge. The clerk fee is not assessed when the case or defendant is dismissed or when costs are to be paid by the state, county, or municipality. Remit the amounts collected for this fee at least monthly to the city treasury.

Crime Victim's Compensation (CVC) Fund Surcharge (Section 488.5339 and 595.045.6 RSMo)

A CVC surcharge of \$7.50 shall be assessed on all traffic violation cases and other municipal ordinance violation cases, including non-moving traffic cases. The CVC surcharge is not assessed when the case or defendant is dismissed or when the costs are to be paid by the state, county, or municipality.

Municipal courts should remit 95% (\$7.13) of the amount collected to the state, and 5% (\$0.37) of the amount collected to the city treasury. Report the amount of CVC funds being disbursed each month on the City Fees Form 4583. This form should be mailed to the Department of Revenue by the 20th of each month for the collections from the previous month. The City Fees Form 4583 can be obtained from the Missouri Department of Revenue website:

www.dor.mo.gov/forms/4583.pdf

Forward the City Fees Form 4583 and a separate check for the Crime Victims Compensation Fund to:

Department of Revenue
County Tax Section
P. O. Box 453
Jefferson City, MO 65105-0453

See Section 4.3 for more information on the Crime Victims' Compensation Fund.

Peace Officer Standards and Training (POST) Commission Surcharge (Section 488.5336 RSMo)

The POST surcharge of \$1.00 shall be assessed on all municipal cases. The POST surcharge is not assessed when the case or defendant is dismissed or when costs are to be paid by the state, county, or municipality. The total amount collected should be remitted monthly to the Treasurer, State of Missouri-POST Fund. Identify the municipal court on the check and mail to:

Department of Public Safety
Budget Director
P. O. Box 749
Jefferson City, MO 65102-0749

Monthly - Cost's Paid Out

4/2/14

Go to "Reports" window, to "Payment" tab. Run "Payments Other Report".

Use "Date Range", "Summary Only".

Print 4 copies (1 copy will be used for our record keeping to checkmark payments made and to keep in the bills folder)

Payments to be made using this report are:

CVC - Crime Victim Fee

PTF - Law Officer Training

PST - Peace Officer Standard Training / POST

SHR - Womens Abuse Shelter (A.L.I.V.E.)

Rest - Restitution

Crime Victim Fee (CVC): Use "Form 4583" provided by MO DOR. Fill in Reportig period, number of cases and amount to be forwarded. Prepare "Request to Pay". Place light yellow copy and a copy of "Form 4583: in Crime Victim folder. Place a red check on the record keeping copy of "Payment Other Report" Paperclip two copies for From 4583 to Request to Pay and forward to Finance.

Law Officer Training (PTF): Highlight PTF, Amt and Date on one of the copies of "Payments Other Report" Mark to the attention of Finance Dept, Attn: Dennis Rainy. Place a red check on the record keeping copy of "Payment Other Report"

Peace Officer Standards & Training/POST (PST): Use Monthly Payment Form provided by MO Dept of Public Safety (original in bills folder). Fill in amount and period covered. Prepare Request to Pay, place light yellow copy in LOT & POT folder. Paperclip two copies of Monthly Payment Form to Request to Pay and forward to Finance. Keep the original form in bills folder.

A.L.I.V.E. / Womens Shelter (SHR): Prepare a Request to Pay, highlight SHR on 1 copy of the report and paperclip to request to pay, forward to Finance. Place light yellow copy of Request to Pay in ALIVE folder. We will receive a receipt in the mail, upon receipt stable to yellow copy of Request to Pay.

Restitution: A copy of the "Request to Pay" / or Interoffice memo and the letter to victim should be in the Restitution File located in the top drawer. The total Request's to Pay and/or Interoffice Memo's for the month should equal the amount on the Payments Other Report. If the amounts do not match , go to Report Window, to Payment's Other, do not check the box for "Summary Only" and run the report. (This does not need to be printed). Skim through the report looking for Restitution payments. Find the restitution payments that are missing. (Follow the procedure for paying restitution). If the amount of Restitution matches the Request to Pay / Interoffice memo's for the month, staple a copy of the report to the copies of the Request's to Pay and Interoffice memo and place in the Restitution file.

**ST. LOUIS COUNTY CIRCUIT COURT
CHESTERFIELD MUNICIPAL DIVISION**

690 CHESTERFIELD PARKWAY WEST
CHESTERFIELD, MISSOURI 63017-0760
Phone: (636) 537-4718
Fax: (636) 537-4795

RICK BRUNK
Municipal Judge

NANCY MORR, C.C.A.
Court Administrator

TONIA POWELL
Asst. Court Administrator

TAMMY BROOKS
Court Assistant

**ST. LOUIS COUNTY CIRCUIT COURT
CHESTERFIELD MUNICIPAL DIVISION
MONTHLY DISBURSEMENT POLICY**

The following procedures will be followed when the monthly report is prepared and all disbursements are requested from the Department of Finance.

- The Court Administrator shall run the monthly financial report thru the court's software by the 8th of each month for the prior month.
- The Court Administrator shall compare the totals of said report with the daily financial reports created for the daily deposits. The court software (JustWare) breaks down income reports by payments for MTV's vs. other type of payments.
- If any discrepancies are found, the Court Administrator shall immediately check for the error.
- Upon balancing these reports, the Court Administrator shall prepare the monthly report (the OSCA Municipal Summary Report) and submit requests for payments to other agencies (cvc, let, domestic shelter fees) via the city's software "Logos".
- A copy of these requests and the corresponding checks received from the Department of Finance shall then be submitted to the Municipal Judge for his review on a monthly basis.
- A copy of the OSCA Municipal Summary Report is also submitted to the Municipal Judge for his review on a monthly basis and is then presented to the City after his review.

EXAMPLES

**VARIOUS PROCEDURES
IN ONE DOCUMENT**

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21ST JUDICIAL CIRCUIT
CITY OF CRESTWOOD MUNICIPAL DIVISION

ORDER MEMORIALIZING CERTAIN POLICIES AND PROCEDURES

The City of Crestwood Municipal Court is committed to protecting the rights of all persons appearing before the Court.

The St. Louis County Circuit Court requires that all Municipal Divisions within the 21st Judicial Circuit adopt and maintain formal written policies and procedures to ensure certain minimum operating standards are adhered to, conveyed to all pertinent justice system stakeholders in the Municipal Division's jurisdiction, and posted for public viewing in the Municipal Division.

While the matters addressed herein have been the longstanding practices, policies and procedures of the City of Crestwood Municipal Court, and the same have been communicated to all pertinent justice system stakeholders previously, this Order is updated and adopted with immediate effect in order to definitively communicate to all concerned the Court's expectations, policies and procedures addressed herein.

It is hereby ORDERED as follows:

1. Pre-Trial Release of Persons Charged with Municipal Ordinance Violations. No person charged with any new violation of the City of Crestwood, Missouri Municipal Code shall be held for more than **24 hours** per Section 479.360, RSMo and Section 544.170, RSMo unless that person is charged with an offense, and held by a warrant issued by a judge. Any person arrested on an outstanding warrant should be brought before judge "as soon as practicable" and will not held no more than 48 hours for minor traffic violations and no more than 72 hours for all other violations and, if not given that opportunity, are released.

In the event that the Crestwood Police Department is contacted by another law enforcement agency and informed of a custodial arrest of a person on a Crestwood Municipal Court arrest warrant, the defendant will, as soon as practicable, be authorized to post bond in the arresting jurisdiction or transported to the Crestwood Police Department for the posting of bond. In the event a defendant posts bond, he or she shall be given the next available Crestwood Municipal Court date. If bond has not been posted by a defendant, the defendant has not been released by order of the Municipal Judge or it is not possible to transport the defendant to the Crestwood Police Department within 24 hours of the initial arrest, the Crestwood Police Department shall immediately release or cause the arresting agency to release the defendant on his or her own recognizance. In the event a defendant is released on his or her own recognizance the defendant shall be provided with the next available Crestwood Municipal Court date on his or her bond form. In every such case, the Crestwood Police Department shall promptly inform the Court Clerk with written notice that the defendant has been arrested and posted bond or released on his or her own recognizance and the Court Clerk shall ensure that the warrant has been appropriately canceled and recalled. Not less than every forty-five days the Court Clerk shall confirm with a designee of the City of Crestwood Police Department that all previously executed and recalled warrants and all cases dismissed by the prosecutor or the Court have been appropriately updated in any relevant criminal justice database.

2. No Bond Schedules. The City of Crestwood Municipal Court does not utilize a bond schedule. Bonds in individual cases, when appropriate and necessary, are as set by the Municipal Judge.

3. Presentation of Evidence Regarding Defendant's Financial Condition. In cases where the court has authority to assess fines against the defendant, the court shall allow a

defendant, who is in compliance with the procedural forms, to present evidence of their financial condition and ability to pay.

4. Installment Payment Arrangements, Alternative Community Service and on-line payments. In cases where the Court has assessed a fine as a penalty for an ordinance violation, the defendant has not paid the fine as ordered, and it appears to the Court that he or she does not have at that time the present ability to pay, the Municipal Judge will order a stay of execution of the fine and (a) grant the defendant a specified period of time within which to pay the fine in full; (b) provide for the payment of the fine on an installment basis under such terms and conditions as the Municipal Judge determines are just and appropriate; or (c) in appropriate cases, permit the defendant to perform community service as an alternative to payment of some or all of the fine assessed. In all cases in which an installment payment arrangement is approved, the Court Clerk shall have the defendant complete an OSCA-approved installment payment agreement form which shall be signed by the Municipal Judge and, when so signed, shall constitute an order of the Court. The Court will continue to allow online payment and publish same on the court's website.

5. Defendants Unable to Pay Fines - Alternatives. At the beginning of each court session, the Municipal Judge shall inform defendants that if they are unable to pay a fine, they should simply inform the Court of that fact and they will be given time to pay or an installment payment agreement. The Municipal Judge shall also inform individual defendants that if payment of fines would present a financial hardship, there are alternatives to fines such as community service which the Court can make available to assist them with satisfying their obligations. Defendants are encouraged by the Municipal Judge at the start of each court session to let the Court know if there are extenuating financial circumstances that prevent them from being able to pay fines, so they can present evidence of their financial condition and the Court can take the same

into account in assessing their ability to pay, establishing installment payment arrangements, or considering alternatives to fines.

6. No Confinement for Inability to Pay Fines. Pursuant to Missouri Supreme Court Rule 37.65, in the event a defendant fails to pay a fine, or any installment thereof, when due, the Court will issue an order to show cause why the defendant should not be held in contempt of court. A summons shall be issued compelling the defendant's appearance before the Court on the order to show cause (unless the defendant was already ordered to appear at a future date as provided in Rule 37.65(b)). The Court Clerk shall send the summons by first class mail to the defendant's last known address. If the defendant fails to appear on the summons, the Court may then issue a warrant to secure the defendant's appearance for a hearing on the order to show cause. If, following a show cause hearing, the Court finds the defendant intentionally refused to obey the sentence of the Court or the defendant has not made a good faith effort to obtain the necessary funds for payment, the Municipal Judge may confine the defendant for a jail term not to exceed 30 days for contempt of court. If, however, the Municipal Judge finds that the failure to pay the fine is excusable, the Municipal Judge shall enter an order allowing the defendant additional time for payment, or may modify the method of payment, waive the collection of all or part of any unpaid portion of the fine, or, in appropriate cases, permit the defendant to perform community service as an alternative to payment of some or all of the fine assessed.

7. Judge Always Accessible. The Municipal Judge is always on duty and available by telephone and e-mail at all times to rule promptly upon warrants, bail, conditions of pre-trial release and any other matters requiring the Court's attention, without undue delay. The Municipal Judge's telephone numbers, address and e-mail address shall be kept by the Court Clerk and the

Crestwood Police Department. The Crestwood Police Department shall ensure that each Crestwood Police Department shift has the Municipal Judge's contact information.

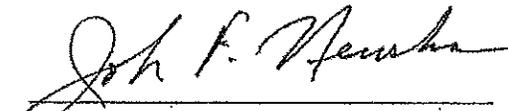
8. Recall and Cancellation of Warrants. When the Municipal Prosecuting Attorney enters a *nolle prosequi* in a City of Crestwood Municipal Court case, the Court dismisses the case, the case is otherwise finally resolved, or when the circumstances that justified issuance of a warrant no longer exist, the Court shall promptly cause to be recalled and canceled any outstanding warrant in that case. The Prosecuting Attorney shall immediately inform the Court Clerk when he or she dismisses a case via written memorandum, whereupon the Court Clerk shall ascertain whether a warrant is outstanding and, if there is a warrant outstanding, the Court Clerk shall immediately inform the Municipal Judge so that the warrant may be promptly recalled and cancelled. When the Municipal Judge orders the cancellation and recall of a warrant, the Court Clerk shall promptly make the appropriate entry in the Court's system which interfaces with LEWeb to immediately electronically cancel the warrant. If the Court Clerk is unavailable to recall the warrant when ordered by the Municipal Judge, the Crestwood Police Department Clerk shall be responsible for effecting the recall via LEWeb. The Court Clerk shall ensure the warrant recall verification is printed and placed in the defendant's file.

9. Procedures in regard to monthly distributions. Per Section 483.075.1, the Court Clerk will continue (and work with other City personnel where applicable) to ensure that accurate records are maintained to account for all payments received and deposited, that receipts are posted accurately and timely, that the method for payment is indicated on all receipts, that checks and money orders are endorsed immediately upon receipt; ensure that voided transactions are properly documented and approved, reconcile the composition of receipts to the composition of deposits, deposits all monies intact and timely, perform monthly bank reconciliations, resolve reconciling

items, make appropriate, documented adjustments to accounting records timely, prepare monthly lists of liabilities and reconcile the lists to the bank account and/or city fund balance, promptly investigate and resolve differences, review the status of liabilities to determine the appropriate disposition of funds held when applicable and ensure that monthly distributions are properly calculated and disbursed timely.

The Court Clerk is directed to: (1) keep a copy of this Order with the Municipal Court's Operating Orders; (2) openly display a copy of this Order in the Municipal Division's office and make the same available for inspection by members of the general public and all pertinent justice system stakeholders in the Municipal Division's jurisdiction; (3) send a paper copy of this Order to the Missouri Association of Criminal Defense Attorneys; (4) provide a copy of this Order to the Crestwood Police Chief for distribution within the Crestwood Police Department; (5) provide a copy of this Order to the Prosecuting Attorney and the City Administrator.

SO ORDERED.



John F. Newsham
Municipal Judge
City of Crestwood, Missouri

Dated: December 29, 2017

Thursday, May 24, 2018
12:00 – 1:15 in the Marbella Ballroom

What Do Missourians *Deserve* In Their Judges? (0.6 hrs Ethics)

Attorney Morry Cole, Missouri Bar President (2017-2018)

Session Summary

Attorney Morry Cole, Missouri Bar President (2017-2018), will highlight the traits of a good judge as featured in Part Two of a Six-Part Series.

Speaker Bios

Morry S. Cole

Morry S. Cole handles complex litigation. He has served as lead trial and appellate counsel in a wide variety of complicated cases in state and federal courts throughout Missouri and the Midwest.

Mr. Cole received a bachelor's degree in business administration from Baylor University, specializing in finance. He graduated from the University of Missouri-Columbia School of Law. While in law school he served as an editor of the *Missouri Law Review*, a research assistant for Professor Martha Dragich, and an intern to former Missouri Supreme Court (now 8th Circuit Court of Appeals Judge) Judge Duane Benton. Before joining Gray, Ritter & Graham, P.C., Mr. Cole worked for the Missouri Supreme Court as law clerk and research attorney for Missouri Supreme Court Judge Edward D. Robertson, Jr.

Mr. Cole has written articles for the *Missouri Law Review* and the Missouri Association of Trial Attorneys. He has published articles and continuing legal education materials relating to Wrongful Death cases in the Missouri Bar Journal and the Missouri Bar CLE Black Book on Damages in Civil Cases. He has lectured for the University of Missouri, the Missouri Bar, the Missouri Association of Trial Attorneys and many civic and scholastic organizations. He has served as an Adjunct Professor of Pre-Trial Litigation and Settlement at the Washington University School of Law since 2008.

Mr. Cole has served the profession of law extensively. He is the 2017-2018 President of The Missouri Bar, a current member of The Missouri Bar Board of Governors, and a member of The University of Missouri Law Society and the University of Missouri Jefferson Club. Previously he served as the state-wide Chairperson of The Missouri Bar YLS Counsel, a member of the Board of Governors

of the Bar Association of Metropolitan St. Louis, a member of the Theodore MacMillian Inn of Court and a trustee of the University of Missouri Law School Foundation Board of Trustees.

Mr. Cole is a 2016 recipient of The Missouri Bar's President's Award. In 2003, he received The Missouri Bar Foundation's Lon O. Hocker Award for "outstanding expression to the qualities of professional competence, industry, integrity and courtesy indicative of an able trial lawyer." In 2005, he was given The Missouri Bar Foundation's David J. Dixon Appellate Advocacy Award for "outstanding achievement in appellate practice." Mr. Cole was also named the 2006 recipient of the St. Louis County Bar Association's Roy F. Essen Outstanding Young Lawyer Award. The annual award is given for excellence as a lawyer, distinguished service to the Bar, and outstanding service to the community. Mr. Cole is the only attorney ever to receive all three of these prestigious awards. Mr. Cole was also named a "2007 Up & Coming Lawyer" by *Missouri Lawyers Weekly*.

Thursday, May 24, 2018
1:30 – 2:30 in Campana Hall

Courtroom Civility (1.2 hrs Ethics)

Supreme Court Judge Paul Wilson and Court of Appeals Judge Roy Richter
Joint session with judges and court administrators

Session Summary

Discussion of principles of courtroom civility

Speaker Bios

Paul C. Wilson

Judge Paul Wilson is a Jefferson City native who received his bachelor's degree in 1982 from Drury College and received his law degree cum laude from the University of Missouri – Columbia. He served as a law clerk at the Supreme Court of Missouri and at the United States Court of Appeals for the Sixth Circuit prior to entering private practice. Judge Wilson left private practice to serve as deputy chief of staff for litigation in the Missouri Attorney General's office, then as senior counsel for budget and finance for the Office of Administration prior to being appointed as Circuit Judge in the 19th Judicial Circuit. Judge Wilson returned to private practice with the law firm of Van Matre, Harrison, Hollis, Taylor and Bacon, P.C., before being appointed to the Supreme Court in December 2012.

Courtroom Civility

Fostering Judicial Professionalism

By Hon. Roy Richter and Hon. Paul Wilson,
with thanks to Hon. Lisa Van Amburg,
Hon. Jess. B. Clanton and the National Judicial College

1

Causes of Courtroom Incivility?

- Crowded dockets; too little time
- Loss of control in the courtroom (reluctance to exert control)
- Over-control of the courtroom
- Reacting to disrespectful lawyers and litigants
- Judicial stress/Vicarious trauma
- Impatience and frustration
- For new judges, insecurity

2

How Judges Set the Example in and Out the Courtroom

- Honesty and integrity/Ethical behavior
- Patience
- Open mindedness
- Dignity
- Graciousness
- A reputation for fairness and impartiality
- Even demeanor
- Mercy toward others
- Control of the courtroom

3

Rules Encourage Civility

- Trial courts should have rules regarding conduct before the court
- Examples: Stand when addressing court, be courteous when addressing the court, do not shout or curse or make faces or gestures toward others, always tell the truth, etc. (See handout for Division 19)

4

Principles of Professionalism

- Be courteous, respectful and civil to lawyers, parties, witnesses, court personnel and all other participants in the legal process.
- (Does this include the press?)

5

Judges Should:

- Maintain control of the proceedings
- Be considerate of the time schedules of lawyers, parties, witnesses and the expenses attendant to litigation in scheduling trials, hearings, meetings and conferences
- Be punctual in convening trials, hearings, meetings and conferences and notify counsel or self-represented parties promptly if matter is rescheduled

6

Judges Should:

- Endeavor to resolve disputes efficiently
- Allow a lawyer or self-represented party to present a cause properly and to make a complete and accurate record, free from unreasonable or unnecessary judicial interruption
- If possible, give all issues in controversy deliberate, informed, impartial and studied analysis and consideration and explain, when necessary, reasons for decisions of court

7

Judges Should:

- Make all reasonable efforts to decide matters promptly
- Avoid hostile, demeaning or humiliating language and behavior in all respects
- Cooperate with other judges in availability of lawyers, parties, witnesses or court resources
- Ensure your court personnel are civil and respectful

8

Judges Should:

- Avoid impugning the integrity or professionalism of any lawyer on the basis of the lawyers' clients or cause
- Avoid procedures that needlessly increase litigation expenses
- Refer to counsel by surname preceded by preferred title (Mr., Mrs., Ms. or Miss) or by professional title while in the courtroom. Refer to all counsel in the same manner.

9

Who Controls the Courtroom?

- **THAT WOULD BE YOU!**
- Do not permit Rambo tactics.
- Examples?
- Nip bad behavior in the bud!

10

When Things Go Wrong:

- Keep your cool (See attached tips for coping with hostility)
- Recess, and confer in chambers with the uncivil lawyer or litigant
- Contempt proceedings after one or two warnings (learn the law on contempt)

11

What Do People Expect of Judges?

- Treat lawyers, litigants, jurors, witnesses with civility and courtesy
- Patience
- Firm but fair
- Punctuality and Efficiency
- Control of his or her temper
- Fair and impartial treatment of everyone
- Allow parties to have their "day in court"

12

BIG DONT'S

- Don't get personally involved; you are the judge, not a combatant
- Don't fail to take a recess if you feel your temper flaring
- Don't go "off the record"
- Don't "take it home"
- Don't hold a grudge; do be optimistic and expect better behavior the next time

13

BIG DO'S

- At first opportunity, let litigants and lawyers know about civility rules
- Set an example of civility for others
- Be firm and fair in enforcing the rules
Announce the rules early before things get out of hand
- Treat all lawyers with equal regard
- Help self-represented litigants learn about court rules and procedures

14

BIG DO's

- Pay attention to your listening and communication skills: Accurate, clear communication will increase the likelihood that participants in the process will perceive it as fair and will comply with your orders.
- Get litigants' assent to following your rules.

15

BIG DO's

- Be kind and treat people with the courtesy and dignity they deserve.
- Display visible court security in your courtroom.
- Have written courtroom weapons policy.
- Let the non-aggressor leave first.
- Stay on the record.

16

BIG DO's

- Be nice!
- Start on time!
- Do not cancel dockets!

17

Words to Remember:

- "Always do right, this will gratify some people and astonish the rest."
 - Mark Twain
- "Never let yesterday use up too much of today."
 - Will Rogers
- What we say: "Stop worrying, the case may settle."
 - Lisa VanAmburg and Paul Wilson

18

Civility Scenarios

- Self-represented litigants in a Protective Order hearing loudly shout and curse at one another. Other litigants are present in the courtroom. What do you do? How can you minimize chances for this type of behavior?

19

Civility Scenarios

- An attorney who regularly appears before you calls you with tickets to the baseball playoff game. What do you say?
- Judge Reprimanded for Accepting Baseball tickets from Attorneys. 22/1/6 (Spring, 2000) American Judicature Society Judicial Conduct Reporter.

20

Romances in the Office

- Washington Censures Judges for Romance with secretary. 18/2/7 (Summer 1996) American Judicature Society, Judicial Conduct Reporter;
- Judge Censured for Affair With Asst. Prosecutor. Recent case 23/2/4(summer 2001) AJS, Judicial Conduct Reporter.

21

Other scenarios?

- You name it, they got it in the Judicial Conduct Reporter Index of AJS.

22

Thursday, May 24, 2018
2:40 – 5:20 in Campana Hall

What Does Rule 37 Have to Do With It? (3 hrs CLE)

Judges Renee Hardin-Tammons, Todd Thornhill,
Keith Cheung, and Cotton Walker

Joint session with judges and court administrators

Session Summary

Court administrators and municipal judges will role play and discuss the mandates of Rule 37 in a joint interactive session.

Speaker Bios

Renee Hardin-Tammons

Judge Renee Hardin-Tammons received her J.D. from the University of Missouri-Columbia School of Law in 1989. She served as a Municipal Judge from 1999 to 2017. In 2017, she was appointed Associate Circuit Judge for the 21st judicial circuit. She serves on the Missouri Supreme Court Committee on Practice and Procedure in Municipal Divisions and the Task Force on Criminal Justice. She is Vice President of Missouri Municipal and Associate Circuit Judges Association.

Todd Thornhill

B.A. – Philosophy, Missouri State University, 1983

J.D., University of Missouri-Columbia, 1987

Judge since 1993. Past president of MMACJA (2000-01), editor of BENCHMARK since 2002, frequent writer and speaker. Appointed by the Missouri Supreme Court to the Municipal Division Work Group and also The Commission on Racial and Ethnic Fairness.

Cotton Walker

Judge Walker represents individuals and businesses throughout Missouri and is licensed to practice in Missouri and Arkansas. He has extensive experience in family law, criminal law, business and corporate law, estate planning and civil litigation. He is also trained to serve as a Collection Notice Review attorney and serves as the Member State Compliance Chair for Missouri within the Member Attorney Program of ACA International.

Mr. Walker is a former city prosecutor and has served as a Municipal Court Judge for over 15 years. He also serves as a frequent speaker and trainer for groups including associations, attorneys, judges, prosecutors and law enforcement

personnel. He has written and spoken at continuing education programs on many topics including: courts, domestic violence, legislative process, collection practices, criminal law and litigation.

He is married to Debra Massengale Walker with two children, Jacquelyn and Quinn.

Friday, May 25, 2018

8:30 – 9:30 and 10:45 – 12 in the Granada Room

Case Law Update, Parts 1 & 2 (1 hr CLE & 1.6 hrs CLE)

Judges Mike Svetlic & Joe Cambiano

Session Summary

8:30 – 9:30; 1.0 hr CLE

Judges Mike Svetlic and Joe Cambiano will present The Mike and Joe Show with the latest case law relevant to our courts including Search & Seizure / Illegal Stops.

10:45 - 12:00; 1.6 hrs CLE

Judges Mike Svetlic and Joe Cambiano will present The Mike and Joe Show with the latest case law relevant to our courts including ethics and DWI Training.

Speaker Bios

Mike Svetlic

Mr. Svetlic serves presently as a Municipal Division Judge in six cities in Clay, Platte, and Clinton Counties, Missouri. He was co-founder and president of the Clay/Platte Municipal and Circuit Judges Association in 1985. In addition, he served as a member of the Board of Directors of the Missouri Municipal and Associate Circuit Judges Association for over ten (10) years and was its president in 1987. He was also a charter member of the Missouri Bar Fee Dispute Resolution Committee serving as its president in 1999 and as a member of the Missouri Bar Board of Governors Committee for eight (8) years. In 1992, he received the Kansas City Metropolitan Bar Association President's Award for public service. Mike also served as a faculty member for the Missouri Supreme Court Subcommittee on training and certification of Municipal Judges. Mike is an Ambassador and member of the Advisory Council to Harvesters, Kansas City's Food Bank. He also is active in the Second Saturday Soup Kitchen of Morning Glory Ministries of the Cathedral of the Immaculate Conception, Kansas City, Missouri.

Joe Cambiano

Mr. Cambiano is the managing partner with the law firm of Rubins, Kase, Hager & Cambiano, P.C. He has been in practice since 1975. For fifteen years he served as Municipal Judge in the Grandview Municipal Division of the Circuit Court of Jackson County. He also served as the City Attorney for the City of Belton, Missouri for 20 years.

Currently, he is the City Prosecutor for the cities of Harrisonville, Cleveland and Freeman, Missouri. He has lectured numerous times and written several articles for programs for the Missouri Bar Association, Kansas City Metropolitan Bar Association, the Missouri Association of Trial Attorneys, the Missouri Judicial College, National Highway Traffic Safety Board, and the National Conference on Juvenile and Family Court Judges. He is also an instructor at the Missouri Judicial College.

Mr. Cambiano is a recipient of the KC Metro Bar Association's President's Award and has been named to Outstanding Lawyers in America, Missouri Super Lawyers 2009-2014, and National Trial Lawyers Top 100 Lawyers in Missouri. He has authored chapters on "Driver's License Cases", "Civil Insurance Consequences of DWI", and Driving Under the Influence of Drugs", for the Missouri Bar.

2018 Annual Case Law Update

Missouri Municipal and

Associate

Circuit Judges Association

DISCLAIMER: This document is not intended by either the Missouri Municipal or Associate Circuit Judges Association to serve as a legal opinion or to render legal advice. This case law update is provided by the Association merely as an educational and informational tool.

2018 Case Law Update

Presented by:

The Honorable Michael J. Svetlic,
Municipal Judge, Pleasant Valley, Trimble, and Dearborn

And

Joe Cambiano,
Prosecutor, Cleveland, Harrisonville and Freeman,
Managing Partner for Rubins, Kase, Hager and Cambiano
P.C.

Grateful appreciation is extended to Mike Svetlic's Paralegal, Tracy Siehndel and Secretary, Shirley Peterson, who assisted in the compilation of these materials.

Missouri Municipal & Associate Circuit Judges
Association Conference
Lodge of the Four Seasons
May 25, 2018

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**State of Missouri v. James Donovan, ___S.W.3d___(Mo. App 2017)
ED104625**

The trial court’s order finding a search warrant invalid and suppressing all evidence seized was affirmed by the Missouri Supreme Court because of the lack of probable cause, and particularity in the invalid portions of the search warrant created a general warrant authorizing a broad and invasive search of a residence, and so, the circuit court properly applied the exclusionary rule to suppress all evidence seized.

State of Missouri v. Phillip Douglass and Jennifer Gaulter, ___S.W.3d___(Mo. App 2018) SC95719

Motion for Suppression of a warrantless arrest and subsequent confession was properly overruled where the officer had probable cause to arrest Defendant.

**State of Missouri v. Adnan Esmerovic, ___S.W.3d___(Mo. App 2018)
ED105118**

Defendant’s conviction for possession of controlled substances was upheld where Defendant was arrested outside of his motor vehicle and a search was conducted directly next to where Defendant was sitting before he was arrested.

**State of Missouri v. Edward Hughes, ___S.W.3d___(Mo. App 2017)
ED104884**

Motion to Suppress was sustained by the trial court and the Court of Appeals suppressed evidence collected from a warrantless search and seizure of a semi trucks electronic controlled module (“ECM”). Defendant had standing to contest the search and seizure; there was no automobile exception; there were no exigent circumstances.

**State of Missouri v. Anthony West, ___S.W.3d___(Mo. App 2018)
WD80879**

II. SELF INCRIMINATION

Trial Court’s sustaining of Defendant’s Motion to Suppress was appealed by the State and subsequently reversed by the Southern District Court of

Appeals because defendant stated only that he “maybe” should get an attorney. Defendant did not unequivocally assert his right to counsel; he reinitiated a conversation regarding the investigation in that he asked to speak with the sheriff and he volunteered information about the investigation before any questioning by the sheriff.

State of Missouri v. Matthew Rumbaugh, ___S.W.3d___ (Mo. App 2017) SD35057

III. EVIDENCE

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Freddie McKee v. State of Missouri, ___S.W.3d___(Mo. App 2018) WD80411

Constructive possession of illegal drugs in a storage locker, rented by defendant and his wife, was sufficient evidence to sustain a criminal conviction.

State of Missouri v. Tony L. Faler, ___S.W.3d___(Mo. App 2018) SD34819

Defendant’s conviction of domestic assault was reversed because the record did not demonstrate that Defendant’s waiver of right to counsel was made knowingly and intelligently.

State of Missouri v. Justin W. Grant, ___S.W.3d___(Mo. App 2018) SD34692

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State of Missouri v. Shannon K. Moyle, 532 S.W.3d 733 (Mo. App 2017) WD79976

Defendant was convicted of involuntary manslaughter in operating a motor vehicle with Defendant appealing the Court’s sustaining of the State’s Motion in Limine based in part on the Defendant’s deficient offer of proof made orally only by the Defendant’s counsel.

State of Missouri v. Paul J. Murphy, 534 S.W.3d 408 (Mo. App 2017) ED105055

Defendant's conviction of first degree assault was affirmed notwithstanding Defendant's appeal of the trial court allowing into evidence the transcript of a victim's testimony at the preliminary hearing, where the witness was determined to be unavailable to submit testimony at trial.

State of Missouri v. Philip Rasmussen, 529 S.W.3d 925 (Mo. App 2017) SD34652

Defendant unsuccessfully argued that the trial court erred in overruling his Motion to Suppress a victim's pretrial and in-court identifications because the identification procedures were impermissibly suggestive.

State of Missouri v. Devon M. Robinson, ___S.W.3d___(Mo. App 2018) ED105384

The trial court did not abuse its discretion in overruling a defendant's objection to an owner's testimony regarding the value of cattle taken, in that the testimony was not offered for the truth of the matter asserted and did fit an exception to this general rule against hearsay.

State of Missouri v. Calvin M. Rose, ___S.W.3d___(Mo. App 2018) SD34982

The introduction of confidential records of a defendant, and Defendant's prior bad acts, was error and the trial court should have sustained Defendant's request for mistrial based upon the prosecutor's evidence and statements concerning this error.

State of Missouri v. Johnetta Salmon, ___S.W.3d___(Mo. App 2018) ED104696

Hospital admission records, offered under the business records statute, Section 490.680, did not violate the Sixth Amendment right of Confrontation Clause as the records were not prepared in anticipation of criminal proceedings and are therefore not testimonial.

State of Missouri v. Kurt A. Steidley, 533 S.W.3d 7 (Mo. App 2017) WD79348

IV. CRIMINAL PROCEDURE

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City of Kansas City v. Bego Cosic, ___S.W.3d___(Mo. App 2018) WD80985

Pro Se Defendant's conviction of failure to yield to an emergency vehicle and subsequent ten day jail sentence was affirmed notwithstanding Defendant's argument that because Defendant was not engaged in "Commerce" as defined in 49 U.S. Code § 31301, he was not subject to the laws the officer sought to enforce and second, that he was denied due process because he was not allowed to fully question the officer as to legal definitions of "commerce".

State of Missouri v. Joshua Morgan Gorombey, ___S.W.3d___(Mo. App 2018) WD80016

Trial court was found under no duty and therefore did not plainly err in failing to sua sponte order a mental examination of Defendant.

State of Missouri v. David Hygrade, ___S.W.3d___(Mo. App 2018) ED105145

Defendant unsuccessfully appealed a verdict convicting Defendant of leaving the scene of a motor vehicle accident, under the "plain error" rule, notwithstanding the prosecutor making a closing argument with several references to Defendant's possible intoxication during the accident, all of which Defendant counsel did not object.

State of Missouri v. Oren Rea Rinehart, ___S.W.3d___(Mo. App 2018) SD34828

Before probation can be provoked for failing to pay amounts due as a condition of probation, the sentencing court must inquire into and make findings regarding the reasons for the Defendant's failure to pay

State of Missouri, ex rel. Hawley v. The Hon. Bart Spear, ___S.W.3d___(Mo. App 2018) WD81140

Where a defendant who pleaded guilty to DWI and felony driving without a valid license challenged the enhancement of the offenses to felonies, the case is remanded for re-sentencing because the State did not present any evidence to support a finding that the Defendant had prior convictions for driving without a valid license.

Patrick H. Syre v. State of Missouri, ___S.W.3d___(Mo. App 2018) WD80132

V. D.W.I./ADMINISTRATIVE CASES

§ 577.041.1 provides a limited statutory right to confer with an attorney prior to taking a breath test. The statute allows for a reasonable opportunity to contact an attorney to make an informed decision. This does not necessarily include a right to privately speak with an attorney away from the peace officer.

Roesing v. Director of Revenue, ___S.W. 3d ___ (Mo. App. 2018); WD80585 (03/13/2018)

A party may be sentenced to enhanced punishment based upon prior convictions. Proof of prior convictions may be waived by the actions of the defendant.

Sayre v. State, ___ S.W. 3d ___ (Mo. App. 2018); WD80132
(2/2/2018)

The Fourth Amendment generally declares warrantless seizures as unreasonable. One exception to the general rule is a brief investigative stop supported by reasonable suspicion. Reasonable suspicion will justify a stop where unusual conduct is observed which leaves a reasonable person, in light of their experience, to conclude criminal activity may be afoot.

State v. Atkinson, ___ S.W. 3d ___ (Mo. App. 2018); SD34966
(0/01/2018)

The crime of driving while intoxicated is not required as an element of the offense, the commission of a traffic violation. The offense is committed by the act of driving while in an intoxicated condition.

State v. Barlow, ___ S.W. 3d ___ (Mo. App. 2018); WD80363
(03/27/2018)

To be admissible an HGN field sobriety test must be properly administered in order to form the bases for probable cause for the arrest.

State v. Deweese, ___ S.W. 3d ___ (Mo. App. 2018); WD80076
(02/27/2018)

Defendant's conviction of driving while intoxicated was upheld based on circumstantial evidence that the defendant was operating a motor vehicle while in an intoxicated condition. There was a temporal connection between the defendant's operation of the vehicle and his observed intoxication.

State v. Lopez, 539S.W. 3d 74 (Mo. App. 2017)

When a portable breath test is used for probable cause to arrest, the numerical result of the test is admissible.

State v. Roux, ___ S.W. 3d ___ (Mo. App. 2017); SD34775
(9/12/2017)

The quantum of evidence necessary to establish probable cause is considerably less than that required to prove guilt beyond a reasonable doubt. In a refusal case, the question is whether the facts taken in the aggregate were sufficient for the officer to believe a defendant was driving while intoxicated.

Trentmann v. Dir. of Revenue, ___ S.W. 3d ___ (Mo. App. 2018); ED105642 (02/27/2018)

VI. ELEMENTS OF THE OFFENSE

When looking at the validity of a charge to rule on a motion to dismiss the court need not go beyond the four corners of the charging document itself. The court need only look to determine if the charging document complies with the elements of the ordinance. In looking at the constitutionality from a First Amendment standpoint of a disturbing the peace or disorderly conduct ordinance, the court needs to determine if it criminalizes only conduct outside the protection of the First Amendment and, therefore, is not overly broad.

City of Raymore v. O'Malley, 527 S.W. 3d 857 (Mo. App. 2017)

While the crime of resisting arrest does require a mental state of the person being arrested, such mental state that the person knowingly resisted arrest can be established from circumstantial conduct, including evidence of conduct before the act, from the act itself, and from subsequent conduct.

City of St. Louis v. Jones, 536 S.W. 3d 794 (Mo. App. 2018)

An arrest is an actual restraint of the person of the defendant or otherwise showing control of the defendant's movements by the officer. It can include submission to custody of the officer under the authority of a warrant or otherwise. A party already under arrest cannot be found guilty of "resisting arrest".

State v. Ajak, ___ S.W. 3d ___ (Mo. App. 2018); SC96333 (04/03/2018)

In a drug possession case, constructive possession requires that the defendant have access to and control of the premises where the drugs were found and exclusive possession of the premises containing the substances or sharing control of the premises or some further evidence to connect the defendant to the controlled substance. The mere presence of the Defendant on the premises does not, by itself, make a submissible case.

State v. Faler, ___ S.W. 3d ___ (Mo. App. 2017); SD34819 (01/11/2018)

To prove the crime of unlawfully possessing or having under ones control a controlled substance, there must be knowledge of the presence and nature of the substance and actual or constructive possession of the substance. Actual possession is where the person has the substance within easy reach and convenient control. Constructive possession can be shown by time to exercise dominion or control over the substance or easy access or joint, accessible locations. Possession may be sole or joint.

State v. Gilmore, 537 S.W. 3d 342 (Mo. 2018)

Exceeding the posted speed limit, failure to yield to emergency vehicle, operating a motor vehicle without maintaining financial responsibility, and operating a vehicle on a highway without a valid license are established crimes by the legislature. It is sufficient if testimony is presented to support the elements of the crime charged to allow factfinder to determine they were committed. These violations derive from the State's inherent authority to regulate speed, traffic, and the roadways for public safety

State v. Gorombey, 538 S.W. 3d 353 (Mo. App. 2018)

A party is criminally responsible for the conduct of another when either before or during the commission of an offense with the purpose of promoting the commission of the offense when they aid, agree to aid, or attempt to aid such person in the planning committing and are attempting to commit the offense. Accomplice liability comprehends any of a potential wide variety of actions intended by an individual to assist another in criminal conduct.

State v. Shaw, ___ S.W. 3d ___ (Mo. App. 2017); WD79932 (12/26/2017)

VII. STATUTORY INTERPRETATION

When looking to the constitutionality of an ordinance under a void for vagueness standard, the ordinance must provide adequate notice of the prohibited conduct to potential offenders. Words in the ordinance are looked at according to their common understanding. If commonly understood there must be no danger of arbitrary and discriminatory application. The same analysis applies when looking to the ordinance as overly broad. Again clarity or language must prevail so that it does not outlaw a substantial amount of constitutionally protected First Amendment speech.

Bennett, et al. v. St. Louis County, Missouri and Krane, _____ S.W.3d ___ (Mo. App. 2017); ED105470 (12/19/2017)

Section 559.115.7 only excludes a first incarceration in a 120-day program from being counted as a previous prison commitment for determining a minimum term.

Green v. Missouri Department of Corrections, 533 S.W. 3d 778 (Mo. App. 2017)

A person commits the crime of hindering prosecution, if for the purpose of preventing the apprehension of another person for conduct constituting an offense, he or she prevents, by means of deception or intimidation, anyone from performing an act that might aid in the discovery or apprehension of such person.

State v. Brown, ___ S.W. 3d ___ (Mo. App. 2018); SD34559 (01/22/2018)

Section 559.036.4 specifically governs a defendant's right to be continued on probation and participate in a 120-day program and the court has a duty to order the individual into the program.

State ex rel. Caldwell v. Ohmer, 535 S.W. 3d 758 (Mo. App. 2017)

VIII. U.S. SUPREME COURT AND FEDERAL CASES

The US Supreme Court will decide by the June, 2018 recess whether the Fourth Amendments Automobile exception permits a police officer, uninvited and without a warrant, to enter private property, approach a home, and search a vehicle parked a few feet from a house.

Ryan Austin Collins v. Commonwealth of Virginia, ___137 S.CT., 790 S.E.2d 611 (VA.2016)

The US Supreme Court will decide prior to its June, 2018 recess, whether or not a driver has a reasonable expectation of privacy in a rental car when he has the renter's permission to drive the car but is not listed as an authorized driver on the rental agreement.

United States of America v. Terrance Byrd, ___137 S.CT., 679 F. App'x.146 (3d Cir. 2017)

Officers arrest of 21 late night party goers at what was purportedly a new address of the host lacked probable cause for the arrest of all of the invitees because the arresting officers knew plaintiffs had been invited to the house by a woman that they reasonably believed to be its lawful occupant.

Theodore Wesby v. District of Columbia, et.al, ___137 S.CT., 765 F.3d 13 (2016)

IX. JUDICIAL POTPOURRI

Submitted in oral presentation

I. SEARCH AND SEIZURE

Defendant's Motion to Suppress Evidence seized during a warrantless search of a motor vehicle was overruled under the "exigent circumstance" rule where the mere possibility that the vehicle can be moved provides sufficient justification for a warrantless search.

State of Missouri v. James Donovan, ___S.W.____(Mo. App. 2017) ED104625

Defendant was convicted of driving while intoxicated, possession of marijuana, possession of drug paraphernalia, and driving while revoked. Among other issues of error, Defendant contended that the trial court erred in failing to suppress evidence seized in a warrantless search. Probable cause to stop Defendant's motor vehicle was based upon the officer's observation of his vehicle exhibiting an "odd behavior" by signaling a right turn where there was "only farmland and no streets for someone to make a right turn." As the officer turned his vehicle around, the Defendant took off at a high rate of speed with the officer activating his lights, sirens and spotlight and pursuing Defendant for approximately one mile. Eventually, the Defendant eventually stopped after running a stop sign and later making a "long lazy right turn."

After going through the required and standardized tests at the scene, Defendant refused to take a breathalyzer, he was arrested, and his car was towed.

The court was presented with the issue as to whether or not the search subsequent to the arrest and confinement of Defendant's motor vehicle constituted an unreasonable and unconstitutional violation of the Fourth Amendment prohibition against warrantless searches and seizures.

In this case, the court reasserted the "exigent circumstance" doctrine where the mere possibility that the vehicle can be moved provides sufficient justification for a warrantless search. The court seemingly expanded the justification for the search by indicating that probable cause is a flexible, common sense concept dealing with "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act." Using this definition of probable cause, the court therefore declared that a reasonably prudent person would have had probable cause to believe Defendant's vehicle contained evidence of the crime of driving while intoxicated and as a result, with an exigent circumstance to search the defendant's automobile without a warrant, the Fourth Amendment prohibition against unreasonable search and seizures was not offended.

It should also be noted that as a part of this case, the court considered Defendant's claim of an abusive discretion in quashing a subpoena of the officer's records including "any citizen complaints against him, the disciplinary file, and the personnel file." The court held that such records that contain privileged information to be discoverable can only be disclosed if a party makes some plausible showing how the information would have been material and favorable. A defendant is not entitled to information on the mere possibility that it might be helpful. In this case, the Defendant subpoenaed the Foristell police department requesting the production of documents regarding the officer's citizen complaints, disciplinary file and his personnel file. Since the Defendant failed to demonstrate that the officer's files contained relevant or exculpatory evidence indicating his discharge was due to his

conduct on the night in question, the court acted within its discretion in denying Defendant's discovery request.

The trial court's order finding a search warrant invalid and suppressing all evidence seized was affirmed by the Missouri Supreme Court because of the lack of probable cause, and particularly in the invalid portions of the search warrant creating a general warrant authorizing a broad and invasive search of a residence, and so, the Circuit Court properly applied the Exclusionary Rule to suppress all evidence seized.

**State Of Missouri v. Phillip Douglass & Jennifer Gault,
__S.W.3d__(Mo. App 2018) SC95719**

The victim spent time with Defendants at their hotel room and left. The next day, one of the Defendant's texted the victim informing her that she had left her handbag and keys in the hotel room. They agreed Gaulter would leave those items at the hotel's front desk. When the woman returned home from work, she found her apartment in disarray with several items of property missing, in the amount of approximately \$10,000. When the woman arrived at the hotel, staff told her someone had already retrieved the handbag.

The police subsequently applied for a search warrant indicating there was probable cause to search the residence of Defendants and to seize specific items believed to have been stolen. The detective submitted a prepared search warrant for which he checked boxes next to five and six preprinted items including one for "diseased human fetus or corps or part thereof." The police searched the residence of Defendants and seized items that the victim confirmed had been stolen from her apartment. Defendants were charged with burglary and stealing.

The trial court in a hearing on Defendant's Motion to Suppress sustained the motions, finding that the detective intentionally checked the box stating probable cause existed to search for a dead body when he knew that statement to be false and bypassed the particularity requirement by checking boxes. The court found the warrant was invalid and held the exclusionary rule was appropriate to deter intentional police misconduct and ordered the suppression of all evidence seized.

The Missouri Supreme Court held that the lack of probable cause and particularity in the invalid portions of the search warrants created a general warrant authorizing a broad and invasive search of the residence, and so in suppressing the evidence, the so called "severance" rule did not apply. The warrant, as a result, was so contaminated as to turn it into what the particularity requirement was created to prevent, that is, a general warrant. Severance, therefore, is inappropriate in this case, and the court did not err therefore in applying the exclusionary rule.

Motion for suppression of a warrantless arrest and subsequent confession was properly overruled where the officer had probable cause to arrest Defendant.

**State of Missouri v. Adnan Esmerovic,
ED105118
__S.W.3d__(Mo. App 2018)**

Defendant was convicted of first degree attempted robbery where he entered a bakery with what appeared to be a gun and demanded money from the cashier,

who was working by herself. Remarkably, the cashier refused to the man any money, then led the man out of the store! The cashier quickly returned to the store and locked the door behind her; the man left. Video recorded the attempted robbery.

An officer arrived at the bakery whose responsibility included patrolling the small geographic area where the bakery was located. The officer reviewed the video, spoke with the cashier and gathered information, including receiving a description of the Defendant's voice. The officer suspected that the Defendant was the suspect because he had previously interacted with the attempted robber. The next day, the same officer conducted a routine traffic stop observing the Defendant at a car dealership. He was wearing the same clothes as matched by the video from the previous day.

An interview was conducted by the officer (presumably with a Miranda warning prior thereto). The Defendant admitted that he attempted to rob the bakery, but claims that he used a fake gun during the incident.

Defendant moved to suppress his confession claiming the confession was the fruit of the poisonous tree because the officer arrested him solely because of an entry made into a police system that an officer needs to question the Defendant about the robbery. Thus, his warrantless search lacked probable cause.

The Court of Appeals held that the requirement of probable cause can never be satisfied with a bare suspicion of guilt. However, in this case, there was enough regarding his description, the video, his accent, and his clothing all of which persuaded the Court of Appeals to conclude that there was probable cause for the Defendant's arrest, beyond a "bare suspicion of guilt." Because the officer had probable cause to arrest the Defendant, the trial court did not clearly err in denying the defendant's Motion to Suppress his confession. As a result, the judgment of the trial court was affirmed.

Defendant's conviction for possession of a controlled substances was upheld where Defendant was arrested outside of his motor vehicle and a search was conducted directly next to where Defendant was sitting before he was arrested.

***State of Missouri v. Edward Hughes*, ___S.W.3d___ (Mo. App 2017)
ED104884**

Defendant's Motion to Suppress Evidence was denied by the trial court, notwithstanding his reliance on the Missouri Supreme Court decision, *State v. Carrawell*, 481 S.W. 3d 833 (Mo. Banc 2016). Defendant asserted that the search of the bag was unlawful because it was not within his immediate control when searched. The State avers that *Carrawell* is factually distinguishable because the Defendant was not secured in the police vehicle before the search and the bag was within Defendant's reach, that the search was proper, and that even if the search was unlawful pursuant to *Carrawell*, the trial court did not abuse its discretion because *Carrawell* only applied to searches made after the decision was issued and the search here occurred before it.

In the Eastern District Court of Appeals, the Court agreed with the Defendant, but unfortunately for the Defendant, indicated that at the time the officer made the search, there was "Court of Appeals precedent, authorizing officers to search an

arrestee's personal effects as a search incident to arrest, even if such items were not within the arrestee's immediate control." The Eastern District Court held that Carrawell applied only to searches occurring after Carrawell was decided. This case was presented to the Eastern District prior to Carrawell, and as a result, the decision of the trial court in denying Defendant's Motion to Suppress was affirmed.

Motion to Suppress was sustained by the trial court and the Court of Appeals suppressed evidence collected from a warrantless search and seizure of a semi trucks electronic controlled module ("ECM"). Defendant had standing to contest the search and seizure; there was no automobile exception; there were no exigent circumstances.

State of Missouri v. Anthony West, ___ S.W.3d ___ (Mo. App 2018) WD80879

This is an appeal from the trial courts order granting the Defendant's motion to suppress all evidence collected from or as a result of the warrantless search and seizure of a semi trucks electronic controlled module ("ECM"). Defendant was originally charged with one count of involuntary manslaughter as a result of driving a semi truck, owned by his employer, on I-70 in Boone County when he allegedly recklessly failed to yield to stopped traffic and collided with the pickup truck of the victim, causing her death. Immediately after the collision occurred the Defendant indicated to officers that the semi truck's brakes did not work. Additionally, the officers contacted the Defendant later at a hospital and the Defendant allegedly consented to the download of data from the ECM in the semi truck. The court was told that the Defendant consented to the download of the data. However, the officer in preparing the incident report did not include any reference to the defendant consenting to the search. Nearly two years following the accident, the officer wrote a supplemental report at the request of the Prosecutor which indicated that the Defendant consented to the search.

The Defendant also testified at the suppression hearing, and denied that he specifically gave consent to the retrieval of the ECM data.

The State asserted at the suppression hearing:

1. Defendant did not have an expectation of privacy in the data collected by the ECM;
2. Even if the Defendant has standing to assert a Fourth Amendment violation, a warrantless search was permitted because a) Defendant consented to the search; b) the automobile exception applied; c) the exigent circumstances exception applied, to permit a warrantless search of the ECM because of a risk that ECM data would be lost when the semi truck was moved.

The Court of Appeals in the decision and opinion filed April 17, 2018 does an excellent job of analysis of each of the above contentions by the state. First, the Court of Appeals held that the Defendant did have standing to assert a Fourth Amendment violation even though the Defendant was not the owner of the vehicle. Secondly, the automobile exception rule did not apply because the ECM data that was seized from the Defendant's truck was done not because there was probable cause to believe that the Defendant had committed a crime and that evidence of the

crime could be found in the truck, but instead to investigate an accident to determine WHETHER the Defendant had committed a crime. As a result, the Court of Appeals held that the automobile exception to permit a warrantless search of an ECM did not apply where the search was to determine "Whether a crime was committed."

Finally, the Court of Appeals held that there were no exigent circumstances to justify a warrantless search because there is no testimony as to an exigency that prevented securing a warrant to download the ECM data before the semi truck was moved.

As a result of all of the foregoing, the suppression of the ECM data was affirmed by the Court of Appeals.

II. SELF INCRIMINATION

Trial Court's sustaining of Defendant's Motion to Suppress was appealed by the State and subsequently reversed by the Southern District Court of Appeals because defendant stated only that he "maybe" should get an attorney. Defendant did not unequivocally assert his right to counsel; he reinitiated a conversation regarding the investigation in that he asked to speak with the sheriff and he volunteered information about the investigation before any questioning by the sheriff.

***State of Missouri v Matthew M. Rumbaugh*, ___ S.W.3d ___ (Mo. App 2017) SD35057**

Defendant voluntarily agreed to go with the Sheriff of Laclede County to the police department for information regarding a shooting that occurred earlier that same day. A detective asked the Defendant if he would talk with him and the Defendant replied: "Well, I might talk to you a little bit, I'm thinking, as serious as this is. You say I'm under arrest. I mean, I'm thinking maybe, and I know I can't afford an attorney. So I'm thinking maybe I better get one. Something, you know at least ask." The detective proceeded with interrogation of Defendant which lasted approximately three and a half hours.

The next day, the Sheriff of Laclede County interviewed the Defendant and stated: "Okay, now before you say anything, remember, you're still under-do you remember your rights that we read to you yesterday? So you still understand your rights and everything?" Defendant indicated that he understood his rights, and the Sheriff said, "Alright, go ahead." During the interview the Defendant made incriminating statements to the sheriff.

In this case, Defendant testified at the suppression hearing that he did not believe he "specifically" told an officer that he wanted to talk with his attorney. Rather, the officer was requesting consent to search a house and a vehicle, and Defendant said he did not live in the house and before he did much of anything, somebody ought to call his attorney. The Court of Appeals held that a reasonable police officer would not have understood the Defendant's statement, that before he agreed to any such search, someone should call his attorney, as an invocation of his Fifth Amendment right to counsel for purposes of interrogation.

As to requesting an attorney, the Court of Appeals held that the trial court erred in suppressing Defendant's statements to the detective because such a request

must be unambiguous. While governing legal principal is not “could a suspect’s words be reasonably interpreted to invoke counsel?” Rather, it is whether the suspect’s words were clear and unequivocal. Here, because a reasonable officer could have interpreted defendant’s words to mean that he was only considering whether he should ask for a lawyer, his words did not constitute a clear and unequivocal request for counsel.

In addition, the Court of Appeals held that Miranda warnings need not be given each time an accused is questioned or simply because there is a time delay between the interrogation and when the warnings were read. Miranda warnings are not so ephemeral that they evaporate between questionings. Once constitutional rights they protect are waived, the waiver remains in effect until undone by the person in custody.

As a result, the trial courts ruling suppressing Defendant’s statements to the Sheriff were reversed, and the trial court is directed to enter denying the suppression motion.

III. EVIDENCE

Defendant’s Rule 29.15 Motion for Post-Conviction Relief was denied and subsequently affirmed by the Court of Appeals because the hearsay testimony, which would be otherwise inadmissible, did not satisfy the Strickland test established by the United States Supreme Court in 1984.

Freddie McKee v. State of Missouri, __ S.W.3d __ (Mo. App 2018) WD80411

Defendant was one of several persons in a motor vehicle going from Kansas City to Columbia, being stopped for a license plate lamp being out. Defendant was charged and subsequently convicted of possession of controlled substances. Defendant contended that his trial counsel was ineffective for failing to object to the Highway Patrol Troopers reference during her testimony to a statement made by another Defendant that the marijuana in the vehicle did not belong to that Defendant and that he was willing to disclose who the marijuana belonged to in exchange for leniency. Defendant asserted the statement was inadmissible hearsay, necessarily implicating him, and creating an enhanced impression of his guilt.

The Missouri Court of Appeals held that contrary to the Defendant’s repeated assertions, there is nothing in the testimony of the trooper that can be so prejudicial as to entitle him to post-conviction relief under the Strickland tests. The trooper testified that all three occupants of the car denied ownership of the marijuana and as a result, the court held that the Defendant’s argument that the statement of a co-Defendant in particular prejudiced him to be persuasive. In addition, there was overwhelming evidence of guilt otherwise presented at trial.

Considering the evidence presented at trial establishing Defendant’s guilt, together with the fact that another Defendant’s denial of guilt which Defendant now claims of was presented alongside the denial of each of the other individuals in the vehicle, Defendant failed to establish that a successful objection by trial counsel resulted in the exclusion of the Co-Defendant’s statement which would have altered the outcome of the trial and thus he failed to satisfy the second prong of the Strickland test. The court cited Taylor v. State, 382 S.W.3d 78,82 (Mo. banc. 2012)

in which the court held that where facts present overwhelming evidence of guilt, a defendant filing for post-conviction relief has failed to establish the prejudice prong of the Strickland test and thus is not entitled to post-conviction relief.

Constructive possession of illegal drugs in a storage locker, rented by defendant and his wife, was sufficient evidence to sustain a criminal conviction.

State of Missouri v. Tony L. Faler, ___S.W.3d___(Mo. App 2018) SD34819

Cole County Sheriff's department executed a search warrant for a storage unit rented by Defendant and wife. Upon executing the warrant, the police found inside a drawer of a dresser located immediately inside the door to the storage unit drug paraphernalia, baggies with drug residue, and marijuana stems and seeds. In addition, there was a legal document directed to the Defendant by name and an envelope addressed to Defendant. Defendant was charged with and found guilty of possession of a controlled substance and possession of drug paraphernalia. Defendant appealed solely on the basis that the trial court could not have reasonably inferred that the Defendant knew about the meth and drug paraphernalia because:

1. The dresser was found in a storage locker rented by both Defendant and his wife,
2. Both Defendant and his wife's personal items were found in the dresser in proximity to the drugs,
3. Only a few of the Defendant's personal items were found in the dresser.
4. The State's evidence shows that the items in the storage locker had been packed for moving and shifted from their original location.

As to these four points, the Court of Appeals held as to point one that joint control of the premises requires some further evidence or admissions connecting the accused with the illegal drugs. In this case, the commingling of Defendant's personal items with the controlled substance and paraphernalia provided that that further evidenced a connection to Defendant. As to the second reason, both the Defendant's and his wife's personal items were found in the dresser in proximity to the drugs. Defendant requested the court to consider evidence contrary to his finding of guilty when the standard of review requires the court to ignore such evidence.

As to Defendant's third reason, this assertion ignores the proximity of these items to the contraband and contravenes the standard of review, which prohibits the court from weighing the evidence. The commingling gave rise to a reasonable inference that the Defendant possessed the meth and drug paraphernalia in that drawer. Finally, as to Defendant's fourth reason, Defendant's argument claims license to contravene the court's standard of review and advocate the consideration of contrary evidence and inference by referring to "totality of the circumstances." Court of Appeals held that in reviewing the sufficiency of the evidence, the court looks at the totality of the evidence in circumstances tending to prove guilt together with all reasonable inferences that support that finding. The court specifically ignored contrary evidence and inferences. As a result, the judgment was affirmed.

Defendant's conviction of domestic assault was reversed because the record did not demonstrate that Defendant's waiver of a right to counsel was made knowingly and intelligently.

**State of Missouri v. Justin W. Grant, ___S.W.3d___ (Mo. App 2018)
SD34692**

Defendant appealed a domestic assault conviction on the basis that the court erred in allowing the Defendant to represent himself because this denied Defendant his rights to counsel and due process in that Defendant's purported waiver of counsel was not voluntary, unequivocal, knowing and intelligent. The Court of Appeals reviewed the universal rule that the burden is upon the State to prove that a waiver of counsel is valid. If the record does not disclose such a valid waiver, the presumption raised is that it was not. A determination of whether a knowledgeable and intelligent waiver has been made must be supported by an inquiry conducted on the record so there is evidence demonstrating that the defendant understood the ramifications of the waiver. City of St. Peters v. Hodak, 125 S.W.3d 892 (Mo. App 2004). Under Missouri law, a Defendant's waiver is not knowing and intelligent unless the court timely informs him as to the nature of the charges against him, the potential sentence if convicted, the potential defenses he might offer, the nature of the trial proceedings, and the dangers of proceeding pro se. In this case, the Defendant executed a written waiver which was found not sufficient to prove a knowing and intelligent waiver was met simply because the Defendant signed a form. While the trial court informed Defendant orally of the charges against him, the minimum and maximum possible sentence, and his right to a jury trial, no record was made on two critical areas mandated by Hodak: Defendant was not asked about his knowledge of any possible defenses he might pursue, and Defendant was not informed about the dangers of proceeding pro se.

As a result, due its absence, the State failed to overcome the presumption that Defendant's waiver of his right to counsel was not knowingly and intelligently made. Therefore the judgment was reversed and the case was remanded for a new trial.

Defendant's conviction of stealing by deceit was upheld as a result of the Court of Appeals adopting the "silent witness" theory for admission of a video. Where a reasonable foundation indicating the accuracy of the process producing a video is established, the video may be received as evidence having an inherent probative value and such credibility and weight as the trier of fact deems appropriate.

**State of Missouri v. Shannon K. Moyle, 532 S.W.3d 733
(Mo. App 2017)**

Defendant was observed on Walmart video showing her entering the store and proceeding to the alcohol and soda aisle where she took a case of beer and placed it in a shopping cart along with a hair trimmer, and then proceeded to a customer service desk where they presented their items in their cart for a refund. After reviewing the surveillance video, the police were contacted and the Defendant was charged with stealing by deceit. The surveillance video was admitted at trial, notwithstanding Defendant's objection that the State failed to lay a proper foundation authenticating the video. The question of whether a sufficient foundation has been established to support the admission of evidence is subject to the trial court's broad discretion. In addition, the party offering a video tape in evidence must show that it is an accurate and faithful representation of it purports to show.

In the instant case, however, there was no individual available who witnessed the Defendant placing the beer and hair trimmer in the cart. Thus the State was not able to call a witness to establish, based on personal observation that the store's surveillance video was "a fair and accurate recording" of the depicted event under the traditional standard. Instead, the State argued the video was admissible under what is commonly known as the "silent witness" theory of authentication.

The silent witness theory is "a silent witness which speaks for itself, and is substantive evidence of what it portrays independent of a sponsoring witness." There is no prior Missouri case addressing the "silent witness" theory, but there should be a reasonable foundation indicating the accuracy of the process producing a video.

A trial court should consider:

1. Whether the camera and recording system were working properly at the time of the event depicted;
2. The historic reliability of the camera;
3. Whether the recording is a fair and accurate portrayal of the recording in its original form and has not been altered.

In the instant case, the State had called an Assistant Manager to testify about the store's video system. There was compliance with the above three requirements for foundation under the "silent witness" theory. As a result, the trial court did not abuse its discretion in finding that a proper foundation was established for admission of the store's security surveillance video.

Defendant was convicted of involuntary manslaughter in operating a motor vehicle with Defendant appealing the Court's sustaining of the State's Motion in Limine based in part on the Defendant's deficient offer of proof made orally only by the Defendant's counsel.

State of Missouri v. Paul J. Murphy, 534 S.W.3d 408 (Mo. App 2017) ED105055

Defendant was found guilty of three counts of second degree assault and one count of involuntary manslaughter. Defendant was found to have operated his motor vehicle while intoxicated and the Defendant argued that the trial court erred in granting the State's Motion in Limine barring Defendant's expert witness from opining on whether Defendant was involuntarily intoxicated, criminally negligent, and unaware of his mental and physical impairments. Following the close of the State's evidence, the trial court granted the State's Motion in Limine prohibiting the Defendant's expert witness from giving the above opinions. Instead of having testimony, Defendant's counsel made a narrative offer of proof regarding the expert's barred testimony. The trial court rejected the Defendant's offer of proof and reiterated that it was granting the State's Motion in Limine "for reasons the court has already stated."

The Court of Appeals reviewed the existing law that to preserve a claim relating to a Motion in Limine "the proponent must attempt to present the excluded evidence at trial and, if it remains excluded, make a sufficient offer of proof." An offer of proof must be sufficiently specific to inform the court what the evidence will

be, the purpose and object of the evidence, and the facts necessary to establish admissibility of the evidence.

The Court of Appeals reviewed the universal rule that the preferred method for making an offer of proof is to question the witness outside the presence of the jury. Without such testimony, it is more difficult for counsel to present a detailed and specific summary of a witness's testimony without presenting conclusions of counsel. Mere conclusions of counsel will not suffice. Therefore, when counsel uses the narrative offer of proof he or she "runs a greater risk that the court will find the offer insufficient."

In this case, the Court of Appeals held that the offer of proof did not explain why the expert, after only reviewing Defendant's past medical records and reports, would be qualified to opine on Defendant's awareness of his impairments and whether he was criminally negligent at the time of the accident. As a result, the Judgment of the trial court was affirmed.

Defendant's conviction of first degree assault was affirmed notwithstanding Defendant's appeal of the trial court allowing into evidence the transcript of a victim's testimony at the preliminary hearing, where the witness was determined to be unavailable to submit testimony at trial.

***State of Missouri v. Philip Rasmussen*, 529 S.W.3d 925 (Mo. App 2017) SD34652**

Defendant primarily appealed his conviction based upon his allegation that the trial court abused its discretion in readmitting a witnesses preliminary hearing testimony because doing so violated Defendant's constitutional right to confrontation in that the witness was not proven to be unavailable as the State did not diligently attempt to locate the witness and Defendant was not provided an adequate opportunity to cross examine the witness.

The Court of Appeals began its analysis with reciting the long standing Missouri rule that a witnesses testimony and a defendant's preliminary hearing generally is admissible at the Defendant's subsequent trial if the witness is unavailable at the trial. This rule is applied even though a defense counsel may choose not to make full use of the opportunity to cross examine a witness at the preliminary hearing and the testimony was solicited at the preliminary hearing primarily for a purpose other than establishing probable cause to believe that a defendant committed a felony, and even though, in Missouri, the purpose of a preliminary hearing is to determine probable cause and not guilt, and that the Defendant does not have a right to discovery until after the preliminary hearing, which occurs outside the presence of a trial jury.

In this case, the preliminary hearing was obviously recorded, the Defendant and his attorney were present in person, the witness was placed under oath, examined by the prosecutor, and subjected to cross examination by defense counsel without any objection by the prosecutor and without the hearing court placing any limits on defense counsels cross examination. The State prior to trial filed a motion informing the trial court that the State and Defendant were unable to locate the witness, and requested that the witness's testimony at the preliminary hearing be admitted. The trial court sustained the State's motion.

The Court of Appeals held that the audio recording of Defendant's preliminary hearing showed that the Defendant's counsel cross examined the witness at the hearing, and that the trial court did not limit in any way defense counsel's cross examination of the witness. In these circumstances, the trial court's admission at trial of the witnesses preliminary hearing testimony did not violate Defendant's constitutional right to confrontation if the witness was unavailable at trial. The Court of Appeals additionally held that the witness was proven to be unavailable and at that the prosecution had met the burden to prove a good faith effort to obtain the presence of the witness. As a result, the conviction was affirmed.

Defendant unsuccessfully argued that the trial court erred in overruling his Motion to Suppress a victim's pretrial and in-court identifications because the identification procedures were impermissibly suggestive.

**State of Missouri v. Devon M. Robinson, ___ S.W.3d ___
(Mo. App 2018) ED105384**

Defendant was convicted of first degree robbery and appealed his conviction based upon what he categorized as an impermissibly suggestive pretrial and in-court identification of the victim at a physical and photographic lineup. Defendant argued that because the victim was unable to identify the Defendant in a six person photographic lineup but subsequently identified him in a four person physical lineup that the identification was impermissibly suggestive. Additionally, Defendant contended that he was presented as the first person in both lineups and was the only person in common between the two lineups.

The Court of Appeals held that a trial court has broad discretion in the admission of evidence, and a conviction will be reversed based on an evidentiary error only if the error was so prejudicial that it deprived the Defendant of a fair trial. In this case, Defendant had to show that the pretrial identification procedure was unnecessarily suggestive and the suggestive procedure made the identification unreliable. The court held that Defendant's presence as the only common participant in both the photographic display and physical lineup rendered the subsequent lineup impermissibly suggestive did not render the subsequent physical lineup impermissibly suggestive. Defendant failed to prove additionally how his position within the sequential lineups created a risk of improper identification or influenced the victim's selection. Viewed in their totality, neither the photographic display nor the physical lineup was impermissibly suggestive. As a result, the conviction was affirmed.

The trial court did not abuse its discretion in overruling a defendant's objection to an owner's testimony regarding the value of cattle taken, in that the testimony was not offered for the truth of the matter asserted and did fit an exception to this general rule against hearsay.

**State of Missouri v. Calvin M. Rose, ___ S.W.3d ___(Mo. App
2018) SD34982.**

Defendant appealed his conviction for receiving stolen property primarily on the basis that the victim's opinion as to the value of the cattle was based upon a third party without any personal knowledge of the value of cattle. The prosecutor argued that the victim was competent to testify as to the value of the cattle because he is an owner and that the sources and quality of the victim's information as to the

value went to the weight of the evidence and was properly for the jury to decide. The court overruled the Defendant's objection. The Defendant appealed based upon the victim's testimony regarding the value of the stolen cattle was, by the victim's own admission, an out of court statement. The victim testified that he is not in the business of buying and selling cattle, doesn't personally know what the cattle were worth, and that his testimony regarding the value was based on what he had heard on television and through "paperwork." These references were out of court statements and the Defendant indicated it was inadmissible hearsay.

The Court of Appeals held that the owner of stolen property need not be experienced in valuating such property in order to express an opinion, even if that opinion has as a basis what would otherwise be inadmissible hearsay. Because the trial court is in a superior position to assess the probative value and competency of opinion evidence, it enjoys considerable discretion in admitting such evidence. In this case, it was appropriate for the jury to consider the credibility of that evidence. As a result, the judgment of the trial court was affirmed.

The introduction of confidential records of a defendant, and Defendant's prior bad acts, was error and the trial court should have sustained Defendant's request for mistrial based upon the prosecutor's evidence and statements concerning this error.

***State of Missouri v. Jhonna Salmon*, ___S.W.3d___ (Mo. App 2018) ED104696**

Defendant was charged and subsequently convicted of endangering the welfare of a child and neglect of a child. The Defendant claimed that the trial court should have sustained her Motion for Mistrial based upon the State's cross examination of a half brother of the Defendant relating to Defendant's prior juvenile record and Defendant's prior bad acts of "assaulting two people last week."

The Court of Appeals first reviewed the confidentiality of juvenile records in Missouri being strongly protective by the legislature and judiciary. In addition, it quoted Section 211.271.3 providing:

"All admissions, confessions, and statements by a child in state custody to the juvenile officer and juvenile court personnel and all evidence given in cases under this chapter, as well as all reports and records of the juvenile court, are not lawful or proper evidence against the child, and shall not be used for any purpose whatsoever in any proceeding, civil or criminal, other than proceedings under this chapter."

The prohibition on use of juvenile records as evidence is mandatory and all inclusive. As a result, the prosecutor's questions relating to her juvenile record were clearly improper.

In addition, Defendant objected to the prosecuting attorney's cross examination of Defendant's witness as to uncharged criminal acts or "prior bad acts". An exception to the general rule regarding admissibility of prior bad acts is the curative admissibility doctrine, otherwise known as "opening the door." This doctrine says that after one party introduces inadmissible evidence, the opposing party may introduce otherwise inadmissible evidence of its own to rebut or explain inferences

raised by the first parties evidence. In this case, the State, not the defense, elicited the opinion testimony about the Defendant's character from the witness. Therefore, it was not a defendant's question opening the door and the State could not introduce inadmissible prior bad acts to rebut its own evidence.

Finally, the trial court was found to have abused its discretion by denying Defendant's request for a mistrial and that the error prejudiced the Defendant. The Court of Appeals held that this was a "close case" where the guilty verdict rest on inferences that the Defendant knowingly endangered a child by under feeding the child. Given the fact that the evidence of the Defendant's guilt was not overwhelming, the Court of Appeals held a reasonable probability that the prosecutor's improper questions regarding prior bad acts and the confidential juvenile records affected the outcome of the trial. Therefore, the trial court did in fact abuse its discretion by denying the Defendant's request for mistrial. The case was therefore reversed and remanded for a new trial.

Hospital admission records, offered under the business records statute, Section 490.680, did not violate the Sixth Amendment right of Confrontation Clause as the records were not prepared in anticipation of criminal proceedings and are therefore not testimonial.

State of Missouri v. Kurt A. Steidley, 533 S.W.3d 7 (Mo. App 2017) WD79348

Defendant was convicted of arson in the second degree. Among other points of error, Defendant complains that the trial court erred in the admission of certain hospital records of admission of Defendant's treatment he received on the day of the fire. The State introduced those hospital admission records during an ATF agent's testimony using an affidavit signed by the hospital's custodian of records. The hospital admission records indicated that the Defendant reported elbow pain after falling and landing on his elbow. The hospital records undermined the Defendant's credibility, as they contradicted Defendant's report to the ATF agent that he sustained a head injury on the day of the fire at his home, and his statement that another witness that he sustained a head injury at his sporting goods store.

Defendant first argued that the affidavit used to impeach his hospital records failed to comply with the requirements of Section 490.680 because it did not include a description of the mode or method of preparation. The Court of Appeals held as to this point that the trial court has broad discretion to admit or deny evidence during a criminal trial and error only occurs when there is a clear abuse of discretion. In this case, the affidavit complied with the above section of Missouri law so Defendant's argument as to this point failed.

Defendant also argued that the hospital records admission violated his Sixth Amendment right to confront a witness. Defendant only argued at trial through his attorney that their admission would violate his rights "under the Missouri Constitution and the Constitution of the United States." The court held that this was insufficient to preserve a claim of violation of the Sixth Amendments Confrontation Clause for appellate review. By failing to raise the specific constitutional objection at the time the records were first admitted, his objection under the Sixth Amendment was not preserved in appeal.

Finally, the court held that even if the Defendant had preserved the issue by timely raising his constitutional concern to admission of the hospital records, the objection would not have been sustained. Ordinary business records tend to be excluded from the scope of the Sixth Amendments Confrontation Clause as they were not prepared in anticipation of criminal proceedings and are therefore not testimonial. *Melendez Diaz v. Massachusetts*, 557 US 305(2009) admission of a business record containing a statement by defendant in the nature of an admission against interest does not constitute testimonial evidence that violates the confrontation clause of the Sixth Amendment. Accordingly, the Judgment was affirmed.

IV. CRIMINAL PROCEDURE

Kansas City's appeal from the trial court's Judgment against Defendant awarding the City unpaid earnings taxes and other costs, but failing to award prejudgment interest was dismissed because the City's Municipal ordinance authorizing imposition of interest was not admitted into evidence in trial.

***City of Kansas City v. Bego Cosic*, ___S.W.3d___(Mo. App 2018)
WD80985**

Kansas City filed a petition against Defendant seeking to recover delinquent earnings taxes for four prior years. In the trial that was conducted in 2017, the City introduced twelve exhibits, three of which were purported to be controlling ordinances applicable to the monies sought. In addition, the City presented testimony from a senior analyst with Kansas City's Revenue Division testifying that the Defendant had not paid earnings taxes and interest totaling \$2,823.76. The trial court entered judgment in favor of the City for the principal amount, but did not award the City any penalties or pre-judgment interest.

Kansas City's single point on appeal argued that the trial court erroneously failed to award the City pre-judgment interest because the applicable Municipal ordinance mandates the imposition of pre-judgment interest on the Defendant's unpaid earnings taxes. The interest rate according to the ordinance is 12% per annum on all unpaid earnings taxes.

The Court of Appeals held that the City did not establish that the applicable ordinance was admitted into evidence at trial, the trial transcript does not include any specific reference to the ordinance, and the senior analyst's testimony does not constitute proof of the contents of the ordinance. Curiously, the exhibits were not deposited with the court and as a result, the contents of the applicable ordinance were not a part of the record on appeal. Kansas City attempted to cure the defect by including in the appendix to its brief a copy of what it claims is the applicable section. However, the Court of Appeals held that items contained in an appendix, but which are not in the legal file or deposited with the Court are not considered on appeal. As a result, the Court of Appeals affirmed the trial court's judgment and the City's appeal was dismissed.

Pro Se Defendant's conviction of failure to yield to an emergency vehicle and subsequent ten day jail sentence was affirmed notwithstanding Defendant's argument that because Defendant was not engaged in "Commerce" as defined in 49 U.S. Code § 31301, he was not subject to the

laws the officer sought to enforce and second, that he was denied due process because he was not allowed to fully question the officer as to legal definitions of “commerce”.

State of Missouri v. Joshua Morgan Gorombey, ___ S.W.3d ___
(Mo. App 2018) WD80016

Defendant was stopped off of Interstate 435 in Clay County, Missouri as a result of the Highway Patrol Officer determining that Defendant was traveling 93 miles per hour in a construction zone with a reduced speed of 55 miles per hour. (The information for speeding was subsequently amended by the State to driving 93 in a 65 mile per hour zone because of apparent deficiencies in the proof required pursuant to Section 304.582 R.S.Mo. Defendant traveled approximately one half mile between the time the officer initiated the emergency lights and stopping his vehicle. He gave expressions to the officer during that one half mile that he was not intending to stop.

During the stop, the Defendant denied driving his vehicle, although he was seated in the driver’s seat and failed to produce a driver’s license. In addition, he failed to produce proof of insurance.

The Defendant, again pro se, raised six points of error on appeal. The Defendant’s main and initial point was that he was denied due process by allowing the officer to testify because the officer was not competent to act as a witness. First, Defendant argued that because he was not engaged in “Commerce” he was not subject to the laws the officer sought to enforce. Secondly, the Defendant argued that he was denied due process because he was not allowed to fully question the officer as to the legal definitions of “commerce” and that the officer was not able to answer the Defendant’s questions regarding the legal definitions to the Defendant’s satisfaction. Therefore, Defendant concluded that the officer was incompetent to testify.

The Court of Appeals held that a witness is competent if he or she shows:

1. A present understanding of, or the ability to understand upon instructions, the obligation to speak the truth;
2. The capacity to observe the occurrence about which testimony is sought;
3. The capacity to remember the occurrence about which testimony is sought;
4. The capacity to translate the occurrence into words.

The Court of Appeals found that since the Defendant never objected to the officer’s testimony on the basis of competence, any such objection is waived. In addition, the officer was present and personally observed all of the factual events that formed the basis of his testimony. Furthermore, there is no exception that such limitations of speed only apply to those engage in “commerce”. Missouri has the authority to regulate speed for public safety, including criminal sanctions and has done so by establishing statutes setting forth such regulations. The officers allegedly deficient answered as to statutory definitions did not render the witness to be an incompetent witness. Generally, witnesses testify as to facts and do not express an opinion as to the ultimate issue of guilt which is determined by the trier of fact or opinions on the law which must ultimately be determined by the Judge.

All of the points of appeal raised by the Defendant were denied and the conviction was affirmed.

Trial court was found under no duty and therefore did not plainly err in failing to sua sponte order a mental examination of Defendant.

State of Missouri v. David Hygrade, ___S.W.3d___(Mo. App 2018) ED105145

Defendant was convicted of two counts of unlawful possession of a firearm. A jury convicted him of both counts and he was sentenced to fifteen years imprisonment, concurrently. Defendant alleged the trial court erred in failing to sua sponte order a competency examination of Defendant after reviewing the sentencing assessment report (SAR). Defendant believed there were several factors present in the SAR to give the trial court reasonable cause to question Defendant's competency to stand trial.

The Court of Appeals was requested to consider the claim under a different standard of review other than plain error, since the issue of competence was not raised at all by Defendant at trial. The Court of Appeals disagreed in this case, and as a result, the court considered this case only to determine "whether manifest injustice or a miscarriage of justice would result if the unpreserved error is left uncorrected".

The Court of Appeals began its analysis in this case reviewing the universal rule that a Defendant is competent to stand trial if he has sufficient ability to consult with his attorney and has a rational and factual understanding of the proceedings against him. The opinion cites Section 552.020.2, R.S.Mo., which requires a Judge to sua sponte order a mental exam of the Defendant if "he or she has reasonable cause to believe the Defendant lacks the mental capacity to proceed." However, in order to require a sua sponte order of an examination, there must be some information, evidence, or observation to trigger the statutory requirement of "reasonable cause." Trial courts are vested with broad discretion in regard to their decision to grant or deny a mental examination.

The Court of Appeals cited that there is no single factor that determines whether or not a trial court with reasonable cause to question a Defendant's mental capacity must order a mental examination. However, the factors that a court should consider are:

1. Prior commitments to mental institutions for evaluation.
2. Inappropriate behavior on the witness stand or inappropriate responses.
3. Bizarre circumstances surrounding the alleged criminal activity in the case.
4. The nature of the prior offenses causing earlier examinations.

In this case, Defendant only specifically points out to the facts that:

1. His full scale IQ score is 59,
2. He was diagnosed with intellectual disabilities,
3. He received social security disability benefits,
4. He read at a third grade level at age 29,

5. He was held at a medical center for federal prisoners when he was federally incarcerated.

The Court of Appeals held that the factors above were insufficient to give the trial court reasonable cause to believe that the defendant lacked capacity.

As a result, the Court of Appeals indicated it could not conclude that a reasonable Judge, faced with the same information as the trial court in the present case, should have experienced doubt as to Defendant's competence. When considered in light of the circumstances in their entirety, the factors Defendant points out in the SAR do not rise to the level of reasonable cause to require the trial court to order a mental examination on its own motion. As a result, the trial court did not err, plainly or otherwise, in failing to sua sponte order a mental examination of Defendant.

Defendant unsuccessfully appealed a verdict convicting Defendant of leaving the scene of a motor vehicle accident, under the "plain error" rule, notwithstanding the prosecutor making a closing argument with several references to Defendant's possible intoxication during the accident, all of which Defendant counsel did not object.

State of Missouri v. Oren Rea Rinehart, ___S.W.3d___(Mo. App 2018) SD34828

Following a jury trial, Defendant was sentenced to three years in prison for leaving the scene of a motor vehicle accident in which a death occurred. Defendant asserted that the trial court plainly erred in failing to grant him a new trial after the prosecutor, in closing argument, made reference to Defendant's possible intoxication on the night of the accident. Initially, the Court of Appeals observed that Defendant's claim was unpreserved inasmuch for the reason that Defense counsel did not make a timely objection to several references made by the prosecutor in closing arguments to Defendant's possible intoxication. Nevertheless, the Court of Appeals did consider the merits of the Defendant's claim under the "plain error" rule which contemplates two steps:

1. The review in court inquires whether the claimed error is a plain error affecting substantial rights and
2. If plain error affecting substantial rights is found, the court determines whether the error actually did result in manifest injustice or a miscarriage of justice. In this case, Defendant contended that the trial court plainly erred in failing to sua sponte declare a mistrial after the prosecutor's comments in closing argument. In other words, the Defendant attempted to essentially place the burden and responsibility for corraling a prosecutor in his closing arguments to the jury.

When the Defendant's counsel objected, though untimely, counsel did not request a mistrial, but instead requested that the jury should be advised that there was not evidence of drinking and to disregard those comments of the prosecutor. The trial court granted this request for relief and allowed the Defendant to come back in further closing argument to argue that there was no evidence of intoxication. The Court of Appeals held that where the trial court grants Defendant all the relief he requested, the trial court does not err.

As a result, the Judgment of the trial court is affirmed.

Before probation can be provoked for failing to pay amounts due as a condition of probation, the sentencing court must inquire into and make findings regarding the reasons for the Defendant's failure to pay.

**State of Missouri, ex rel. Hawley v. The Hon. Bart Spear,
___S.W.3d___ (Mo. App 2018) WD81140**

Without describing the procedural avenue for having this case before the Court of Appeals, the issue presented before the Court was whether the sentencing court had complied with the Missouri Supreme Court holding in State ex rel. Fleming v. Board of Probation and Parole, 515 S.W.3d 224 (Mo. banc 2017) regarding a sentencing court failing to make the required inquiries and findings concerning a Defendant's reasons for failing to pay restitution and failing to consider alternatives to imprisonment. Defendant in this case was presented with an order following a completion of a 120 day shock incarceration to pay restitution to the victim under his conviction of financial exploitation of the elderly in the sum of \$242,000.00. He owed in excess of \$200,000.00 and did not comply with the requirement to pay a monthly restitution payment of at least \$4,000.00 per month.

The trial court held a probation violation hearing in which the only evidence adduced by the State concerned Defendant's non-payment of restitution was its provision of a printout, showing that Defendant had paid only \$6,200.00 since a previous hearing. Defendant offered evidence of his current employment at the rate of \$11.00 per hour. No other evidence was submitted by either party. Following the revocation hearing, the court entered an order and judgment that the 25 year sentence be executed.

Three years later, Defendant filed a Petition for Writ of Habeas Corpus alleging that the sentencing court improperly revoked his probation. The sentencing court agreed and the State of Missouri filed this appeal to the court's order reinstating probation.

The Missouri Court of Appeals, Western District held that Defendant should be discharged from his sentence of imprisonment, released from custody of the Department of Corrections and restored to his status of a probationer under the sentencing court's orders setting the terms and conditions of his probation. The court reasserted the application in Missouri of the United States Supreme Court opinion, Beardon v. Georgia, 461 U.S. 660 (1983), setting forth that before a sentencing court revokes a probation for failure to pay a fine or restitution, the court must determine whether the Defendant refused to pay or failed to make sufficient bona fide efforts to acquire the resources to pay. If the court determines that the Defendant did not make bona fide efforts to pay, then the court must consider alternate measures of punishment other than imprisonment. In this case, because neither the sentencing court's findings nor its record justified a determination that the Defendant had not made sufficient bona fide efforts to find sufficient work to pay his restitution, the sentencing court was correct in reinstating his probation status and having the defendant released from the Department of Corrections after a three year stint at Crossroads Correctional Center.

Where a defendant who pleaded guilty to DWI and felony driving without a valid license challenged the enhancement of the offenses to felonies, the case is remanded for re-sentencing because the State did not present any evidence to support a finding that the Defendant had prior convictions for driving without a valid license.

***Patrick H. Syre v. State of Missouri*, ___S.W.3d___(Mo. App 2018)
WD80132**

Defendant was convicted of class B felony driving while intoxicated and class D felony driving without a valid license. At the time that the pleas of guilty were entered by the Defendant, the Circuit Court questioned Defendant at the plea hearing to ensure that his guilty pleas were made knowingly, intelligently, and voluntarily. The class B felony information set forth the ten prior alcohol related convictions for which there was the basis for enhancement. However, the information, testimony of the Defendant at the plea hearing, and the State's evidence, did not present anything which would support a finding that the Defendant had prior convictions for driving without a valid license.

The Defendant at sentencing did not admit his prior convictions for driving without a valid license. At that hearing, the driving without a valid license offense was mentioned only once, and the discussion consisted solely of the prosecution and the defense both recommending that any sentence on the driving without a valid license offense should be ordered to run concurrent to Defendant's sentence for driving while intoxicated. Even with the oral judgment, the court did not pronounce a sentence for driving without a license, but in the written judgment ordered a four year sentence to run concurrently with the ten year driving while intoxicated class B felony.

Defendant appealed both of his felony convictions based upon his argument that the prosecutor never presented evidence of his prior convictions for intoxication related offenses and the court made no findings concerning his prior convictions for driving without a valid license. The Court of Appeals held that the Defendant waived proof of his prior convictions, as contemplated by Section 577.023.11. In addition, during the plea hearing, the Prosecutor stated that the Defendant was arrested for DWI, "has ten prior convictions for driving while intoxicated." Defendant agreed with the recitation of the facts by the prosecutor. However, Defendant's conviction of a class B felony of driving without a license is a different story.

Unlike the enhancement of Defendant's driving while intoxicated offense, Defendant's driving without an invalid license was enhanced to a class B felony without a sufficient evidentiary hearing. The State did not present any evidence at the guilty plea or sentencing hearing which would support a finding that Defendant had prior convictions for driving without a valid license. In addition, there was not basis to find that Defendant waived proof of the prior convictions necessary to enhance his driving without a valid license offense. Finally, Defendant did not even admit his prior convictions of driving without a valid license at the sentencing hearing. Because the State failed to present sufficient evidence to establish that Defendant had prior convictions for driving without a valid license, and that Defendant did not waive proof of those convictions, his offense should not have been classified as a class D felony.

The court remanded the case, not to give the State another opportunity to "cure" its failure to present evidence of the Defendant's prior conviction, but to

instruct the Circuit court for resentencing on the charge of driving without a valid license as a misdemeanor.

V. DWI/ADMINISTRATIVE CASES

§ 577.041.1 provides a limited statutory right to confer with an attorney prior to taking a breath test. The statute allows for a reasonable opportunity to contact an attorney to make an informed decision. This does not necessarily include a right to privately speak with an attorney away from the peace officer.

**Roesing v. Director of Revenue, ___ S.W. 3d ___ (Mo. App. 2018);
WD80585 (03/13/2018)**

Roesing appealed from the trial court's determination sustaining revocation of his license for failing to submit to a chemical test. He challenges the determination because he claims that he was not allowed to speak to his attorney violating his right to consult with counsel.

Following his arrest on suspicion of DWI, Roesing was read the implied consent law. He was permitted to use his cell phone to contact an attorney and had asked to speak to his attorney in private. The discussion could not be private because every room in the detention facility was audio and video recorded. As a result, he continued his conversation with his attorney in the officer's presence, with the officer standing three to four feet away. The officer testified that he could hear what Roesing was saying during the call but he could not hear what the attorney was saying. The trial court sustained the revocation of his driving privileges.

Roesing challenged the third component of the statutory scheme under the implied consent law with respect to refusals, that is, that he was not allowed to speak with an attorney because he was not allowed to do so in private. The statute allows twenty minutes within which to contact an attorney. Roesing contends, however, that he should have been allowed to do so in private and failure to allow him to do so invalidated his refusal to submit to a test.

THERE IS NO CONSTITUTIONAL RIGHT TO SPEAK WITH AN ATTORNEY WHEN DECIDING TO TAKE A BREATH TEST. THE RIGHT IS STRICTLY PROVIDED BY STATUTE WHICH GIVES A REASONABLE OPPORTUNITY TO CONTACT AN ATTORNEY WITHIN A TWENTY MINUTE TIME-FRAME. The statutory scheme was met when Roesing was given twenty minutes to contact an attorney as required by the statute. The subsequent refusal was, therefore, valid. There is no right to confer privately with an attorney covered by the statute. To allow same would be to broaden the definition of reasonable opportunity to contact an attorney beyond those definitions provided in Missouri case law. The court looked for guidance in a case involving a statutory right to communicate with counsel in termination of parental rights proceedings where the Missouri Supreme Court held that the lack of ability to have private conversations with counsel due to the Department of Corrections personnel's presence did not violate the statutory schemes.

Furthermore, it did not violate the attorney/client privilege nor waive same because a driver is required to involuntarily conduct the conversations in the presence of the lawyer. The attorney/client privilege dictates whether the communication could be admitted at trial, it does not implicate whether Roesing was

afforded the statutory right to contact counsel. Roesing was not denied his limited statutory right to contact an attorney. AFFIRMED.

A party may be sentenced to enhanced punishment based upon prior convictions. Proof of prior convictions may be waived by the actions of the defendant.

Sayre v. State, ___ S.W. 3d ___ (Mo. App. 2018); WD80132 (2/2/2018)

Sayre pled guilty to one count of driving while intoxicated and also driving without a license but each charge was enhanced to a felony because of prior convictions. He sought to vacate his sentences claiming no evidence of his prior convictions were presented at the hearing for purposes of enhancement. The charging document reflected that he had been convicted of ten prior intoxication related traffic offenses. At the sentencing hearing, he claimed he clearly understood the nature of the charges against him and had read the documentation. Specifically, the prosecutor stated that he had ten prior convictions for driving while intoxicated.

Sayre's motion for post-conviction relief claimed that he was prejudiced by the lack of evidence and findings regarding the prior convictions with respect to the DWI as well as the license charge. Unlike the DWI charge, there was no mention of any predated driving without a license offenses at the plea hearing.

ENHANCED SENTENCING REQUIRES PROOF OF PRIOR CONVICTIONS. A PARTY MAY WAIVE PROOF OF PRIOR CONVICTIONS BY ACKNOWLEDGING THE ACCURACY OF THE PLEA DOCUMENT OR INFORMATION PRESENTED AT THE PLEA HEARING.

The charging document reflected ten prior convictions for driving while intoxicated and such recitation of that factual basis was mentioned at the plea hearing and acknowledged by Sayre. Accordingly, Sayre waived proof of those prior convictions and cannot complain afterwards of the lack of same.

With respect to the driving without a license, there was no such acknowledgment so insufficient proof was presented to support those convictions or any claim that there was a waiver of proof of prior convictions. Accordingly, the driving without a license was vacated and remanded for resentencing. The post-conviction relief with respect to the DWI was denied.

The Fourth Amendment generally declares warrantless seizures as unreasonable. One exception to the general rule is a brief investigative stop supported by reasonable suspicion. Reasonable suspicion will justify a stop where unusual conduct is observed which leaves a reasonable person, in light of their experience, to conclude criminal activity may be afoot.

State v. Atkinson, ___ S.W. 3d ___ (Mo. App. 2018); SD34966 (0/01/2018)

Atkinson appealed her conviction of driving while intoxicated and failing to drive on right half of the roadway. She claimed the court erred in rejecting her motion to suppress because there was no reasonable suspicion for the traffic stop

and no evidence she violated the provisions of § 304.015 regarding driving on the right half of the roadway.

An officer was assigned to the DWI Specialist Unit with the Greene County Sheriff's Department and while stopped at a traffic light observed a person, Atkinson, beside them in the right-hand lane slouched over searching for her mouth with a cigarette. After the light changed, Atkinson's vehicle was observed moving over to the right shoulder past the fog line and started to drive on the right shoulder, at one point being almost entirely on the right shoulder. This lasted approximately 20 seconds. Atkinson was stopped and the officer, who was a certified drug evaluator, conducted a DWI investigation at the roadside. The officer admitted that the entire incident occurred in a matter of seconds and that she considered Atkinson driving on the shoulder far enough to where it was a very unusual action to take. She also claimed the traffic stop was made due to a lane violation. Further testimony consisted of the officer describing Atkinson trying to find her mouth with a cigarette she had lit in her hand, searching, tapping it to her face, and sliding it in her mouth, again indicating what the officer believed to be unusual behavior.

After Atkinson was stopped, she had difficulty removing her driver's license, slurred speech, bloodshot and watery eyes consistent with substance impairment, according to the officer. Further field sobriety tests, according to the officer, were consistent with intoxication and based on the officer's experience as a DRE, Atkinson was under the influence of some type of substance. A drug recognition evaluation was made, as well as a blood draw. Atkinson admitted to taking Methadone and a drug called Celexa. The officer concluded based upon her evaluation that Atkinson was too impaired to drive.

Atkinson presented no evidence and was found guilty on all counts and challenged the evidence of reasonable suspicion and the grounds for the stop based on failing to drive on the right half of the roadway. REASONABLE SUSPICION THAT WILL JUSTIFY THE MINIMAL INTRUSIVE TERRY STOP IS PRESENT WHEN A POLICE OFFICER OBSERVES UNUSUAL CONDUCT WHICH LEADS HIM OR HER REASONABLY TO CONCLUDE IN LIGHT OF HIS OR HER EXPERIENCE THAT CRIMINAL ACTIVITY MAY BE AFOOT. THE COURT LOOKS AT THE TOTALITY OF THE CIRCUMSTANCES TO EVALUATE WHETHER REASONABLE SUSPICION HAS BEEN MET.

The Court concluded that the circumstances here were sufficient to warrant reasonable suspicion. The officer observed unusual conduct, suggestive of intoxicated driving, the difficulty finding the cigarette in her mouth, deviation over the fog line, and substantial deviation onto the shoulder. Consequently, there was sufficient indicia that criminal activity may have been afoot to warrant the officer's traffic stop.

The Court further notes on the charge of failing to drive upon the right half of the roadway that statutorily it is required that, in order to comply with the statute, a person must drive upon the right half of the roadway. The court finds that roadway is defined as that portion of the state highway ordinarily used for travel, exclusive of the shoulder. Consequently, the fog line and shoulder are not part of the roadway and a violation of the statute occurred. JUDGMENT AFFIRMED.

The crime of driving while intoxicated is not required as an element of the offense, the commission of a traffic violation. The offense is committed by the act of driving while in an intoxicated condition.

**State v. Barlow, ___ S.W. 3d ___ (Mo. App. 2018); WD80363
(03/27/2018)**

Barlow appealed a conviction of the class B felony of driving while intoxicated. He claimed the trial court erred in the admission of evidence obtained as a result of the traffic stop, alleging no reasonable suspicion to stop his vehicle. Barlow was observed talking with a group of friends by an officer who he noticed that Barlow had bloodshot and glassy eyes and smelled of intoxicants. This was while standing outside a café. The officer also heard Barlow speaking and detected slurred speech and he also smelled of intoxicants. Before the officer could detain Barlow to prevent him from driving, he got into the driver's seat of a vehicle and drove away. The officer attempted to locate Barlow but was unable to immediately do so. Approximately ten minutes later, he observed Barlow's vehicle drive past and was able to stop it. After the stop, he again observed the same signs of intoxication that he had previously observed. Field sobriety tests were conducted revealing signs of intoxication. The breath test showed Barlow's BAC was .286 percent.

Barlow with charged with a DWI, a chronic offender. He filed a motion to suppress claiming the stop was not supported by reasonable suspicion. The motion was overruled and Barlow did not renew his objection to the admission of the evidence at trial.

Barlow alleged that bloodshot and glassy eyes, slurred speech, and a strong odor of intoxicants was not enough to justify the traffic stop when the officer did not observe Barlow make any traffic violations before stopping him. Since the objection was not properly renewed after overruling the Motion to Suppress, the court looked to whether, in its discretion, it could review the matter as plain error. Plain error would require the court to determine whether there were substantial grounds for believing a 'manifest injustice or miscarriage of justice occurred, and then whether or not such miscarriage of justice or manifest of justice will occur if the error is left uncorrected. The court did not feel that the claim here established substantial grounds for manifest injustice but nonetheless reviewed the issue of the stop as a warrantless search and seizure under the Fourth Amendment. THE LAW DOES NOT REQUIRE THAT A POLICE OFFICER DEVELOP REASONABLE SUSPICION A PARTY WAS INTOXICATED UNLESS FIRST OBSERVING THE PARTY COMMIT A TRAFFIC VIOLATION. THE CRIME OF DRIVING WHILE INTOXICATED DOES NOT HAVE SUCH A REQUIREMENT,

In this case, the officer observed Barlow in an intoxicated condition before entering his vehicle, having had a reasonable opportunity to observe his physical condition. These observations were made before Barlow entered his vehicle and ten minutes before the traffic stop. Accordingly there were specific and articulable facts justifying a reasonable suspicion to justify the stop. JUDGMENT AFFIRMED.

To be admissible an HGN field sobriety test must be properly administered in order to form the bases for probable cause for the arrest.

**State v. Deweese, ___ S.W. 3d ___ (Mo. App. 2018); WD80076
(02/27/2018)**

Deweese appealed his conviction of driving while intoxicated as a persistent and chronic offender. He specifically challenged the admission of the HGN test, alleging the State failed to lay a proper foundation for admission of the test. He was

stopped by an officer who observed him swerving within the lane of traffic and crossing the center line numerous times. After emergency lights were activated, Deweese did not stop for nearly eight blocks, then an additional five blocks after the sirens were activated.

Indicia of intoxication upon being stopped included bloodshot and watery eyes, difficulty obtaining personal papers, not knowing where he was coming from or going, odor of intoxicants and admission to drinking two drinks of vodka before driving. An HGN test was performed and the officer testified that all six clues of intoxication were present. In addition, he failed several field sobriety tests, testing .274, and was placed under arrest and eventually found guilty for driving while intoxicated.

Deweese contended that the officer did not correctly perform the HGN test. He also challenged whether the test was even performed based on a witnesses testimony who was a hundred feet away who claimed he did not see any tests being performed by the officer.

TO ADMIT THE HGN TEST INTO EVIDENCE THE STATE MUST SHOW THE OFFICER WAS ADEQUATELY TRAINED TO ADMINISTER THE TEST AND RENDER AN OPINION AND THE TEST WAS PROPERLY ADMINISTERED. IT HAS BEEN HELD THAT EIGHT HOURS OF INSTRUCTION IS SUFFICIENT TO ALLOW ADMINISTRATION OF THE TEST. The officer testified he had at least eight-hour shifts of training on the HGN test and the corresponding certificate plus training pursuant to the NHTSA manual. Accordingly, the court found that the officer possessed the necessary training to administer the test and render an opinion.

The witness' testimony, being inconsistent with the officer's, did not render the test inadmissible. The jury was free to disbelieve or believe any conflicting testimony and judge the witnesses credibility. JUDGMENT AFFIRMED.

Defendant's conviction of driving while intoxicated was upheld based on circumstantial evidence that the defendant was operating a motor vehicle while in an intoxicated condition. There was a temporal connection between the defendant's operation of the vehicle and his observed intoxication.

State v. Lopez, 539 S.W. 3d 74 (Mo. App. 2017)

Lopez was found guilty by the trial court of driving while intoxicated, endangering the welfare of a child, and driving without a valid license. Lopez appeals arguing that there was insufficient evidence to support the DWI conviction, and that the trial court erred in permitting an instructional error and improperly applying the law

An officer responded to a dispatch reporting a vehicle accident. He found a vehicle had gone off the road and struck a tree. Lopez was outside the vehicle but identified himself as the driver and stated his child was with him at the time of the accident. He produced a Mexican identification card, but he did not have a Missouri driver's license or an international driver's license. He had a moderate smell of alcohol, slurred speech, was swaying, and his eyes were bloodshot, watery, and glassy. He showed nystagmus on the HGN, and showed impairment on application of several field sobriety tests.

On appeal, Lopez argued there was insufficient evidence for conviction of the DWI charge. TO SUSTAIN A CONVICTION OF DWI, THE STATE MUST PROVE BY DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOT ONLY THAT THE DEFENDANT WAS INTOXICATED, BUT THAT DEFENDANT OPERATED THE VEHICLE WHILE IN AN INTOXICATING CONDITION. THIS CAN BE PROVEN BY CIRCUMSTANTIAL EVIDENCE WHICH GIVES RISE TO A LOGICAL INFERENCE THAT A PARTICULAR FACT EXISTS. THERE MUST BE A SUFFICIENT TEMPORAL CONNECTION BETWEEN DEFENDANT'S OPERATION OF THE VEHICLE AND THE OBSERVED INTOXICATION.

Defendant argued that the evidence of intoxication was too remote.

The court reviewed the timeline as follows: crashed vehicle 7:20 p.m.; dispatch call at 7:30 p.m.; officer arrival 10-15 minutes later, observed signs of intoxication. The court notes there was approximately 30 minutes or less between defendant's admission he was driving and the officer's observations of intoxication and that this was sufficiently close in time to support an inference of intoxication while driving .

In addition, the court believed there was sufficient circumstantial evidence and witness testimony to prove intoxication. The defendant admitted to drinking six beers. The officer noticed indicia of intoxication on the defendant, including smell of alcohol, slurred speech, etc. The defendant failed the field sobriety test. As a result, a reasonable judge or jury could find the defendant was operating his vehicle while intoxicated.

While defendant may present alternative explanations, an appellate court will not reweigh the evidence or substitute its judgment for that of the jury. The weight of the evidence was for the jury, not the appellate court. There were also issues regarding the verdict directing instruction not defining the meaning of "recklessly" and "caused". The appellate court found that it contained a concise statement of defendant's conduct and the definitions were not required. The court also determined that the State met its burden of the driving without a license charge because the defendant failed to properly preserve it for review. JUDGMENT AND SENTENCE AFFIRMED.

When a portable breath test is used for probable cause to arrest, the numerical result of the test is admissible.

**State v. Roux, ___ S.W. 3d ___ (Mo. App. 2017); SD34775
(9/12/2017)**

Roux was charged with driving while intoxicated and filed a motion to suppress the evidence in the case. The motion was granted and the State appeals pursuant to §547.200.1(3)1. The State argues the trial court's decision was not supported by substantial evidence and the court erred in refusing to admit the result of the portable breath test.

Roux's vehicle was stopped without illuminated tail lights. After being removed from the car, Roux was asked to submit to a portable breath test. The results of the test were positive for alcohol, greater than .08. Roux's attorney objected to the testimony regarding the portable breath test arguing that the number is not admissible with regards to a PBT. The argument was that the PBT

could only be considered for the limited purposes of why the officer made the decision to arrest for probable cause purposes. The trial court found that the officer could testify to the positive result, but not the numerical result. The court then subsequently found that a positive PBT was insufficient in the absence of other evidence of impairment to establish probable cause to arrest.

The issue for the appellate court became whether an abuse of discretion existed. An abuse of discretion exists when the trial court misapplies the law in excluding evidence. THE ADMISSION OF A PORTAL BREATH TEST IS SPECIFICALLY RESTRICTED BY STATUTE. IT IS ADMISSIBLE AS EVIDENCE OF PROBABLE CAUSE FOR THE OFFICER TO ARREST, AND AS EXCULPATORY EVIDENCE BUT NOT ADMISSIBLE TO SHOW BLOOD ALCOHOL CONTENT.

However, the evidence of a positive test is ambiguous without an actual numerical value which makes the result relevant to the issue of probable cause. The appellate court, therefore, concluded that the trial court's ruling on the admissibility of the PBT prevented the State from presenting admissible evidence to support its burden of proof that there was probable cause to arrest. Accordingly, the numerical result of the PBT, for probable cause purposes, should have been admitted.

The case was remanded for admission of the PBT results and reexamination and evaluation of the existence of probable cause in light of same.

The quantum of evidence necessary to establish probable cause is considerably less than that required to prove guilt beyond a reasonable doubt. In a refusal case, the question is whether the facts taken in the aggregate were sufficient for the officer to believe a defendant was driving while intoxicated.

Trentmann v. Dir. of Revenue, ___ S.W. 3d ___ (Mo. App. 2018); ED105642 (02/27/2018)

Trentmann appealed the trial court's judgment sustaining revocation of his license for refusing to consent to a breath test. He contended that the trial court erred in finding there was reasonable grounds to believe he was driving while intoxicated and that the officer did not satisfy the statutory requirements for requesting the test.

An officer was dispatched to a motor vehicle crash. He found the vehicle on its roof. An ambulance was already at the scene and the driver was inside the ambulance. Trentmann stated that he was the only person in the vehicle. He had a moderate odor of intoxicants, watery and bloodshot eyes, and mumbled speech. He had no idea what had happened but admitted that he had consumed alcohol that night and woke up in the morning to go home. When asked when he had stopped drinking he said seven o'clock and claimed he had drunk "a lot". He refused an HGN and a PBT test. He was arrested for DWI and failed to respond when asked to submit to a test, therefore, the officer treated his silence as a refusal.

The Director in a refusal case has the burden of proving that the person was arrested on reasonable grounds to believe he or she was driving a motor vehicle in an intoxicated condition and refused to submit to a chemical test. For probable cause to exist the surrounding facts and circumstances must demonstrate to a reasonable person that a particular offense has or is being committed.

THE QUANTUM OF EVIDENCE NECESSARY TO ESTABLISH PROBABLE CAUSE IS LESS THAN THAT REQUIRED TO PROVE GUILT BEYOND A REASONABLE DOUBT.

In this case, there was a moderate odor of intoxicants, bloodshot and watery eyes, and mumbled speech. The key was whether or not Trentmann was intoxicated at the time he drove. While the record failed to identify the actual time of the accident, the precise time is unnecessary for purposes of determining whether the officer had probable cause to believe Trentmann drove while intoxicated. Nothing in the case law or statutes requires the Director to prove the time of an accident as long as there are facts, when in the aggregate, are sufficient to find probable cause. Trentmann told the officer he had consumed alcohol last night and then woke up to head home this morning. There were no alcoholic beverages or containers at the scene, so it was reasonable to believe that the last consumption of alcohol was the night before the crash and the occurred sometime during the early morning while Trentmann was still intoxicated. With regard to implied consent, Trentmann contested that the officer violated the notice requirements by failing to state multiple reasons for requesting a breath test after arrest.

THE IMPLIED CONSENT LAW REQUIRES GIVING THE PERSON THE REASONS FOR REQUESTING A CHEMICAL TEST. WHEN THE OFFICER OMITS NECESSARY INFORMATION, THE REFUSAL IS INVALID. STATUTORY REQUIREMENTS ARE FULFILLED IF THE OFFICER INFORMS THE DRIVER OF THE CONSEQUENCES OF A REFUSAL. The officer in this case testified that he read Trentmann the implied consent law therefore satisfying the statutory requirements. AFFIRMED.

VI. ELEMENTS OF THE OFFENSE

When looking at the validity of a charge to rule on a motion to dismiss the court need not go beyond the four corners of the charging document itself. The court need only look to determine if the charging document complies with the elements of the ordinance. In looking at the constitutionality from a First Amendment standpoint of a disturbing the peace or disorderly conduct ordinance, the court needs to determine if it criminalizes only conduct outside the protection of the First Amendment and, therefore, is not overly broad.

City of Raymore v. O'Malley, 527 S.W. 3d 857 (Mo. App. 2017)

The City of Raymore appealed O'Malley's motion to dismiss a municipal charge of disorderly conduct against her which was granted by the trial court. She was charged with disorderly conduct by acting in a violent manner by pushing a door against another; fighting in public. The information was subsequently amended, alleging that she congregated with others for the purpose of causing, provoking, or engaging in any fight or brawl, bringing onto the scene unknown male parties with the intention of finding some big guys to throw other persons out of the building in which they were located. O'Malley argued the charge should be dismissed because she was acting in the defense of property while engaging in the conduct and was legally justified and could not be prosecuted. The court granted the motion to dismiss and the City appealed.

In determining the validity to of the petition to dismiss a claim, the court looks to the facts alleged to determine if they meet the elements of a recognized

cause of action. THE COURT, IN EXAMINING A MOTION TO DISMISS, NEED NOT LOOK OUTSIDE THE FOUR CORNERS OF THE DOCUMENT. THE INFORMATION MUST BE SUFFICIENT TO SERVE THE PURPOSES OF BOTH ADEQUATELY INFORMING THE PARTY OF THE CHARGE AGAINST THEM AND INSURING THE FINAL DISPOSITION OF THE CHARGE WILL CONSTITUTE A BAR TO FURTHER PROSECUTION. IT ALSO MUST FUNDAMENTALLY MEET THE ELEMENTS OF THE ORDINANCE FOR WHICH THE PERSON IS CHARGED. In this case, the information tracked the ordinance verbatim so O'Malley was sufficiently informed of the charge against her. Her defense of justification need not be a part of the pleading of the case but as a defense of property for O'Malley to assert and prove. It is not a matter that must be pled or defended in the City's charging document. It is a defense for the defendant to bear and inject in to the case. O'Malley also challenges the constitutionality of the ordinance as being overly broad. The overbreadth doctrine restricts statutes that prohibit not only unprotected behavior, but also constitutionally protected behavior. Her argument goes back to the justification defense claiming the ordinance should not be allowed to criminalize conduct used in defense of property. The appellate court said the ordinance did not do so, it outlawed assembly and congregation due to specific unlawful purposes: namely to cause, provoke, or encourage a fight or brawl, in other words "fighting words".

Generally, assembling and congregation are constitutionally protected First Amendment rights and any ordinance criminalizing same must specifically demonstrate it is outside the protection of the First Amendment, limiting scope to speech or conduct which is suggestive of "fighting words". Here the utterances criminalized those that would tend to incite an immediate breach of the peace, thus the conduct criminalized is outside the protection of the First Amendment and not overly broad. REVERSED AND REMANDED.

While the crime of resisting arrest does require a mental state of the person being arrested, such mental state that the person knowingly resisted arrest can be established from circumstantial conduct, including evidence of conduct before the act, from the act itself, and from subsequent conduct.

City of St. Louis v. Jones, 536 S.W. 3d 794 (Mo. App. 2018)

Jones was convicted of one count of resisting arrest. He appealed based on his contention there was no evidence to support the finding. He was participating in a peaceful protest in downtown St. Louis. The protestors were impeding traffic by walking into the streets and were warned by the police, including defendant, to get out of the street. They were advised that anyone who failed to comply would be arrested. Jones and the other protestors moved from the sidewalks, but then returned to the streets blocking traffic and endangering pedestrians and vehicles. An officer announced that the protestors not obeying orders to get out of the street would be placed under arrest. One officer commanded Jones to stop (though this was not heard on a video), according to the officer, Jones ignored the verbal commands and when the officer shouted, "Get back!" defendant ran past the officer and fled. He was arrested for impeding traffic and resisting arrest.

Jones appealed, contending he was not aware he was under arrest and that was an essential element of the offense. RESISTING ARREST IS A PARTY INJURING, OBSTRUCTING, RESISTING OR OTHERWISE INTERFERING WITH AN OFFICER IN THE DISCHARGE OF HIS/HER DUTIES, PREVENTING THE OFFICER FROM ARRESTING A PERSON. WHILE PROOF OF A CULPABLE MENTAL STATE IS NOT EXPRESSLY

REQUIRED, A CULPABLE MENTAL STATE IS REQUIRED TO BE PROVEN IF THE PERSON ACTS PURPOSELY OR KNOWINGLY WHICH CAN BE PROVEN BY CIRCUMSTANTIAL EVIDENCE.

Evidence of the mental state can be proved by the party's conduct during the course of the act. The court found there was sufficient evidence to allow a reasonable factfinder to believe beyond a reasonable doubt that Jones acted knowingly when he resisted arrest.

An officer testified that he commanded the defendant to stop. The officer was in uniform and standing directly in front of the defendant. The video showed the defendant ignored the commands and pushed past the officer. That Jones acted knowingly was evidenced by the fact that, despite numerous warnings to get out of the street, Jones and the other protestors continued to impede traffic, ignoring the officer's command, and actually running past the officer after being told to stop. The defendant's presence at a crime scene or flight therefrom, can be evidence of consciousness of guilt.

It is the law in Missouri that a police officer is not required to specifically say "You're under arrest" when the circumstances clearly indicate the officer is attempting to arrest. Such were the circumstances of this case and there was sufficient evidence for Jones' conviction. AFFIRMED.

An arrest is an actual restraint of the person of the defendant or otherwise showing control of the defendant's movements by the officer. It can include submission to custody of the officer under the authority of a warrant or otherwise. A party already under arrest cannot be found guilty of "resisting arrest".

State v. Ajak, ___ S.W. 3d ___ (Mo. App. 2018); SC96333 (04/03/2018)

Ajak had been charged with several counts of domestic assault and resisting arrest. He was only convicted of the charge of resisting arrest. He appealed, arguing that the relevant conduct occurred after the arrest was effected and he was in police custody by the time any resistance occurred.

Ajak got into a fight that arose out of a relationship with his girlfriend and involvement with two of her adult children and a boyfriend. When the police were called and after speaking with witnesses Mr. Ajak was handcuffed and advised he was under arrest and that he would be transported to jail. In preparation for the transporting Ajak to jail and while he was restrained in handcuffs, he refused to put on clothes the police instructed him to put on, jerked back and forth trying to break the officer's grip when he was being moved outside the residence, and was yelling and screaming at the officers and, in doing so, spit on the side of one officer's face before being placed into the patrol car.

A PERSON COMMITS THE CRIME OF RESISTING ARREST WHILE KNOWING THAT A LAW ENFORCEMENT OFFICER IS MAKING AN ATEMPT OR ATTEMPTING TO LAWFULLY DETAIN OR STOP THE INDIVIDUAL FOR THE PURPOSE OF PREVENTING THE OFFICER FROM EFFECTING THE ARREST, THE PERSON RESISTS THE ARREST, STOP OR DETENTION BY USING OR THREATENING THE USE OF VIOLENCE OR PHYSICAL FORCE OR BY FLEEING FROM THE OFFICER. TO PROVE RESISTING

ARREST, THREE ELEMENTS ARE NECESSARY: (1) KNOWLEDGE THAT THE OFFICER IS MAKING AN ARREST; (2) PURPOSE ON THE PART OF THE DEFENDANT TO PREVENT THE OFFICER FROM EFFECTING THE ARREST; AND (3) RESISTING THE ARREST BY THREATENING VIOLENCE OR PHYSICAL FORCE OR FLEEING FROM THE OFFICER. Ajak argued he had already submitted to the custody, was under actual physical restraint while he was in the kitchen in handcuffs. The State argues that confinement in the kitchen was inadequate and that Ajak was not under arrest until he was placed in the patrol car.

A person may be said to be under arrest from the moment the police officer takes control of his movements. It is undisputed that Ajak was restrained in handcuffs and was told he was under arrest. So the question becomes whether the arrest was completed at that point. Sufficient restraint is dependent on the particular facts and circumstances, and whether the evidence showed restraint of the person of the defendant or control of the defendant's movements. If the defendant is not actually under the officer's restraint or control, the arrest has not been effectuated. In the circumstances here, Ajak was actually restrained in the kitchen before going to the patrol car. He was handcuffed, his movements were completely under the officer's control and he was not free to leave. His resistance came after the arrest was effected or in the officer's control within the kitchen.

The issue can become one of custody so the actions following the arrest come under the heading of "escape from custody" rather than resisting arrest. Escape from custody occurs if a person, while being held in custody after arrest, escapes or attempts to escape from the custody. JUDGMENT REVERSED.

In a drug possession case, constructive possession requires that the defendant have access to and control of the premises where the drugs were found and exclusive possession of the premises containing the substances or sharing control of the premises or some further evidence to connect the defendant to the controlled substance. The mere presence of the Defendant on the premises does not, by itself, make a submissible case.

***State v. Faler*, ___ S.W. 3d ___ (Mo. App. 2017); SD34819 (01/11/2018)**

Faler was found guilty of possession of a controlled substance and possession of drug paraphernalia. He contends that the court could not have found he knew about the existence of the drugs. A search warrant was executed for a storage unit rented by the defendant and his wife. Inside officers found drug paraphernalia, baggies with drug residue and marijuana stems and seeds. Also found under the baggie was a legal document directed to the defendant by name, an envelope addressed to the defendant. The residue in one of the baggies later tested positive for methamphetamine. The defendant argued that the court could not reasonably infer that the drugs in the closed dresser drawer found in the storage locker rented by both the defendant his wife belonged to him.

A PERSON WITH THE KNOWLEDGE OF THE PRESENCE AND NATURE OF A SUBSTANCE HAS ACTUAL CONSTRUCTIVE POSSESSION OF THE SUBSTANCE. ALTHOUGH NOT IN ACTUAL POSSESSION IF THE PERSON HAS THE POWER AND THE INTENTION AT A GIVEN TIME TO EXERCISE DOMINION OR CONTROL OVER THE SUBSTANCE EITHER DIRECTLY OR THROUGH ANOTHER PERSON OR PERSONS, THAT PERSON IS IN CONSTRUCTIVE POSSESSION OF IT. The court in determining

constructive possession looks to access to the premises where the drugs were found, exclusive possession or sharing control of the area where the drugs were found implying that the defendant knew of the presence of the substances and they were under his or her control. An inference of knowledge and control can be through incriminating statements, consciousness of guilt, routine access to the place, comingling of the substances with the defendant's personal belonging, or great quantity of the illegal substance at the scene or public view and access by defendant.

In this case, the comingling in the dresser drawer of defendant's personal items in close proximity with the controlled substance and paraphernalia gives rise to a reasonable inference that the defendant possessed the methamphetamine and drug paraphernalia. The dresser was in a storage locker rented by both the defendant and his wife and was comingled with personal items of both parties. The totality of the evidence tends to prove the guilt and the reasonable inferences support a finding of guilt. AFFIRMED.

To prove the crime of unlawfully possessing or having under ones control a controlled substance, there must be knowledge of the presence and nature of the substance and actual or constructive possession of the substance. Actual possession is where the person has the substance within easy reach and convenient control. Constructive possession can be shown by time to exercise dominion or control over the substance or easy access or joint, accessible locations. Possession may be sole or joint.

State v. Gilmore, 537 S.W. 3d 342 (Mo. 2018)

Gilmore appeals her conviction of the class C felony possession of a controlled substance. Police had launched an investigation into drug activity at a residential trailer. The police performed multiple trash pulls. Based on the information obtained, they served a warrant on the owner's trailer. At the time of the service of the warrant, Gilmore was in the trailer with the owner and another party. The owner consented to a search of the trailer. Gilmore cooperated, as well. Gilmore told the police officers there was drug paraphernalia in the trailer. They did not discovery any contraband on or about Gilmore, but did find on her cell phone a reference to a possible marijuana sale. Gilmore was not under the influence of drugs or alcohol.

During the course of the search, inside a large stereo console, the police found a small amount of white powder and some marijuana smoking devices. They also found methamphetamine inside a medicine cabinet. In searching the premises, there was a magnetized picture of Gilmore and the owner of the trailer hanging on the refrigerator. The detective conducting the search did not find any female clothes in searching the trailer. They did find other drugs and drug paraphernalia in and about the premises. There was no mail in Gilmore's name, nor were there any her personal items other than her purse inside the trailer. Gilmore argued there was no evidence of her knowledge of the methamphetamine.

A CRIMINAL OFFENSE HAS TWO COMPONENTS: A TANGIBLE DEED OR ACT AND GUILTY MIND OR INTENT THAT MAKES THE ACT OR DEED CRIMINAL. IN POSSESSION OF A CONTROLLED SUBSTANCE CASES THERE MUST BE BOTH CONSCIOUS AND INTENTIONAL POSSESSION AND POSSESSION OF THE SUBSTANCE, EITHER ACTUAL OR CONSTRUCTIVE. Knowledge of the presence of a controlled substance is a condition precedent to a person's actual or constructive possession of it. In this case, the court concluded that the evidence was insufficient

to establish that Gilmore knew or was aware of the presence of the methamphetamine. Proximity to the contraband alone fails to prove knowledge of its presence and there must be some incriminating evidence implying the defendant knew of it and it was under his or her control. Gilmore did not have exclusive control over the trailer or the bathroom, had no personal items, other than her purse, in the trailer, there were no female clothes in the trailer, and Gilmore was not under the influence of any controlled substance. JUDGMENT REVERSED AND JUDGMENT OF ACQUITTAL ENTERED.

Exceeding the posted speed limit, failure to yield to emergency vehicle, operating a motor vehicle without maintaining financial responsibility, and operating a vehicle on a highway without a valid license are established crimes by the legislature. It is sufficient if testimony is presented to support the elements of the crime charged to allow factfinder to determine they were committed. These violations derive from the State's inherent authority to regulate speed, traffic, and the roadways for public safety

State v. Gorombey, 538 S.W. 3d 353 (Mo. App. 2018)

Gorombey was arrested for failure to produce an insurance card, speeding, failure to produce a driver's license, and failure to yield to an emergency vehicle. He was found guilty on all counts and was sentenced to ten days in the county jail. He appealed. He was stopped for going ninety-three miles per hour in a construction zone, failing to immediately stop after the officer activated his emergency lights (including shaking his head "no" when the officer motioned him to pull over), failing to produce a driver's license (he did not have a valid Missouri driver's license), and failing to produce proof of insurance.

The general bases for the defendant's claims on appeal relate to a denial of due process because he was not engaged in commerce and, therefore, not subject to laws the officers sought to enforce. He argued the officer was not competent to testify because the defendant was not allowed to ask the officer about what he thought his definitions of "commerce" were and, therefore, is not a competent witness. MISSOURI HAS THE AUTHORITY TO REGULATE SPEED FOR PUBLIC SAFETY, INCLUDING CRIMINAL SANCTIONS AND ESTABLISHING STATUTES SETTING FORTH SUCH REGULATIONS. THOSE STATUTES HAVE NO LIMITATIONS ON REGULATING USE OF THE HIGHWAYS THAT APPLY ONLY TO THOSE ENGAGED IN "COMMERCE". The crimes for which Gorombey was charged are all crimes established by the legislature and the legislature and the prosecution properly charged and tried them. The defendant does not make it clear in any manner how his due process rights were violated.

In addition, Gorombey attempted to argue the court lacked jurisdiction because he was not accused of violating anyone's legal rights. The court found that Gorombey was not charged with any crime requiring proof of injury to another individual to establish guilt. THE STATE HAS THE RIGHT TO ESTABLISH LAWS FOR THE PUBLIC'S WELFARE, INCLUDING REQUIREMENTS AS TO SPEED ON A ROADWAY, HAVING A LICENSE TO OPERATE A VEHICLE, THE REQUIREMENT OF INSURANCE AND REQUIRING CITIZENS TO YIELD TO EMERGENCY VEHICLES.

Gorombey also attempts to argue there was no "corpus delicti", again because there was no specific loss or injury. The officer observed Gorombey commit

the offenses so there was no necessity for using extrajudicial statements to prove the crime and it was not at issue in the case. AFFIRMED.

A party is criminally responsible for the conduct of another when either before or during the commission of an offense with the purpose of promoting the commission of the offense when they aid, agree to aid, or attempt to aide such person in the planning committing and are attempting to commit the offense. Accomplice liability comprehends any of a potential wide variety of actions intended by an individual to assist another in criminal conduct.

State v. Shaw, ___ S.W. 3d ___ (Mo. App. 2017); WD79932 (12/26/2017)

Shaw appealed his conviction of felony steeling and an associated count of armed criminal action and of involuntary manslaughter in the first degree associated with the armed criminal action. He argued he should only be convicted of misdemeanor stealing because the voluntary manslaughter was based on an accomplice theory that was insufficient to support the conviction.

Shaw made arrangements to meet another individual for a sexual encounter and also a drug purchase. Shaw met with the individual who was subsequently found dead with Shaw denying any involvement in the individual's death. The evidence reflected that there was a struggle between the decedent and a third person who subsequently shot the individual with Shaw claiming he left the scene after the shooting.

On appeal, Shaw argued there was insufficient evidence to demonstrate he acted in concert with the individual, Golston, in committing involuntary manslaughter.

A PERSON WHO IN ANY WAY AIDS, ABETS, OR ENCOURAGES ANOTHER IN THE COMMISSION OF A CRIME BY ACTING WITH A COMMON INTENT AND PURPOSE IS GUILTY TO THE SAME EXTENT AS THE PRINCIPAL OFFENDER EVEN THOUGH THE ACCOMPLICE DID NOT PERSONALLY COMMIT EVERY ELEMENT OF THE OFFENSE. ACCOMPLICE LIABILITY COMPREHENDS ANY OF A POTENTIAL WIDE VARIETY OF ACTIONS INTENDED BY AN INDIVIDUAL TO ASSIST ANOTHER IN CRIMINAL CONDUCT. If, during the commission of the offense, and for the purposes of promoting the commission of the offense, the person in any way aids or agrees to aid or attempts to aid such other person in planning, committing or attempting to commit the offense, they are equally culpable as an accomplice. Shaw in this regard argued that there was no evidence he knew Golston had a gun or intended to shoot the other individual.

The evidence reflected that Shaw admitted to police he knew Golston was going to rob the decedent, permitting the inference that he was actually involved in setting up the meeting with the intent to commit forcible robbery. Having affirmatively participated in a course of criminal conduct with Golston to commit forcible robbery, Shaw is responsible for those crimes which he could have reasonably anticipated would have been part of the course of conduct. As a result, Shaw, as an accomplice, is responsible for those crimes. The key is whether the individual participated in the crime by providing essential conduct for its successful completion. To the extent Shaw was complicit in the crime of steeling that ultimately

resulted in the involuntary manslaughter; he is culpable as an accomplice. AFFIRMED.

VII. STATUTORY INTERPRETATION

When looking to the constitutionality of an ordinance under a void for vagueness standard, the ordinance must provide adequate notice of the prohibited conduct to potential offenders. Words in the ordinance are looked at according to their common understanding. If commonly understood there must be no danger of arbitrary and discriminatory application. The same analysis applies when looking to the ordinance as overly broad. Again clarity or language must prevail so that it does not outlaw a substantial amount of constitutionally protected First Amendment speech.

***Bennett, et al. v. St. Louis County, Missouri and Krane*, _____ S.W.3d _____ (Mo. App. 2017); ED105470 (12/19/2017)**

Bennett and the rest of the parties appealed from a trial court's dismissal of a complaint alleging a St. Louis County Ordinance was unconstitutionally vague and overly broad. The Ordinance in question made it unlawful to, in any manner, interfere or obstruct a police officer or other county employee in the performance of his or her official duties. The violations of the Ordinance arose out of their participation in an anti-police brutality protest outside Ferguson Municipal Police Department. The parties were arrested for violating the Ordinance while participating in the protest.

They challenged the Ordinance alleging three points on appeal. They argued the plain meaning of the Ordinance encompasses conduct protected by the First Amendment, that it was unconstitutionally vague by failing to give fair notice of its application and encouraging arbitrary and discriminatory enforcement, and that the Ordinance is overbroad by outlawing vast amounts of protected speech.

IN DETERMINING THE VALIDITY OF AN ORDINANCE AS OVERLY BROAD, THE COURT MUST LOOK TO WHETHER THE ENACTMENT REACHES A SUBSTANTIAL AMOUNT OF CONSTITUTIONALLY PROTECTED CONDUCT. A COURT WILL NOT INVALIDATE AN ORDINANCE ON ITS FACE MERELY BECAUSE IT'S POSSIBLE TO CONCEIVE A SINGLE INPERMISSIBLE APPLICATION. The court looked to a series of cases interpreting Ordinances with reference to obstructing, hindering or interfering. The court concluded that the Ordinance did not provide or prescribe a substantial amount of conduct protected by the First Amendment. The court noted use of the term "obstruct" means to block, stop or place an obstacle in and the term "interfere" has been held to connote purely physical acts. Accordingly, the use of the word obstruct in this particular Ordinance is consistent with physical conduct. Interference has also been narrowly construed to describe physical acts. Thus, the Ordinance limits physical conduct and does not limit or conclude a substantial amount of protected First Amended speech. The inclusion of the words "in any manner" in the court's opinion does not expansively enlarge the definition of obstruct and interfere.

The court then looked to the void for vagueness standard and noted that for an Ordinance to violate the standard it must not provide adequate notice of prohibited conduct to potential offenders. THE TEST IN ENFORCING THE DOCTRINE OF ADEQUATE NOTICE IS WHETHER A PERSON OF ORDINARY INTELLIGENCE IS

GIVEN A SUFFICIENTLY DEFINITE WARNING AS TO THE PROSCRIBED CONDUCT WHEN MEASURED BY COMMON UNDERSTANDING AND PRACTICES. The court then looks again to the words "obstruct" and "interfere" and notes these are commonly understood terms not so overly broad as to render the Ordinance unconstitutional. The court further noted there was no danger of arbitrary and discriminatory application because the Ordinance uses commonly understood language that only physical conduct is prohibited.

Accordingly, the court found that the Ordinance adequately advises the police officer of when enforcement is proper and that only physical conduct is prohibited. JUDGMENT OF THE TRIAL COURT, AFFIRMED

Section 559.115.7 only excludes a first incarceration in a 120-day program from being counted as a previous prison commitment for determining a minimum term.

Green v. Missouri Department of Corrections, 533 S.W. 3d 778 (Mo. App. 2017)

Green appeals the entry of a judgment favoring the Department of Corrections where he had asked that it be declared his minimum prison sentence had been incorrectly calculated based upon the number of previous prison commitments.

In 1998, Green was delivered to Department of Corrections to serve a three-year DWI persistent offender conviction and placed in a 120-day treatment program. He successfully completed the program, but his probation was revoked in 1999 and he was placed in another 120-day program which he successfully completed. He was then sentenced in 2001 to five years imprisonment for involuntary manslaughter. In 2007, he was required to serve a four-year sentence for DWI as a persistent offender and put in another 120-day program. In 2009, his probation was revoked and he was ordered to serve his 2007 four-year sentence for DWI concurrently with the new eight-year sentence for DWI. In 2012, he again returned to the Department of Corrections after his probation was revoked and he was notified that because of three previous prior commitments when he committed the offense of DWI chronic offender in 2009, he was required to serve a minimum prison sentence of eighty percent of his eight-year term before he would be eligible for parole. He filed a declaratory judgment challenging that calculation.

SECTION 558.019.2 PROVIDES MINIMUM PRISON TERMS FOR OFFENDERS BASED ON PREVIOUS CONVICTIONS. IF AN OFFENDER HAS ONE PREVIOUS PRISON COMMITMENT FOR A FELONY OFFENSE, THE MINIMUM PRISON TERM IS FORTY PERCENT SERVED BEFORE PROBATION ELIGIBILITY; IF TWO PREVIOUS PRISON COMMITMENTS FOR FELONIES THEN FIFTY PERCENT MUST BE SERVED FOR ELIGIBILITY, AND IF THERE ARE THREE OR MORE PREVIOUS PRISON COMMITMENTS THE REQUIREMENT IS EIGHTY PERCENT OF SENTENCE SERVED FOR PAROLE ELIGIBILITY. HOWEVER, WHEN CALCULATING PRIOR PRISON COMMITMENTS, IT SHALL NOT INCLUDE AN OFFENDER'S FIRST INCARCERATION, PRIOR TO RELEASE PER § 217.362 OR § 559.115.

Green's first incarceration in 1998 for which he was eligible and placed in a 120-day treatment program does not count as a previous prison commitment. His 2001 commitment does count as a previous prison commitment. Green argues that the 1999 and 2007 commitment to the 120-day program should not count as a

previous commitment. He contends that the statute now excludes all incarcerations in a 120-day program under § 559.119 from being considered as a previous prison commitment because the word "first" has been deleted from the statute. However, in interpreting a series of criminal statutes that were enacted later in 2014 and superseded other statutes, the legislature amended § 559.115.7 to read: "An offender's first incarceration under this section prior to release on probation shall not be considered a previous prison commitment for the purpose of determining a minimum prison term under the provisions of section 558.019." Contrary to Green's contention, this section continues to exclude only first incarcerations from being counted. Consequently, the 1999 and 2007 commitments combined with the prior 2001 result in the requirement of an eighty percent sentence to be served prior to Green's parole eligibility. JUDGMENT AFFIRMED.

A person commits the crime of hindering prosecution, if for the purpose of preventing the apprehension of another person for conduct constituting an offense, he or she prevents, by means of deception or intimidation, anyone from performing an act that might aid in the discovery or apprehension of such person.

State v. Brown, ___ S.W.3d ___ (Mo. App. 2018); SD34559 (01/22/2018)

The State appealed a dismissal of acquittal of felony murder and hindering prosecution with respect to Brown. Officers saw a vehicle with a headlight out and, after activating emergency signals, engaged in a high speed chase. A passenger, Collins, jumped out of the vehicle and the driver tossed drugs out of the window of the vehicle. An officer pursued the passenger trying to subdue him, shots were exchanged, and the passenger and officer were both mortally wounded. Defendant, the driver of the vehicle, was subsequently tried on charges of hindering prosecution and felony murder. The argument was that the defendant created a diversion to help Collins avoid apprehension by speeding off into a different direction when Collins, the passenger, went running.

HINDERING PROSECUTION OCCURS WHEN A PERSON, FOR THE PURPOSE OF PREVENTING THE APPREHENSION OF ANOTHER, PREVENTS OR OBSTRUCTS, BY MEANS OF FORCE, DECEPTION, OR INTIMIDATION, ANYONE FROM PERFORMING AN ACT THAT MIGHT AID IN THE DISCOVERY OR APPREHENSION OF SUCH PERSON. The question becomes whether the action in decelerating his vehicle so Collins could exit amounted to deception that prevented the officers from apprehending Collins. The appellate court felt that nothing done by the defendant misled or deceived the officer causing him to believe something was untrue or misled him about anything in particular. There was no evidence that slowing down enough for Collins to jump out of the vehicle was deceptive or how the actions prevented the officer, who subsequently caught him on foot, from performing an act that might aid in the apprehension. AFFIRMED

Section 559.036.4 specifically governs a defendant's right to be continued on probation and participate in a 120-day program and the court has a duty to order the individual into the program.

State ex rel. Caldwell v. Ohmer, 535 S.W.3d 758 (Mo. App. 2017)

Caldwell sought a writ of mandamus to reinstate his probation and put him on a 120-day program rather than revoking his probation contending he had a specific right to the program. In June, 2014, he pled guilty to possession of a controlled substance. As a prior and persistent offender and a prior drug offender, he was sentenced to ten years imprisonment, execution of that sentence was suspended and he was placed on two years of probation. Two years later, in April, 2016, pursuant to the probation board's recommendation his probation was extended for three additional years. His probation was suspended in January of 2017 for violating probationary conditions regarding drugs and supervision. At that time, he requested he be placed in a 120-day program rather than having his probation being revoked. The court denied the request – his writ of mandamus followed.

Section 559.036.4 governs the duration of probation and the right to be continued on probation and participate in a 120-day program. SECTION 559.036.4 AUTHORIZES PLACEMENT IN A 120-DAY PROGRAM WHEN CERTAIN CONDITIONS ARE MET. Caldwell's violations regarding drug and supervision strategy did not fall into the circumstances that disqualify him from the 120-day program and mandate jail sentencing. As a result, he had a right to be continued on probation and participate in the program because he met all the conditions for placement in it. With those conditions satisfied, the statute clearly and unambiguously requires the court to order placement in the 120-day Department of Corrections program. Respondent directed to follow the dictates of the statute and placed Mr. Caldwell in one of the programs.

VIII. U.S. SUPREME COURT AND FEDERAL CASES

The US Supreme Court will decide by the June, 2018 recess whether the Fourth Amendments Automobile Exception permits a police officer, uninvited and without a warrant, to enter private property, approach a home, and search a vehicle parked a few feet from a house.

***Ryan Austin Collins v. Commonwealth of Virginia*, ___137 S.Ct., 790 S.E.2d 611 (VA.2016)**

Defendant was convicted of receiving stolen property. Before trial, the Defendant moved to suppress evidence obtained when police conducted a warrantless search of a stolen motorcycle parked in the driveway of a home where Defendant resided. The trial court denied the motion to suppress. The Court of Appeals in Virginia affirmed, along with the Virginia Supreme Court. The Defendant unsuccessfully argued that the police officers trespassed when they walked up to the driveway of Defendant's residence without permission or a search warrant and conducted a search by removing the motorcycle tarp to reveal its VIN.

The Virginia Supreme Court held that the officer, by lifting the tarp and discovering the VIN, verified that the motorcycle was indeed stolen, and therefore constituted contraband. According, the court held that the officer's search of the motorcycle was permissible under the automobile exception. In the footnotes to the case, there is an extensive recitation of a number of cases dealing with searches of motor vehicles on private property, without a search warrant, justified under the automobile exception to the Fourth Amendment prohibition against unreasonable searches and seizures.

The question submitted to the United States Supreme Court for decision prior to its June, 2018 recess is: whether the Fourth Amendment's automobile exception permits a police officer, uninvited and without a warrant to enter private property, approach a home and search a vehicle parked a few feet from the house.

The US Supreme Court will decide prior to its June, 2018 recess, whether or not a driver has a reasonable expectation of privacy in a rental car when he has the renter's permission to drive the car but is not listed as an authorized driver on the rental agreement.

***United States of America v. Terrance Byrd*, __137 S.Ct., 679 F. App'x. 146 (3d Cir.2017)**

Defendant entered a conditional guilty plea to charges of illegal drugs, reserving the right to appeal several suppression rulings. He argued that:

1. The initial traffic stop was pre-textual and the district court clearly erred in accepting the officer's testimony describing a traffic violation;
2. The officer's impermissibly extended the stop;
3. The district court erred by holding Byrd lacked standing to challenge the vehicle search.

As to the first point, record showed that the officer was parked in a median and recognized the car as a rental and noticed the driver's seat was reclined to an unusual degree such that the driver was not clearly visible. The officer followed Byrd and eventually pulled him over, claiming that he violated a state law requiring drivers to limit use of the left-hand lane to passing maneuvers. The officer approached the car and asked for Byrd's license and rental agreement. He appeared nervous and conspicuously avoiding a center console. He eventually produced a New York driver's license and a rental agreement which did not list Defendant as the renter or permissive driver.

The stop continued because the officer requested the vehicle be moved to a safe location. As that was done, a computer check indicated that Defendant's license returned the name James Carter. In addition, there was an outstanding warrant from New Jersey. The officers determined that James Carter was an alias and discovered his criminal history.

The officers returned to Byrd's vehicle asking him to exit the car and asked him about an outstanding New Jersey warrant. The officers asked the Defendant for permission to search but stated that they did not need his consent because he was not listed on the rental agreement. The officers assert that Defendant gave his consent and they subsequently found illegal drugs.

The Third Circuit Court of Appeals held that there was no pretextual stop, because the video showed the Defendant clearly in violation of the "left lane" statute. Secondly, as to the duration of the stop, the court held that an officer does not lack diligence merely because his tasks of checking a driver's license, checking for warrants, inspecting registration and proof of insurance are delayed by computer issues or because a driver's use of an alias or lack of photo ID complicates the identification process. In this case, the court held that the officers acted with reasonable diligence and did not impermissibly extend the stop.

Finally, the most relevant portion of the decision to the Supreme Court appeal is as to whether or not the court erred by holding the Defendant lacked standing to challenge the vehicle search. The Third Circuit acknowledged a split of circuits deciding the issue before the Supreme Court. It, however, held that society generally does not share or recognize an expectation of privacy for those who have gained possession and control over a rental vehicle they have borrowed without the permission of the rental company. The Supreme Court, therefore, will decide prior to its June, 2018 recess whether a permissive user of a rental car has a reasonable expectation of privacy in order to assert a Fourth Amendment motion to suppress successfully.

Officers arrest of 21 late night party goes at what was purportedly a new address of the host lacked probable cause for the arrest of all of the invitees because the arresting officers knew plaintiffs had been invited to the house by a woman that they reasonably believed to be its lawful occupant.

***Theodore Wesby v. District of Columbia, et.al*, ___137 S.Ct., 765 F.3d 13 (2016)**

Police officers found 21 late night party goes inside a vacant home belonging to someone else. After giving conflicting stories for their presence, some of the partiers claimed they had been invited by a different person who was not there. After an investigation by the officers, it was found that the lawful owner had not in fact authorized entry by anyone.

After this initial investigation, the officers arrested all of the party goes for trespassing. However, because it was undisputed that the arresting officers knew that the plaintiffs had been invited to the house by a woman that they reasonably believed to be its lawful occupant, the officers lacked probable cause for the arrest. In addition, there was no probable cause to arrest for disorderly conduct because the evidence failed to show any disturbance of sufficient magnitude to violate local law.

Plaintiffs sued the officers under civil rights section 1983 and for common law false arrest claims.

The question for the US Supreme Court is:

1. Whether the officers had probable cause to arrest under the Fourth Amendment, and in particular whether, when the owner of a vacant home informs police that he has not authorized entry, and officer assessing probable cause to arrest those inside for trespassing may discredit the suspects' questionable claims of an innocent mental state and;
2. Whether, even if there was no probable cause to arrest the apparent trespassers, the officers were entitled to qualified immunity because the law was not clearly established this regard.

IX. JUDICIAL POTPOURRI

Submitted in oral presentation

Friday, May 25, 2018
9:30 – 10:30 in the Granada Room

Judicial Ethics (1.2 hrs Ethics)

Judge Glenn Norton

Session Summary

Judge Glenn Norton will teach the canons of judicial ethics utilizing hypotheticals and real-life examples.



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