Missouri Municipal and Associate Circuit Judges Association

1717 E. Republic Road, Suite A
Springfield, MO 65804
Phone: 417-886-8606 Fax: 417-886-3685

May 1, 2015

The Supreme Court of Missouri
P.O. Box 150
Jefferson City, Missouri 65102

Honorable Justices of the Supreme Court:

The Missouri Municipal and Associate Circuit Judges Association (MMACJA) thanks the Court for the opportunity to provide suggestions on ways to improve the rules applicable to practice in Missouri's municipal court divisions as outlined in the April 2, 2015 press release. As you are aware our Association represents over 250 municipal judges who preside in nearly 300 courts in the State of Missouri. We are keenly aware of recent events and share your desire to insure that Missouri's municipal courts operate in a manner deserving of the respect of the communities they serve and also deserving of the respect of the state's judiciary.

In the press release, the rules being reviewed are not specified, making it somewhat difficult for us to provide detailed input. However, "educational requirements" and alleged "conflicts of interest" are mentioned, so we address those issues in our comments below. Additionally, and also related to municipal court policies and procedures, we address other issues that we believe would assist Missouri's municipal courts to operate more fairly, independently, and consistently in order to better serve the communities they represent.

We again thank you for this opportunity to provide suggestions in an effort to improve the operation of municipal courts in Missouri. The education of municipal judges and improvement of municipal courts is the mission of our Association and has been for 50 years.

1. Educational Requirements of Municipal Judges

As you are aware your Mo. S. Ct. Rule 18 governs the continuing legal education requirements for municipal judges in the State of Missouri. Each municipal judge is required to complete 15 hours of accredited activity each year under this rule. If the municipal judge is a lawyer, 10 of the necessary hours may be completed under Mo. S. Ct. Rule 15, meaning the lawyer judge must

complete 5 hours of judicial education in addition to 10 hours of legal education each year. For the non-lawyer judge, 15 hours of judicial education is required. One suggestion is to require additional hours of judicial education for the lawyer judge, perhaps changing the hours from 5 to 10 hours of judicial education.

Our Association, MMACJA, is an accredited program sponsor for municipal judge education in Missouri. This year is the 50th anniversary of our Association's Annual Conference which is committed to municipal judge education in this state. Each year we provide a minimum of 15 hours of judicial education at our Annual Courts Conference, including at least 2 hours of training on judicial ethics.

We do an excellent job of providing relevant judicial education to our members and make this available for all municipal judges in Missouri. For example in recent years (2010, 2013, and 2014) we provided training on dealing with *pro se* defendants and making fair and ethical decisions, with speakers from the National Judicial College. We also have provided specific programs on the court's ability to collect past due amounts several times in the last few years as part of various programs at our annual conference.

We put on a fall seminar each year that provides 4 hours of judicial education, including one hour of judicial ethics. We published the 17-chapter Missouri Bench Book-Circuit Court Municipal Divisions that provides clear instruction on how to fairly and ethically be a municipal judge. Finally, we publish BENCHMARK, the thrice-yearly newsletter of the MMACJA that keeps members current throughout the year on events, cases, and legislation that affect the municipal courts.

In short, the MMACJA is part of the training for all judges in the state, including new judges. In our view, the availability of excellent and varied municipal judge education in Missouri is not, and has not been, a problem.

2. Alleged Conflicts of Interest

One item mentioned is the alleged conflict of interest of judges and city prosecutors performing multiple tasks across multiple jurisdictions. We certainly understand the perception that these actions can present.

Article V, Section 23 of the Missouri Constitution specifically states that a municipal judge may be a part-time judge except where prohibited by ordinance or charter of the municipality. This provision implies that the citizens of Missouri agreed to the idea that part-time judges would have other vocations in order to make a living. Most of the municipal judges in Missouri are part-time judges in courts that may meet only once or twice a month. It would be extremely difficult to earn a living as just a part-time judge.

Addressing potential conflicts of interest is an issue faced by every Missouri lawyer on a frequent basis[1]. The same attorney in Missouri may represent injured plaintiffs one day and defend insurance companies the next. We have ethical rules that govern these practices for lawyers, just as we have the judicial code of conduct to govern the actions of our Missouri judges.

Mo. S. Ct. Rule 2.3.1 of the Judicial Code of Conduct specifically discusses extrajudicial activities by Missouri judges. Additionally, Mo. S. Ct. Rule 2.2.11(A)(1) specifically requires recusal by a judge "in any proceeding in which the judge's impartiality might reasonably be questioned, including ... bias or prejudice concerning a party or a party's lawyer ..." These two provisions seem to adequately address issues of impartiality, or "conflict of interest," as far as judges are concerned.

Judges and prosecutors know the rules and should follow them. If they do not, then they should be disciplined and have been in the past. We have processes in place to respond to those judges who are not acting appropriately and we should use those processes. If necessary, we suggest a clarification of the ethical rules to make it clear which provisions apply to municipal judges, whether they are part-time or full time.

If you do believe that a change in the conflict rules is necessary, we do not believe that the Supreme Court should look at this issue by looking solely at the title of the job, as the Missouri Legislature appears to be doing, but you should look at what prosecutorial functions are performed by the person and the amount of time devoted to these actions when determining who can and cannot be a municipal judge. For example, there may not be a conflict for someone working in a state court in some capacity and serving in a municipal court in some capacity. Or a City attorney who supervises a City Prosecutor's Office, but does not perform prosecutorial functions would not pose a conflict of interest in our opinion. A city attorney who is only covering for a sick or vacationing prosecutor for a brief period of time should be able to perform these temporary functions without conflicts.

Significant problems could result from rule changes which prohibit lawyers with designated areas of practice from serving as part-time municipal judges and/or prosecutors. There are comparatively few full-time municipal judges in Missouri. Municipalities which cannot afford to hire full-time judges and/or prosecutors would be limited to a pool of candidates from which those attorneys, most experienced in the most relevant area of practice, had been eliminated. In rural areas where there may be very few lawyers, the pool of lawyers would be even further diminished.

In sum, it is our belief that the current rules, if enforced fairly and correctly, can address those problems that arise within our judiciary.

---

[1] We are not aware that non-lawyer judges face these alleged conflict of interest issues. As we understand it, all of the situations of judges and city prosecutors performing multiple tasks across multiple jurisdictions are faced by lawyers.

3. Judicial Independence and Integrity

A significant problem sometimes faced by appointed municipal judges is the pressures applied on them by their appointing authorities. We believe you should strengthen the power of the municipal divisions to punish by indirect contempt any action on the part of their appointing authority to influence the court's decisions on any matter before the court. This would include, but is not limited to, pre and post trial disposition of cases, revenue from cases, past due payments on cases, etc. This could be done by new wording in Mo. S. Ct. Rule 37.75.

We believe that you should request the Missouri Legislature to pass legislation designed to strengthen the judicial independence of our municipal divisions by requiring anyone found in indirect contempt for such actions to forfeit their term of office after any appeals are exhausted and the contempt is final.

We also believe you should request the Missouri Legislature to enact legislation to make all municipal judicial terms for elected judges, four years instead of two years, and for appointed judges, make all appointments for a four year term. This could be done by revisions to Mo. Rev. St. 479.020. This would make it easier for judges to resist inappropriate pressures from other municipal authorities on how they run their courts. This would also make us consistent with other judges in our judicial system.

4. General Comments

a. Better Supervision of Municipal Courts

We suggest that all Circuits in the State have municipal divisions be made a part of the Court En Banc meetings so that the Presiding Judges can have another regular venue in which to exercise their supervisory duties over the municipal courts. We understand that some Circuits are doing this, but it may not be happening in all Circuits. As an alternative to having all municipal judges attend these meetings because of the large numbers, perhaps a representative judge from the municipal divisions could be a part of the en banc meeting to voice questions and concerns from that group. It also may not be necessary for the municipal judge representatives to attend every meeting, but only those meetings where information relevant to municipal courts is presented or discussed.

One other alternative would be to have a few members of MMACJA be appointed to a committee to attend the Annual Judicial Conference. The Court should be cognizant of any additional resource burdens these actions may have on small courts.

It may be useful to develop a consistent annual review process to require all Presiding Judges to review their respective municipal divisions. This is currently being done to a degree in some Circuits, but the review is not consistent from Circuit to Circuit.

We suggest a clarification and reemphasis on the requirement that each municipal judge educate their court staff on the provisions of the Code of Judicial Ethics that apply to them and that all new hires should also receive this training. Certification of this training could be provided to the Presiding Judge at the annual review suggested in the prior paragraph.

b. Meaningful Access to Decision Makers in Our Court System

One issue that comes up consistently is the complaint that not everyone has meaningful access to decision makers in our municipal court system. As you are aware, the majority of municipal court cases present *pro se* defendants who are not accused of a violation that would warrant jail time. We understand that Mo. S. Ct. Rule 37.58 allows prosecutors to engage in discussions with defendants in an effort to try to resolve a matter. However, in our view this may not occur as frequently as it should. We recommend that you amend Rule 37 to allow all municipal courts to conduct pre-trial conferences with pro-se clients. This new rule could be patterned on Mo. S. Ct. Rule 24.12 which allows pre-trial conferences in criminal cases for persons with attorneys. The new rule could permit municipal judges to use a pre-trial conference to allow pro-se defendants to access the same plea bargaining process that persons with attorneys have access to. The court should be required to make it very clear to the defendants that they are not required to speak to the prosecutor and that if they do not want to do so, they will be taken before the judge and given a trial date. This new rule would allow defendants to save time and money by resolving the case without the need for trial. It also sends the message that you get the same access to justice without a lawyer as you do with a lawyer. It would have the added benefit of reducing trial dates for cases and allowing police officers and potential witnesses to spend less time in trial and more time on other duties.

We recommend that you amend Mo. S. Ct. Rule 37.47(a) to make it clear that we can use modern communication technology to hold initial proceedings under Mo. S. Ct. Rule 37.47 and bond hearings under Mo. S. Ct. Rule 37.20. The use of modern communication technology could allow judges to assure they are providing these hearings as soon as practicable. This should include conference calls, video calls, or other such means of communications. The rule should also be flexible enough to account for the fact that these types of hearings may occur outside the traditional courtroom setting in those courts which only meet once or twice a month.

c. Court Cost, Surcharges, and Fees

Our Association recommends that the Supreme Court take a clear and definitive position on what court costs, surcharges, and fees should be collected on municipal court cases. The Ad Hoc Committee Report on court costs completed last year should be brought forward by the Supreme Court and you should seek enabling legislation to enact the committee's recommendations. Municipal courts are getting mixed messages on this issue from the Office of State Courts Administrator (OSCA) and it is time for a consistent state-wide message on this issue. As one of our members stated, "It is disingenuous for the state to complain about cities using municipal

courts to generate funds while the legislature wants to create new court costs to be assessed for their coffers."

We also understand there is proposed legislation to require alternative methods of satisfying fines and costs, for example through the use of community service. Many of our courts already do this with good success. However, requiring the use of community service can raise liability issues for municipalities, so it may be necessary to clarify and strengthen the immunity provisions in Mo. Rev. St. 479.190 to prevent potential liability issues for cities who use community service.

d. Are we civil or criminal courts?

Another issue that arises frequently is whether we are civil or criminal courts. As you are very aware, whether a case is civil or criminal can have numerous effects on how or whether the case proceeds and/or what are the proper remedies for the matter. We suggest that the Supreme Court take a clear position that municipal courts adjudicate alleged ordinance violations and that the criminal rules of procedure and the criminal statute of limitations apply. It makes no sense to think that a different statute of limitations could apply for a DWI in a municipal court than would apply in state court. By taking this approach we would be adopting a body of law that has multiple built in procedures for the protection of defendants and indigents.

e. Failure to Appear charge

We understand there is proposed legislation that would limit the power of the court to enforce failure to appear charges. While we understand the genesis of this proposed legislation and its stated purpose, we nevertheless think it may be sending the wrong message to those citizens who receive traffic citations. This sort of proposed legislation could lead the average citizen to believe that avoiding court is the better option. This, in our view, does not promote respect for the rule of law in general or for our courts in particular.

5. Conclusion

Let us not forget Mo. S. Ct. Rule 2.2.4 of our Judicial Code of Conduct: "A judge shall not be swayed by partisan interests, public clamor, or fear of criticism." There is certainly a large public clamor arising over conduct in the municipal courts of Missouri. We have received some very poor local, national and international media. But let us be steadfast. While there are certainly some rule and procedural changes that might benefit the municipal courts in Missouri and the communities they serve, a reasoned approach addressing more than public clamor should guide this Court in its mission to explore any appropriate changes.

We as an Association do not believe the municipal court system in Missouri is broken, nor do we believe that it is badly damaged. Perhaps there are individual judges and courts who have made

grave mistakes, but that should not discredit the outstanding work that 99% of our municipal judges and courts perform each day.

Can we do better? Absolutely. We should always strive to operate better. However, there is no need for drastic changes when small corrections can address problems, perceived or otherwise. Perhaps, a reemphasis on existing ethical restrictions and court procedures as well as a reexamination (by ALL entities involved in the administration of local criminal justice systems) of the purpose of our courts is more appropriate than wholesale changes to these well-established rules and procedures so that we can make Missouri courts a model for the nation.

Sincerely,

Steven L. Sanders, President
Missouri Municipal & Associate Circuit Judges Association