

# OSCA REPORT

**FERGUSON MUNICIPAL COURT**  
**APRIL 13, 2015**

The Ferguson Municipal Court had turnover of their management staff and half of their clerk staff during the past six months. Court staff remains positive and open to process recommendations.

In addition to case processing, court staff are responsible for:

- Entry and recall/withdrawal of all warrants in the law enforcement system (MULES),
- Filing of all warrant paperwork, and
- Handling work for the prosecutor's office.

The prosecutor never sees a traffic file, unless an attorney enters on a case. In accordance with Supreme Court Rule 37.34 and 37.35, the prosecutor must sign them in order to make them an Information. The court staff files all tickets with the court. The prosecutor reviews criminal case filings only after they are received and filed by the court clerk.

**DOJ ISSUE: COURT VIEWED AS A MEANS TO GENERATE REVENUE AND IMPOSE UNNECESSARY FINES AND FEES (Pages 9, 42 and 52)**

Several steps have been taken to address this issue. The fine schedule has been revised, effective April 1, 2015, and reductions were made to fines assessed by the court. Several of the fees the court had been assessing were repealed in the city ordinances.

A detailed review of city ordinances disclosed the following fees and practices not supported by state law:

- Section 13-60 Withdrawal of Complaint – Up to \$75 fee plus court costs when an individual withdraws a complaint that resulted in issuance of a violation.
- Section 13-61 Dismissal of Trivial Offenses – Dismissed upon payment of costs.
- Section 13-63 Parole and Probation – Establishes a special deterrent fee.
- Section 13-70(2) Costs – Serving Warrants, Mileage.
- Section 13-70(3) Costs – Mileage for serving warrants.
- Section 13-70(5) Court Costs – Sheriff Costs.

In addition to the above ordinances, the following procedures need to be revised or repealed:

- Administrative Rule No 2. – Credit Card Fee/Non-Negotiable Payment Fee. The manner in which this fee is being collected, \$4 flat fee for face-to-face payments, may violate contractual agreements with the various credit card brands.
- The report specifically cited *Bearden v. Georgia*, 461 U.S. 660,671 (1983) in regards to serving time for unpaid costs and labor provisions (Section 1-16 and 1-17). While it does not appear that these practices are being used, the ordinances need to be reviewed by the city and revised or repealed accordingly.
- Section 13-62 Jailing of Defendants – Assessing the board bill to the defendant is allowed by statute but only when there is a guilty plea.

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**DOJ ISSUE: FAILURE TO APPEAR CHARGE AND FEE (Page 42-43)**

At the time of the DOJ review, assessing failure to appear fine and costs was common practice. As of September 23, 2014, a failure to appear fine and costs are no longer assessed.

**DOJ ISSUE: COURT PROCEEDINGS APPEAR TO BE DEFICIENT (Page 43)**

Issues were noted in how trial proceedings were conducted. Comments received were that the Municipal Judge did not listen to testimony, did not review reports or criminal history of defendants and did not allow all pertinent witnesses to testify before rendering a verdict. Attempts to raise legal claims were met with retaliatory conduct.

Municipal Judge Ronald Brockmeyer resigned on March 9, 2015. Effective March 16, 2015, Judge Roy Richter, Eastern District, Missouri Court of Appeals, was temporarily transferred to the 21<sup>st</sup> Judicial Circuit for assignment to the Ferguson Municipal Court.

Of the dockets observed, the Municipal Judge has been attentive and willing to listen to defendants and/or defense counsel.

**DOJ ISSUE: COURT PRACTICES AND PROCEDURAL DEFICIENCIES CREATE A LACK OF TRANSPARANCY REGARDING RIGHTS AND RESPONSIBILITIES (Page 45)**

Court procedures and operations were considered ambiguous, were not written and did not appear to be transparent or available to the public. This makes it difficult for an individual to know their rights and responsibilities, how much is owed, where and how to pay, their payment options and whether a court appearance is required.

Each court session now starts with Judge Richter providing an explanation of the court process. If a defendant is not in attendance at the beginning of court or did not understand, he explains the process to the individual one-on-one.

Efforts are being made by the court clerk to develop written procedures. Her goal is to ensure that cases are being handled consistently by the court staff. The court clerk is receptive to suggestions made to improve case processing.

To further improve the understanding of individual rights and responsibilities, the court should:

- Consider adding the defendant rights on a court website and displaying the rights on the wall of the courtroom.
- Develop a flier for officers to disburse at the time of a stop regarding payment options, fine amounts and where to get answers to their questions.

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- Request the on-line payment vendor include information about which violations require a court appearance. A link could be provided on the vendor's website to the defendant rights document, and current fine and cost schedule. Make all information available in both English and Spanish.

The City of Ferguson does not currently have a court website. Getting the website back up and running is essential and enables the court to provide valuable information to the public regarding court operations, defendant rights and responsibilities, court dates and times, fine schedules and cost schedules. To keep the public informed, the court should provide as much information as possible on the website. This information should include, at minimum:

- Current municipal orders.
- Court dates and location.
- Court hours (i.e., the time frame the court staff are actually available to the public to do business).
- Violation Bureau listing with fine and court cost information.
- Those charges requiring a court appearance.
- Instructions on how to obtain a compliance letter for the Department of Revenue.
- All payment options and the different methods of payment.
- Information on what to do if a payment cannot be made.
- Listing of warrants by case number and defendant name.

**DOJ ISSUE: VIOLATION BUREAU LIST IS INCOMPLETE AND IS NOT CLEAR REGARDING WHETHER A COURT APPEARANCE IS MANDATORY. (Page 46)**

The new Violation Bureau list is posted at the payment window and clearly indicates those offences requiring a court appearance (accident, DWR, DWS, etc.). Law enforcement officers need to be trained regarding violation requiring a court appearance. Providing a flier containing this information to individuals at the time of the stop may help clarify when court appearances are mandatory. As referenced above, once a court website is available, the fine schedule should be included along with the explanation of when a court appearance is mandatory.

**DOJ ISSUE: INADEQUATE COMMUNICATION REGARDING COURT APPEARANCES AND CONSEQUENCES RESULTING FROM MISSED COURT DATES (Pages 46-47)**

Letters regarding the missed court dates and warrants are automatically generated from the court case management system (ITI).

Copies of letters generated from ITI clearly indicate the reason for the letter, the cases and charges, whether the defendant needs to appear, how much the defendant owes and

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when the amount needs to be paid. These letters and warrants are not generated for 48 hours after a court date to allow defendants time to pay if they missed their court appearance. Warrants issued in the system are not enforced for an additional week awaiting the judge's signature.

**DOJ ISSUE: INDIVIDUALS FEAR THAT IF THEY CANNOT IMMEDIATELY PAY THE FINES THEY OWE THEY WILL BE ARRESTED AND SENT TO JAIL. (Page 48)**

Changing the public perception is a difficult task. Payment options are available, which could be disclosed on a court website and can also be included on the on-line payment vendor website. Making payment options clear may help alleviate misguided perceptions of court operates.

Observations of court proceedings and payment window procedures indicated that the court clerks communicate to the individuals paying that there are payment options. Each individual was treated with respect and when someone did not have the amount due, they were provided written information on how much to pay and what to do if they could not pay the amount at the assigned due date. The court cannot control court practices in surrounding cities but continuing with the current practice of working with individuals to the extent possible can only help reduce some of the misconceptions about the court.

**DOJ ISSUE: SUSPENSION OF LICENSE UNDER MISSOURI'S "FACT" PROCESS (Page 42, bottom and page 50)**

Ferguson follows Missouri's statutory process to report noncompliance by a defendant in a moving traffic violation case (sections 302.341 and 544.045 RSMo).

- A letter is sent to the defendant in advance of suspension;
- Notice is sent to the Department of Revenue to suspend, and
- Compliance notice is provided when a defendant's balance is paid in full.

If the suspension notice is returned in the mail, a notation is made in the case management system that it was a "non-deliverable" and the letter is placed in the case file.

**DOJ ISSUE: RECOMMENDATION PROCESS (Page 44, top paragraph)**

The prosecuting attorney has authorized the court to communicate fine recommendations when requests are received from attorneys. In this instance court staff is working on behalf of the prosecutor, though recommendation letters are sent on Municipal Court letterhead. The prosecutor does not see a filing or a recommendation until court is in session and only if an attorney has filed and wants to discuss a recommendation. Requests for recommendations should go directly to the prosecutor and not to the court.

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**DOJ ISSUE: REQUESTS FOR DISCOVERY (Pages 23 and 44)**

Requests for discovery are filed with the court and responses to the requests are made by the court staff. Copies are maintained in the court files. The prosecuting attorney does not see the request.

The prosecutor in Ferguson does not maintain a case file. The prosecutor and court documentation is commingled in the same case file. To properly segregate the prosecutor duties, the prosecutor should maintain separate case files. Requests for recommendations and discovery should be sent to the prosecutor and not the court.

**DOJ ISSUE: HIGH BOND AMOUNTS AND PROCEDURAL OBSTACLES (Page 47)**

The municipal judge has approved a written bond schedule and the schedule has been provided to the police department and court staff.

The clerks are aware that they must be impartial and fair, no sympathetic tendencies to one defendant and not another. All staff must follow the same procedures and be consistent. A copy of Court Operating Rule 2 was provided to detail the information classified as public information and may be provided over the phone or in person.

**DOJ ISSUE: REQUIRING SPECIFIC DATE AND TIME TO APPEAR OR PAY ENCOURAGES FAILURE TO APPEAR AND PAY (Page 48)**

Ferguson Court is reviewing charges requiring a defendant to appear and has developed a new violation bureau listing that specifies when a court appearance is mandatory. Requiring a specific date and time by which to appear or pay is the only way to enforce the law. If a person fails to appear or pay multiple times, a warrant is issued to enforce the legal requirements.

**DOJ ISSUE: COURT APPEARANCES MAY REQUIRE INDIVIDUALS TO WAIT OUTDOORS IN INCLEMENT WEATHER (Page 49)**

During recent observations of court, security processed people through the metal detector as quickly as possible so they would not have to stand in the rain.

When the court moves to its new location, the metal detector will be placed further into the building. Residents will have to wait at the entrance to be processed through security.

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**DOJ ISSUE: NOT BEING ABLE TO FIND WARRANTS IN WARRANT DRAWERS TO OBTAIN BOND AMOUNT (Page 47, bottom and Page 56)**

Warrant drawers are not the court files and contain the Ferguson Police Department (FPD) copies of the warrants to be served. However, the court is making the law enforcement system (MULES) warrant entries and maintaining both the court file and the law enforcement file when a warrant is issued and returned. The warrant drawers should be the responsibility of the FPD records clerks, not court staff. Court staff should only be responsible for the court record file.

**DOJ ISSUE: PAYMENT PLAN INSTALLMENTS ARE SET AT \$100 WHICH IS HIGHER THAN OTHER AREA MUNICIPALITIES (Page 53)**

The court should consider having the defendant complete a written payment agreement when fines and costs are not paid in full at disposition. Requiring a minimum payment at disposition, (typically set at \$35-\$50) and considering lowering the minimum installment amount to \$25 could improve the ability to comply with the payment agreement and reduce the number of times an individual may have to come back to court.

Currently, the on-line payment website indicates that only full payments can be made from the website. Accepting partial payments through the on-line payment vendor would also make the payment process more convenient.

**DOR ISSUE: FAILURE TO ASSESS THE DEFENDANTS ABILITY TO PAY WHEN DETERMINING THE FINE AMOUNT TO ASSESS (Page 53)**

The violation bureau fine schedule has been revised and observations of the fines assessed for mandatory court appearances appeared to be in line with other courts. Keeping fines reasonable increases the defendant's ability to pay. The court also accepts payments on-line making payments easier for the defendants.

While requiring defendants requesting a payment plan to complete a financial statement is a useful tool in establishing a payment agreement, it is also a time consuming task for both the defendant and the court. In a review done by the National Center for State Courts, *Current Practices in Collecting Fines and Fees in State Courts: A handbook of Collection Issues and Solutions*, Second Edition, 2009, 80% of all defendants requesting a payment plan decided to pay in full instead of completing a financial statement.

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**DOJ ISSUE: INSUFFICIENT ALTERNATIVES TO PAYMENT OF FINES AND COSTS (Page 54)**

Ferguson has community service through Eastern Missouri Alternative Sentencing Services (EMASS) for defendants under the age of 23; previously this was available to those under the age of 19.

**DOJ ISSUE: NUMBER OF WARRANTS BECAUSE COURT ISSUES TO GET PAYMENT (Page 55)**

A more accurate count for warrants is around 12,000 -13,000 not 32, 000, as previously reported in DOJ report. The court is waiting on an accurate warrant listing from ITI. This report needs to be evaluated for warrants issued prior to January 1, 2010 and discussed with the prosecutor whether to recall or retain outstanding warrants.

**DOJ ISSUE: USE OF WARRANTS TO SECURE PAYMENT (Page 55)**

Warrants are now used as a last resort to enforce an appearance when a defendant misses three (3) court appearances. Court staff is authorized to allow two (2) continuances. Upon the first failure to appear, a letter is sent out with a new court date. If the defendant fails to show up for the third scheduled appearance, a warrant is issued. Observations of court indicated that the court staff is willing to make payment arrangements when the defendant appeared in court to talk to the judge.

**DOJ ISSUE: BOND PRACTICES ARE UNCLEAR AND INCONSISTENT (Page 59)**

The municipal judge approved a written bond schedule and the schedule has been provided to the police department and court staff. Controls over the procedures used for posting, logging, placing the bond form and money in the court's locked drop box, verification of the bond log between the police department and the court, and deposit procedures were observed and appeared to provide adequate internal controls.

**DOJ ISSUE: BOND FORFEITURE PROCEDURES (Page 61)**

The court is following standard bond forfeiture procedures. Bonds are forfeited when a defendant has not appeared in court to have their case disposed. At this time, the case has not been disposed and therefore fines and costs are not due. Prior to forfeiting a bond the court sets a bond forfeiture hearing, sends a notice of the hearing to the defendant, and conducts the hearing. If the defendant does not appear at the forfeiture hearing the bond is then forfeited.