



MISSOURI MUNICIPAL COURTS: BEST PRACTICE RECOMMENDATIONS

FINAL REPORT
NOVEMBER 2015

Gordon M. Griller, Project Director
Yolande E. Williams, Court Consultant
Russell R. Brown, III, Court Consultant

Daniel J. Hall, Vice President
Court Consulting Services
707 Seventeenth Street, Suite 2900
Denver, Colorado 80202-3429
(303) 293-3063

© 2015

National Center for State Courts

This study was prepared under a State Justice Institute grant for the Supreme Court of Missouri and the Office of State Courts Administrator (OSCA), the administrative arm of the Supreme Court. The grant was administered through OSCA and supported consulting services provided by the National Center for State Courts (“NCSC,” “National Center,” or “Center”). The NCSC is an independent, private nonprofit corporation, chartered in 1971, targeting the improvement of courts nationwide and around the world. **This study reviews the operations and procedures of Missouri’s municipal courts and recommends a series of improvements based on various best practices operative in limited jurisdiction courts throughout the country.** The points of view and opinions expressed in the report are those of the authors as agents of the National Center, and do not necessarily represent the official position or policies of the State Justice Institute, the Missouri Judicial Branch, the Supreme Court of Missouri, or the Office of State Courts Administrator.

Online legal research provided by LexisNexis.



Acknowledgements

The NCSC consultants wish to thank the judges and staff of the various municipal courts reviewed throughout Missouri for their cooperation and assistance in site visits, data collection, interviews, and observations of court operations and proceedings on three separate trips to the state. The Center is also indebted to the lawyers, city and county officials, circuit court judges, court staff, and members of the public who provided information and suggestions about the workings and performance of Missouri's municipal justice system. Finally, the authors are especially appreciative of the advice and counsel provided by staff of the Office of State Courts Administrator, and in particular Kathy Lloyd, Missouri State Court Administrator, for her guidance, and Jill Schroeder, Administrative Coordinator, for logistical and scheduling arrangements that aided the work of the NCSC project team.

Missouri Municipal Courts Best Practice Recommendations

Table of Contents

	Page
Executive Summary.....	v
Best Practice Recommendations	vii
1.0 Leadership and Governance	2
1.1 Municipal courts must operate independently with clearly defined powers	3
1.2 Municipal courts must visibly function as part of the judicial branch.....	4
1.3 Municipal court operations must be distinguishable from city functions	5
1.4 Circuit courts should exercise greater oversight of municipal divisions	6
1.5 Presiding municipal judges must be administrative heads of municipal courts....	8
1.6 Options should be available to reorganize; consolidate municipal courts	9
1.7 Expand OSCA's role in monitoring and coordinating municipal courts	10
2.0 Judicial Selection, Retention, and Evaluation	12
2.1 Transparency should govern judicial appointment; termination; evaluation.....	12
2.2 Develop strong, formal conflict of interest rules for municipal judges.....	14
2.3 Formalize municipal judge training through the Supreme Court.....	15
3.0 Court Management.....	17
3.1 Court space must be dignified, safe, and separate from police; prosecution.....	17
3.2 Develop restrictions on court staff work for other justice system agencies.....	18
3.3 Audio record municipal court proceedings	19
3.4 Procedural fairness and understandable processes are essential	21
3.5 Maximize services to the public via the Internet and court websites.....	23
3.6 Update courtwide technology strategies to include municipal divisions.....	24
3.7 Formalize court staff training through state court administration	24
4.0 Fiscal and Financial Operations	26
4.1 Municipal courts should not be deemed revenue generators for cities	26
4.2 Bail should not punish the accused or enrich municipal treasuries	27
4.3 Expand and coordinate community service opportunities in lieu of fines.....	28
Epilogue.....	30

EXECUTIVE SUMMARY

This study, was conducted by the National Center for State Courts (NCSC) at the request of the Supreme Court of Missouri, and funded through a State Justice Institute (SJI) grant. It is directed at identifying best practices in operating and managing limited jurisdiction courts throughout the United States and suggesting how those practices may be applied to municipal courts in Missouri. The impetus for this analysis was sparked by a recent Department of Justice (DOJ) assessment of the Ferguson Missouri Police Department which also alluded to problems and improprieties in the operation of the Ferguson Municipal Court. Court officials feel some of the difficulties in Ferguson may extend to a broader range of municipal courts in the state.¹ To that end, National Center consultants, beginning in May 2015, reviewed studies and reports on Missouri's municipal courts (including the March 2015, DOJ Report), examined data on court performance, met twice with the Supreme Court of Missouri, and visited, observed, and interviewed judges, lawyers, and court staff in a select number of municipal courts throughout the state. A variety of attorneys, judges, county, city, and court officials and staff throughout Missouri were interviewed during three separate trips to the state.²

The analysis was conducted independently by the National Center. No person pressured, influenced or otherwise compromised the objective nature of this review. All those interviewed and contacted provided requested data and information openly and in a timely manner. At all times the consultants were free to determine whom to interview, what questions to ask, how to collect needed data and information, which courts and cities to visit, and how to assemble this report.

The NCSC project director Gordon Griller is a Principal Court Management Consultant at the Center. He is a nine-year, full-time employee of the Center's Court Consulting Services, and has over 40 years of experience in leading, managing and analyzing limited and general jurisdiction state trial courts. Mr. Griller was assisted by two subject matter experts, Ms. Yolande

¹ United States Department of Justice, Civil Rights Division. *Investigation of the Ferguson Police Department*. (March 4, 2015).

² The NCSC project team conducted three site visits to Missouri to observe, review, interview and discuss court operations and procedures with judges, lawyers, city officials, and court staff. The dates, courts, and selected noteworthy events and interviews included the following. *May 12-14, 2015*: Ferguson Municipal Court, DOJ sponsored Ferguson Town Hall Meeting on the Ferguson Court, State Courts Administrator. *June 22-26, 2015*: Florissant Municipal Court, Bella Villa Municipal Court, Presiding Judge of the Twenty-first Judicial Circuit Court (St. Louis County), Columbia Municipal Court, OSCA Chief Technology Officer, Supreme Court of Missouri, Court Administrator of the Thirteenth Judicial Circuit, Project Director of the Center for Court Innovation Pretrial/Jail Overcrowding Study on St. Louis County (MacArthur Foundation grant targeting a reduction in unnecessary over-incarceration), and a representative of the Missouri Municipal and Associate Circuit Judges Association. *August 10-13, 2015*: Kansas City Municipal Court, Lees Summit Municipal Court, Higginsville Municipal Court, Fulton Municipal Court, Presiding Judge of the Sixteenth Judicial Circuit Court (Greater Kansas City), and Supreme Court of Missouri.

E. Williams, Court Administrator for the Seattle Washington Municipal Court, and Mr. Russell R. Brown, III, Court Administrator for the Cleveland Ohio Municipal Court. Both are accomplished and highly regarded professionals who manage progressive, well-respected municipal courts in their communities.

The report is divided into four subject matter sections:

- leadership and governance
- judicial selection retention and evaluation
- court management
- fiscal and financial operations

Various topics under each section represent recognized best practices in operating municipal courts. Admittedly, these practices may not be the only leading protocols in administering municipal courts, but the National Center maintains they are among the most important and practicable in promoting both immediate and sustained improvement in Missouri's municipal courts.

The following pages outline the best practice recommendations found under each of the above sections and provides the page number the recommendation can be found.

Best Practice Recommendations

Leadership and Governance

Page 4

1. Model contracts for the appointment of full or part-time municipal judges should be developed by the Supreme Court in a manner and through a process as decided by the Court and directed at strengthening the independence of municipal courts and upholding impartiality and fairness in situations where a judge serves under contract with a city.
2. Model ordinances (city codes) should be developed by the Supreme Court that clearly define a municipal division as a court of law funded and supported by the city but structurally a component of the Missouri Judicial Branch.
3. The Supreme Court should clarify to a greater extent the criminal and civil powers of municipal divisions and how the criminal rules of procedure and criminal statute of limitations apply.

Page 5

4. The Office of the State Courts Administrator (OSCA) should develop monographs and brochures, as they so determine, that clearly describe in fact and law the relationship of municipal courts to the State Judicial Branch, require their distribution to all current full and part-time municipal court judges and staff and all new employees upon hiring or assignment to a municipal court on an ongoing basis.
5. To the extent feasible, signage, stationery, forms, orders and documents related to and used by municipal divisions should convey to the public and court customers that the court is part of the Missouri Judicial Branch. This should not bar the court from using the name of its related municipality in its official designation as a court, but in so doing it should be clear the court is a court of law functioning as part of the State Judicial System not a department of municipal government.

Page 6

6. The Missouri Judicial Branch, in concert with selected members from the Municipal and Associate Circuit Judges Association, and the Presiding Judges of the various Circuit Courts in the State, should develop a brochure or pamphlet and pilot a visitation program directed at all current and newly elected city councilpersons and mayors in various municipalities by appropriate Judicial Branch representatives to explain and review the importance and features of judicial independence for municipal divisions and the fact that such divisions are constitutionally part of an integrated Missouri Judicial Branch. A report on the pilot project, its impact, and any elements that ought to be improved, along with recommendations regarding the statewide expansion of the pilot, should be submitted by OSCA to the Supreme Court no later than 12 months after program initiation, and, as appropriate, the Supreme Court may wish to issue a directive for the continuation and expansion of the program on a permanent basis.

Page 7

7. Circuit court presiding judges should assertively exercise administrative supervision over the municipal courts (aka as municipal divisions) in their circuits. The presiding circuit judges, assisted by the staff and other judges of the circuit court as they determine, should meet on a regular basis with the presiding judges of the municipal courts to discuss separation of powers,

resources, use of technology and legal, administrative and other relevant issues to ensure the overall proper functioning and independence of the courts of the circuit.

Page 8

8. A report should be filed annually by each presiding municipal judge with the presiding judge of the circuit court outlining reforms, improvements, efficiencies and services that benefit the public and enhance the independence, fairness and impartiality of their court. Copies of such reports should be transmitted to OSCA. Where it may be determined from reports, observations, performance data or investigations that a municipal division may be operationally dysfunctional or problematic, and is beyond the circuit court presiding judge's capacity to ameliorate as determined by that judge, the matter shall be referred to the Chief Justice and State Courts Administrator for appropriate remedies.
9. Within a city, the presiding municipal judge should function as the administrative head of the municipal division and supervise the judicial and internal management functions of the court by developing and overseeing the budget, supervising the chief clerk or court administrator, and ensuring the proper functioning of the court. Such duties may be delegated to the chief clerk or court administrator, but such delegation should not relieve the presiding judge of accountability for the operations and administration of the court.

Page 9

10. The duties of the presiding municipal judge as administrative head of a municipal division should be clearly outlined in any municipal code and employment contract related to the appointment of the presiding municipal judge. In turn, the presiding municipal judge should be fairly compensated for the additional time required to perform such duties.

Page 10

11. It is suggested that the Supreme Court develop a committee or task force to investigate, research and recommend plausible options for municipal division consolidations where appropriate.
12. Consolidation and reorganization of some of the 82 municipal divisions in St. Louis County should be a priority given the dense population in the Greater St. Louis area and large number of municipal divisions.

Page 11

13. The Supreme Court should request appropriate funding from the State Legislature to develop a special OSCA unit dedicated to Municipal Court Services. Formal reports on the work and achievements of this special group should periodically be submitted to the Supreme Court and other interested parties.
14. The new OSCA Municipal Court Services division should have dedicated staff and a strategic agenda based on policy decisions by the Supreme Court to methodically coordinate, upgrade, and monitor the work of municipal divisions in concert with the presiding judges of the circuit courts.

Judicial Selection, Retention, and Evaluation

Page 13

15. By rule, administrative order, or statute, a specially-appointed citizen advisory board should be required in every municipality wherein a judge is appointed by the city council and/or mayor and serves on a contract, pursuant to an ordinance, or some other specially designated process by the elected governing board of the municipality. The purpose of the board is to recommend to the city governing body the best qualified persons to become municipal division judges, to evaluate incumbent judges regarding their responsibility to perform with impartiality, integrity, proficiency and fairness, and to advise the governing body as to whether incumbent judges should be retained in office. To these ends, it would also be appropriate for the Supreme Court to develop helpful guidelines regarding judicial evaluation criteria for use by such a board.
16. In appointing members to the advisory board, the city governing body should be sensitive to representation reflecting the diversity of the community served by the municipal division. Advisory board meetings should comply with all open meeting laws of the state. The city should arrange administrative support for the advisory board by preparing notices of meetings, keeping formal minutes, sending information packets to members, advertising notice to the public about judicial vacancies and reappointments, and fulfilling other clerical and management duties needed by the board. The advisory board should not limit its investigation of applicants to the applications and letters of recommendation received but should hold public hearings, personal interviews and conduct such other investigations into the background, performance and qualifications of the applicants as the advisory board deems necessary.

Page 14

17. The advisory board should recommend more than one candidate for each vacancy. If at least two candidates are not qualified, the advisory board shall submit a formal report to the municipal governing board as to the general reasons for a lack of qualified candidates and those reasons should be made public. Candidates submitted by the advisory board should be the only nominees considered, voted upon, and installed as municipal division judges by a municipal governing body. Should no candidates be qualified, the municipality shall notify the presiding judge of the circuit court in which the municipality is located for the assignment of an associate circuit judge as a municipal division judge, or other such remedy as the presiding judge shall determine.

Page 15

18. In the interest of independent, impartial courts and the importance of preserving the public's confidence and trust in them, the Supreme Court should consider a rule that prohibits lawyers who serve as municipal judges from simultaneously working as municipal prosecutors.

Page 16

19. The Supreme Court, through its Office of State Courts Administrator, should assertively and actively engage in continuing judicial education programming for all municipal and associate circuit judges serving as judges in municipal divisions, beyond merely certifying, accrediting, and staffing the educational activities of the Missouri Municipal and Associate Circuit Judges

Association. To that end, it is recommended that additional funding and staff be requested from the State Legislature.

20. OSCA should consult with the National Association of State Judicial Educators to develop a more comprehensive judicial branch education program for Missouri, including but not limited to municipal divisions.

Court Management

Page 18

21. To the extent feasible, municipal court space for judges, staff, record keeping, and work processes should be sight and sound separated from police and prosecution activities.
22. Courtrooms must be dignified and convey that proceedings in them are fair, unbiased and conducted under the authority of the Missouri Judicial Branch, not a city municipal government. It is challenging to convey that impression to the public when court proceedings are held in police facilities, city council chambers, or gymnasiums, and prosecutors sit next to the judge at city council tables which National Center consultants observed in some locations. Consequently, it is suggested the State Courts Administrator establish minimum standards for décor, design, and accouterments for municipal division courtrooms, with special attention given to make-shift city council courtrooms and courtrooms located in police stations.
23. The Office of the State Courts Administrator should develop courtroom and court facility security guidelines for municipal governments to follow regarding municipal division space in city facilities. To those ends, the presiding judges of each circuit court, or their designee, should ensure every municipal division in the circuit has complied with the established guidelines.

Page 19

24. The Supreme Court of Missouri Rules Governing Court Personnel should be amended to include municipal court clerks and clearly state that no court employee shall job-share, split duties or work for a city agency, office or contracted individual (other than a municipal judge) directly involved in the city's justice system.
25. Further, should non-justice system work be permitted for municipal court employees, the working arrangement should be allowed only through written, formal authorization by the presiding municipal judge and a clear understanding of the restrictions on the court employee's work activities by the non-justice system employer(s).

Page 20

26. The Supreme Court should establish a committee or task force to develop strategies and pathways to transition municipal divisions to courts of record employing digital audio records.
27. Costs associated with equipment purchase, installation and training to establish digital audio records in all Missouri municipal courts should, to the extent possible, avoid placing a financial burden on municipalities.

Page 22

28. OSCA should initiate a statewide effort to review court issued forms and instructions provided to the public with the goals of simplifying the language, removing legal jargon and terms that may be familiar to the court but confusing to the public.
29. Court calendars should be publicly available. Courts should be encouraged to schedule cases at times and on dockets that are not rushed which in many municipal divisions is the current situation. In OSCA's monitoring role (see section 2.7), random reviews of court dockets should take place and guidelines for setting calendars should be developed.
30. A program to administer periodically the National Center's CourTool Measure One Survey on Access and Fairness in municipal divisions should be developed by OSCA. The survey is in the form of a questionnaire whereby court users on a specific day or a few days rate the court's accessibility and its treatment of customers in terms of fairness, equality and respect. Comparisons of results among courts by location, type of customer, and type of service can inform and improve court management practices.

Page 23

31. Improved assistance in developing more useful, consistent and uniform municipal division websites should be a strong objective of state court administration. Numerous litigants who receive traffic citations are not residents of the municipality where the offense occurred. With a mobile population it would be helpful if OSCA could develop a model website for municipal courts that would give visitors useful information; provide a common, helpful look and feel among municipal divisions; and facilitate easier, more familiar navigation for users.

Page 24

32. State court administration should ensure the court system's statewide technology plan includes municipal divisions and is updated consistent with a more inclusive role for limited jurisdiction courts within the Judicial Branch, including a qualified vendor list for municipal courts to purchase an electronic case management system.
33. Identify and implement a common data exchange system that allows courts to transfer important case information to regional repositories or a central data warehouse. To that end, the Supreme Court should request the necessary funding from the State Legislature.

Page 25

34. The Office of State Courts Administration, should consider engaging in a more involved and active role in continuing education programming for municipal division chief court clerks and court administrators beyond merely certifying and accrediting the educational activities of the Missouri Association for Court Administrators and the Metropolitan St. Louis Association for Court Administration.
35. OSCA should consult with the National Association of State Judicial Educators and other state court administration offices regarding ideas and strategies to promote a more comprehensive judicial branch education program for non-judicial municipal division chief clerks and court administrators as well as counsel with the leaders of MACA and MSLACA toward those ends.

Fiscal and Financial Operations

Page 27

36. All employment contracts and city codes or ordinances outlining the duties and responsibilities of municipal judges and prosecutors should clearly state that tenure and/or reappointment is not contingent on generating revenue for the municipality.
37. Fees and costs, however set, should be determined in consultation with the municipal judge and presiding judge of the circuit court, and all municipal division fees and costs should be reviewed periodically by the municipal judges and presiding judge of the circuit at a meeting of them en banc.
38. Fees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension.

Page 28

39. Training should be provided to municipal judges on the fundamentals of bail as coordinated through the presiding judges of the circuit courts.
40. Municipal courts should be encouraged to use evidence-based bail determinations and individual assessments of each defendant's background and criminal history in setting bail.
41. Municipal governments should consider the creation of a pretrial service function in an existing municipal agency, apart from the police department, to administer an objective risk assessment tool and the collection and verification of background information on arrestees for pretrial judicial decision-making.
42. OSCA should develop a task force to research and explore ways to institute oversight and accountability measures in the municipal court bail determination process.

Page 29

43. OSCA should review and study the array of diversion and community service programs in the State available to the municipal divisions with the objective to identify and cataloging their locations, types of services, client capacities, court and client costs, and operations for distribution to presiding judges of the circuit courts and all municipal judges. The catalog should be periodically updated to ensure its continued accuracy.
44. Based on a review and study of diversion and community service programs in the State, OSCA should pinpoint close geographic clusters of municipal courts regardless of their jurisdictions that could benefit from working together to access local diversion and community service programs, and provide such information to the affected presiding judges of the circuit courts and municipal judges for further action.
45. Presiding judges of the circuit courts and the municipal judges in those circuits should develop a task force to study and determine the viability of municipal division operated and shared community service and diversion programs in a circuit.

Findings:

Best Practices

Observations/Commentary

Recommendations

1.0 LEADERSHIP AND GOVERNANCE

Much has been written lately within the national court community on governance and leadership in state and local trial court systems. In many ways it is a reaction in modern fast-paced times to the historic operating principles of the American justice system. The set of roles and responsibilities conveying power and control to those in authority over state and local courts are generally so fragmented, consensus focused, loosely-coupled, and laissez-faire driven, that it is both complicated and protracted for top leaders to develop binding organization-wide (read: state-wide) policies, directions and strategies.³

As scholars and experts in judicial and court management have examined leadership and governance in today's courts, most conclude state judicial systems are complex for reasons endemic to the basic purposes and functions of courts. Namely, administering justice in individual cases.⁴

Judges, like professors and doctors, are highly trained professionals with extensive individual autonomy. Both management and professional decisions made by them are largely decentralized. Tension is commonplace between institutional commitment and individual independence. Reliance on multiple, external funding sources add to system disintegration by causing dispersed, varied resource levels throughout the collective institution. Managing such widely spread, loosely connected, and complex organizations requires governing mechanisms different from traditional hierarchical or corporate command-and-control structures.⁵

In courts, colleges and hospitals, effective leadership is commonly based more on persuasive, collegial approaches exercised by recognized leaders who are seen as having professional and managerial legitimacy and competence, who are inclusive and collaborative in their decision-making, who operate through open, transparent communication procedures. And, who are invested in a reform process directed at sustainable improvements that avoid severe, disruptive crisis-centered change that can further splinter an already fragmented system or is merely cosmetic rather than substantive in its impact. To those ends, the National Center recommends throughout this report a series of best practices found in high performing limited jurisdiction courts that, in our opinion, will improve the operations and functioning of Missouri's municipal courts without creating undue hardship on the courts themselves or the cities that

³ Durham, Christine M., Becker, Daniel J., *A Case for Court Governance Principles*. A monograph in a series of Perspectives on State Court Leadership emanating from the Executive Session of State Court Leaders in the 21st Century, A Harvard Kennedy School Program. National Center for State Courts. Williamsburg, VA (2012)

⁴ Griller, Gordon M., "Governing Loosely Coupled Courts in Times of Economic Stress," *Future Trends in State Courts*, National Center for State Courts. Williamsburg, VA (2010).

⁵ McQueen, Mary Campbell, *Governance: The Final Frontier*. A monograph in a series of Perspectives on State Court Leadership emanating from the Executive Session for State Court Leaders in the 21st Century, A Harvard Kennedy School Program. National Center for State Courts. Williamsburg, VA (2013).

fund them. We start with improvements in overall leadership and governance, the foundation for the remaining recommendations.

1.1 Municipal courts must operate independently with clearly defined powers

Best Practices:

Municipal courts (aka “municipal divisions” of the circuit courts in Missouri) are courts of law and therefore required by constitution and statute to operate independently. Many states define the case types handled by municipal courts as serious matters subjecting defendants to possible loss of liberty and harsh fines. As such, limited jurisdiction courts are generally recognized as having criminal adjudication responsibility and governed by criminal rules of procedure and related statutes of limitations.

Observations/Commentary: Judicial independence and the three branch concept prevalent at the federal and state levels (executive, legislative and judicial) is blurred at the municipal level in Missouri and many other states. State constitutions generally don’t mandate separation of powers in city or county governments, and state and federal courts have historically been reluctant to require them to do so under what appears to be two theories of reasoning. “One theory holds that the doctrine applies only where the government possesses sovereignty. Municipalities are administrative units of the state possessing no sovereignty and, as such, their powers are strictly limited to those expressly granted by statute or charter. The other theory relies upon the fact that municipal governments have not kept the three departments separated in form or practice, but have tended to intermingle their functions.”⁶

Municipal divisions in a handful of larger Missouri communities with charter governments (e.g. St. Louis, Kansas City, Columbia, Springfield, Independence, etc.) are generally seen to operate as separate, independent judicial divisions. Where municipal judges are elected rather than appointed, or where associate circuit judges serve as municipal division judges, the courts operate more independently and are better positioned to resist improper influences and job-related pressures from politicians or special interest groups.⁷

In visiting and reviewing those municipalities that contract with private lawyers as part-time judges, it is the National Center’s opinion there is a greater tendency that the judge’s independence may be threatened or compromised through a fear of losing his or her job by

⁶ “Separation of Powers Doctrine as Applied to the Cities,” *Indiana Law Journal*: Vol. 18: Iss.2, Article 12, Maurer School of Law: Indiana University. Pages 147-148.

⁷ There are 955 municipalities in Missouri. Of those 955, 911 are general law municipalities, 38 are home rule charter cities and 6 operate under a special legislative charter permitted prior to the adoption of the state’s constitution in 1875. Only the largest cities have full-time judges.

displeasing city officials through rulings against the city or a reluctance to generate higher levels of revenue from fines and fees. Certainly, such circumstances are not true in every municipality that contracts with private lawyers for judicial services. But given the fact that contracts are for limited periods of time, and judges can and have been summarily removed at the end of their contracts for spurious reasons, such an employer-employee situation without suitable protections for judges who must administer the law impartially and fairly presents the very real possibility of damaging the fundamental purposes of courts.

In addition to recognizing municipal divisions as courts of law, it would be helpful to clearly define their criminal/civil nature. Based on the National Center's observations, municipal courts in Missouri are adjudicating many ordinance violations that have criminal overtones, mimic state criminal statutes, and subject those found or pleading guilty to criminal penalties. On the other hand, we acknowledge the Supreme Court of Missouri has issued decisions that recognize municipal divisions as generally civil in nature.

Recommendations:

- 1. Model contracts for the appointment of full or part-time municipal judges should be developed by the Supreme Court in a manner and through a process as decided by the Court and directed at strengthening the independence of municipal courts and upholding impartiality and fairness in situations where a judge serves under contract with a city.*
- 2. Model ordinances (municipal codes) should be developed by the Supreme Court that clearly define a municipal division as a court of law funded and supported by the municipality but structurally a component of the Missouri Judicial Branch.*
- 3. The Supreme Court should clarify to a greater extent the criminal and civil powers of municipal divisions and how the criminal rules of procedure and criminal statute of limitations apply.*

1.2 Municipal courts must visibly function as part of the judicial branch

Best Practices: Limited jurisdiction courts in other states with decentralized judicial systems (e.g. Washington, Arizona) such as exist in Missouri are clearly defined as part of the state judicial branch for purposes of policy oversight and operational direction. As such, municipal courts are subject to the administrative authority of state Supreme Courts and are concurrently obligated to work cooperatively with their respective municipal governments.

Observations/Commentary: Changes in Missouri's State Constitution in the early and mid-twentieth century shifted broad authority from the Legislature regarding the structure and jurisdiction of courts and vested that authority in the Judiciary (MO. CONST. art. V). Additionally,

the Supreme Court has clear ability to adopt procedural rules governing the operations and adjudication processes in all state and local general and limited jurisdiction courts.

In many municipal courts, employees and, tragically, some municipal judges, are confused about their overall attachment to the State Judicial Branch. It isn't a new dilemma for court personnel who often take their cues from judges who are part-time with little interest or time to oversee court staff. Surveys of municipal court administrators and clerks in the recent past (circa 2004) found half of them reported to and were supervised by city executive department administrators, including local police officials.⁸

Recommendations:

4. The Office of the State Courts Administrator (OSCA) should develop monographs and brochures, as they so determine, that clearly describe in fact and law the relationship of municipal courts to the State Judicial Branch, require their distribution to all current full and part-time municipal court judges and staff and all new employees upon hiring or assignment to a municipal court on an ongoing basis.

5. To the extent feasible, signage, stationery, forms, orders and documents related to and used by municipal divisions should convey to the public and court customers that the court is part of the Missouri Judicial Branch. This should not bar the court from using the name of its related municipality in its official designation as a court, but in so doing it should be clear the court is a court of law functioning as part of the State Judicial System not a department of municipal government.

1.3 Municipal court operations must be distinguishable from city functions

Best Practices: Supreme Courts in many states with decentralized court systems similar to Missouri have held that municipal judges are judicial officers, not officers or agents of a town, city or municipality. So, while the judge is selected in a manner set forth in local charter or ordinance, and the judge's compensation is set by the governing body of the city or town, any other authority over the municipal court must be limited by the need for the court to operate in a fair, impartial and independent manner.

Observations/Commentary: After observations, interviews, and discussions with numerous municipal elected and appointed officials throughout Missouri regarding the role and function of municipal courts in their communities, it is the conclusion of the National Center that substantial confusion and misunderstanding exists by a vast majority of them. That confusion

⁸ Myers, Lawrence. "Judicial Independence in the Municipal Court: Preliminary Observations from Missouri," *Court Review*. (Summer 2004). American Judges Association. Williamsburg, VA

often carries over to court staff as well, especially given the fact that many chief court clerks and court administrators report to and are supervised on a day-to-day basis by managers and administrators employed by city executive agencies. Part-time judges, in the meantime, are generally absent from the courthouse except for the few times each month when formal proceedings are held. Admittedly, clerks and administrators do contact absentee judges for procedural advice and directives related to adjudication processes from time-to-time, but such interactions represent only a small portion of the workplace activity.

The result is that the immutable purpose of a court to operate as an independent, unbiased and fair tribunal can unknowingly be compromised at the local municipal level. Not by callous disregard for its operational integrity, but by confused misunderstandings about the subtle yet critical distinctions and separations needed at the local level between municipal divisions as courts of law and the executive and legislative functions of their host municipal governments. It is the obligation of the Judicial Branch to highlight and strengthen those distinctions among municipal court employees as well as city elected and appointed officials.

Recommendation:

6. The Missouri Judicial Branch, in concert with selected members from the Missouri Municipal and Associate Circuit Judges Association, and the Presiding Judges of the various Circuit Courts in the State, should develop a brochure or pamphlet and pilot a visitation program directed at all current and newly elected city councilpersons and mayors in various municipalities by appropriate Judicial Branch representatives to explain and review the importance and features of judicial independence for municipal divisions and the fact that such divisions are constitutionally part of an integrated Missouri Judicial Branch. A report on the pilot project, its impact, and any elements that ought to be improved, along with recommendations regarding the statewide expansion of the pilot, should be submitted by OSCA to the Supreme Court no later than 12 months after program initiation, and, as appropriate, the Supreme Court may wish to issue a directive for the continuation and expansion of the program on a permanent basis.

1.4 Circuit courts should exercise greater oversight of municipal divisions

Best Practices: Nationwide, it is common for a chief or presiding judge of a general jurisdiction court operating in a circuit, district or county (depending on the way a state court is organized) to be vested with administrative oversight of limited jurisdiction courts in their region on behalf of the Supreme Court. This is true as well in Missouri. Generally, such duties and functions are outlined in court rules or administrative orders and directives issued by a Supreme

Court or its chief justice through their inherent powers to oversee the Judicial Branch. Such responsibilities include, but are not limited to, coordinating the work of limited jurisdiction courts (e.g. uniform bond schedules, information sharing among courts, compliance with judicial branch educational policies and standards, etc.), monitoring the performance of courts within their region, and upon a specific directive of the Supreme Court taking a court into receivership and temporarily managing failing or dysfunctional courts until long-term, permanent remedies are effectuated.⁹

Observations/Commentary: Increasingly across the country, leaders of general jurisdiction courts are looked to by Supreme Courts to help oversee limited jurisdiction courts in their regions. The Supreme Court of Missouri has requested little of the circuit courts in this regard to date largely due to limited circuit court resources, and little in-depth knowledge about the problems and shortcomings in the state's municipal court system prior to the recent revelations and reports centered on the Ferguson Municipal Court.

There is little doubt in law and practice, however, that the presiding judge of each circuit court in Missouri has administrative authority over the judges and court personnel of the municipal divisions within their circuit.¹⁰ Their involvement throughout the state, however, is quite varied. Some circuits invite municipal judges to circuit court meetings, routinely monitor municipal division performance, and assist in coordinating activities among the divisions. Other circuits, interact little or not at all with municipal courts in their localities.

Recommendations:

7. Circuit court presiding judges should assertively exercise administrative supervision over the municipal courts (aka as municipal divisions) in their circuits. The presiding circuit judges, assisted by the staff and other judges of the circuit court as they determine, should meet on a regular basis with the presiding judges of the municipal courts to discuss separation of powers, resources, use of

⁹ With the large number of municipal courts in the state, and the fact that numerous judges and courts operate responsibly, it is difficult to pinpoint from a distance those judges and courts that may not be performing well. Some state court administration offices have audit teams that periodically review all trial courts within their states. Still, it is a daunting task given the number of limited jurisdiction courts in the states. An encouraging development has been pursued recently in Arizona, however, that may hold promise for Missouri in helping to detect dysfunctional courts, isolate problems, and develop corrective actions by using methods to identify areas of higher risk and vulnerability. An article on the Arizona approach appears in the latest National Center for State Courts's [Trends in State Courts 2015](#) authored by Elizabeth Evans, Court Operations Officer, Arizona Supreme Court, entitled [Applying Risk Management Principles to Court Oversight](#). It can be downloaded from NCSC's website at www.ncsc.org/trends.

¹⁰ See MO. Revised Statutes, Chapter 479; Rule 37.04, Criminal Rules of Procedure for Missouri.

technology, and legal, administrative and other relevant issues to ensure the overall proper functioning and independence of the courts of the circuit.

8. A report should be filed annually by each presiding municipal judge with the presiding judge of the circuit court outlining reforms, improvements, efficiencies and services that benefit the public and enhance the independence, fairness and impartiality of their court. Copies of such reports should be transmitted to OSCA. Where it may be determined from reports, observations, performance data or investigations that a municipal division may be operationally dysfunctional or problematic, and is beyond the circuit court presiding judge's capacity to ameliorate as determined by that judge, the matter shall be referred to the Chief Justice and State Courts Administrator for appropriate remedies.

1.5 Presiding municipal judges must be the administrative heads of municipal courts

Best Practices: In municipal courts throughout the states, it is a common and best practice for a judge to assume the responsibility of presiding or chief judge and function as the head of the municipal court. Where there is more than one judge in a court, the judges typically select the presiding judge from among the members of the bench. The presiding judge, in turn, is responsible for supervising the staff; preparing, presenting and overseeing the court's budget; developing and promulgating policies, rules and procedures for adjudication processes; ensuring all cases are handled efficiently and fairly; providing for the effective maintenance and improvement of court facilities and security; and working to promote suitable electronic data systems.

Observations/Commentary: Many municipal divisions in Missouri do not operate according to this best practice. Typically, they function with absentee part-time judges who are available by phone for sporadic, short conferences with a chief clerk or court administrator when there is a question or problem related to court operations. Resultantly, for day-to-day supervision, the top non-judicial staff person generally reports to a city department executive, often the city finance director, mayor, and sometimes the police chief. Not only is this inappropriate, but it clearly runs counter to a coherent management structure that promotes the necessary independence of the court at the local level and confuses, at best, any clear line of Judicial Branch authority from the Supreme Court to the presiding judge of the circuit court and eventually to the presiding judges of the municipal divisions in a circuit.

Recommendations:

9. Within a city, the presiding municipal judge should function as the administrative head of the municipal division and supervise the judicial and

internal management functions of the court by developing and overseeing the budget, supervising the chief clerk or court administrator, and ensuring the proper functioning of the court. Such duties may be delegated to the chief clerk or court administrator, but such delegation should not relieve the presiding judge of accountability for the operations and administration of the court.

10. *The duties of the presiding municipal judge as administrative head of a municipal division should be clearly outlined in any municipal code and employment contract related to the appointment of the presiding municipal judge. In turn, the presiding municipal judge should be fairly compensated for the additional time required to perform such duties.*

1.6 Options should be available to reorganize; consolidate municipal courts

Best Practices: Optimum trial court performance requires court leaders to consider and strive to improve the administration of justice in five basic areas: enhanced and convenient access to justice by the public; expedition and timeliness in litigating matters; equality, fairness and integrity in the judicial process and decisions and actions of judges and staff; independence and accountability in the operations of the court; and a commitment to engender public trust and confidence in the justice system. To those ends, many states have revisited basic justice delivery patterns and re-engineered organization structures and services. One such change that has occurred in states with an abundance of small, separately operated limited jurisdiction courts that often struggle to survive has been the decision to permit and encourage them to consolidate in various ways to reduce costs, professionalize operations, and improve service to the public. These efforts are often driven by broad, thoughtful assessments of the five trial court performance measures as well as cost control reasons. The review process is certainly a best practice for any court system. What seems to resonate more so for everyone in the process is the development of multiple options for improved justice system services from both court and public viewpoints.

Observations/Commentary: The Supreme Court of Missouri and its administrative arm, OSCA, are challenged by the number and variety of municipal governments in the state; somewhere in excess of 900 with over 80 percent of the cities with populations of 2500 residents or less. Based on the latest data, there are 595 municipal courts in the state; 427 are independently operated by their respective municipalities, and 168 are conducted via circuit

courts by associate circuit court judges.¹¹ Up until September 1, 2015, no one was quite sure how many municipal courts existed since cities can abolish and create them at will. Missouri Senate Bill (SB) 5 passed and signed into law now requires the presiding judge of each circuit court to report to the Supreme Court the number and location of all municipal divisions in the circuit and provide a running account of those that are abolished or created.

With the restrictions on municipal division revenue to the cities pursuant to the recent passage of Senate Bill 5, and the likely problems it will generate for various small cities with courts, it would be wise to explore options regarding consolidation of municipal divisions. Currently, the National Center understands that open, active cases from municipalities that abolish their courts are transferred to the circuit court; certainly a solid solution. Perhaps with some changes in the law, other options may be possible, including absorption of city municipal divisions by county municipal courts where they exist, or consolidation of municipal courts themselves under the guidance and authority of presiding circuit court judges.¹²

Recommendations:

11. It is suggested that the Supreme Court develop a committee or task force to investigate, research and recommend plausible options for municipal division consolidations where appropriate.

12. Consolidation and reorganization of some of the 82 municipal divisions in St. Louis County should be a priority given the dense population in the Greater St. Louis area and large number of municipal divisions.

1.7 Expand OSCA's role in monitoring and coordinating municipal courts

Best Practices: Each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands and the Virgin Islands have a state court administrator or equivalent official dedicated to managing and improving state court systems including all trial courts within them. It is a universal practice among state court administration offices to assist, monitor and coordinate limited jurisdiction courts in concert with presiding judges of general jurisdiction courts who commonly oversee such courts in their regions.

Observations/Commentary: Currently, OSCA plays a limited role in monitoring, assisting and coordinating municipal divisions. To a certain extent it is understandable given the number, diversity and geographic expanse of municipal divisions in the state, and the limited resources presently available to state court administration. OSCA does an outstanding job in

¹¹ Source: Office of the State Courts Administrator as of October 28, 2015.

¹² New Jersey recently experimented with special legislative provisions that allowed municipalities to merge their courts where cities were small and geographically close together, and willing to share common court facilities and staff while judges, calendars, and proceedings remained separate.

numerous areas, including (a) *administrative services* programs directed at overall Judicial Branch activities such as legislative liaison, legal advice, standing committee support, and special projects; (b) *court business services* activities that target, for the most part, appellate and circuit court program development, research, and support, while providing some ancillary assistance to municipal courts;¹³ and (c) *information technology services* that develop and advance the Branch's electronic Justice Information System (JIS) as well as promote various other high-tech initiatives.

Based on the problems and needs of municipal divisions, special attention should be given to those courts. Municipal justice systems are where most people experience the American legal system firsthand. Nationwide, they handle close to 55 percent of the 100 million plus trial court matters filed nationally. One traffic, parking or ordinance violation case is filed annually for every five people in the United States.¹⁴ Given the number and activity of municipal divisions in Missouri, that statistic may even be higher for Missourians. The National Center is convinced that Judicial Branch leaders are committed to bring about meaningful changes in the structure, operations and work of municipal divisions throughout the State. To that end, OSCA must be a key player in those reforms. It is the National Center's opinion that although many municipal division judges and employees are open and willing to make substantive improvements in their operations, procedures and activities, they often lack the insights, perspective, skills and resources to do so. OSCA likely will need additional resources (read: staff and funding) to spearhead, coordinate and monitor improved performance in limited jurisdiction courts as directed by the Supreme Court.

Recommendations:

13. *The Supreme Court should request appropriate funding from the State Legislature to develop a special OSCA unit dedicated to Municipal Court Services. Formal reports on the work and achievements of this special group should periodically be submitted to the Supreme Court and other interested parties.*

14. *The new OSCA Municipal Court Services division should have dedicated staff and a strategic agenda based on policy decisions by the Supreme Court to methodically coordinate, upgrade, and monitor the work of municipal divisions in concert with the presiding judges of the circuit courts.*

¹³ Currently for municipal courts, OSCA provides and updates a Municipal Clerk Manual (electronic; hard copy), develops forms for use statewide, conducts on-site reviews upon request, and notifies courts of their records of conviction reporting based on data from the Missouri Department of Revenue.

¹⁴ National Center for State Courts' Court Statistics Project (2010).

2.0 JUDICIAL SELECTION, RETENTION, AND EVALUATION

Judges at all levels are required by federal and state constitutions, laws and rules to render fair, impartial, objective judgment over disputes whether they involve individuals, corporate entities or the government, and in so doing, to avoid wrongdoing or the appearance of misconduct in their actions. These provisions pertain equally to jurists that are elected or appointed; full or part-time.

2.1 Transparency should govern judicial appointment; termination; evaluation

Best Practices: As courts of law, any lawyer selected and retained by a municipality in Missouri to serve as a full or part-time municipal judge should be chosen on merit, and certainly without regard to politics or any revenue-raising commitment. Transparency, citizen involvement, and formal performance assessments increasingly are features in judicial appointment processes at all levels of courts throughout the country. It should be especially true where judges are subject to contractual employment or yes/no retention elections.

Observations/Commentary: At the municipal level, most city councils and mayors in Missouri appear to have a very muddled, clouded process for selecting municipal judges in comparison to other states. Increasingly, court reform organizations have encouraged states to employ more open, public processes in selecting limited jurisdiction judges, including those appointed and serving on a contract. Open, public, understandable judicial selection, termination and evaluation procedures are slowly becoming more prevalent throughout the nation for limited jurisdiction courts and are instructive as to changes that should be instituted in Missouri.¹⁵

Arizona is one of the more advanced states in opening its local municipal judge appointment processes. It is a recommended practice by the Supreme Court of Arizona. Cities can opt into the procedure and are free to develop and modify their own rules to promote the guidelines encouraged by the Supreme Court. Due to widespread public dismay regarding

¹⁵ Admittedly, there are numerous variations among the states as to how limited jurisdiction court judges are selected, retained, and evaluated. Some states have eliminated lower courts altogether by creating a single, unified trial court. Examples include Minnesota, Iowa, Florida, California, District of Columbia, Arkansas, and Illinois. A number of states require all judges be elected. Several states such as Idaho and Kansas have vested special, independent judicial commissions with the selection, assessment and termination of limited jurisdiction judges. Alaska, Massachusetts, Rhode Island, and New Mexico permit the governor to appoint from candidates recommended by a nominating commission. Hawaii permits the Chief Justice to appoint from a slate of nominating commission candidates with senate confirmation. South Dakota allows appointment by circuit court presiding judges with state Supreme Court approval. A number of state judicial systems similar to Missouri permit limited jurisdiction judges to be elected and appointed depending on state law and city charters, including such states as Alabama, Arizona, Texas, Colorado, Delaware, Georgia, New Jersey, Ohio, Washington, Oregon, Oklahoma, Mississippi, Wyoming, and South Carolina.

Missouri's municipal court system, especially in St. Louis County, and noted problems in the performance of various limited jurisdiction courts, the National Center suggests the basics of the Arizona approach, centering on appointed citizen advisory boards in screening, appointing and evaluating judges, be required for all municipalities that contract for municipal judge services, with the exception of municipalities that utilize associate circuit court judges as municipal division judicial officers.¹⁶

Recommendations:

15. By rule, administrative order, or statute, a specially-appointed citizen advisory board should be required in every municipality wherein a judge is appointed by the city council and/or mayor and serves on a contract, pursuant to an ordinance, or some other specially designated process by the elected governing board of the municipality. The purpose of the board is to recommend to the city governing body the best qualified persons to become municipal division judges, to evaluate incumbent judges regarding their responsibility to perform with impartiality, integrity, proficiency and fairness, and to advise the governing body as to whether incumbent judges should be retained in office. To these ends, it would also be appropriate for the Supreme Court to develop helpful guidelines regarding judicial evaluation criteria for use by such a board.

16. In appointing members to the advisory board, the city governing body should be sensitive to representation reflecting the diversity of the community served by the municipal division. Advisory board meetings should comply with all open meeting laws of the state. The city should arrange administrative support for the advisory board by preparing notices of meetings, keeping formal minutes, sending information packets to members, advertising notice to the public about judicial vacancies and reappointments, and fulfilling other clerical and management duties needed by the board. The advisory board should not limit its investigation of applicants to the applications and letters of recommendation received but should hold public hearings, personal interviews and conduct such other investigations into the background, performance and qualifications of the applicants as the advisory board deems necessary.

¹⁶ The National Center is not adverse to a variation of the Arizona nominating commission approach found in some other states, namely independent judicial commissions at judicial circuit court levels with appointment, evaluation, and retention decisions by the presiding judges of judicial circuits or city councils and mayors upon the recommendation of nominating commissions. (See footnote 14). We do feel, however, the appointment process for municipal judges in Missouri should be centered largely on local involvement given the dispersion, numbers and sizes of municipalities.

17. The advisory board should recommend more than one candidate for each vacancy. If at least two candidates are not qualified, the advisory board shall submit a formal report to the municipal governing board as to the general reasons for a lack of qualified candidates and those reasons should be made public. Candidates submitted by the advisory board should be the only nominees considered, voted upon, and installed as municipal division judges by a municipal governing body. Should no candidates be qualified, the municipality shall notify the presiding judge of the circuit court in which the municipality is located for the assignment of an associate circuit judge as a municipal division judge, or other such remedy as the presiding judge shall determine.

2.2 Develop strong, formal conflict of interest rules for municipal judges

Best Practices: Municipal judges, as part of the state judicial branch, must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and avoids behavior and conflicts that impugn the dignity and fairness of the court.¹⁷

Observations/Commentary: Part-time judges serving as part-time prosecutors create situations where reasonable people often raise questions about the underlying incompatibility in those roles and a lawyer's capacity to effectively separate them and serve impartially as a judge. These perceptions are palpable among people who appear in municipal court and understand part-time judges also serve as part-time prosecutors. States have dealt with the issue differently, but most place some restrictions on part-time judges who also practice law. Many states require all judicial positions to be full-time and bar judges from practicing law.¹⁸ Some, like Georgia and New Jersey, prohibit part-time judges from simultaneously serving as prosecutors in any matters, and others, like Utah and Arizona, ban part-time judges or judges pro-tem from appearing as attorneys in any types of cases they preside over as judges.

Admittedly, such conflicts of interests can be responsibly managed by numerous part-time lawyer-judges and not debase the integrity of the municipal justice system. However, it takes a constant, concerted, principled effort to do so and even in situations where the potential conflicts are effectively balanced, the appearance of impropriety remains in the public mind. National Center observations and interviews gave us the impression that some lawyers who are

¹⁷ Supreme Court of Missouri Code of Judicial Conduct encompasses this required tenet for all judges. Rule 2 of the Code states in part, "Judges should maintain the dignity of judicial office and avoid both impropriety and the appearance of impropriety. They should aspire to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity and competence."

¹⁸ In instances where there isn't enough work in a court to keep a full time judge busy, judges "ride circuit" from one court to another covering multiple calendars.

both municipal judges and municipal prosecutors do have difficulty effectively and ethically balancing those roles.

Our charge to recommend best practices, leads the National Center to take a tough stance on this controversial topic. We also conclude there is an obvious appearance of impropriety in regard to attorneys who serve as judges, prosecutors, and defense lawyers in the same criminal law arena. Consequently, the Center advises a strong position against the current practice.

Recommendation:

18. In the interest of independent, impartial courts and the importance of preserving the public's confidence and trust in them, the Supreme Court should consider a rule that prohibits lawyers who serve as municipal judges from simultaneously working as municipal prosecutors. States that permit part-time judges and part-time prosecutors in limited jurisdiction courts commonly place formal restrictions on the ability of lawyers to serve in both functions.¹⁹

2.3 Formalize municipal judge training through the Supreme Court

Best Practices: In many states, state court administration offices, under the direction and guidance of their respective Supreme Courts, actively plan, coordinate and deliver judicial education programs for all appellate and trial courts, including limited jurisdiction courts. Ancillary education and training may be permitted through judges associations, national organizations such as the American Bar Association, National Center for State Courts, or National Judicial College, and universities. For judicial education at the limited jurisdiction court level to be developed and provided largely by a judges association, as is the case in Missouri, is not considered a best practice.

Observations/Commentary: The Missouri Municipal and Associate Circuit Judges Association (MMACJA) has been accredited by Missouri Judicial Branch leaders as a program sponsor for municipal judge education in the State and has provided education for municipal judges at its annual conference for the past 50 years. In large measure, they do an adequate job, invite speakers from national education organizations to present, publish newsletters and a bench book.²⁰ The National Center is concerned, however, that program content, topics,

¹⁹ A common restriction in states that allow part-time judges and part-time municipal prosecutors is to limit municipal judges from handling cases in their practice of law that are inconsistent with their duties as a municipal judge. In other words, part-time municipal judges could have a felony, family or civil law practice, but not a municipal law practice.

²⁰ OSCA does provide some supportive services to the MMACJA regarding judicial education including staffing the Municipal Judges Education Committee, assisting with new municipal judge training/certification, Continuing Legal Education tracking, and information materials. OSCA executive staff also meets with the MMACJA Board on a regular basis.

curriculum, multi-year objectives, and learner outcomes are largely too controlled by the MMACJA.

The National Association of State Judicial Educators (NASJE), a professional alliance of court system educators, strongly endorse Judicial Branch control, development and delivery of judicial education. To that end, they have developed a set of *Principles and Standards for Judicial Branch Education* that guide curriculum development and educational policy for both judges and court staff. Specific recommendations encourage each state judicial branch to have (a) a comprehensive judicial education process, (b) programs that teach specific skills and subjects that comprise career-long judicial education and development opportunities, (c) appropriate adult education practices that focus on needs assessments, learning objectives, learning activities, adult learning methodologies and faculty development, and (d) activities that provide active, hands-on development and delivery of education in the context of the judicial branch as an organization.

Furthermore, the National Center submits that when professional judicial branch educators exercise hands-on control of educational development and programming more advanced and impactful courses and learning is possible, including on-line courses with follow-up in-person sessions at annual judicial conferences, learning management systems that provide libraries of interrelated courses and educational subject matter, wide-ranging instructional design capable of coordinating career-long judicial educational programming, and special analytics that track and test learner comprehension levels and tailor needed improvements. Voluntary associations such as the MMACJA are not in the same league, nor should they be when it comes to basic and advanced learning for judges.

Recommendations:

19. *The Supreme Court, through its Office of State Courts Administrator, should assertively and actively engage in continuing judicial education programming for all municipal and associate circuit judges serving as judges in municipal divisions, beyond merely certifying, accrediting, and staffing the educational activities of the Missouri Municipal and Associate Circuit Judges Association. To that end, it is recommended that additional funding and staff be requested from the State Legislature.*

20. *OSCA should consult with the National Association of State Judicial Educators to develop a more comprehensive judicial branch education program for Missouri, including but not limited to municipal divisions.*

3.0 COURT MANAGEMENT

Court management focuses on the day-to-day operational issues in running a court from records to space to training to calendaring and hundreds of other important, yet sometimes mundane, functions that must be melded effectively together to competently operate a trial court and process cases expeditiously. Here, the National Center selected overarching topics where observations and interviews posed serious deficiencies in operating and managing Missouri's municipal courts.

In defense of the judges and staffs in the municipal divisions, the National Center was amazed in many instances as to how they were able to stretch budgets, personnel, equipment, and facilities to support the necessary and basic work of their courts. Many municipal courts operate with too few resources and under very arduous conditions. There is a definite need for Judicial Branch leaders to develop goals and chart pathways toward improved management and performance in the critical areas the Center points out in this section.

3.1 Court space must be dignified, safe, and separate from police; prosecution

Best Practices: Court operations and staffing should be physically and functionally separate from day-to-day interactions with city agencies other than for required, official court duties. It is especially important to guard against comingling police and prosecution activities with day-to-day court-related activities. To do so risks violating the court's responsibility to remain neutral and independent both in fact and appearance. Casual *ex parte* communications regarding cases and case information involving police or prosecution with the court breaches that duty as well as job-sharing between the court and police or prosecution functions.

Observations/Commentary: Municipal judges and court staff often work in close quarters with police and prosecutors since space in municipal buildings is often limited and many court staff in smaller volume courts may work part-time for the court and part-time for city departments. Close proximity among justice system agencies can and does breed problems in the ability of court staff and judges to remain free of inappropriate contact and influence. The Supreme Court of Missouri has outlined recommended minimum standards for municipal division facilities [Chap. II 2.1] and state statutes direct that city council's designate a place for the municipal court and provide a *suitable* [italics added] courtroom for hearings. [MO. Revised Statutes 479.060 (1) (2).]

The comingling of court functions with police and prosecution operations is especially troublesome where part-time judges have little time or inclination to oversee court personnel and often leave day-to-day supervision of court staff to city executive branch administrators, who, in turn, understand little about the need of the court and court staff to function

independently. Resultantly, it is the practice in too many municipal courts for court staff to be directed to perform work for prosecutors and police, including filing, data entry, and recordkeeping, that compromises the necessary autonomy a judicial system needs to maintain its neutrality and objectivity.

Recommendations:

21. To the extent feasible, municipal court space for judges, staff, recordkeeping, and work processes should be sight and sound separated from police and prosecution activities.

22. Courtrooms must be dignified and convey that proceedings in them are fair, unbiased and conducted under the authority of the Missouri Judicial Branch, not a city municipal government. It is challenging to convey that impression to the public when court proceedings are held in police facilities, city council chambers, or gymnasiums, and prosecutors sit next to the judge at city council tables which National Center consultants observed in some locations. Consequently, it is suggested the State Courts Administrator establish minimum standards for décor, design, and accouterments for municipal division courtrooms, with special attention given to make-shift city council courtrooms and courtrooms located in police stations.

23. The Office of the State Courts Administrator should develop courtroom and court facility security guidelines for municipal governments to follow regarding municipal division space in city facilities. To those ends, the presiding judges of each circuit court, or their designee, should ensure every municipal division in the circuit has complied with the established guidelines.²¹

3.2 Develop restrictions on court staff work for other justice system agencies

Best Practices: Court staff should not job-share, split duties or work for a city agency, office or contracted individual (other than a municipal judge) directly involved in the city's justice system.

²¹ Based on NCSC protocols for court security, there are three essential components in promoting adequate security in court facilities and courtrooms: 1. Conduct a threat analysis assessing the courts historical, current and anticipated threat [see the National Sheriffs' Association, U.S. Marshall's Office, or the U.S. Department of Justice], 2. Conduct a court facility site survey assessing the facility external and internal weaknesses including policies, procedures, staffing and training; and 3. Establish a Court Security Committee for both short and long-term work, including leadership representation from government users of the court facility, city government, elected political leadership and court representatives. In developing security protocols, OSCA should consult with the Supreme Court Marshall.

Observations/Commentary: Through National Center interviews and observations, it was noted that court employees are often requested or directed by their day-to-day supervising authorities, who are frequently city executive branch officials, to work for other city departments. This is especially true in smaller courts where there may not be enough court work to keep a person employed full-time.

Conflict of interest problems regarding this practice surface when an employee is asked to do work for a city justice system agency. Unfortunately, in many instances, that agency is the police department or the prosecutor's office since those functions and their work is tied closely to court processes. Not only does this cause difficulties for employees themselves in complying with Judicial Branch ethical obligations to conduct themselves impartially as court staff, but it presents a most definite appearance of impropriety.

Recommendations:

24. The Supreme Court of Missouri Rules Governing Court Personnel should be amended to include municipal court clerks and clearly state that no court employee shall job-share, split duties or work for a city agency, office or contracted individual (other than a municipal judge) directly involved in the city's justice system.

25. Further, should non-justice system work be permitted for municipal court employees, the working arrangement should be allowed only through written, formal authorization by the presiding municipal judge and a clear understanding of the restrictions on the court employee's work activities by the non-justice system employer(s).

3.3 Audio record municipal court proceedings

Best Practices: Limited jurisdiction court proceedings should be digitally audio recorded to reduce costs and time for litigants in the appeal process, to permit written appellate opinions that can guide municipal judges in their work and procedures, and to provide transparency and greater public faith in the judicial process. Nationwide, most municipal courts audio record formal courtroom proceedings.

Observations/Commentary: The National Center acknowledges that Missouri municipal divisions are not now, nor have they ever been, courts of record. Court trials and formal proceedings are heard "de novo" on appeal to the circuit court; meaning decisions and rulings can be re-litigated entirely as if no prior trial or proceeding had occurred. Seemingly, such a situation provides the greatest of protections for litigants who may feel they have been convicted wrongly or treated unfairly.

In practicality, however, it is a remedy little understood, rarely used, and burdensome to the majority of litigants. The vast majority of litigants who appear in municipal court are self-represented and have marginal incomes. The de novo appellate process is so foreign and complicated that it would never come to mind, and if it did, the procedures and costs would likely dissuade them from requesting a re-hearing. Appeals must be filed and perfected within ten days of the entry of judgment together with all necessary filing fees and an appropriate bond unless the circuit or associate circuit judge assigned the case finds the appealing party indigent. The re-trial takes place at the circuit court courthouse which may be at some distance from the municipal court, and occurs during the business day at a time convenient for the court.

A far better approach in the opinion of the National Center is for all limited jurisdiction courts, regardless of jurisdiction, to be courts of record. The Center is joined in that viewpoint by the Conference of State Court Administrators (COSCA).²² COSCA's contention, as is the National Center's feeling, is that to do so will fundamentally elevate how both the law and public view these important courts.

The Center understands this is a huge change in the status and legal standing of municipal divisions, and ultimately will require a statutory amendment. It is felt, however, that such a change would significantly elevate the quality of judging and the fairness of the adjudication process in municipal divisions across the state.

Technology exists to permit digital audio recording of court proceedings at reasonable cost. Admittedly, equipment and training costs connected to such a change, and additional burdens placed on circuit courts in writing appellate findings and decisions in lieu of conducting trials, cannot be avoided. The benefits, however, in creating a more legally sound municipal court system and more tightly integrating municipal divisions within the Judicial Branch are worth the costs.

Recommendations:

26. *The Supreme Court should establish a committee or task force to develop strategies and pathways to transition municipal divisions to courts of record employing digital audio records.*

27. *Costs associated with equipment purchase, installation and training to establish digital audio records in all Missouri municipal courts should, to the extent possible, avoid placing a financial burden on municipalities.*

²² Pepin, Arthur W., 2013-2014 Policy Paper: Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century, Conference of State Court Administrators. Williamsburg, VA

3.4 Procedural fairness and understandable processes are essential

Best Practices: High performing courts are procedurally fair. They treat those who appear before the court with respect, dignity, and understanding. Procedural fairness is not a feel-good, vague ideal; it is a tangible operational philosophy that promotes the highest ideals of justice.

Observations/Commentary: All municipal divisions, whether rural or urban, confront similar work patterns in delivering justice to large numbers of people in relatively routine matters. Proceedings are informal. Facts are clear and rapidly established. The courts primary objective is to apply the law expeditiously and move onto the next case.

In such an atmosphere, unless there is a conscientious, consistent effort by judges and staff toward sincerely instituting and conveying procedural fairness – the perception and reality that the processes and decisions of the court are reasonable and just - litigants will view the court as sacrificing fairness for efficiency and becoming a revenue generating or bill-collecting agency for the city. To guard against that occurrence, limited jurisdiction court judges must rightfully take on a more active role in protecting the rights and interests of those accused, establishing the facts of the case, monitoring the proceedings and establishing fairness. It becomes doubly important to do so in these fast-acting courts since lawyers are sparse, and litigants are often confused about the process and their rights. Court staff must also ensure court operational procedures, the treatment of litigants, and case resolution options are clearly and understandably conveyed to litigants in a dignified, respectful, informative manner.

Procedural fairness includes not only litigant perceptions about whether judicial decisions are fair (“outcome fairness”), but more importantly, an assessment as to how court users perceive their case was handled and the quality of the treatment they received from judges and staff. Much of it is related to the work of New York University Professor Tom Tyler who has pioneered the idea. Tyler’s research, vetted by many others, identifies four primary elements of procedural fairness.²³

- *Respect:* People react positively when they feel they are treated with politeness and dignity; when they feel valued and their rights are respected. Helping people understand how things work and what they must do to navigate through the court system is strongly associated with court user satisfaction.
- *Voice:* People want the opportunity to tell their story; to explain their unique situation and circumstances. Often, as patrons describe their viewpoints and reasons for seeking court intervention, judges and court staff can help them grasp issues, terms and processes more clearly.

²³ Tyler, T.R., *Why People Obey the Law*. Princeton University Press. (2006)

- *Trustworthiness*: People look for actions to indicate they can trust the character and sincerity of those in authority and that those in authority are aware of and genuinely concerned about their needs. People look for conduct or behavior that is competent, benevolent (e.g. putting the needs of the customer ahead of the needs of the employee), caring, and seeking to do the right thing.
- *Neutrality*: People are more likely to accept direction, decisions, and help when those in authority do things that both are, and perceived as, fair and neutral (e.g. litigants have been treated like everyone else with similar circumstances), the importance of the facts are clearly understood, and the next steps or reasons for a decision or course of action have been clearly explained.

In efforts to introduce more procedural fairness, various court leaders have created citizen task forces on court feedback to help in promoting improvements in the courtroom and throughout the court. Some courts have developed “court watcher” programs to provide candid, private feedback regarding perceptions about the court (i.e., work by the Council for Court Excellence in Washington DC is an example). Still others have distributed internal, confidential judicial and court performance surveys. Innovative examples include Hennepin County Minnesota District Court and the Maricopa County Arizona Superior Court where management coaches have worked with judges to improve their effectiveness in the courtroom and their interactions with lawyers and the public.²⁴

Recommendations:

28. *OSCA should initiate a statewide effort to review court issued forms and instructions provided to the public with the goals of simplifying the language, removing legal jargon and terms that may be familiar to the court but confusing to the public.*

29. *Court calendars should be publicly available. Courts should be encouraged to schedule cases at times and on dockets that are not rushed which in many municipal divisions is the situation currently. In OSCA’s monitoring role (see section 2.7), random reviews of court dockets should take place and guidelines for setting calendars should be developed.*

30. *A program to administer periodically the National Center’s CourTool Measure One Survey on Access and Fairness in municipal divisions should be developed by OSCA. The survey is in the form of a questionnaire whereby court users on a specific day or a few days rate the court’s accessibility and its treatment of customers in terms of fairness, equality and respect. Comparisons of results among courts by*

²⁴ Coaching is not advice, therapy or counseling; rather it targets assessments about working relationships, organization challenges, communication improvements, options building, and values clarification.

*location, type of customer, and type of service can inform and improve court management practices.*²⁵

3.5 Maximize services to the public via the internet and court websites

Best Practices: Many limited jurisdiction courts across the country are serving constituents better, faster, less expensively, while minimizing person-to-person contact through the Internet and high tech – high touch court websites. Traffic and ordinance violations where fact situations are narrow and remedies are limited provide ideal customer/court touch points where service can be improved and advanced.

Observations/Commentary: Many municipal courts do not have websites and those that do often have minimal help or assistance in developing and updating them. Where courts provide robust internet information in terms of data about court processes, online payment options, court schedules and calendars, do-it-yourself forms and instructions, and wayfinding information about parking, mass transit services and court locations, it is welcomed by court users.

The vast majority of municipal divisions in the State have little helpful information on websites, if they even have a website at all. Dependent on their city government to host court websites, cities generally regard courts as low priority in comparison to city departments and any help in the future may even be more reserved as municipal courts become a tighter component of the State Judicial Branch.

Recommendation:

31. Improved assistance in developing more useful, consistent and uniform municipal division websites should be a strong objective of state court administration. Numerous litigants who receive traffic citations are not residents of the municipality where the offense occurred. With a mobile population it would be helpful if OSCA could develop a model website for municipal courts that would give visitors useful information; provide a common, helpful look and feel among municipal divisions; and facilitate easier, more familiar navigation for users.

²⁵ More information on CourTools measures can be found at www.courttools.org

3.6 Update courtwide technology strategies to include municipal divisions

Best Practices: Decentralized, locally-funded state court systems similar to those in Missouri generally have judicial branch technology strategic plans that encompass all limited jurisdiction courts within their state.

Observations/Commentary: Municipal courts would benefit from additional assistance in determining and addressing their technology needs. Currently, the methods used by individual courts vary widely, some use custom electronic case management systems (CMS), others have a variety of proprietary vendor systems (e.g. ITI, REJIS, Tyler and Encode), and approximately 90 municipal courts use the Judicial Branch's Justice Information System (JIS). Since JIS is presently limited in its expansion capability, the State Judicial Records Committee has approved a list of court e-CMS vendors that can be engaged by municipal divisions and their municipalities.

The most common complaints from judges and staff regarding technology are (a) the lack of a common e-CMS for use by all municipal divisions in the State, (b) the inability to electronically transfer data between courts with different e-CMS products, (c) the lack of connectivity with the Missouri Uniform Law Enforcement System (MULES), a Highway Patrol developed/managed repository for warrants to determine if a defendant has a warrant in a surrounding county, and (d) a noticeable lack of knowledge by municipal court clerks and court administrators about statewide e-CMS plans, options, and approved vendors.

Recommendations:

32. State court administration should ensure the court system's statewide technology plan includes municipal divisions and is updated consistent with a more inclusive role for limited jurisdiction courts within the Judicial Branch, including a qualified vendor list for municipal courts to purchase an electronic case management system.

33. Identify and implement a common data exchange system that allows courts to transfer important case information to regional repositories or a central data warehouse. To that end, the Supreme Court should request the necessary funding from the State Legislature to do so.

3.7 Formalize court staff training through state court administration

Best Practices: Many states with limited jurisdiction courts have comprehensive training programs for municipal court staff developed and presented by state court

administration offices. In doing so, it helps uniformity in practices among courts and a sense of unity with the Judicial Branch. It is a best practice.

Observations/Commentary: As with municipal judges, the Missouri Judicial Branch largely depends on professional court management associations to conduct training for municipal court employees, namely the Metropolitan St. Louis Association for Court Administration (MSLACA) and the Missouri Association for Court Administrators (MACA). Representatives of OSCA often attend conferences held by these associations and may on occasion conduct technology training programs.²⁶ As with any professional association, not all court employees are able to attend.

These two associations provide substantial work related benefits to their members aside from conferences and formal education sessions. Both groups serve a clearinghouse function for procedural and management information sharing through their websites, email and phone interactions. The downside, however, is without approved, enforced statewide uniform standards in common work tasks and procedures there are various ways the same processes may be performed throughout the state. This is true even though some procedures are recommended in the Municipal Clerk Handbook.

Recommendations:

34. The Office of State Courts Administrator, should consider engaging in a more involved and active role in continuing education programming for municipal division chief court clerks and court administrators beyond merely certifying and accrediting the educational activities of the Missouri Association for Court Administrators and the Metropolitan St. Louis Association for Court Administration.

35. OSCA should consult with the National Association of State Judicial Educators and other state court administration offices regarding ideas and strategies to promote a more comprehensive judicial branch education program for non-judicial municipal division chief clerks and court administrators as well as counsel with the leaders of MACA and MSLACA toward those ends.

²⁶ OSCA is working with the leadership of the Missouri Association of Court Administrators (MACA) to enhance the role state court administration in training and information dissemination at MACA regional meetings. In that regard, OSCA is developing a “roadmap” to incorporate training needs of municipal clerks more fully into Judicial Branch activities including the submission of a proposal to the Supreme Court Coordinating Commission for Judicial Education to appoint a Municipal Clerk Education Committee staffed by OSCA and funded through the Commission. Also, OSCA is in the process of evaluating available course for municipal clerks, and is looking at methods/technology to make web/video training available to municipal clerks.

4.0 FISCAL AND FINANCIAL OPERATIONS

The intersection of municipal budgets and municipal court funding is complex, and includes constitutional, statutory and case law mandates and restraints governing access to justice, governmental revenues, and appropriate uses of court-generated revenues. In traffic and ordinance violations, whether characterized as criminal or civil, court leaders face significant challenges in ensuring that fines, fees and surcharges are not simply an alternative form of taxation.²⁷

4.1 Municipal courts should not be deemed revenue generators for cities

Best Practices: Limited jurisdiction courts, as core functions of government, should be substantially funded by general government revenues. Any fees or miscellaneous charges for court services should not preclude access to courts and should be waived for indigent litigants. The tenure and/or reappointment of contracted municipal judges and prosecutors should never be contingent on their ability to generate revenue for a municipality.

Observations/Commentary: To a considerable extent, the current public dissatisfaction with municipal courts in Missouri largely centers on alleged actions by some city authorities (i.e. mayors and city council persons) encouraging appointed judges and prosecutors (as well as police officials) to maximize court-generated revenues to help pay for the law enforcement and justice systems of the municipality. Undoubtedly, much of that discontent is concentrated in St. Louis County,

Likely lurking in the background for some contracted municipal judges and prosecutors are concerns about reappointment. These circumstances, if true, may violate the due process clause of the Fourteenth Amendment which guarantees the right to a trial before a disinterested and impartial judicial officer.²⁸

²⁷ 2011-2012 Policy Paper: *Courts are Not Revenue Centers*, Conference of State Court Administrators.

²⁸ In *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927) the U.S. Supreme Court held as unconstitutional an Ohio Mayors Court system which provided mayor/judges were compensated by a fee taxed as part of the costs against a defendant who was convicted in the mayor's court. Almost fifty years later the U.S. Supreme Court extended *Tumey* to apply to instances where the local government was the beneficiary rather than the judge. In *Ward v. Village of Monroeville*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972) the Court was confronted with an instance where a "major" part of the village's income was derived from the fines, forfeitures, costs, and fees imposed by the mayor/judge. The "possible temptation" to find against defendants in order to fund the locality was held too great for the mayor to continue to preside. Supreme Court of Arkansas in 1977 echoed this sentiment finding in *Gore v. Emerson*, 262 Ark. 463, (1977) that while that state's City Courts were constitutional, the judge of the court (mayor) could be so conflicted with regard to fines, forfeitures and their impact to city finances that his continued service as a judge failed to meet the requirements of due process. Eventually, Arkansas phased out its City Court system entirely through a 2000 constitutional amendment.

Recommendations:

36. *All employment contracts and city codes or ordinances outlining the duties and responsibilities of municipal judges and prosecutors should clearly state that tenure and/or reappointment is not contingent on generating revenue for the municipality.*

37. *Fees and costs, however set, should be determined in consultation with the municipal judge and presiding judge of the circuit court, and all municipal division fees and costs should be reviewed periodically by the municipal judges and presiding judge of the circuit at a meeting of them en banc.*

38. *Fees and miscellaneous charges should be simple and easy to understand with fee schedules based on fixed or flat rates, and should be codified in one place to facilitate transparency and ease of comprehension.²⁹*

4.2 Bail should not punish the accused or enrich municipal treasuries

Best Practices: The purpose of bail is not to punish the accused ahead of a trial or to enrich the city treasury, but to enforce the criminal laws by requiring the accused to appear in court (*Missouri Municipal Judge Bench Book* 2010, Chapter VI, Bail and Sureties, p.3, Rule 37.15). To those ends, the use of evidence-based, validated pretrial risk assessment tools in release decisions and the conditions of release are best practices.

Observations/Commentary: In some municipal jurisdictions, persons are being detained on a failure to appear warrant and are required to pay a bond amount or pay outstanding fines and fees. Subsequently, where persons may have multiple warrants from different jurisdictions, individuals are being transferred to multiple jurisdictions which also requires similar payment of bond or outstanding fines and fees as a condition of release. In some cases, a person can spend in excess of a week in custody while being transferred from jurisdiction to jurisdiction on multiple warrants.

Many pretrial defendants do not present a substantial risk of failure to appear or are a threat to public safety, but they do lack the financial means to be released. And, jail time can result in irreparable harm to persons including loss of job, loss of home, and disintegrating social relationships which can all increase the likelihood of a person reoffending upon release.

The use of pretrial risk assessment tools in making judicial decisions whether to release or not and the attendant conditions of release are used most often in larger jurisdictions where

²⁹ Although fees must be authorized by law and should not be imposed without statutory authorization, the application of the law can be subject to interpretation, and a listing of fees is not often posted, understandable or readily available to the public.

courts or other government agencies have dedicated pretrial release staff stationed at jails or detention centers. Such programs, though, are becoming more prevalent in smaller jurisdictions as well.³⁰ Conversely, when bail officials make the discretionary decision to grant pretrial release and decide the bond amount to be imposed *without the use of evidence based validated pretrial risk assessment tool*, it is possible that the race of the arrestee plays a role in a way that disproportionately and adversely subjects African Americans to pretrial detention and harsher bail conditions.³¹ While there is no one-size-fits-all solution for the misapplication of the bail system in Missouri's municipal divisions, the recommendations noted below can improve the discretionary decision making process and prevent unwarranted detention.

Recommendations:

39. Training should be provided to municipal judges on the fundamentals of bail as coordinated through the presiding judges of the circuit courts.

40. Municipal courts should be encouraged to use evidence-based bail determinations and individual assessments of each defendant's background and criminal history in setting bail.

41. Municipal governments should consider the creation of a pretrial service function in an existing municipal agency, apart from the police department, to administer an objective risk assessment tool and the collection and verification of background information on arrestees for pretrial judicial decision-making.

42. OSCA should develop a task force to research and explore ways to institute oversight and accountability measures in the municipal court bail determination process.

4.3 Expand and coordinate community service opportunities in lieu of fines

Best Practices: Community service and diversion programs in lieu of monetary sanctions are important and valuable sentencing options for limited jurisdiction judges. Where municipal courts do not have a probation function as part of court operations to provide such choices, methods and approaches should be developed and organized through consortiums of courts to promote and establish some form of coordinated community service and diversion opportunities. To do so is a best practice.

Observations/Commentary: A few larger Missouri municipal divisions in charter cities have probation functions as part of the court's operations. Small to mid-size courts – the bulk of

³⁰ 2012-2013 Policy Paper: Evidence-Based Pretrial Release, Conference of State Court Administrators.

³¹ Jones, Cynthia E., "Give us Free: Addressing Racial Disparities in Bail Determinations." Legislative and Public Police [Vol. 16:919]

municipal divisions in the State – lack the financial resources to do so, but many express a high interest in establishing community service prospects. Where such options do exist, individual courts struggle to find, partner and oversee organizations in the community who are willing to accept and work with those referred by the court.

Private and non-profit community services agencies in Missouri do present options for some municipal divisions across the State. They appear to be most useful where there are large numbers of courts in a region that can sustain their operations with higher referral numbers.

Recommendations:

43. OSCA should review and study the array of diversion and community service programs in the State available to the municipal divisions with the objective to identify and cataloging their locations, types of services, client capacities, court and client costs, and operations for distribution to presiding judges of the circuit courts and all municipal judges. The catalog should be periodically updated to ensure its continued accuracy.

44. Based on a review and study of diversion and community service programs in the State, OSCA should pinpoint close geographic clusters of municipal courts regardless of their jurisdictions that could benefit from working together to access local diversion and community service programs, and provide such information to the affected presiding judges of the circuit courts and municipal judges for further action.

45. Presiding judges of the circuit courts and the municipal judges in those circuits should develop a task force to study and determine the viability of municipal division operated and shared community service and diversion programs in a circuit.

EPILOGUE

The best practices and recommendations outlined in this report for municipal courts in Missouri pinpoint hopeful improvements and offer a range of ideas to Judicial Branch leaders in architecting strategic agendas for change. The National Center realizes the array and scope of these suggestions may appear overwhelming and understands some of the proposals may be controversial, some require additional staff, funding, and all demand a concerted effort over time to accomplish. There should be some comfort in knowing, however, that other states throughout the nation have embraced many of these directions in successful ways over the years, and details regarding their implementation can be sought from them.

It is the National Center's contention that Judicial Branch leaders, and Missourians in general, are at a point where meaningful limited jurisdiction court reform is needed. Missouri has a strong tradition of progressive justice system reorganization beginning most notably in 1940, with the development of the "Missouri Plan" for selecting judges at the appellate and general jurisdiction levels by merit. As suggested in this report, it is time to extend that approach to municipal judge selection, retention and evaluation, and to embrace additional enhancements that modernize and upgrade the operations of the State's municipal divisions.

Weighty improvements to justice systems such as proposed here are certainly not for the short-winded. Not only will such reforms take time and courageous leadership to bring about, but there undoubtedly will be resistance and opposition to new directions and policies by those affected. As organizational change experts often note, transformational leadership is risky business since it's about altering the status quo where most people are comfortable.

Although easier said than done, those who have successfully instituted major change in complex organizations like courts, and helped skeptics and naysayers overcome their fears of abandoning the present, have only been able to do so in an approach that delivers "...disturbing news and raises difficult questions in a way that people can absorb, prodding them to take up the message rather than ignore it or kill the messenger."³² The National Center's hope is that this report, among others submitted to the Supreme Court of Missouri, will motivate justice system stakeholders to take up the message and generate the necessary changes to create a more effective limited jurisdiction court system.

³² Heifetz, Ronald A., and Linsky, Marty, Leadership on the Line: Staying Alive through the Dangers of Leading. Harvard Business School Press, Boston MA (2002). pp. 12.