Missouri Municipal and Associate Circuit Judges Association

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

Honorable Justices of the Supreme Court:

The Missouri Municipal and Associate Circuit Judges Association (MMACJA) thanks the Court for the opportunity to provide additional suggestions on ways to improve the rules applicable to practice in Missouri's municipal court divisions.[1] As you are aware our Association represents over 250 municipal judges who preside in nearly 300 courts in the State of Missouri. We share your desire to insure that Missouri's municipal courts operate in a manner deserving of the respect of the communities they serve and also deserving of the respect of the state's judiciary. In a September 22, 2015, letter to the Municipal Division Work Group formed by your court, you identify four issues where you request input from the Work Group. In this letter we would like to provide our thoughts on these issues. The four issues identified are: 1) Propriety of judges, prosecutors and staff serving in different capacities in multiple municipal divisions; 2) Consolidation of municipal divisions, including any authority of the Supreme Court to mandate consolidation; 3) Use of warrants, process for setting bonds, and time of incarceration; and 4) Enforceability of judgments and remedies for nonpayment. In this letter we will address these issues as well as reference our letter of May 1, 2015, which also provided input on certain of these issues.

1. Propriety of Judges, Prosecutors and Staff Serving in Different Capacities in Multiple Municipal Divisions

In our May 1, 2015, letter, under the title of "Alleged Conflicts of Interest", we addressed this issue. We will not reiterate that discussion here, but have attached that letter to suggest you consider the thoughts and concerns we provided on this issue.

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[1] In a May 1, 2015 letter from our association to the Supreme Court of Missouri we provided suggestions on improvements to practice in municipal divisions.

2. Consolidation of Municipal Divisions, Including Any Authority of the Supreme Court to Mandate Consolidation

If there is any thought to consolidate municipal divisions, the individual divisions as well as their municipal governing authorities should be consulted prior to any reform. Municipal divisions are a part of the criminal justice system and operate as a public service to the communities they serve. If a municipality wants to maintain these services and is willing to commit the necessary resources, we are not certain the Supreme Court should intervene, regardless of authority. We certainly agree municipalities should not be using their municipal courts as a source of revenue generation in order to support other requirements or needs of the municipality. We also understand it may be useful for adjoining municipalities to combine various aspects of their criminal justice system to better protect and serve their communities. Any decision regarding consolidation should be made with the full input of the affected municipalities and only after careful consideration of all of the needs of the communities involved.

We are aware of allegations some communities have been misusing the authority of the municipal court for revenue generation or other misguided principles. There are ways to address such problems short of combining municipal divisions. If municipalities are made aware of the advantages of combining municipal divisions (i.e. cost savings, better community policing, etc.) it may be determined the advantages outweigh the disadvantages. A suggestion by the Court, to request municipalities include consideration of consolidation of courts as they review and compare advantages and disadvantages of consolidation of municipal functions, would seem preferable to arbitrary, mandatory consolidation(s). Consolidation could be seen as a better method of keeping communities safe.

3. Use of Warrants, Process for Setting Bonds, and Time of Incarceration

The authority for the use of warrants is found in Missouri Revised Statutes, Chapter 479.100 and discussed generally in Supreme Court Rule 37. Senate Bill 5, which went into effect in August 2015, prohibits incarceration for "minor traffic violations". The implementation of Senate Bill 5 raises issues regarding the use of warrants for minor traffic violations. There is some disagreement as to whether judges should be issuing warrants to defendants who fail to appear on minor traffic violations. We believe a warrant can be issued on a minor traffic violation under the following circumstances: 1) if a properly summoned defendant for a minor traffic violation fails to appear, 2) is given additional notice and an opportunity to appear to explain why he or she did not appear, and 3) then again fails to appear. Guidance on this issue would be welcome.

With respect to bonds, Supreme Court Rule 37 provides guidance. As a result of ongoing litigation concerning bond amounts for potential indigent defendants, many courts, especially smaller courts, are reluctant to develop a process for setting bond amounts for fear of potential litigation. Our Association teaches bond amounts should be tailored to the alleged violation and the defendant. It can be very time intensive to contact the judge for each potential violation to determine a bond amount as each information is processed. It would be helpful to get further

direction on how municipal courts should set bonds in order to provide consistency on this issue Statewide.

There are numerous processes around the State for setting bonds. Guidance regarding consistent criteria would be helpful. MMACJA believes any criteria would need a caveat to provide indigent defendants an opportunity to provide proof of inability to pay.

Regarding time of incarceration, Senate Bill 5 provides direction on how long charged defendants can be held before appearing before a judge. MMACJA strives to educate its members that, except as directed, municipal judges have the authority to determine on a case by case basis if incarceration is an appropriate remedy for any specific ordinance violation. Municipal judges should order incarceration only when necessary. Further consistent guidance regarding how municipal judges should approach incarceration would be welcomed.

4. Enforceability of Judgments and Remedies for Nonpayment

Enforceability of judgments and remedies for nonpayment issues present similar issues as raised in the discussion on warrants. In both cases defendants fail to perform acts which they have been asked to perform by the court. The required performance is simply at different times in the process. There are tools available to judges to enforce judgments and nonpayment found in Chapter 479 of the Revised Missouri Statutes as well as Supreme Court Rule 37.

One tool that was particularly useful to judges was the ability to have the Department of Revenue suspend a violator's driving privilege if the violator failed to appear or was recalcitrant in performing the required remedy from a violation, including nonpayment of fines. Senate Bill 5 removed this tool for minor traffic violations. We would like to have this tool reinstated. We believe that driving is a privilege and if a potential violator is not willing to appear and address allegations of driving violations, that person should have this privilege suspended, regardless whether the traffic violation is minor or otherwise. We believe the removal of the ability to suspend driving privileges sends the wrong message to potential violators. If you commit a minor traffic violation, you can ignore the violation without consequence.

We appreciate the opportunity to provide additional suggestions on ways to improve the rules applicable to practice in Missouri's municipal court divisions. We share your goal of making Missouri courts a model for the nation.

Sincerely,

Thomas Motley, President
Missouri Municipal & Associate Circuit Judges Association