

CHAPTER VIII. – ARRAIGNMENT

Judge Kevin Kelly

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CHAPTER VIII

ARRAIGNMENT

8.1 SCOPE OF CHAPTER

This chapter describes the judge's role in the arraignment process. It explains how the judge should handle an arraignment docket, guilty and not guilty pleas, plea agreements, setting bail and requests for a jury trial. Also, the Supreme Court Rules applicable to the arraignment process will be cited.

8.2 INFORMING THE DEFENDANT

Individuals, who appear before a municipal judge, or an associate circuit judge hearing municipal cases, have been charged with ordinance violations. A majority of these offenses are traffic violations but the court also has jurisdiction to hear housing and municipal code violations as well as minor criminal offenses. For many whom appear before the court, it will be their first personal experience with the judicial system. Most will be unfamiliar with the procedure, let alone, apprehensive about their appearance before a judge.

Supreme Court Rules 37.47, 37.48, and 37.58 set the guidelines for the arraignment of a defendant appearing before a municipal judge, both where the defendant appears in response to a summons, and where the defendant appears following an arrest under a warrant. Supreme Court Rule 37.47(b) states: "The judge shall inform the defendant of the ordinance violation charged, his right to retain counsel, his right if indigent and there is a possibility of a jail sentence to request the appointment of counsel, his right to remain silent and that any statement made by him may be used against him." Supreme Court Rule 37.48 (b) states: "Arraignment shall be conducted in open court and shall consist of reading the information to the defendant or stating to him the substance of the charge and calling on him to plead thereto."

This rule seems to suggest that each defendant be individually informed of the particular rights set forth above. But is this practical when the number of defendants to answer an arraignment docket may well be two hundred or more? Of course it is not. Most judges have adopted an opening statement to be read aloud to all defendants present during the beginning of each court session. This statement should explain the procedure to be followed in court, the different pleas available to the defendants, the rights of the defendants, and the range of punishment for ordinance violations, the sentencing alternatives available to the court, and the right to appeal. Appearing in numerous municipal courts as I have (not as a defendant, yet), I have heard numerous versions of opening statements, all of which cover the essential information to be provided. There is no absolutely correct opening statement. Each judge should prepare an opening statement with which he/she is comfortable, and deliver it at the beginning of each court session. I have included a sample opening statement (see Sample Opening Statement following this chapter), which I find very helpful in assuring that all the necessary information is given to those defendants who are present at the beginning of court.

In many courts it is likely that not all defendants are present when the judge makes the opening remarks. Just as likely, many defendants seem to be in la-la land when the judge is speaking pay

no attention whatsoever. To give the defendants every opportunity to be informed of their rights, many courts have provided a handout to each defendant advising them of their rights and explaining the procedure in the particular court. Another tool which is very helpful is to have available a power point presentation setting out the information each defendant should know before being asked to enter a plea. This power point is repeated throughout the court session on screens in the front of court so even those defendants arriving late have the information contemplated by the Supreme Court Rules before they enter their plea. The ultimate goal is to assure the defendants enter their plea with an understanding of their rights in your court.

8.3 THE ARRAIGNMENT PROCESS

After having read the opening statement, the first defendant will be called to appear before the judge. There are various means to accomplish this. Some courts have the bailiff call several defendants at the same time and have them form a line before the bench. In other courts, the judge or the prosecutor calls the defendants' names. Some courts have the defendants seated in the order in which they arrived, and then have the clerk pull the court files and give them to the prosecutor or the judge as each row is called before the bench. Any of these procedures, as well as others, is acceptable. Each judge must decide with which method he/she is most comfortable.

My personal preference is to have each defendant check in with the clerk to have their file pulled; then the names of only those defendants who are present are called by the judge. These defendants are instructed to form a line, and are called a second time to approach the judge one at a time. One of the reasons not to call all the names of the defendants as they appear on the court's docket is to avoid the situation where fifteen or more names are called, and only one person answers. Those defendants who appear may question why many people fail to appear, yet there seems to be no consequences for their absence. There may be legitimate reasons for those defendants not to be present (continuance granted, case disposed of previously), but the other defendants would have no way of knowing those reasons, thereby leading to a loss of respect for the judicial system.

When a defendant who is not represented by an attorney steps before the judge, the court should address the defendant formally, such as Mr. Jones or Ms. Jones. The judge should read the charge (or have the prosecuting attorney read the charge) to the defendant. The court should then ask the defendant how he/she pleads. If there is any possibility that the defendant is unclear about the charges against him/her, the court should explain the allegations contained in the summons. If the city is seeking a term of imprisonment in the case or there is a possibility a jail sentence may imposed, the court must remind the defendant of his/her right to retain counsel, and of his/her right to representation if he/she is indigent, as well as his/her right to waive representation by an attorney. The court may then proceed to accept the defendant's plea of not guilty, guilty, or guilty with an explanation. If the defendant is entering a plea of guilty where there is a strong possibility of a jail sentence, the court should have the defendant execute a plea of guilty and waiver from to be place in the court file. When a defendant executes such a form, the court should be sure to inquire of the defendant if the defendant understands the form and the rights he/she is waiving. Supreme Court Rule 37.58 (d).

Two other areas of concern during the arraignment process are defendants who are hearing-impaired or are unable to clearly understand the English language. Section 476.753.1, RSMo (1997) requires any court to provide a deaf person, who is a party to the action and is in need of

assistance, the services of an interpreter or other aids to assist the deaf person in the proceedings before the court. If the court is aware, prior to the arraignment date, that a defendant may need such services, the court may want to have available a qualified interpreter to facilitate the taking of the initial plea. Sections 476.750 through 476.763, RSMo (1997) provide the mechanism for arranging for an interpreter or other auxiliary aids for the deaf person, including providing for the payment of the costs involved. A list of qualified interpreters or other auxiliary aids may be obtained from the Missouri Commission for the Deaf, 1500 Southridge Drive, Suite 201, Jefferson City, MO 65109

As to defendants who are unable to speak or understand the English language, there are several options which the court may consider during the arraignment process to guarantee that the defendant's rights are protected. If the defendant is alone, and is unable to understand his or her legal rights or the charges against them, the case should be continued to allow the defendant to procure an interpreter, whether it be a friend, or someone provided by the court. Many of the defendants who are unable to speak English will come to their first court appearance with a friend who is willing to act as an interpreter. As long as this person is properly instructed as to his/her role (only interpreting what is said by the judge, the prosecutor and the defendant), this is an expeditious way to accept a plea at the time of arraignment. To further ensure that the defendant understands his/her rights, the court should provide a pre-printed form in the defendant's language which sets out the specific rights waived by the defendant when pleading guilty and the range of punishment available to the court following a guilty plea. (Each judge can determine which languages these forms should include from the makeup of the community, and the court's prior experiences, and provide a separate form for each defendant.) Certainly if there is any question as to the defendant's ability to understand the proceedings, the court should arrange for an interpreter to assist the defendant. This may be accomplished by entering a "not guilty" plea for the defendant and setting the case for trial when an interpreter can be made available, or by continuing the case for a plea with an interpreter present. If the charges are more serious than simple traffic violations, the defendant should be instructed to consult with an attorney before entering a plea, and the case should be postponed to allow such consultation.

GUILTY PLEA

8.4 RIGHTS WAIVED

A defendant who pleads guilty waives the following rights:

1. To be represented by an attorney, and, if the defendant is indigent, to have an attorney appointed by the court if it appears there would be a possibility of a jail sentence upon conviction;
2. To plead not guilty or to persist in that plea; by pleading guilty, the defendant waives his/her right to trial;
3. To confront and cross-examine the witnesses against the defendant;
4. To present witnesses on defendant's behalf, and to subpoena witnesses;
5. To require the prosecution to prove guilt beyond a reasonable doubt;

6. To have a jury trial; and
7. Not to be compelled to incriminate himself or herself.

Before accepting a plea of guilty, the judge should determine that the information actually and accurately states an offense [See Section 4] and be convinced that the defendant understands and voluntarily waives each right.

8.5 DETERMINING FACTUAL BASIS OF PLEA

“The judge should not enter a judgment upon a plea of guilty without first determining that there is a factual basis for the plea.” S.Ct. Rule 37.58 (f). The factual basis for the plea may be established by asking the prosecutor to state the facts as the city's file reveals them, and then ask the defendant if the city's version of the incident is accurate; and, if not, to state any particulars in which the defendant's version of the facts differ from the city's version.

In the municipal court with large dockets, it may not be feasible to have the prosecutor state the essential facts for each case. If the defendant is informed that he has been charged with a stop sign violation, and responds by pleading guilty, the general practice is to accept the plea on its face and proceed to sentencing.

For particular cases such as stealing, assault and offenses against an officer (resisting arrest, failure to comply, etc.) it is advisable to ask the defendant to tell their side of the story. Because these offenses may adversely affect the defendant, should the defendant say he/she wants to plead guilty but then tells the court facts which do not form the basis for an offense; it may behoove the court to strongly advise the defendant to consult with counsel or to not accept the plea and set the matter for trial. (See 8.6) When this occurs in the presence of a large number of people in the courtroom, it affirms the court's interest in justice and avoids the appearance that the court is just interested in punishment.

8.6 EQUIVOCAL PLEAS

A judge should never accept a plea of guilty that is equivocal. Where the defendant announces a plea of guilty, but goes on to say things such as "I didn't do it, but I just want to get it over with," or "I don't want to come back for trial," or "I know I didn't do what the officer said," the judge should inquire further as to the charges. If the defendant insists on not admitting the facts which constitute the offense, the judge should enter a plea of not guilty for the defendant, and set the case for trial. One advantage of accepting a plea of "*guilty with an explanation*" is to allow the defendant to make a statement to the court which includes the defendant's version of the facts. It is important to inform the defendant that the plea of guilty will be accepted, and that the explanation only goes to the punishment to be imposed. This also allows the judge to determine whether the defendant's plea is knowingly and intelligently made. If the judge feels the defendant is equivocal in his plea based upon his explanation, the judge may then set the case for trial.

8.7 THE RANGE OF PUNISHMENT

The judge should inform each defendant as to the range of punishment for each offense with which the defendant is charged. This may be accomplished by the opening speech, or by informing each defendant individually. Most ordinance violations fall under a general punishment provision of the city code, but where a specific violation is governed by a special punishment section; the defendant should be informed of the special provision. (Many city ordinances provide that certain violations, usually housing violations, are continuing violations which may incur punishment on a daily basis). The court should have an up-to-date copy of the city ordinances in the courtroom. The alternative sentence of so many days in jail or so many dollars is not allowed. If there is a possibility of a jail sentence and the city has an ordinance which authorizes recovery of housing costs from a jailed defendant, the judge must inform the defendant at the time a plea of guilty is accepted.

8.8 RECORDING THE PLEA

The plea of the defendant must be accurately and clearly stated and recorded on both the court file, and the judge's docket.

8.9 ENTERING JUDGEMENT

Following a plea of guilty, judgment should be entered. If there is no legal cause presented why the judgment should not be entered, the court should then sentence the defendant within the guidelines of the ordinance. The court should impose sentence without unreasonable delay, but may defer sentencing for a pre-sentence investigation to be prepared, or to allow the completion of programs available to the court (SATOP, DIP, etc.). Although not a topic for this chapter, the clerk should forward to the appropriate agencies any disposition of cases which are required to be reported by state statute.

8.10 WITHDRAWING GUILTY PLEAS AND SETTING ASIDE JUDGMENTS

Rule 37.67 (a) allows the court on its own initiative or upon motion of the defendant to set aside a judgment within ten days after the entry of judgment (sentence imposed) and prior to the filing of application for trial de novo. The grounds upon which a judgment may be set aside are:

- “(1) That the facts stated in the information filed and upon which the cause was tried do not state an ordinance violation;
- (2) That the court was without jurisdiction of the ordinance violation charged;
- (3) To correct manifest injustice.”

Supreme Court Rule 37.67 (a).

Rule 37.67(b) requires that a motion to withdraw a guilty plea be filed before sentence is imposed (judgment) when imposition of sentence is suspended, or after sentence is imposed to correct manifest injustice.

There is differing practice and interpretation whether a court may grant a motion to set aside a guilty plea filed more than ten days after judgment (sentence imposed). Some judges reason that 37.67(a)'s requirement of ten days also applies to a 37.67(b) judgment set aside and subsequent

withdrawal of a guilty plea, while others reason that the “manifest injustice” clause of 37.67(b) allows a longer time to set aside judgment when a plea of guilty is involved. Some judges allow use of rule 37.09 to enlarge the ten-day period where the reason for not filing within ten days after judgment is the result of excusable neglect. There are rational arguments for all of these approaches, and to date there has been no appellate case deciding or discussing this specific issue. If a judgment is set aside, the judge must record the grounds upon which the action was taken. Rule 37.67(a).

OTHER PLEAS

8.11 NOT GUILTY PLEAS

Rule 37.59(a)

The defendant has the right to plead not guilty. When a plea of not guilty is entered the case should be set for trial. Depending on the seriousness of the charges, (possibility of jail time, civil consequences) it may be appropriate to suggest the defendant consult with an attorney, continue the case for announcement. The matter can always be set for trial on the next appearance. The court may also, if the defendant declines to consult an attorney, to have the defendant sign a waiver of counsel form prior to setting the trial date. The defendant would not be bound by this waiver if he/she later appears with an attorney.

8.12 FAILURE TO PLEAD OR APPEAR

Rule 37.43

If a defendant refuses to plead or if a corporation fails to appear, the court shall enter a plea of not guilty.

If the accused fails to appear as commanded by a summons and an information is filed, the judge may issue a bench warrant for the accused's arrest. [See Rule 37.44.] A Missouri resident who fails to appear in court or fails to dispose of the charges before his appearance may be subject to having his/her driving privileges suspended. Section 302.341, RSMo (2008) allows the municipal court to notify the defendant who "fails to dispose of the charges of which he is accused through authorized prepayment of fine and court costs and fails to appear on the return date or at any subsequent date to which the case has been continued, or without good cause fails to pay any fine or court costs assessed against him for any such violation within the time specified or in such installments as approved by the court..." that the court will order the director of revenue to suspend the defendant's driving privileges. The notice to the defendant shall be sent within ten days of the appearance date, and the defendant shall pay the fine and court costs within thirty days of the date of the mailing, or the defendant's license will be suspended. "Such suspension shall remain in effect until the court with the subject pending charge requests setting aside the noncompliance suspension pending final disposition, or satisfactory evidence of disposition of pending charges and payment of fine and court costs, if applicable, is furnished to the director by the individual."

For non-resident defendants, the municipal court may use the "Nonresident Violators Compact," Section 544.046, RSMo (2008) to insure compliance regarding traffic citations. The compact

guarantees that a nonresident motorist receiving a citation for traffic violations in a compact member state will receive the same treatment given resident motorists. A nonresident receiving a traffic citation in a compact member state must fulfill the terms of the citation or face the possibility of license suspension in the motorist's licensing state until the terms of the citation are met. The compact may be used for all traffic violations. The Missouri Department of Revenue will not transmit a report on any violation if the date of the transmission is more than six months after the date of the original citation.

8.13 PLEAS OF “NO CONTEST” OR “NOLO CONTENDERE”

A defendant may wish to plead "no contest" and accept the police officer's report to be accurate. The "no contest" plea is often attractive when the defendant fears that a civil case based on the same incident may arise and that a plea of guilty will be used against the defendant in the civil suit. Pleas of "no contest" or "nolo contendere" do not exist in Missouri. The judge should enter a plea of not guilty for the defendant and set the case for trial. If the defendant wishes to submit the facts contained on the summons, or in the police report, to the court as the stipulated facts of the case, and the city consents, the court should review the submitted documents and render a verdict.

8.14 SETTING BAIL

As previously discussed in Chapter 6, "Bail and Sureties," reasonable bail shall be set; however, there may be circumstances in which bail should be considered and reduced.

Supreme Court Rule 37.15 states “any person arrested for an ordinance violation shall be entitled to be released from custody pending trial.” If the defendant is being held, “the court shall order the person released upon the person’s written promise to appear unless the court finds:

- (1) The promise alone is not sufficient reasonably to assure the appearance of the person;
or
- (2) The person poses a danger to a crime victim, the community or any other person.”

Supreme Court Rule 37.15 (b), (2004)

Section (c) of Rule 37.15 sets forth conditions the court may impose if the court determines they are necessary to assure the appearance of the defendant and the defendant does not pose a danger to a crime victim, the community or any other person.

The gist of the Rule changes enacted in 2004 makes it evident that defendants are entitled to be released pending arraignment or trial when charged with municipal violations.

Pursuant to Supreme Court Rule 37.19 either the prosecutor or the accused may requests the court to review the conditions of a bond. This allows both the city and the defendant to have the conditions of the bond be reviewed by the court whether the defendant is still incarcerated or whether the defendant is free on bail or is at large.

"(a) Upon motion by the prosecutor or by the accused, or upon the judge's own motion, the judge before whom the procedure is pending may modify the requirements for release after notice to the parties and hearing when the judge finds that:

- (1) New, different or additional requirements for release are necessary; or
- (2) The conditions for release that have been set are excessive; or
- (3) The accused had failed to comply with or has violated the conditions for his release; or
- (4) The accused has been convicted of the ordinance violation charged.

(b) When the requirements for release are increased by the judge or new requirements are set, the accused shall be remanded to the custody of the corrections official until compliance with the modified conditions. If the accused is not in custody, the judge may order that a warrant for his arrest be issued."

PLEA NEGOTIATIONS

8.15 ROLE OF THE JUDGE

"The judge shall not participate in any plea negotiation discussions, but after an agreement has been made between the city and the accused and presented to the judge, the judge may discuss with the attorneys the agreement and any alternative that would be acceptable." Supreme Court Rule 37.58 (e).

8.16 DISCLOSURE OF AGREEMENT

If plea negotiations result in an agreement, the judge shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. The judge may accept the plea agreement, reject the plea agreement, or defer accepting the plea agreement until there has been an opportunity to consider the presentence report.

8.17 ACCEPTANCE OF THE PLEA

Should the judge accept the plea agreement, the judge will inform the defendant that the judgment and sentence agreed upon between the parties will be entered as the court's judgment, and the matter will be disposed of in accordance with the plea agreement.

8.18 REJECTION OF THE PLEA

Should the judge reject the plea agreement, the judge should inform the parties of that decision and advise the defendant personally, in open court or, on showing of good cause, in camera, that the judge is not bound by the plea agreement.

The judge must then advise that the defendant that he/she has the right to withdraw the plea of guilty. The judge must also advise the defendant that should he/she persist in the plea of guilty,

the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

8.19 SUMMARY

In summary, plea agreements are made between the defendant (or the defendant's lawyer) and the prosecutor, not the judge. They are presented to the judge for a ruling of acceptance or rejection. The final decision is the judge's.

8.20 REQUEST FOR JURY TRIALS

Rule 37.61

A request for a jury trial must be made by a motion filed at least 10 days prior to the scheduled hearing date. The judge should rule promptly on a motion for a jury trial. If the motion is sustained, the case should be certified to the presiding judge for assignment for trial by jury, or handled in accordance with any applicable local court rule. In municipal courts where the trial judge is not designated more than ten days prior to trial, the application for jury trial may be filed at any time. The judge should consult the local court rules for any rules that govern assignments for jury trials from municipal divisions.

8.21 WAIVER OF JURY TRIAL

Section (f) to Rule 37.61 provides that a defendant may file a written motion and attach to it a waiver of his right to jury trial; the defendant's case may be remanded to the municipal division for trial. This section applies to ordinance violations being tried in the associate division.