



SUPREME COURT OF MISSOURI

en banc

June 12, 2018
Effective July 1, 2018

In re:

(1) Repeal of subdivision 4.29, entitled "Municipal Division Reporting to the Municipality," of Court Operating Rule 4, entitled "Uniform Record Keeping System," and in lieu thereof adoption of a new subdivision 4.29, entitled "Municipal Division Reporting to the Municipality."

(2) Repeal of Appendix A, entitled "Minimum Operating Standards for Missouri Courts: Municipal Divisions," to Rule 37.04, entitled "Supervision of Courts Hearing Ordinance Violations," of Rule 37, entitled "Statutory and Ordinance Violations and Violation Bureaus," and in lieu thereof adoption of a new Appendix A, entitled "Minimum Operating Standards for Municipal Divisions and Municipal Division Judges – Annual Certification Requirement."

(3) Repeal of the "Minimum Operating Standards Form," contained within Appendix A and adoption of a new minimum operating standards form, entitled "Judge's Report to the Presiding Circuit Judge of Compliance with Minimum Operating Standards for Municipal Division Having Cases Heard by an Associate Circuit Judge."

ORDER

1. It is ordered that effective July 1, 2018, subdivision 4.29, of Court Operating Rule 4 be and the same is hereby repealed and a new subdivision 4.29 adopted in lieu thereof to read as follows:

COURT OPERATING
RULE 4.29

MUNICIPAL DIVISION REPORTING
TO THE MUNICIPALITY

On or before the 15th of each month, the Municipal Division shall submit to the municipality a copy of the monthly case load summary report for the preceding month required by Court Operating Rule 4.28. This reporting requirement shall supersede and replace the reporting requirement established by section 479.080.3, RSMo.

2. It is ordered that effective July 1, 2018, Appendix A to Rule 37.04 of Rule 37 be and the same is hereby repealed and a new Appendix A adopted in lieu thereof to read as follows:

37.04 SUPERVISION OF COURTS HEARING ORDINANCE VIOLATIONS

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Appendix A
Minimum Operating Standards for Municipal Divisions
and Municipal Division Judges – Annual Certification Requirement

Minimum Operating Standard # 1: Municipal divisions and their judges shall ensure that when individuals must be held in jail in the interests of justice, this is done strictly in accordance with the principles of due process of law, including:

A. Municipal Divisions

- The municipal division is in compliance with the following requirements of section 479.360.1, RSMo:
 - Procedures exist to prevent defendants from being held longer than 48 hours on minor traffic violations and 72 hours on other violations without being heard by a judge in person, by telephone, or via video conferencing.
 - The municipal division has made reasonable efforts to communicate to local law enforcement the 24-hour rule: "Defendants in municipal custody shall not be held more than twenty-four hours without a warrant after arrest." See also section 544.170.1, RSMo.
 - No additional charge is issued for failure to appear for a minor traffic violation.
- The municipal division has a duty judge available at all times to rule promptly upon warrants, bail and conditions of pretrial release, and other matters, without undue delay.
- Bond schedules are utilized **only** for persons arrested without a warrant and held no longer than 24 hours pursuant to sections 479.360.1(2) and 544.170.1, RSMo; Rule 37.17.
- The municipal division has procedures in place to ensure that when a case is dismissed by the prosecuting attorney or otherwise finally resolved, or when the circumstances that justified issuance of a warrant no longer exist, the judge recalls and cancels any outstanding warrants in that case as soon as practicable.
- The municipal division has procedures in place to ensure that the recall and cancellation of outstanding warrants is communicated to law enforcement by the clerk without delay.

B. Municipal Division Judges

- Confinement to coerce payment of fines and costs is utilized only if found in contempt of court after strict compliance with the Due Process procedures of Rule 37.65. Section 479.353, RSMo.
- Warrants are issued **only** upon a finding that reasonable grounds exist to believe that the defendant will not appear upon a summons or that the accused poses a danger to a crime victim, the community, or any other person. Rule 37.43(b).

- Warrants are signed **only** by judges unless the exception of a **specific** warrant ordered by a judge to be signed by a clerk is applicable. Rule 37.45(b)(6).
- No person is sentenced to confinement on "minor traffic violations" or "municipal ordinance violations" with the exception of violations: involving alcohol or controlled substances; endangering the health or welfare of others; or involving eluding or giving false information to a law enforcement officer. Section 479.353(2), RSMo.

Minimum Operating Standard # 2: Municipal division judges shall inquire of defendants and allow them to present information about their financial condition when assessing their ability to pay and when establishing payment requirements for monies due.

- The judge complies with the following requirements of section 479.360.1, RSMo:
 - Defendants are allowed to present evidence about their financial condition in assessing their ability to pay and establishing payment requirements.
 - Alternative payment plans are utilized. See also Rule 37.65(a)(1)-(2).
 - Community service is utilized with no fee assessed to the defendant.
- Stay of execution procedures exist for defendants to pay fines and costs within a specified period of time or to make installment payments. Rule 37.65(a)(1)-(2).
- If probation fees are assessed, the judge does so in compliance with sections 549.525.2, 559.604, and 559.607, RSMo, including consideration of factors exempting a probationer from part or all of the standard monthly probation fee of \$30 to \$50 per month. The municipal division advises offenders of the right to request individualized consideration of exemption from paying probation fees and surcharges under these statutes.

Minimum Operating Standard # 3: Municipal division judges shall not condition an indigent defendant's access to a judicial hearing or the granting of probation upon the payment of fines or fees.

- If a defendant files an application for trial *de novo*, the payment of the statutory trial *de novo* fee shall be waived if the defendant qualifies as indigent.

- If the defendant requests a jury trial, the cause shall be transferred to the circuit court without prepayment of fees.
- Granting probation is not conditional upon the payment of anything other than lawfully authorized fees and probation is not denied solely because of the inability of the defendant to pay authorized probation fees and surcharges.

Minimum Operating Standard # 4: Municipal divisions and their judges shall neither assess nor collect unauthorized fines, costs, or surcharges.

A. Municipal Divisions

- The violation bureau schedule of fines and costs is prominently posted at the place where fines are to be paid. Rule 37.49(d).
- Only court costs (fees, miscellaneous charges, and surcharges as defined at section 488.010, RSMo) authorized by state statute are assessed. The OSCA bench card on municipal division court costs shall be used as a reference. Sections 479.260.1, 479.360(5), and 488.012, RSMo; COR 21.01.
- DPC (Dismissal on Payment of Costs) is not permitted. Section 479.353(5), RSMo; COR 21.01(c).
- The municipal division has taken reasonable steps to ensure that, where applicable, the schedule of fines and costs is provided to an accused at the same time as a violation notice. Rule 37.33(b).
- If a violation bureau has been adopted, it processes only those violations authorized by Rule 37.49(c).

B. Municipal Division Judges

- Fines and costs assessed on "minor traffic violations" as defined at section 479.350(3), RSMo, shall not exceed \$225.00. Section 479.353(1)(a), RSMo.
- Fines and costs assessed on "municipal ordinance violations" as defined at section 479.350(4), RSMo, shall not exceed the mandatory maximum amounts authorized by section 479.353(1)(b), RSMo.
- Fines assessed on other ordinance violations do not exceed the maximum amount authorized by state law and the city code.
- The judge does not assess court costs against indigent defendants. Section 479.353(4)-(5), RSMo.
- The judge, in compliance with section 479.360.1(9), RSMo, makes use of community service with no fee assessed to the defendant.

Minimum Operating Standard # 5: All municipal judges shall be lawfully selected, lawfully authorized to act in specific cases, and adequately prepared for their duties through appropriate training and continuing education.

A. Municipal Divisions

- All judge(s) serving in a municipality – full-time, part-time, substitute, and provisional – are selected pursuant to municipality's ordinance or charter before serving. Section 479.020.1, RSMo.
- The municipal division has a mechanism in place to check for judicial conflicts prohibited by Rule 37.53(b)(2), and the judge recuses in all instances when required to do so pursuant to this rule.
- Upon successful change of judge requests and recusals, the procedural requirements of Rule 37.53(d) and section 479.230, RSMo, are followed.

B. Municipal Division Judges

- Following applicable law, the judge follows rules cutting off or limiting the judge's authority to act in a case once a motion to disqualify, motion for jury trial, or motion for trial *de novo* is filed.
- The judge is in compliance with Rule 18, "Municipal Judge Continuing Education Requirements and Nonlawyer Certification."
- The judge has received instruction on laws related to intoxicated-related traffic offenses. Section 479.172.1, RSMo.

Minimum Operating Standard # 6: Municipal divisions shall be operated in a manner reasonably convenient to the public and in facilities sufficient to the purpose.

- Courtrooms are suitable and meet due process requirements for all court attendees. Section 479.060.1, RSMo.
- The municipal division is in compliance with the following requirements of section 479.360.1, RSMo:
 - The courtroom is open to the public of all ages and large enough to reasonably accommodate the public, parties, and attorneys.
 - For minor traffic violations, procedures exist for electronic payment or payment by mail.

- The municipal division allows payments online and makes available free, online access to information about pending cases, outstanding warrants, and scheduled municipal division dockets,

OR

The municipal division is actively pursuing court automation to achieve compliance with allowing payments online and making available free, online access to information about pending cases, outstanding warrants, and scheduled municipal division dockets.

Minimum Operating Standard # 7: Municipal divisions shall be operated in a manner that upholds the constitutional principles of separation of powers and the integrity of the judiciary as a separate and independent branch of government.

- Informations are signed by the prosecutor. Rule 37.35(a).
- Clerks of court and other nonjudicial personnel do not perform any functions that constitute an actual or apparent conflict of interest with the impartial performance of their judicial duties. Work performed on behalf of law enforcement or the prosecuting attorney is one example of an actual or apparent conflict of interest.
- Clerks of court and other nonjudicial personnel, when performing court-related functions, work solely under the direction and supervision of the municipal judge, the circuit clerk, or another officer of the judicial branch as to the work to be performed and the manner in which it is to be done.
- Judges, clerks of court, and other nonjudicial personnel are not subject to informal pressure, formal discipline, firing, or threats of non-retention or non-reappointment at the conclusion of a term of office by officers and administrators of the municipal government resulting from the performance of judicial duties in a manner that upholds the independence of the judiciary.
- Judges, clerks of court, and other nonjudicial personnel are not subject to informal pressure, formal discipline, firing, or threats of non-retention or non-reappointment at the conclusion of a term of office by officers and administrators of the municipal government that are designed to encourage or require the municipal division to operate in such a way as to maximize the municipal revenues derived from municipal division operations or to meet specified revenue targets without regard to whether such goals or targets are communicated formally or informally to court personnel.

- Municipal division facility's exterior and interior signage, design, functionality, and other factors convey an appearance to the public that it is a separate and independent branch of government.

Minimum Operating Standard # 8: Municipal divisions shall be operated in accordance with the constitutional principles and legal requirements of open courts and open records.

- The municipal division has a municipal clerk available at least 30 hours per week during regular business hours and court sessions to whom the person can pay fines and from whom the person can obtain information about charges, payments and court operations. The clerk should be available in person during these hours in an office open and accessible to the public and may perform other functions for the municipality that do not constitute an actual or apparent conflict with the impartial performance of judicial duties. In the event the municipal division does not have sufficient staff to have a clerk available for all of the 30 hours in person, the clerk may instead be made available for up to 15 of the 30 hours to provide information about charges, payments and court operations through live communication by telephone, email, or other means of electronic communication.
- Proceedings in the municipal division are open to the public of all ages unless the municipal division orders otherwise in a particular circumstance for good cause shown.
- The courtroom facility is sufficient for the purpose of a courtroom. The courtroom is large enough to reasonably accommodate the public, parties, and attorneys. Section 479.360.1(7), RSMo. The facility chosen for court takes into consideration the safety and comfort of the public, parties, and lawyers. The facilities chosen uphold the integrity and independence of the judiciary as a separate branch of government.
- The municipal division allows members of the public and the news media access to open municipal division records in accordance with Court Operating Rules (COR) 2 and 4 and other relevant law.

Minimum Operating Standard # 9: Municipal division judges shall advise litigants of their rights in court.

- Defendants are given advice of rights pursuant to Rules 37.47, 37.48, 37.50, and 37.58.
- The judge assures that a "Notice of Rights in Municipal Division," in a form approved by or substantially similar to that approved by the Supreme Court, is provided to all defendants. This notice of rights is displayed prominently wherever the municipal clerk transacts business with the public and in the facility where proceedings in the municipal division are held. This notice of rights in municipal division is made available as a handout for those appearing before the municipal division and is displayed on each public information website operated by the municipal division or on behalf of the municipal division.
- Announcements by the judge that are intended for the benefit of all present can be heard throughout the courtroom or are communicated adequately in other ways. Such announcements are also communicated to those waiting outside the courtroom or otherwise made available to them when they come into the courtroom.
- The municipal division utilizes a written "Waiver of Counsel" substantially in the form of Form 37C. Rule 37.58(d).

Minimum Operating Standard # 10: Municipal divisions shall be well-managed and accountable to the law, with appropriate oversight of municipal division operations provided by the circuit court presiding judge of the judicial circuit.

◆ Generally

- The municipal division has a functional clerk's office that organizes and preserves the judicial records of the municipal division in a prudent and organized manner and in compliance with applicable laws and supreme court rules.
- The municipal division has a functional clerk's office that handles bookkeeping and money handling obligations of the municipal division in a prudent and organized manner and in compliance with the current recommendations of the Office of State Courts Administrator and the Missouri state auditor.

- The municipal division has certified substantial compliance with section 479.360.1(1-10), RSMo, and provided signed certification to the governing body in compliance with the state auditor's rules and procedures. Section 479.360.1 and .2, RSMo.
- The municipal division provides to the municipality adequate information for the municipality to determine excessive revenue calculations to the state auditor. Section 479.359, RSMo.
- The municipal division had educated its personnel on the requirements of Rule 37.04, Appendix B, "Code of Conduct for Municipal Division Personnel."
- The municipal division shall notify the Presiding Judge of the Circuit the following information:
 - Names of any substitute, provisional, or *pro tem* judges who serve in the municipality.
 - Address where municipal division is held.
 - Dates and times where municipal division court is held.
 - Municipal division phone number.
 - Municipal Judge's contact phone number.
 - Municipal Judge's email address.
 - Clerk's or administrative assistant's email address.

◆ **Chapter 479, RSMo**

- If holding administrative hearings, the municipal division is authorized to do so. Section 479.011.1, RSMo.
- Judge serves as a judge in no more than five municipalities. Section 479.020.9, RSMo.
- Judges are under the age of 75 years. Section 479.020.7, RSMo.
- Municipality has notified circuit clerk of the municipal division's existence. Section 479.030.1, RSMo.
- Nonjudicial personnel have been provided to ensure proper functioning of the municipal division. Section 479.060.1, RSMo.
- Fines and costs collected are paid into the municipality's treasury at least monthly. Section 479.080.1, RSMo.
- A written policy for reporting intoxication-related traffic offenses to the central repository has been **adopted** and **provided** to OSCA and the highway patrol. Section 479.172.1 and 2, RSMo.
- Semiannual disposition report of intoxication-related traffic offenses is provided to the circuit court *en banc*. Section 479.172.3, RSMo.

◆ Open Records and Other Recordkeeping Matters (Article I, § 14, Constitution of Missouri; Court Operating Rules 2, 4 and 8; sections 483.065, 483.075, 483.082, RSMo)

- The municipal division maintains complete and accurate records of municipal division proceedings, including warrants outstanding, bonds posted, case files and dispositions.
- The municipal division ensures that the proper disposition of all cases is documented on the municipal division dockets or backer sheets and that all municipal division dockets or backer sheets are signed by the municipal judge, if required by law.
- The municipal division ensures that an information signed by the prosecuting attorney is filed for each ordinance violation to be prosecuted. In addition, the municipal division ensures that the prosecuting attorney signs all tickets and reviews and approves all amended and dismissed tickets.
- The municipal division ensures that the proper disposition of cases is documented in manual and electronic records and sufficient documentation is maintained to support all case actions.
- The municipal division has established procedures to generate monthly reports of municipal division activity, and the municipal division submits these reports timely to OSCA and to the city in accordance with COR 4.28 and 4.29.
- The municipal division regularly backs up computer data and ensures it is stored in a secure off-site location and its recovery is tested on a regular, predefined basis.
- The municipal division requires unique user identifications and passwords for each employee and passwords that are confidential and periodically changed. The municipal division ensures that user access is periodically reviewed and unnecessary access, including that of terminated users, is removed timely as well as reviews user access to data and other information resources to ensure access rights are commensurate with current user job responsibilities.

◆ Financial and Bookkeeping (section 483.075.1, RSMo)

- The municipal division segregates accounting duties to the extent possible. If it is not possible to segregate duties, the municipal division

ensures that documented periodic independent or supervisory reviews of municipal division records are performed.

- The municipal division ensures that accurate records are maintained to account for all payments received and deposited, receipts are posted accurately and timely, and the method for payment is indicated on all receipts. Checks and money orders are endorsed immediately upon receipt. Additionally, if manual receipts are in use, the municipal division ensures that manual receipt slips are timely entered in the computerized system and the numerical sequence of manual receipt slips is accounted for properly. In addition, the municipal division ensures that voided transactions are properly documented and approved.
- The municipal division reconciles the composition of receipts to the composition of deposits, and deposits all monies intact and timely.
- The municipal division performs monthly bank reconciliations, resolves reconciling items, and makes appropriate, documented adjustments to accounting records timely.
- The municipal division prepares monthly lists of liabilities and reconciles the lists to the bank account and/or city fund balance, promptly investigates and resolves differences, and has established procedures to review the status of liabilities to determine the appropriate disposition of funds held.
- The municipal division has developed procedures to ensure the monthly distributions are properly calculated and disbursed timely.
- The municipal division has established procedures to routinely generate and review the accrued costs list for accuracy and properly follows up on all amounts due.
- The municipal division obtains signed payment plans from all defendants and ensures payment plans are established in the case management system in accordance with court operating rules where applicable.
- The municipal division ensures that adequate documentation is maintained to support all adjustment transactions and ensures that an independent review and approval of these transactions is performed and documented.
- The municipal division maintains the change fund at an established amount and periodically counts and reconciles the monies on hand to the authorized balance.

- The municipal division maintains bond coverage for all personnel with access to municipal division monies.
- The municipal division ensures that all bond receipts are recorded and deposited timely and intact.
- The municipal division has developed procedures and records to identify applicable violations and the associated fines and court costs revenues for the purposes of the revenue calculations required by section 479.359, RSMo, et seq., and the municipal division provides this information to the city.

◆ **Trial *de novo* Procedure**

- When a trial *de novo* request has been filed, the municipal division certifies the file to the circuit court within 15 days.
- When a case record is certified to the circuit court upon filing of a request for trial *de novo*, all funds received in connection with the case, any bonds, and the record are transferred within 15 days.
- Once a case has been certified to the circuit court, the municipal division does not act on that case unless and until the case is remanded back to that municipal division.

Certification of Compliance with Minimum Operating Standards

◆ **Principal/Chief Judge**

By September 1 of each year, the municipal judge in each municipality with one regular municipal judge, or the chief municipal judge in municipalities with more than one municipal judge, subject to the exceptions listed below, shall certify to the Office of State Courts Administrator compliance with **all** minimum operating standards.

This certification must be made personally by the judge, and not by a clerk, court administrator, or other personnel. This certification shall be submitted in an electronic format as designated by the Clerk of the Supreme Court of Missouri, and shall include the following electronic attachments:

* Semiannual disposition report of intoxication-related traffic offenses provided to the circuit court *en banc* pursuant to section 479.172, RSMo;

- * Executed substantial compliance certification form, section 479.360.1(1-10), RSMo; and
- * CLE compliance form, Rule 18.

In consolidated municipal courts which serve more than one municipality, a separate certification must be filed for each municipality served.

♦ **Non-principal/non-chief judge**

By September 1 of each year,

- * in municipalities with more than one municipal judge, each regular municipal judge other than the chief municipal judge, and
- * in all municipal divisions, each substitute, provisional, part-time, and *pro tem* municipal division judge, subject to the exceptions listed below,

shall certify to the Office of State Courts Administrator that the individual judge is in compliance with Minimum Operating Standards 1B, 2, 3, 4B, 5B, and 9. This certification must be made personally by each individual non-principal/non-chief judge, and not by a clerk, court administrator, or other personnel. This certification shall be submitted in an electronic format as designated by the Clerk of the Supreme Court of Missouri, and shall include the following electronic attachment:

- *CLE compliance form, Rule 18.

Exceptions: Certification of Compliance with Minimum Operating Standards shall not be required of associate circuit judges presiding over municipal division cases for municipalities which have elected to have their cases heard by the associate division of the circuit court, special judges sitting temporarily by assignment from the Supreme Court of Missouri, or special judges sitting by assignment from the presiding judge of the circuit. (The exception for associate circuit judges applies only to associate circuit judges hearing municipal division cases at the state circuit court. An associate circuit judge who hears municipal division cases by agreement in a freestanding municipal division is required to file the same certification as would be required of a municipal judge.)

Within one month after each reporting cycle, the Office of State Courts Administrator shall provide the presiding circuit judge of the judicial circuit with the results of its municipal division judges' certifications. Subject to the exceptions above, the presiding circuit judge shall be responsible for ensuring that: each municipal division and the principal municipal division judge is in compliance with all minimum operating standards and each municipal division judge other

than the principal municipal division judge is in compliance with minimum operating standards 1B, 2, 3, 4B, 5B, and 9.

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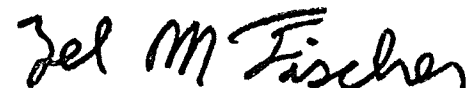
3. It is ordered that effective July 1, 2018, the "Minimum Operating Standards Form," contained within Appendix A be and the same is hereby repealed and a new minimum operating standards form, entitled "Judge's Report to the Presiding Circuit Judge of Compliance with Minimum Operating Standards for Municipal Division Having Cases Heard by an Associate Circuit Judge" adopted to read as attached.

4. It is ordered that notice of this order be published in the Journal of The Missouri Bar.

5. It is ordered that this order be published in the South Western Reporter.

6. The state courts administrator shall furnish a copy of this order to each circuit court presiding judge, each municipal division court judge, each municipal division court clerk, and such other persons as she may direct.

Day – to – Day



ZEL M. FISCHER
Chief Justice