

**JUDICIAL INDEPENDENCE IN THE MUNICIPAL COURTS**

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# **JUDICIAL INDEPENDENCE IN THE MISSOURI MUNICIPAL COURT**

## **ABSTRACT**

Studies of judicial independence abound. Yet most of them focus on the federal courts, even though the overwhelming bulk of the contacts between the public and the courts take place in state and municipal courts. This study is of the 473 municipal courts in Missouri but has implications for the other twenty-nine states with over 8,291 locally funded courts, such as municipal courts, city courts, town and village justice courts, justice of the peace courts, mayor courts and even some county courts.

The research in this paper focuses on judicial independence. The author believes that examination of the administrative structure of the municipal courts in Missouri will show that different administrative structures encroach on the judicial branch as a separate and co-equal branch of government. Such encroachments occur when the court administrator/clerk reports to someone other than solely to the judge of the municipal court. The hypothesis is that administrative structures where the court administrator/clerk reports to someone in either the executive or the legislative branch of government will cause confusion on the part of the court administrator/clerk as to the purposes and responsibilities of courts. These court administrators/clerks will experience more problems than those court administrators/clerks who report solely to the judge. This, and any effect it has on the ability of the judge to render decisions based solely on the facts and the law, should concern us all.

A six page, 15 question, survey was developed and mailed on August 6, 2004 to the 473 municipal courts within the state of Missouri. Two hundred and sixteen surveys were returned of which 200 were valid surveys and with useful data and information. One hundred and ninety-eight were completed by court administrators/clerks and judges completed two of the surveys.

The respondents were very open on the survey and many shared horror stories regarding the problems they encounter. While a slightly higher response rate would have been preferable, since one cannot determine the extent to which the views of non-responders differ from those who returned the surveys, the responses appear to provide a great deal of useful information. The sample included significant numbers for all sizes of municipal courts found in Missouri – small to large; rural to metropolitan. However, most of the respondents were in small rural communities, as are most municipal courts in the state. Yet, these courts, in the year 2003, had over 600,000 filings.

From the research, it was determined that only forty-one percent of the court administrators/clerks report only to the judge. Twenty-one percent report jointly to the judge and someone who works in either the executive or legislative branch of government and thirty-four percent report solely to persons within the executive branch of government. These included reporting solely to the city clerk, city manager/administrator, chief of police or other police officer, city prosecutor, director of finance and city council or combinations thereof. Most enlightening are the administrative structures where the court administrator/clerk reports to the prosecutor, chief of police or a sergeant in the police department, the director of finance and the city clerk. The research showed that there was confusion as to the purposes of courts especially on the statement that it is a purpose of the court to generate revenue. Twenty-seven percent of those reporting solely to the judge agreed with that statement while fifty-one percent of those not reporting to the judge agreed with the statement. Table 14 shows that in administrative structures where the court administrator/clerk reports solely to the judge the average number of identified problems caused by the administrative structure was .62. For those reporting jointly to the judge and to someone in the executive branch of government the average identified problems increased to 1.73. For those court administrators/clerks reporting solely to someone in the

executive branch the average number of identified problems increased to 1.98. For those reporting only to the city clerk the average number of problems was 2.5 and for those solely reporting to someone in finance the average was 4.75. The hypothesis that court administrators/clerks who report to only someone in either the executive or legislative branch of government would experience confusion as to the purposes and responsibilities and would experience more problems than the court administrators/clerks who report solely to the judge was confirmed by the research. Eight recommendations were made to bring about change. These included better education of the judges, court administrators/clerks and other court employees, members of the executive and legislative branch of government, city managers and other city officials. Recommendations also included making the Office of the State Court Administrator aware of the research and its findings and to work with them in order to bring about change.

# JUDICIAL INDEPENDENCE IN THE MISSOURI MUNICIPAL COURT

## INTRODUCTION

Studies of judicial independence abound. Yet most of them focus on the federal courts, even though the overwhelming bulk of the contacts between the public and the courts take place in state and municipal courts.<sup>1</sup> New Jersey places the highest importance on the municipal court contacts when it says: “It is through the Municipal Courts that most citizens in the State come into contact with the judicial system, either as a defendant, complaining witness or other party. Since most citizens will never appear before another State Court, it is from their experience in the Municipal Courts that most people base their conclusions about the quality of justice in New Jersey.”<sup>2</sup> The author believes this to be the case in many states, including the state of Missouri.

This study is a survey of the 473 municipal courts in Missouri and the results show significant structural and attitudinal barriers to judicial independence in Missouri. The study may have implication for the other twenty-nine states with over 8,291 locally funded courts, such as municipal courts, city courts, town and village justice courts, justice of the peace courts, mayor courts and even county courts.

In order to establish the importance and value of this study it is critical to first present a brief overview touching eight different areas: What is judicial independence? Why should judicial independence be important to us? What is the relationship between judicial

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<sup>1</sup> The excellent 1997 report of the American Bar Association’s Special Commission on Separation of Powers and Judicial Independence is a case in point. Focused on the federal courts, the commission report included a brief segment on judicial independence in the state courts. That section began: “The focus of this study is on judicial independence in the federal courts; limited time and resources have not allowed a detailed examination of the intrusions, both real and apparent, on the independence of the state courts. Nevertheless, since 97% of all litigation occurs in the state courts, the Commission felt it was essential to survey the major issues affecting state judicial independence, if only briefly.” American Bar Association, *An Independent Judiciary: Report of ABA Special Commission on Separation of Powers and Judicial Independence* § 5 (1997), available at <http://www.abanet.org/govaffairs/judiciary/report.html> (accessed October 9, 2004).

<sup>2</sup> New Jersey Judiciary. “*The Municipal Court System.*” njcourtonline.com. Accessed April 30, 2004.

independence and judicial accountability? What are the threats to judicial independence? What implications does this study have for courts in general? What basis for judicial independence exists for Missouri Municipal Courts? What are the purposes and responsibilities of courts? And, What would an ideal municipal court in Missouri look like and how would it be structured and operate?

The discussion will then focus on the findings of this study, additional action steps to be taken and additional outcomes hoped for from the study.

## **WHAT IS JUDICIAL INDEPENDENCE?**

“A truly independent judiciary is one that issues decisions and makes judgments which are respected and enforced by the legislative and executive branches; that receives an adequate appropriation from Congress; and that is not compromised by politically inspired attempts to undermine its impartiality. . . . Judicial independence includes the independence of an individual judge as well as that of the judiciary as a branch of government. Individual independence (otherwise known as decisional independence) is both substantive, in that it allows judges to perform the judicial function subject to no authority but the law, and personal, in the sense that it guarantees judges job tenure, adequate compensation and security.”<sup>3</sup>

There can be no doubt that an independent judiciary is necessary in order to preserve the rule of law. The foundation of American democracy is the Constitution and the protections that it guarantees for every person through establishing basic rights and a balance and separation of governmental power. These protections are basic to securing equal justice and making the rule of law apply equally to all people. Some of the key concepts of an independent judiciary are:

- They serve as a principled decision-maker.
- They have the independence of mind and office to be fair, impartial and unbiased in their consideration of the facts that are before them in each case.

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<sup>3</sup> American Bar Association, “An Independent Judiciary: Report of the Commission on Separation of Powers and Judicial Independence”, (Chicago, 1997), ii-iii.

- They function as an independent institution able to check the actions of the legislature, the prerogatives of the executive branch, and the will of the majority, thus protecting individual citizens and groups from improper governmental actions,
- They resolve, in a fair and more or less predictable way, disputes between private actors.

Article I, II and III of the Constitution of the United States establishes the legislative, executive and judicial branches of government as it sets forth, in part:

**Article I, Section 1.** All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. . . .

**Article II, Section 1.** The executive power shall be vested in a President of the United States of America. . . .

**Article III, Section 1.** The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. . . .<sup>4</sup>

While the United States Constitution does not mention the separation of powers as such, the Federalists Papers generated much discussion regarding it. That discussion and discussion of the independence of the court continues to this date. The primary purpose for the separation of powers is to diffuse power in order to protect the liberty of individual citizens and to provide each branch with weapons to fight off encroachment by the other two branches. As James Madison argued in Federalist 51, “Ambition must be made to counteract ambition.”<sup>5</sup> Clearly our

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<sup>4</sup> United States Constitution

<sup>5</sup> Alexander Hamilton, James Madison and John Jay, Edited and with an introduction by Garry Wills, “Federalist 51”, *Federalist Papers*, (New York – Toronto – London – Sydney – Auckland, Bantam Books, February 1982).

system of separated powers is not designed to maximize efficiency; it is designed to maximize freedom.

Scholars have given us two ways of looking at the general idea of judicial independence: decisional independence and institutional, or judicial branch, independence.

- Decisional independence refers to a judge's ability to render decisions based on law and free from political or popular influence; decisions should be based solely on the fact of the individual case and the applicable law.
- Institutional or judicial branch independence describes the judicial branch as a separate and co-equal branch of government with the executive and legislative branches.<sup>6</sup>

The research in this paper focuses mainly on the judicial branch as a separate and co-equal branch of government. However, it does touch on decisional independence as well. This author believes that examining the administrative structure of the municipal courts will show that different administrative structures encroaches on the judicial branch as a separate and co-equal branch of government. Such encroachments occur when the court administrator/clerk reports to someone other than the judge of the municipal court. The hypothesis is that administrative structures where the court administrator/clerk reports to someone in either the executive or the legislative branch of government will cause confusion on the part of the court administrator/clerk as to the purposes and responsibilities of courts. These court administrators/clerks will experience more problems than those court administrators/clerks who report solely to the judge of the municipal court. This, and any effect it has on the ability of the judge to render decisions based solely on the facts and the law, as pointed out in the next section, should concern us all.

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<sup>6</sup> American Judicature Society. "*Judicial Independence: What is it?*" at [ajs.org/cji/cii/whatisji.asp](http://ajs.org/cji/cii/whatisji.asp) (accessed October 24, 2004).

## WHY SHOULD JUDICIAL INDEPENDENCE BE IMPORTANT TO US?

Supreme Court Justice Anthony M. Kennedy said: “The law makes a promise—neutrality. If the promise gets broken, the law as we know it ceases to exist.”<sup>7</sup>

The constitution serves recognition of the judiciary as an institution that is separate from the legislative and executive branches and that is empowered with the authority to interpret the governing laws of the land.<sup>8</sup> James Madison further defined the role of judges as custodians of fundamental rights when he said: “Independent tribunals of justice will consider themselves. . . . the guardians of these rights; they will be an impenetrable bulwark against every assumption of power in the legislature or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights.”<sup>9</sup>

As mentioned earlier, the primary purpose for the separation of powers is to diffuse power in order to protect the liberty of individual citizens and to provide each branch with weapons to fight off encroachment by the other two branches – each branch checks the actions of the others and balances their powers in some way. The chart in Appendix A is from an article, *Separation of Powers*<sup>10</sup>, from the free encyclopedia, *Wikipedia*, and shows in detail the constitutional powers and the “checks and balances” of each branch of government.

The importance of the checks and balances of government was underscored by the comments of John Adams when he said: “The dignity and stability of government in all its branches, the morals of the people and every blessing of society, depends so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from

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<sup>7</sup> Anthony M. Kennedy, Address to the American Bar Association Symposium, “Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice”, December 4-5, 1998.

<sup>8</sup> This concept commonly referred to as institutional or branch independence is of major concern within this study.

<sup>9</sup> Annals of Congress 457 (Joseph Gales, ed. 1789).

<sup>10</sup> Wikipedia, Separation of Powers, available at [http://en.wikipedia.org/wiki/Separation\\_of\\_Powers](http://en.wikipedia.org/wiki/Separation_of_Powers) (accessed November 26, 2004).

both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that. . . .”<sup>11</sup>

A more modern definition of judicial independence is provided by the Brennan Center for Justice:

“Judicial independence is the freedom we give judges to act as principled decision-makers. The independence is intended to allow judges to consider the facts and the law of each case with an open mind and unbiased judgment. When truly independent, judges are not influenced by personal interests or relationships, the identity or status of the parties to a case, or external economic or political pressures.”<sup>12</sup>

Dean Kevin J. Worthen, Professor of Law at the J. Reuben Clark Law School, Brigham Young University, put it this way:

“Judicial independence is desirable not because it makes judges powerful, but because it enables them to do their job correctly. And what is that job? While it could be explained in a number of ways, I suggest (as others have done) that judges play two primary and critical roles in our system: 1) protecting individual citizens and groups from improper governmental actions, and 2) resolving, in a fair and more or less predictable way, disputes between private actors.”<sup>13</sup>

He goes on to state:

“Both of these roles are critical – indeed, essential to our system of government and our way of life – and both require a fair amount of judicial independence if they are to be performed correctly. In the former role – protecting citizens from improper actions by the political branches of government – the Court must be free from undue interference from those branches and their sovereign masters if the role is to be performed. . . . It is that end – creating and maintaining a system based on the rule of law – not the two necessary means of judicial independence and judicial accountability – which should be the focus of the debate. . . . Keeping the attention on the overall goal is important not only for the sake of analytical clarity, but also for the sake of maintaining public confidence.”<sup>14</sup>

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<sup>11</sup> John Adams, *Thoughts on Government*, (1776).

<sup>12</sup> Brennan Center for Justice at NYU School of Law, “Questions and Answers about Judicial Independence”, (2000).

<sup>13</sup> The ABA Commission on Separation of Powers and Judicial Independence asserts that an independent judiciary is necessary to both 1) “check over-concentrations of power in the political branches,” and 2) ensure “impartial decisions in individual cases.” Quoted in Frances Kahn Zemans, “The Accountable Judge: Guardian of Judicial Independence”, 72 S. Cal. L. Rev. 626 (1999).

<sup>14</sup> Kevin Worthen, Dean, Professor of Law at the J. Reuben Clark Law School, Brigham Young University, “Judicial Independence and Judicial Accountability”, an unpublished speech given to the Conference of Chief Justices, Salt Lake City, Utah, July 2004, pp. 8-9.

Shirley S. Abrahamson, Chief Justice of Wisconsin and 2004 Chair of the Board of Directors of the National Center for State Courts concurs when she states: “Judicial independence is a means to an end – the end is due process, a fair trial according to law. Judicial independence thus protects the litigants in court and all the people of the nation.”<sup>15</sup>

A cover story in Business Week reflected:

“Like priests, rabbis, and mullahs, judges go to work in robes. Their long black gowns are intended to convey the prestige, seriousness, and scholarliness of their calling. This message is reinforced by everything that surrounds them: the Lady Justice statues, the classic Greek revival courthouses, the people calling them ‘Your Honor.’ When you get right down to it, all of these trappings are designed to build faith in the core ideals of the American judiciary; that judges are fair, objective, principled, and nonpartisan.”<sup>16</sup>

Article III, Section 1 of the Constitution, which provides for life tenure and compensation which shall not be diminished during the judge’s continuance in office, protects and provides somewhat of a guarantee of decisional independence on the federal level. However, most state court judges face elections of some form or another, a threat to judicial independence that does not exist for the federal judiciary.<sup>17</sup> Such lack of protection results in the statement by a Georgia Supreme Court justice who acknowledged that the elected justices of that court may have overlooked errors, leaving federal courts to remedy them via habeas corpus, because “[federal judges] have lifetime appointments. Let them make the hard decisions.”<sup>18</sup>

In Missouri and perhaps in other states, the majority, if not all, of the municipal court judges are appointed by someone in the executive and/or legislative branch of government, such as the City Council, Board of Trustees, Mayor, City Administrator and/or City Executive.

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<sup>15</sup> Shirley S. Abrahamson, “Judicial Independence as a Campaign Platform”, Bench & Bar of Minnesota, 2000.

<sup>16</sup> Business Week, “The Battle Over the Courts: How politics, ideology, and special interests are compromising the U. S. justice system”, September 27, 2004.

<sup>17</sup> Kevin Worthen, Dean, Professor of Law at the J. Reuben Clark Law School, Brigham Young University, “Judicial Independence and Judicial Accountability”, an unpublished speech given to the Conference of Chief Justices, Salt Lake City, Utah, July 2004, pp. 5.

<sup>18</sup> Stephen B. Bright, Symposium: Judicial Review and Judicial Independency: “Can Judicial Independence be Attained in the South? Overcoming History, Elections and Misperceptions About the Role of the Judiciary”, 14 Ga. St. U. L. Rev. 817, 840 (1998).

Therefore, they have even less protection from political, economic, and social factors and even face the threat of termination of their contracts. This lack of protection could result in or be seen as having undue influence on judicial decision-making. Suffice it to say here that some executives in every state may think and believe as former California Governor Gray Davis did when he observed that if judges he appointed to the bench took a position contrary to his, then they should resign. “My appointees should reflect my views. They are not there to be independent agents,” he said.<sup>19</sup>

While Governor Davis’ comment flies in the face of independence it does lead us into the area of accountability. One of the five Trial Court Performance Standards is Independence and Accountability. The standard on Independence and Accountability states:

“The judiciary must assert and maintain its distinctiveness as a separate branch of government. Within the organizational structure of the judicial branch of government, trial courts must establish their legal and organizational boundaries, monitor and control their operations, and account publicly for their performance. Independence and accountability permit government by law, access to justice, and the timely resolution of disputes with equality, fairness, and integrity; and they engender public trust and confidence. Courts must both control their proper functions and demonstrate respect for their coequal partners in government.

Because judicial independence protects individuals from the arbitrary use of government power and ensures the rule of law, it defines court management and legitimates its claim for respect. A trial court possessing institutional independence and accountability protects judges (the author would add court administrators/clerks) from unwarranted pressures. It operates in accordance with its assigned responsibilities and jurisdiction within the State judicial system. Independence is not likely to be achieved if the trial court is unwilling or unable to manage itself. Accordingly, the trial court must establish and support effective leadership, operate effectively within the State court system, develop plans of action, obtain resources necessary to implement those plans, measure its performance accurately, and account publicly for its performance.”<sup>20</sup>

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<sup>19</sup> Kermit L. Hall, President, Utah State University, “Perpetuating the Judiciary. The Judicialization of Public Life and the Independence of the Judiciary in American History”, an unpublished speech given to the Conference of Chief Justices in Salt Lake City, Utah, July 2004, pp. 7-8.

<sup>20</sup> Trial Court Performance Standards with Commentary, Bureau of Justice Assistance NCJ 161570, July 1997, pp. 24-25. This document was prepared by the National Center for State Courts, supported by grant numbers 87-DD-CX-0002 and 91-DD-CX-0013(S-1). For detailed information regarding all of the Trial Court Performance Standards the reader is referred to the Bureau of Justice Assistance Monograph NCJ 161570.

## WHAT IS THE RELATIONSHIP BETWEEN JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY?

Any discussion of judicial independence needs, however, to be joined with a discussion of accountability. Roger Warren, President Emeritus of the National Center for State Courts, stated, “the rule of law itself is a two-edged sword” because it not only ensures the protection of rights, but also enforces responsibilities.<sup>21</sup>

Chief Justice Abrahamson states:

“The rule of law holds government officials accountable to those in whose name they govern to prevent abuse of power, and the judiciary is not exempt from accountability. Judges are accountable to the public to work hard, keep their dockets current, educate themselves about changes in the law and treat each person with respect and dignity. Judges are accountable to represent the judicial branch before the public and other branches of government and to advocate for court reform.”<sup>22</sup>

Kermit L. Hall, President of Utah State University, in a speech to the Conference of Chief Justices, said that independence and accountability are two powerful yet seemingly contradictory values. Independence holds that judges must be free from direct political influence. Accountability holds that judges must be answerable to both their profession and to the public. He went on to say that we tend to make two important mistakes in using these terms. “First, we view them as absolutes and therefore at odds with one another. Thus, a more accountable judge would be a less independent judge. Second, we tend to view these terms as ends in themselves; when, in fact they are means, not ends. The end to which these means lead is power and power is always the ghost at the banquet served up by the framers of the American constitutional system.”<sup>23</sup>

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<sup>21</sup> Roger Warren, “The Importance of Judicial Independence and Accountability,” Unpublished speech in China available on the NCSC’s Website: [www.ncsconline.org/WC/Publications/KIS\\_JudIndSpeechScript.pdf](http://www.ncsconline.org/WC/Publications/KIS_JudIndSpeechScript.pdf), 2003.

<sup>22</sup> Shirley S. Abrahamson, “Judicial Independence as a Campaign Platform”, Bench & Bar of Minnesota, 2000, pp 5.

<sup>23</sup> Kermit L. Hall, “Perpetuating the Judiciary. The Judicialization of Public Life and the Independence of the Judiciary in American History”, an unpublished speech given to the Conference of Chief Justices in Salt Lake City, Utah, July 2004, pp. 3.

Dean Scott Bice said: “Judicial independence is the right of judges to be free from **inappropriate** control by others in the exercise of judicial decision making. Conversely, judicial accountability is the **appropriate** control by others of that decision making.”<sup>24</sup> In short, judicial independence and judicial accountability are both necessary in order to create and sustain a fair system of adjudication – a system based on the rule of law, protection of individual rights and the resolving, in a fair and more or less predictable way, disputes between private actors.

Without question, the critical nature of judicial independence, the American system of checks and balances imposes some restraint on every branch of government. The Conference of State Court Administrators (COSA) has expressed, in a forceful and clear Policy Statement on Effective Judicial Governance and Accountability, what the check on courts entails:

. . .For state courts to achieve effective judicial governance and full accountability in the performance of their responsibilities they must have the capacity to manage their affairs and develop and implement policies and practices in certain core areas of court administration. While the courts occupy a unique position within American government that demands independence, the other branches of government and the public have the right to hold the judiciary accountable for effective management of court business.

All state court systems must strive to be accountable – that is, to serve the public with maximum effectiveness and responsiveness. Failure to either achieve or demonstrate accountability sets the stage for external criticism and attacks on particular decisions of individual judges and courts, and fosters an environment in which the other branches of government are more likely to diminish the judiciary’s ability to govern its own affairs, e.g., by eroding court funding or micro-managing court practice and procedure. While vigilant of our constitutional prerogatives as a separate branch of government, the judiciary must go beyond merely accepting appropriate outside review and affirmatively welcome it as the best opportunity to educate the public and the other branches about the mission, accomplishments and needs of the third branch. It is in that context that the Judiciary will best be able to articulate how excessive interference with court operations can impair the ability of the courts to provide the public with the highest level of service.”<sup>25</sup>

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<sup>24</sup> Kevin Worthen, Dean, Professor of Law at the J. Reuben Clark Law School, Brigham Young University, “Judicial Independence and Judicial Accountability”, an unpublished speech given to the Conference of Chief Justices, Salt Lake City, Utah, July 2004, pp. 7.

<sup>25</sup> Conference of State Court Administrators, “Policy Statement Effective Judicial Governance and Accountability”, Adoption Date: COSCA Midyear Meeting, November 30, 2001.

The full Policy Statement, along with Conference of State Court Administrators' Resolution II, In Support of Principles of Effective Judicial Governance and Accountability, adopted by the Conference of State Court Administrators at their 2003-midyear meeting December 12, 2003 is in Appendix B. In Resolution II, COSCA identifies core elements of judicial accountability for state court systems that are working to present to their citizenry and other branches of government a bold vision of the judiciary's role in our society.

### **WHAT ARE THE THREATS TO JUDICIAL INDEPENDENCE?**

Historically, threats to judicial independence have come from the legislative and executive branches. Executive and legislative leaders have at times tried to influence judicial outcomes. Today, issues that have triggered such attempts include reapportionment, school funding, reproduction rights, gun control, tort reform and affirmative action.<sup>26</sup> In "Judicial Independence as a Campaign Platform", Chief Justice Abrahamson lists other governmental threats to an independent judiciary as:

- Poor inter-branch relationships between the judiciary, the legislature, and the executive, marked by a lack of communication;
- Legislative limits on or curtailment of judicial jurisdiction;
- Legislative refusal to increase judicial salaries; and
- Chronic under-funding of the judicial branch and increasing workload.<sup>27</sup>

As mentioned, this research paper focuses on encroachment by administrative structures where the administration of the court is through the executive or legislative branches of government and what threat such administrative structures poses for judicial independence. The

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<sup>26</sup> Shirley S. Abrahamson, "Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence", 64 Ohio St. L.J. 3, 2003.

<sup>27</sup> Shirley S. Abrahamson, "Judicial Independence as a Campaign Platform", Bench & Bar of Minnesota, 2000, pp 6.

author believes that institutional structure matters! It appears that historically, threats to judicial independence have come from the legislative and executive branches. Therefore, administrative structures created by the executive and/or legislative whereby the court leadership reports to someone who works solely in either the executive or legislative branches are a threat, if not the major threat, to judicial independence. How can the court be independent under such an administrative structure? How can the general public perceive the court to be independent under such an administrative structure? Such questions and concerns led to this research.

Governmental threats, however, are not the only threats to judicial independence. Chief Justice Abrahamson also lists more specific threats to judicial independency by non-governmental groups that include:

- Inappropriate threats of impeachment prompted by particular judicial decisions;
- Political threats intended to influence a judge's decision in an individual case; and
- Misleading criticism of individual decisions.

She adds: "The danger is that when individuals or groups are highly organized, ideologically driven, and well funded, their self-interest in winning cases overcomes their interest in an independent judiciary." . . .<sup>28</sup> "The best judges are those who resist threats to judicial independence and actively advocate judicial independence. The basic, underlying safeguard for judicial independence is popular support of the concept."<sup>29</sup>

Some court experts have expressed doubts about the courts' abilities to discharge their institutional obligations effectively. The reason for the skepticism is the absence of an appropriate management culture. For example, Ostrom, Ostrom, Hanson and Kleiman in their manuscript, "Public Organization Culture: A View from Twelve Courts" quote Robert W. Tobin:

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<sup>28</sup> Shirley S. Abrahamson, "Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence", 64 Ohio St. L.J. 3, 2003.

<sup>29</sup> Shirley S. Abrahamson, "Speech: The Ballot and the Bench", N.Y.U.L. Rev.973, 990, 2001.

“The executive and legislative branches. . . . have been reluctant to accord broad management latitude to a branch that has been historically uncomfortable with a management culture and inclined to diffuse power among individual judges. . . . Courts must either create an effective and credible management system or lose control over their internal management, and ultimately, the independence of the judiciary”.<sup>30</sup>

Ostrom et al state: “These two pronouncements imply a critical role for the ‘culture’ of courts in shaping the future of the American Court system, which can be stated in the form of a basic syllogism. Courts are independent bodies only if they administer justice effectively. They administer justice effectively only if they have a sound management culture. Therefore, courts will be independent only if they operate with a sound management culture.”<sup>31</sup>

The Conference of State Court Administrators through Policy Statements and Resolutions, and the National Association for Court Management through their Ten Core Competencies are addressing the management culture and management issues. However, one will see later that the Missouri Municipal Courts, and perhaps courts in other states, with local funding, with part time judges and part time court staff may be perceived as not having the capacity to manage their courts.

## **WHAT IMPLICATIONS DOES THIS STUDY HAVE FOR COURTS IN GENERAL?**

According to the Missouri Office of the State Court Administrator (OSCA), Missouri has a unified court system. This view is not shared by many of the municipal court administrators/clerks. According to the municipal court administrators/clerks that the writer contacted by phone and the writer himself, the unification is in theory only. It is this writers

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<sup>30</sup> Robert W. Tobin, “An Overview of Court Administration in the United States”, Williamsburg, VA, National Center For State Courts, 1997.

<sup>31</sup> Brain Ostrom, Charles W. Ostrom, Roger Hanson, and Matthew Kleiman, “Public Organization Culture: A View from Twelve Courts”, National Center for State Courts, Forthcoming 2005.

opinion that most municipal court administrators/clerks and other employees of the court do not know nor believe that they are a part of a unified court system.

This belief is based on the following three facts:

- 1) the municipal courts are totally funded by the municipality;
- 2) there is limited, if any, contact with the circuit court; and
- 3) the municipal courts perceive very little service or assistance being provided to them by the Office of the State Court Administrator. They see OSCA providing the following: a Municipal Clerk Manual, as mentioned earlier; some training that usually consists of a half day on legislative updates; and a telephone resource to call for answers to questions.

In contrast, the Office of the State Court Administrator is currently seen with a degree of hostility by some of the municipal courts in the state due to a recent decision by OSCA requiring the municipal courts to report case filing and outcomes, in a format decided by OSCA without input from the municipal court administrators/clerks. Some municipal courts perceive this “demanded requirement” as an unfunded mandate.

The Missouri Court Structure, 2002, as reported in the State Court Caseload Statistics, 2003<sup>32</sup> is found in Appendix C. For our purposes here, note that the Supreme Court is the Court of last resort; the Courts of Appeals are the intermediate appellate courts; the Circuit Courts are the courts of general jurisdiction and the Municipal Courts are the courts of limited jurisdiction. Also on the chart please note that the municipal court box is a dotted line and not a solid box thus indicating that they are locally funded.

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<sup>32</sup> State Court Caseload Statistics, 2003, a joint project of the Conference of State Court Administrators, the Bureau of Justice Statistics, and the National Center for State Courts’ Court Statistics Project, 2003, pp 33.

This format is consistent with thirty states affecting 8,291 courts, including the 473 municipal courts in Missouri. These states are exhibited in the State Court Caseload Statistics, 2003<sup>33</sup> as having similar court structure. These court structures indicate, with a broken line surrounding them that they are funded from local sources and are referred to as “locally funded court systems”.<sup>34</sup> While this study is only of the municipal courts in Missouri, the author believes, because of local funding, similar administrative structures whereby the courts are supervised and administered by individuals within the executive and legislative branches of government may be found in other states.<sup>35</sup> While not saying that the findings in this study will or do apply to the courts in these states, the author is saying that these states have similar court structures to Missouri and this study may have implications for them. Further study in this area is encouraged. The golden rule adage of, “he that has the gold rules”, may be alive and well in these court structures.

### **WHAT BASIS FOR JUDICIAL INDEPENDENCE EXISTS FOR MISSOURI MUNICIPAL COURTS?**

All of the above certainly applies to all courts. However, the question can be asked: does additional information exist that further establishes the basis for judicial independence for Missouri municipal courts?

The literature search in this area focused on three major areas, with an emphasis on how this applies to the municipal courts in Missouri: 1) separation of powers; 2) judicial

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<sup>33</sup> State court Caseload Statistics, 2003, Supplement to Examining the Work of State Courts, 2003, A joint project of the Conference of State Court Administrators, the Bureau of Justice Statistics, and the National Center for State Courts’ Court Statistics Project, pp 7-59.

<sup>34</sup> Ibid, 30, pp 4.

<sup>35</sup> The entire list of the 30 states can be found in Appendix C. There are 8,291 different courts such as municipal courts, city courts, town and village justice courts, justice of the peace courts, mayor courts and even county courts that make up this list.

independence and accountability; and 3) the purposes of courts. The relevant literature search will be summarized in this section.

Five Missouri sources have been found that address the issue of separation of powers and four of them specifically address if the municipal courts within the state of Missouri fall under the separation of powers doctrine. The five sources are: The Missouri Constitution; RSMo 479.260; The Municipal Clerk Manual; a letter from Ronald L. Larkin, Administrator of the Office of State Courts Administrator dated August 20, 1997; and a Memorandum from a Court Specialist, Office of State Court Administrator dated March 30, 2004.

### **THE MISSOURI CONSTITUTION**

The Missouri Constitution in Article II, The Distribution of Powers states:

“Section 1. The powers of government shall be divided into three distinct departments—the legislative, executive and judicial—each of which shall be confided to a separate magistracy, and *no person, or collection of persons, charged with the exercise of power properly belonging to one of those departments, shall exercise any power properly belonging to either of the other, except in the instances in this constitution expressly directed or permitted.*”<sup>36</sup>

All of Article II, Section 1 is in Appendix D.

### **REVISED STATUTES OF MISSOURI**

479.260 RSMo pertains to court costs and fees, judicial education fund, purposes, and administration. 479.260, which may be read in its entirety in Appendix D, is an important piece of legislation that allows the court to set aside one dollar of court costs and to create an account

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<sup>36</sup> Missouri Constitution, Article II, The Distribution of Powers, Section 1. Emphasis by author.

to provide training for the judge, the court administrator and the clerks of the municipal court and that the funds in this account *are under the control of the municipal court.*<sup>37</sup>

## **THE MISSOURI MUNICIPAL CLERK MANUAL**

The *Missouri Municipal Clerk Manual*, which Missouri court administrators/clerks commonly refer to as the “Clerk’s Bible” is compiled and distributed by the Office of State Courts Administrator (OSCA). Within the *Missouri Municipal Clerk Manual* there is an Administrative Procedures Chapter. The nine pages of the Chapter on Administrative Procedures are in Appendix D. However, the key areas pertaining to the separation of power and the independence of the court are summarized in this section.

The Chapter begins:

“This chapter discusses the administrative responsibilities of judicial personnel in the municipal division courts, describes the separation of powers between the governmental branches, and outlines the duties of the municipal judge and municipal clerk. If there are questions regarding the statements below, discuss the issues with the municipal judge.”<sup>38</sup>

The Office of State Courts Administrator (OSCA), without so stating, which they do in a later section, is acknowledging that the municipal court judge is the chief judicial officer of the municipal court and, as such, is the person who has the primary responsibility for the administration of the court. No distinction is made between being a full time or part time municipal court judge or of the staff being assigned full time or part time to the operation of the court.

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<sup>37</sup> You will later note in the findings from the surveys, a number of cities – not the court – control this fund and do not allow the judicial branch of government either to control this fund or to provide professional development for the judge, the court administrator or clerks of the municipal court – all clearly encroachments on the separation of powers and in violation of Missouri statutes. Emphasis by author.

<sup>38</sup> Office of the State Courts Administrator, “Municipal Clerk Manual, Chapter I, Administrative Procedures”, updated October 20, 2004, pp. 1.

OSCA goes on to quote from Article II of the Missouri Constitution and also refers to an Organizational Chart, which may be found in Appendix D. This City Government Organizational Chart shows the three branches of government answering to the voters. It also shows the City Council/City Alderman under the Legislative Branch; the Mayor under the Executive Branch; and the Municipal Court under the Judicial Branch.

### **Presiding Judge**

This section refers to Supreme Court Rule 37.04 Supervision of Courts Hearing Ordinance Violations, which reads: “The presiding judge of the circuit shall have general administrative authority over the judges and court personnel of all divisions of the circuit court hearing and determining ordinance violations within the circuit. The judges of all such divisions shall be subject to the rules of the circuit court that are not inconsistent with this Rule 37.”<sup>39</sup>

This section also refers to “Article V, Section 15(3) of the Missouri Constitution, adopted by the voters in 1976, and which creates the position of presiding judge for each judicial circuit. The presiding judge has general administrative authority over all divisions of the circuit court within the circuit, *including the municipal division*.<sup>40</sup> If the municipal judge has any questions concerning the administration of the court, the presiding judge may be contacted for assistance.”

### **Municipal Judge**

The municipal judge is the chief judicial officer of the municipal court and, as such, assumes the primary responsibility for the administration of the court. This section goes on to discuss the general administrative duties of the municipal judge which include:

- Preparing the municipal court budget
- Supervising the court staff

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<sup>39</sup> Missouri Court Rules, Volume I, “37.04 Supervision of Courts Hearing Ordinance Violations”, 2004, pp. 219.

<sup>40</sup> Emphases by author.

- Ensuring the complete and accurate case records and accounting records are being maintained.

In Article V. Section 15(3) of the Missouri Constitution and the Municipal Judge section of the Municipal Clerk Manual, OSCA has clearly established a chain of command for the municipal court. The clerk reports to the municipal court judge who reports to the person who has general administrative authority over all divisions of the circuit court within the circuit, including the municipal division. That person is the Presiding Judge of the circuit.

OSCA, citing Article II of the Missouri Constitution, specifies that the court is responsible for its own budget and “that is set apart from other city departments’ budgets” and that “the municipal judge is responsible for preparing the budget and supervising expenditures.”

### **Closed Records**

Closed records pose an interesting problem for municipal courts in Missouri where the court staff report to someone within the executive or legislative branch of government. Based on the law and this Administrative Procedures section of the Municipal Clerk Manual, non-court personnel should not have access to closed records. Closed records are to be accessible only to the defendant and to specific agencies for specific purposes as allowed in Section 610.120 RSMo.

The court should designate an area that is inaccessible to the public, preferably a locked cabinet, where all closed records can be kept. A closed record includes the case file, case index card, financial records where a name is listed, and any other information pertaining to the confidential case.<sup>41</sup>

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<sup>41</sup> Office of the State Courts Administrator, “Municipal Clerk Manual, Chapter I, Administrative Procedures”, updated October 20, 2004, pp. 4.

### **Court administrator/clerk (Section 479.060 RSMo)**

Section 479.060.1 RSMo provides that ‘where municipal violations are to be tried before a municipal judge or judges, the governing body of the municipality shall provide by ordinance for a clerk or clerks. . .’ The primary duty of the clerk is to carry out the day-to-day ministerial duties of the court. In this capacity, the clerk files cases, calendars cases, maintains all case records, and accounts for all money due and paid to the court.”

The Section goes on and states:

“In some communities, court administrator/clerks by necessity assume additional responsibilities for the city such as those of police dispatcher, police clerk, or city clerk. In these situations, the city mayor, chief of police, or another non-court city employee often exercises administrative authority over the clerk in all job capacities, including record keeping responsibilities for the court. *This practice is inappropriate because of the constitutional provision of separation of powers.*<sup>42</sup> The judge, not the mayor or the chief of police, is primarily responsible for the records of the court and as such, should direct the record keeping operations of the court. The clerk reports directly to the judge concerning the record keeping of the court. The duties of the court administrator/clerk are separate and independent from any other duties performed for the city. Records of the court, both public and closed, should not be made available to non-judicial personnel (such as the prosecutor, the city attorney, police officers, the mayor, city council members, or the public), except under the supervision of the court administrator/clerk or the judge as authorized by statute.”<sup>43/44</sup>

### **Accounting Guideline**

Of interest to this study is the second paragraph under this section on Accounting Guidelines. Beginning with the last line of the first paragraph, it states:

“It is the judge’s responsibility to ensure that all necessary accounting records are prepared and retained.

In some municipalities, the court has turned over all accounting-related duties to a city employee other than a court employee. Relinquishing these duties to non-court personnel

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<sup>42</sup> Emphasis by author.

<sup>43</sup> Office of the State Courts Administrator, “Municipal Clerk Manual, Chapter I, Administrative Procedures”, updated October 20, 2004, pp. 4-5.

<sup>44</sup> Please note here and elsewhere in the Municipal Clerk Manual, OSCA is aware of encroachment on the separation of powers, notes that it’s inappropriate and directs the clerk to talk with your judge or for the judge to talk with the presiding judge. In the survey you will note that 90 percent of the court administrator/clerks do not have any regular contact with the presiding judge of the court. That may be true of the Municipal Court Judge as well.

does not relieve the court of the responsibility to ensure that all accounting records are prepared and retained. For this reason, courts are strongly encouraged to maintain their own financial records

If the city presently handles these duties and, upon the court's request, refuses to authorize the court to establish and maintain its own financial records and bank accounts, the court should document this refusal. The documentation may prove useful in the event an audit determines that the court monies were improperly handled or that the financial records are incomplete."<sup>45</sup>

Please note that while the Office of the State Courts Administrator is aware of encroachment by the executive and/or legislative branches, other than saying it's inappropriate and talk with your judge and the presiding judge, it provides no remedy to the court administrator/clerk or judge on how to prevent this encroachment or what action the presiding judge can or will take.

#### **LETTERS FROM THE OFFICE OF THE STATE COURTS ADMINISTRATOR (OSCA)**

The author has located two letters: one sent by the Administrator of the Office of State Courts and a second letter sent by a staff member of the Office of the State Courts Administrator that says that the doctrine of separation of power applies to the municipal courts within the state of Missouri. These letters can be found in Appendix D.

The first is a letter from Ronald L. Larkin, on August 20, 1997 then the Administrator of the Office of State Courts to Mrs. Margaret Kelly, CPA with the Office of the State Auditor, Jefferson City, Missouri. The letter addresses "a concern repeatedly expressed to us by court staff concerning the State Auditor's recommendation that the courts work with local law enforcement agencies to ensure that all uniform traffic tickets are accounted for. This recommendation is commonly included as an 'audit finding' in the reports issued by your office concerning the municipal courts. The following are reasons why I believe this recommendation

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<sup>45</sup> Office of the State Courts Administrator, "Municipal Clerk Manual, Chapter I, Administrative Procedures", updated October 20, 2004, pp. 7.

is inappropriate for the courts.” Mr. Larkin goes on to outline four reasons why this is inappropriate for the courts and in summary writes:

“ . . . . the State Auditor’s recommendation that the municipal court account for all uniform traffic tickets appears to be *in conflict with Article II of the Missouri Constitution which requires a separation of powers between the three branches of government.*”

Based on the above, I am requesting that the State Auditor’s Office discontinue suggesting that court staff assist with the process of tracking uniform traffic tickets. The recommendation should be made to the police department, or some other office within the Executive Branch of city government.”<sup>46</sup>

The second letter is from a Court Specialist of OSCA dated March 30, 2004 who quotes from the *Municipal Clerk Manual* and concludes with a summary:

“To sum this up, the *city clerk should not have any administrative authority over the municipal court administrator/clerk as these are two separate divisions of government.* The municipal clerk should report to the municipal judge and the judge has final say over what occurs in the municipal court.”<sup>47</sup>

Both letters clearly state that the administration of the courts is the responsibility of the judicial branch and not the responsibility of the executive or legislative branch of government, thus providing additional basis for judicial independence for Missouri municipal courts.

In this section, the author has presented information on judicial independence that pertains specifically to the state of Missouri; examined the issue of separation of powers as outlined in the Missouri Constitution; and reviewed RSMo 479.260 that allows the court to set up a special account and to put one dollar out of court cost on each case specifically for training of court staff and that such account shall be under the control of the municipal court. Sections of the *Missouri Municipal Clerk Manual* were examined as to how they outline the courts responsibilities and the author has pointed out where the Office of the State Courts Administrator

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<sup>46</sup> Ronald L. Larkin, Administrator of the Office of State Courts, letter to Margaret Kelly, CPA, Office of the State Auditor dated August 20, 1997. Emphasis by author.

<sup>47</sup> Court Specialist of the Office of the State Courts Administrator (OSCA) letter dated 2004. Emphasis by author.

presents the case for an administrative structure where the court administrator/clerk report solely to the judge of the municipal court. Two letters, out of the Office of the State Courts Administrators, were reviewed and both stated that judicial and executive branches of government are separate within the state of Missouri. Now let's turn our attention to the purposes of courts and to the trial court performance standards before discussing what the ideal municipal court in Missouri would look like.

## **THE PURPOSE OF COURTS**

As in other states, the courts in Missouri exist to serve a purpose. Two main sources of information on the purposes of courts are the Core Competencies<sup>48</sup> and the Trial Court Performance Standards<sup>49</sup> and they are summarized in this section.

### **NACM Core Competencies Curriculum Guidelines**

NACM's Core Competencies Curriculum Guidelines in Purposes and Responsibilities of Courts states: "Absent knowledge of the judiciary's enduring purposes and continuing responsibilities, court leaders, both judicial and managerial, can lose their way as they and their court drift among seemingly unrelated issues and demands." If true, and we believe it to be so, then it is even more important that those supervising the Court administrator/clerk have a full and complete knowledge of the purposes of the courts. The Curriculum Guidelines also say: "Hamilton, in Federalist 78, agrees with Montesquieu: 'there is no liberty if the power of judging be not separated from the legislative and executive powers.'"

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<sup>48</sup> National Association for Court Management (NACM), supported by grants from the State Justice Institute and the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.

<sup>49</sup> National Center for State Courts (NCSC) supported by grants awarded by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

They go on to state: “Courts exist to do justice, to guarantee liberty, to enhance social order, to resolve disputes, to maintain rule of law, to provide for equal protection, and to ensure due process of law.

In *Why Courts Exist*, of the Curriculum Guideline on Purposes and Responsibilities of Courts, under the section Knowledge, Skills and Abilities, it is stated that every court employee should have “knowledge of accepted purposes underlying judicial process and the management of cases from filing to disposition, the heart of everyday judicial administration: 1) individual justice in individual cases; 2) the appearance of individual justice in individual cases; 3) provision of a forum for the resolution of legal disputes; 4) protection of individuals from the arbitrary use of governmental power; 5) a formal record of legal status; 6) deterrence of criminal behavior; 7) rehabilitation of persons convicted of crime; and 8) separation of some convicted people from society.”<sup>50</sup>

Because every court employee should know the purposes of courts, these purposes were incorporated into the survey mailed out to the municipal courts in Missouri. Respondents were asked for the level of agreement they had with each stated purpose and responsibilities of the court. The same was true of the trial court performance standards. The responses to these questions will be discussed in the Findings section of this paper.

### **The Trial Court Performance Standards<sup>51</sup>**

The Trial Court Performance Standards (CPS) begins with a quote:

“The ordinary administration of criminal and civil justice . . . contributes more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government. –Alexander Hamilton, *The Federalist*, No. 17 (1787)”

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<sup>50</sup>National Association for Court Management (NACM), Core Competencies Curriculum Guidelines: What Court Leaders Need to Know and Be Able to Do, “*Purposes and Responsibilities of Courts*”, *Court Manager*, Volume 18, Issue 2.

<sup>51</sup> For detailed information regarding all of the Trial Court Performance Standards the reader is referred to the Bureau of Justice Assistance Monograph NCJ 161570.

That's even truer today than it was in 1787. Public trust and confidence in the courts is at an all time low. The importance of the staff of a municipal court understanding the purposes and responsibilities of the court and the trial court performance standards is underscored by the fact that the only court that most American citizens have contact with will be a municipal court. Some municipal courts in a month will have contact with more people than a higher court will have contact with in a year.

The Trial Court Performance Standards (CPS) are organized around four principles and civic ideals, five performance areas, 22 standards and 60 plus performance measures. It is not the purpose of this paper to go into great detail about the CPS, therefore only the four principles and the five performance areas will be mentioned.

The guiding principles and civic ideals of CPS are:

- Focus on Performance (Outcomes)
- Service Orientation
- Courts Are Public Organizations
- Courts Are Crucial to the Community

The five performance areas are:

- Access to Justice
- Expedition and Timeliness
- Equality, Fairness, and Integrity
- Independence and Accountability
- Public Trust and Confidence

As mentioned before, every court employee should know the purposes of courts and the trial court performance standard so these were incorporated into the survey questions.

## **THE IDEAL MUNICIPAL COURT IN MISSOURI**

Based on the preceding materials, one can begin to see a clear picture of what an ideal municipal court in the state of Missouri would look like. First of all, the municipal court would refer to itself verbally and in writing as: The Municipal Division of the (insert circuit number) Circuit Court and not as the (insert name of city) Municipal Court or the Municipal Court of (insert name of city). From the very beginning, the court would align itself with the Circuit Court. This would be the masthead for all forms, stationary, letterheads and orders and would so state in the Municipal Clerk Manual – in fact OSCA would change the name of the Manual to: Municipal Division Administrator/Clerk’s Manual.

The Municipal Division would be structured so that it is a part of the judicial branch of government. Simply put, this would mean that the municipal division staff reports to the municipal division judge who reports to the presiding judge of the judicial circuit. The municipal division judge and the presiding judge would meet on a regular basis: on a monthly basis or at a minimum once a quarter.

The municipal division judge would supervise the court staff. The court administrator/clerk would meet with the municipal division judge on a regular basis: on a weekly basis or at a minimum once a month. It would be good for the court administrator to meet, along with the municipal division judge, with the presiding judge of the judicial district. Twice a year would be sufficient.

The municipal division judge would prepare the municipal court budget either directly or by delegation to the court administrator/clerk. The court administrator/clerk with prior input from the municipal division judge would prepare the courts budget and present it to the municipal division judge. The municipal division judge and court administrator/clerk would

present the court's budget to the city for funding. If there was a dispute regarding the budget that could not be resolved then according to Supreme Court Operating Rule 13 one or more of the parties involved could file a request for a settlement conference with the presiding judge of the Circuit. The municipal division judge would have the burden of proof verifying that the budget request was reasonable. The presiding judge would issue a written recommendation following the conference.

The municipality could seek review of any recommendation of the presiding judge regarding the municipal division's budget request by filing a petition for review with the Judicial Finance Commission acting as the Municipal Finance Commission. The municipal division judge would have the burden of proof that the budget request is reasonable. The Commission would issue a written recommendation following review of the issues.

As provided by 479.260 RSMo, the municipal division budget would include a line item for training. The line item for training would be \$1,500.00 per judge and administrator or clerk of the municipal division. The municipal division's budget would be set apart from other city departments' budget and the municipal division judge would supervise the expenditures.

The staff of the municipal division would be well trained. They would understand that the purposes of the court are to do justice, to guarantee liberty, to enhance social order, to resolve disputes, to maintain rule of law, to provide for equal protection, and to ensure due process of law. They also would be aware of and knowledgeable in the trial court performance standards of access to justice, expedition and timeliness, equality, fairness and integrity, independence and accountability, and public trust and confidence.

The judge would be a principled decision-maker, having the independence of mind and office to be fair, impartial and unbiased in consideration of the facts that are before the judge.

The municipal division judge would ensure that complete and accurate case records and accounting records are being maintained. The judge would also ensure that closed records were maintained separate from open case records and that only court personnel had access to them.

The court would function as an independent institution able to check the actions of the legislature, the prerogatives of the executive branch, and the will of the majority, thus protecting individual citizens and groups from improper governmental action. Disputes between private litigates would be resolved in a fair and more or less predictable way. Decisions would be based on law and free from political or popular influences; decisions would be based solely on the fact of the individual case and the applicable law.

In addition to being service orientated, the court would be accountable to the general public. The court would report to the city on a monthly basis the number of cases heard, the sentences ordered and completed. This information would be presented to the general public in media releases and with the publication of an annual report. The court would enjoy the community's public trust, confidence and support. Such would be the ideal municipal division within the state of Missouri.

Based on the material and information presented, if the Missouri municipal courts are not structured so that the court administrator/clerk reports solely to the judge of the municipal court these institutional arrangements are compromised. The hypothesis is that one will see encroachment on the independence of the court – both on the decisional independence of the court and specifically on the institutional independence of the judicial branch as a separate and co-equal branch of government. This would manifest itself by causing confusion on the part of the court administrator/clerk as to the purposes and responsibilities of court and that the court administrator/clerk will have more problems than those court administrators/clerks who do report

solely to the judge of the municipal court. It is this hypothesis that will be explored in our research.

In the following pages, the author will discuss the methodology of the study, general observations about the respondents and characteristics of the courts in Missouri, the size of the court and the nature of the judicial officers who responded. The discussion will then look at the administrative structures of the responding courts and the specific problems the court administrator/clerk in each of those administrative structures experience. Recommendations for the future will then be presented.

## **METHODOLOGY**

During the month of July 2004, with guidance from the Research Division of the National Center for State Courts<sup>52</sup> in Williamsburg, Virginia, a survey and cover letter<sup>53</sup> were developed to mail to the court administrators/clerks of the municipal courts in Missouri in order to generate information on the following:

- To identify, within the state of Missouri, the various administrative structures of the municipal courts
- To determine what, if any, problems are caused by the various administrative structures and how that administrative structure either help or hinder the municipal court in accomplishing its purpose
- To determine if there is an administrative structure of the municipal court that better serves the court in accomplishing its purpose and which maintains the independence and accountability of the municipal court as a part of the third branch of government

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<sup>52</sup> Matthew Kleiman, Ph.D., Court Research Associate with the Research Division of the National Center for State Courts.

<sup>53</sup> A complete copy of the cover letter and the survey are in Appendix E.

Using the two lists of purposes of courts as found in the NACM Core Competencies, questions<sup>54</sup> were crafted to solicit the degree of agreement by the court administrator/clerk on the purpose of Municipal Courts, responsibilities of courts, and agreement on statements pertaining to separation of the court from the executive and legislative branches of government. These were questions 12 – 14 on the survey.

A six page, 15 questions, survey was developed and mailed on August 6, 2004 to 482 different addresses in order to reach the reported<sup>55</sup> 473 municipal courts within the state of Missouri. A return date of August 20, 2004 was requested. It was expected that the survey would be completed by the court administrator/clerk. Two hundred and sixteen surveys were returned. Of these 216 surveys, 16 were discarded because of bad addresses (four surveys) and because the city no longer has a municipal court (twelve surveys). This left 200 valid surveys. These numbers represent a return rate of 46 percent for all surveys and a return rate of 42 percent of valid surveys when corrected for bad addresses and cities that no longer have municipal courts. Two surveys were filled out and returned by circuit court judges. Thought was given to removing them from the research, except for background information, but it was decided to include them. Therefore, the survey results are based on 200 surveys.

Overall the author was pleased with the number of returned surveys. To receive 216 (46%) surveys returned with 200 being valid surveys (42%) is highly unusual for the Missouri municipal courts. It is believed the return rate was a combination of both the topic being of supreme interest to the municipal court community and the fact that the researcher is known to many of those surveyed.

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<sup>54</sup> Please see the survey in Appendix E, questions 12, 13, and 14.

<sup>55</sup> State Court Caseload Statistics, 2003, Supplement to Examining the Work of State Courts, 2003, A joint project of the Conference of State Court Administrators, the Bureau of Justice Statistics, and the National Center for State Courts' Court Statistics Project, pp 33.

While a slightly higher response rate would have been preferable,<sup>56</sup> since one cannot determine the extent to which the views of non-responders differ from those who returned the surveys, the responses appear to provide a great deal of useful information.

## **GENERAL OBSERVATIONS ABOUT THE RESPONDENTS**

The respondents were very open on the survey. For example, the name of the court was optional and yet, over 75 percent gave the name of their court – close to 60 percent made additional comments. Many shared horror stories. Some of those will be included along the way as we review the data. Twenty enclosed the organizational chart for their city.

From personal observation and experience, the author would say that the Municipal Courts within the state of Missouri have dedicated, hard working and service orientated court administrators/clerks. The author does not want to directly or indirectly imply anything else. These are good people trying to do the best they can - to do their jobs and to accomplish the purposes of their court. As Justice Earl Warren stated: “It is the spirit and not the form of law that keeps justice alive.”<sup>57</sup>

## **FINDINGS ON CHARACTERISTICS OF THE COURTS IN MISSOURI**

Before turning to the substantive results, one should consider the characteristics of the courts in Missouri and those who responded. The author will present data on who responded and

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<sup>56</sup> The “standard” for an adequate response rate in a mail survey has long been considered to be 50%. E.g., Earl R. Babbie, *Survey Research Methods* 165 (1973); Earl R. Babbie, *The Practice of Social Research* 242 (5<sup>th</sup> ed. 1989). Professor Shari Seidman Diamond has suggested that when the response rate is below 50%, “the survey should be regarded with significant caution as a basis for precise quantitative statements about the population from which the sample was drawn.” Shari Seidman Diamond, *Reference Guide on Survey Research*, in *Federal Judicial Center, Reference Manual on Scientific Evidence* 245-46 (2d ed. 2000). Here, of course, we are not trying to make “precise quantitative statements” about the exact percentages of Missouri municipal court officials who have a specific opinion. Rather we are trying to gauge what problems may exist to at least some degree given the administrative structures now in place. Thus, we consider the response rate sufficient for our purpose and would note that it likely exceeds that of most mail surveys. See Pamela L. Alreck & Robert B. Settle, *the Survey Research Handbook* 45 (1985) (finding that response rates above 30% are rare in surveys).

<sup>57</sup> Holiday Message from President William F. Dressel, The National Judicial College, November 2004.

the size of their court as determined by number of employees and total number of filings in the year 2003 and then will discuss the job titles of the respondents, the number of years of service with the court and if they have regularly scheduled meetings with the Presiding Judge of the Judicial Circuit.

### **RESPONDENTS AND THEIR COURT SIZE**

One can see in Figure 1 seventy percent of the courts that responded have two or less employees; 16 percent have more than three employees; and 14 percent have between 2.5 – 3 employees. Most of the municipal court respondents are in small rural communities.

<b>FIGURE 1: NUMBER OF EMPLOYEES</b>		
<b>Number of employees</b>	<b>Number</b>	<b>Percentage</b>
< than or equal to 1	88	47%
> than 1 and less than or equal to 2	44	23%
> than 2 and less than or equal to 3	27	14%
> than 3 and less than or equal to 4	14	7%
>than 4	16	9%
<b>Total</b>	<b>189<sup>58</sup></b>	<b>100%</b>

Because the respondents were from small rural communities and with two or less employees we would expect that these courts would also have a small number of filings. Figure 2 shows a third of the respondents work in courts that have fewer than 500 case filings during the year 2003 and another third work in courts that have between 500 and 1,999 case filings during all of 2003. With two thirds of the respondents working in courts with fewer than 2,000 violations per year, one would expect that the courts would be part time in nature and that a significant portion of these courts clerks would, by necessity, be a part time employee or at least a part time employee within the court.

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<sup>58</sup> Note: the N will vary throughout the findings and will vary from Figure to Figure due to some respondents not answering all of the questions.

Another 18 percent work in courts with more than 2,000 and less than 5,000 case filings and a total of 17 percent work in courts with 5,000 or more case filings in 2003. Thus, the sample included significant numbers for all sizes of municipal courts found in Missouri – small to large: rural to metropolitan.

**FIGURE 2: SURVEY RESPONDENTS BY SIZE OF COURT ACCORDING TO NUMBER OF FILINGS IN THE YEAR 2003**

<b>Number of Filings</b>	<b>Number</b>	<b>Percentage</b>
< 500	50	33%
500 – 1,999	49	32%
2,000 – 4,999	27	18%
5,000 – 19,000	19	13%
> 20,000	6	4%
<b>Total</b>	<b>151</b>	<b>100%</b>

The number of filings in 2003, in those courts who responded to the question, was a total of 622,680. The municipal courts in Missouri, collectively, resolve disputes and administer justice to a large number of people and yet, as mentioned, many courts are very small and located in rural Missouri. A few, in some of the metropolitan areas, have dockets every work day of the week; in rural areas some have court once a week, some have court twice a month, many have court once a month; and some have court only once every three months. We suspect, but are not sure, that all the municipal courts have regular business hours Monday through Friday even though court is only held periodically.

Most of the respondents were court administrator/clerks, although, as mentioned before, two were judges. About three-fourths of the respondents were court administrator/clerks; about one-fourth work both as a court administrator/clerk and at the same time have a separate executive branch job. For example, 29 respondents (15 percent) listed titles either as city clerk,

or city clerk/court administrator.<sup>59</sup> Others have additional titles such as city collector/court administrator; or court administrator/treasurer; communications supervisor/court administrator; or police municipal clerk; or court administrator/police dispatcher/records clerk; or assistant city clerk and even “city clerk/prosecutor/police/maintenance.” All together there were 32 different job titles listed.

Figure 3 shows the respondents, by the number of filings in 2003, who have a job title of court administrator/clerk and of the respondents who have a job title of court administrator/clerk and also have a separate executive branch job title or a title of Judge.

One can quickly see that all of the court administrator/clerks with a title in conjunction with another position – one that would be characterized as part of the executive branch of government - are all in courts with less than 5,000 filings in 2003 and most of these are in courts with less than 2000 filings. One should also note that in courts with 5,000 or more filings in the year 2003 none of the court administrators/clerks have job titles that were in conjunction with a position within the executive branch of government.

**FIGURE 3: JOB TITLES OF SURVEY RESPONDENTS BY 2003 FILINGS**

<b>Number of Filings</b>	<b>Court administrator or court clerk title only</b>	<b>Court administrator/clerk and executive branch title</b>	<b>Judge</b>	<b>Total</b>
<500	28	22		<b>50</b>
500 – 1,999	36	11	2	<b>49</b>
2,000 – 4,999	24	3		<b>27</b>
5,000 – 19,999	19	0		<b>19</b>
> 20,000	6	0		<b>6</b>
<b>Total</b>	<b>113</b>	<b>36</b>	<b>2</b>	<b>151</b>

It is perfectly understandable and acceptable that the courts with fewer filings (2000 or less) would have less need for full time court employees. The city would either have to hire part

<sup>59</sup> We will use court administrator rather than court administrator/clerk in this section for the purpose of clarity. The reader needs to understand that court clerk could be used in place of court administrator for any of these titles.

time staff for the court or to hire staff that would work part time in the court and the rest of the time in other departments – thus have a court title and a title for another position within the executive branch of government.

The city is not being faulting for that decision. What is of concern, and the purpose of this research, is the administrative structure when the employee is working in the court. When they are working in the court do they report solely to the judge? Or, when they are working in the court and when they are not working in the court do they report to someone who works solely in the executive branch or legislative branch of government?

The author believes that with a title of court administrator/clerk and another title for a position within the executive branch of government that it is more likely someone other than the judge will supervise the court administrator/clerk when they are working in the court.

It also stands to reason that courts with 5,000 or more filings per year would have a need for full time employees and employees that would work full time within the court. Such employees would have a job title only within the court. The concern, however, remains the same: What is the administrative structure of the court? Does the court administrator/clerk report solely to the judge or do they report to someone in the executive or legislative branch of government?

Figure 4 shows the years of service the respondent has with the court. The largest single group are the 62 who have 5 years or less of service. This group combined with the group that has between 6 years and 10 years of service shows that 120 or 60 percent of the respondents have ten years or less of service with the court. One would expect those with the least amount of years of service and experiences to have less knowledge and information about the purposes of courts and judicial independence. One would also anticipate for those with less than one-year of

service with the courts to have a need to be trained by someone who understands courts and their purpose. Based on the information here and elsewhere in this paper, there are concerns that this is not the case.

**FIGURE 4: YEARS OF SERVICE WITH THE COURT**

<b>Years of Service</b>	<b>Number</b>	<b>Percent</b>
0-5 years of service	62	31%
6-10 years of service	58	29%
11-15 years of service	25	13%
16-20 years of service	26	13%
Over 20 years of service	28	14%
<b>Total</b>	<b>199</b>	<b>100%</b>

Question 9 on the survey asked: “Do you have regularly scheduled meetings with the Presiding Judge (PJ) of the Circuit?” Figure 5 shows the response to that question. As one can see only 14 out of 151 (9 percent) of the respondents have regular meetings with the Presiding Judge of the Circuit and *91 percent do not have regular meeting with the Presiding Judge*. Ninety-three percent of those who do have regular meetings are in courts with less than 2,000 filings per year.

**FIGURE 5: DO YOU HAVE MEETINGS WITH THE PRESIDING JUDGE?**

<b>Number of Filings</b>	<b>Yes</b>	<b>No</b>
< 500	4	46
500 – 1,999	9	40
2,000 – 4,999	0	27
5,000 – 19, 000	1	18
> 20,000	0	6
<b>Total</b>	<b>14</b>	<b>137</b>

Please note that the question asked was: Do you have regularly scheduled meetings with the Presiding Judge of the Circuit? The author did not ask, nor know from the responses to the question, if the municipal court judge has regularly scheduled meetings with the Presiding Judge. However, one of the judges answered, “As needed”; the other did not answer the question. One

would, therefore, doubt that many municipal court judges meet regularly with the PJ. In a unified court system one would expect 100 percent of the municipal court judges and court administrators/clerks would have regular meetings with the Presiding Judge of the Circuit.

When one looks at Figures 1, 2, 3, 4 and 5, you get a picture of the small rural courts in Missouri. Seventy percent having two or less employees; 66 percent having filing of less than 2,000; where nearly a quarter of the court administrator/clerk have a joint title with a position within the executive branch of government; 31 percent having less than five years of experience with the court; and 91 percent not having regular meetings with the presiding judge of the circuit.

One has to question, in addition to the issue of judicial independence, who is providing orientation, training, professional development, supervision and direction for these court administrators/clerks? Based on information presented, the answer appears to be people who work solely within the executive branch and one has to question their knowledge of the purposes and operation of courts.

#### **NATURE OF JUDICIAL OFFICERS**

As mentioned earlier, due to two thirds of the respondents working in courts that have fewer than 2,000 case filings during 2003, one would expect a significant portion of these courts and the clerks would be part time. The findings confirm that *most of Missouri's municipal court staff work only part-time in the courts*. One hundred and thirteen out of 148 or 76 percent of the judges and 126 out of 148 or 85 percent of the city prosecutors were reported to work only part-time in those jobs. In addition, 50 out of 147 or 34 percent of the respondents who serve as court administrators or clerks work only part-time.

However, this is misleading. As one can see in Figure 6, 97 out of 147 or 66 percent of the court administrators/clerks responded that they work full time. However, many of these

court administrators/clerks, while full-time *city employees* are not full-time *court employees*. Rather, they also work in city departments within the executive branch of government. Nearly half (48 percent) of the respondents listed at least one other city department in which they work.

This in and of itself is both understandable and acceptable. It makes sense that in a small rural court that employees may have to wear different hats in order to both have enough to do during the day and also in order to get the “work of the city” done. Again, what concerns the author is who provides the supervision, training and direction when that person is working in the court?

**FIGURE 6: NUMBER OF FULL AND PART TIME RESPONDENTS, JUDGES AND PROSECUTORS BY NUMBER OF FILINGS**

Number of Filings	Court administrator/clerk/Administrator		Judge		Prosecutor	
	Full Time	Part Time	Full Time	Part Time	Full Time	Part Time
< 500	17	33	8	41	5	45
500 – 1,999	31	15	12	36	7	39
2,000 – 4,999	25	2	6	21	4	23
5,000 – 19,000	18	0	5	13	3	16
> 20,000	6	0	4	2	3	3
<b>Total</b>	<b>97</b>	<b>50</b>	<b>35</b>	<b>113</b>	<b>22</b>	<b>126</b>
<b>Grand Total</b>	<b>147</b>		<b>148</b>		<b>148</b>	

When asked to check each department they worked in, 48 percent of the respondents, stated they worked in at least one other city department and listed 29 different departments within the city where the court administrator/clerk worked at least part time. The largest number (33 or 17 percent) worked in the city clerk’s office as a clerk or as the city clerk; another 5 worked as city clerk/collector and 4 worked in the police department. The remainder worked in various executive branch departments of the city. At least one administrator/clerk is a contract employee who is paid for hours worked as needed.

The part-time status of 76 percent of the judges and 48 percent of the respondents who work only part time within the court, undoubtedly affects the way in which business is handled. For example, the number of times court is held and when the judge is available. One clerk said, “Actually, I am pretty well on my own. The judge isn’t here, but if there is something I just can’t handle I *try* to get the judge.” Another noted the difference in availability between the city clerk and the judge: “The city clerk is here all the time. The judge is only here while court is in session one evening a month.”

### WHO CONDUCTS PERFORMANCE EVALUATION

Two questions were asked in order to obtain information on the administrative structure of the courts: 1) who conducts your performance evaluation and the last year it was conducted; and 2) during the hours you work in the court who is the primary person to whom you report?

In Figure 7, one can see the responses to the questions “who does your performance evaluation” and “the year of your last performance evaluation”? Figure 7 shows that 39 out of 104 or 38 percent did not report any date on which they last had a performance evaluation and 65 or 62 percent gave the year of their last evaluation. Only 54 out of 104 (52 percent) had a current performance evaluation (within the years 2003 and 2004).

<b>FIGURE 7: YEAR OF LAST PERFORMANCE EVALUATION</b>								
<b>Filings</b>	<b>No Year Given</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>Total</b>
<500	13	0	0	1	4	5	5	<b>28</b>
500 – 1,999	12	1		0	1	6	13	<b>33</b>
2,000 – 4,999	6	0	0	1	2	8	5	<b>22</b>
5,000 – 19,000	7	0	0	0	0	5	4	<b>16</b>
> 20,000	1	0	0	0	1	3	0	<b>5</b>
<b>Total</b>	<b>39</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>8</b>	<b>27</b>	<b>27</b>	<b>104</b>

One knows that the 11 who gave their last evaluation date as the years 1999, 2001 and 2002 have not had a current evaluation. One does not know, however, if the 39 who did not

report any date and the 96 who did not respond to the question ever had an evaluation, let alone a current one.

The author looked internally at the data in Figure 7 and examined more than just the year of the last performance evaluation. In addition to the date of the last evaluation, who does the performance evaluation was examined and it was determined that the judges were current in 57 percent of their evaluations, were not current in 10 percent and the date of the last performance evaluations were not given by 33 percent of the respondents. This compares with 49 percent current for those evaluated only by someone within the executive branch, 11 percent not being current and dates of the last conducted performance evaluation were not given by 40 percent of the respondents.

For those respondents evaluated jointly by the judge and someone within the executive or legislative branches of government, 100 percent of the respondents were current in having their performance evaluated.

Based on this limited data, it would appear that the judges were more responsible in conducting the performance evaluation of the court administrator/clerk than were their counterparts in the executive and legislative branches of government. Also there did not appear to be any significant differences between courts based on size according to the number of filings.

Figure 8 provides interesting information by comparing “who performs the performance evaluation?” and reporting structure – “whom do you report to?” found in Figure 9 on page 42. In Figure 8 in the column “who do you report to” shows that 63 out of 150 or 42 percent responded that they report only to the judge while in comparison with “who performs your evaluation”? 30 or 29 percent of the respondents reported that the judge is the person who conducts the performance evaluation.

Fifty-one or 34 percent said they reported to only someone in the executive or legislative branch of government, while in comparison you can see that 72 respondents or 69 percent said that only someone in the executive or legislative branch of government evaluated them. Twenty-one percent said they reported to both the judge and someone in the executive branch of government and yet only two percent said that the judge and someone within the executive or legislative branch of government evaluated them jointly.

**FIGURE 8: A COMPARISON OF WHO PERFORMS YOUR EVALUATION AND WHO DO YOU REPORT TO?**

	<b>Who performs your evaluation?</b>	<b>Who do you report to?</b>
<b>Only the judge</b>	30 (29 %)	63 (42 %)
<b>The judge plus someone in the executive/legislative branch</b>	2 (2 %)	31 (21 %)
<b>Only someone in the executive/legislative branch of government</b>	72 (69 %)	51 (34 %)
<b>Total</b>	<b>104 (100 %)</b>	<b>150 (97 %)<sup>60</sup></b>

Logic, not to mention good management and good supervisory practices, would dictate that the person one reports to would be in the best position to evaluate that employee’s job performance and to conduct the formal performance evaluation - not to mention to provide orientation, coaching, guidance and direction. One must ask: Why is there such a discrepancy between the respondents’ answers to these two questions?

The discrepancy may be explained in a number of ways. The respondent may have misunderstood the questions or the respondent does really have an administrative structure of joint reporting, etc. However, it does lead one to believe that the answers to the question “whom do you report to?” may have been over reported for the judge and/or under reported for the

<sup>60</sup> This is not 100 percent because the three respondents who stated they reported to no one and the two who report to OSCA were dropped from Figure 8.

numbers who report to only someone in the executive or legislative branch of government. Follow up research in this area would be useful.

As mentioned earlier, of major concern, and the reason for this study, is the administrative structure (when working in the court, who does the court administrator/clerk report to?) of the court and what, if any, encroachment this administrative structure may have upon the independence of the municipal court. Therefore, this discrepancy is of concern.

### **FINDINGS ON ADMINISTRATIVE STRUCTURE OF THE COURTS**

The second question asked in order to obtain information on the administrative structure of the courts was: During the hours you work in the court who is the primary person to whom you report? The reporting structure is in Figure 9 on the next page. It should also be mentioned that twenty courts enclosed the organizational chart of their city. These are in Appendix F.

Sixty-two court administrators/clerks (41 percent) answered that they reported solely to the judge and another 9 (6 percent) answered that they reported jointly to the judge and the city manager/city administrator. The remaining 53 percent answered that they reported to someone else within the executive or legislative branch of government or to the judge and someone, lower than the city manager/administrator, within the executive branch of city government, reported to OSCA or said they reported to no one.

Eighteen (12 percent) of them answered that they report to the city clerk; 10 (7 percent) to the city manager/administrator; 8 (5 percent) report to the judge and city prosecutor; 7 (5 percent) report to the chief of police; 6 (4 percent) report to the city prosecutor; 6 (4 percent) report to various other city officials; 4 (3 percent) report to the judge and director of finance and 4 (3 percent) report to the director or someone in finance. Perhaps the three who are not

confused over the lack of separation of the branches of government are the lucky *three who answered they did not report to anyone!*

**FIGURE 9: REPORTING STRUCTURE FOR COURT ADMINISTRATOR/ CLERK BY NUMBER OF FILINGS IN 2003**

Court administrator/clerk reports to:	Number of Filings in 2003					
	<500	500-1,999	2,000-4,999	5,000-19,999	>20,000	Total
Judge	30	19	9	2	2	<b>62</b>
Judge & other city official <sup>61</sup>	4	2	1	2	1	<b>10</b>
Judge and city manager/administrator	2	2	3	1	1	<b>9</b>
Judge & city prosecutor	2	4	1	1	0	<b>8</b>
Judge & director of finance	0	0	1	3	0	<b>4</b>
Circuit court administrator/clerk	0	1	0	0	0	<b>1</b>
City clerk	5	7	4	1	1	<b>18</b>
City manager/administrator	0	5	4	0	1	<b>10</b>
Chief of police or other Police officer	0	2	3	2	0	<b>7</b>
Various other city officials <sup>62</sup>	1	1	1	3	0	<b>6</b>
City prosecutor	4	2	0	0		<b>6</b>
Director of (or other person in) finance department	0	0	0	4	0	<b>4</b>
No one	2	1	0	0	0	<b>3</b>
OSCA	0	2	0	0	0	<b>2</b>
<b>Total</b>	<b>50</b>	<b>48</b>	<b>27</b>	<b>19</b>	<b>6</b>	<b>150<sup>63</sup></b>

One court administrator/clerk put it this way: “the municipal court administrator/clerks are ‘left swinging in the wind’ – we are neither fully court employees or city employees. Judges are part time with no real input to daily activities. Municipal courts should be supported by the county and state branches not just subjected to random rules, regulations, with no regard to most situations municipal courts find themselves.”

<sup>61</sup> This category includes: judge/mayor; judge/mayor/city administrator; judge/mayor/city prosecutor/chief of police; judge/city council; judge/city clerk; judge/chief of police; and judge/city prosecutor/chief of police.

<sup>62</sup> This category includes: city council; chairman of the board of trustees; city manager/city clerk; city clerk/city collector/ assistant city manager; and business license coordinator.

<sup>63</sup> There were 46 respondents who did not answer the question: How many filings did you have in the year 2003? Twenty-two of these reported to only the judge and ten others reported to the judge and someone in the executive or legislative branch of government.

**Does the size of the court matter as to whom the court administrator/clerk reports?**

This author would say there are some indications of trends, but it does not appear to be a deciding factor. The trends are that of the courts that have less than 500 filings, 60 percent of the administrators/clerks report only to the judge and 76 percent of the court administrators/clerks report jointly to the judge and to someone from either of the other two branches of government. These are the largest percent for all groupings of filings.

For the three groups of filings in the middle, (500-1,999; 2,000-4,999; and 5,000-19,999) the percent of court administrators/clerks who report only to the judge decreases from 40 percent to 33 percent and to a low of 11 percent of the court administrators/clerks in courts with filings of 5,000 to 19,999. The same trend, but with a more flat pattern, appears for court administrators/clerks who report jointly to the judge and someone from either of the other two branches of government. The percent stays at 56 percent for courts with filings between 500-1,999 and 2,000-4,999 and decreases to 47 percent for courts with filings of 5,000-19,999. For courts with filings of over 20,000, 33 percent of the court administrators/clerks report only to the judge and 66 percent report jointly to the judge and someone from either the executive or legislative branch of government.

It appears that in the courts with the fewest filings the court administrator/clerk reports to the judge and as courts move up in filings there is a point where the court administrator/clerk reports jointly to both the judge and someone from either the executive or legislative branch of government. This shows that size is not a determining factor for administrative structure.

Data was examined as to if size matters in determining whom the court administrator/clerk reports to by examining if the judge and/or court administrator/clerk being part-time was the variable that brings about an administrative structure that does not include the

judge. One would expect to see a response where the courts with the least number of filing would have the highest percentages of administrative structures where the supervision was provided by the executive branch of government.

As one can see in Figure 10, this is not the case. Out of 150 respondents 88 (59 percent) reported an administrative structure where jointly the judge and someone from the executive or legislative branch of government or where only someone within the executive or legislative branch of government provided the supervision of the court administrator/clerk. This went from a low of 40 percent (20 out of 50) for courts with less than 500 filings in 2003 to a high of 89 percent (17 out of 19) for courts reporting filings of 5,000 to 19,999. For courts with filings of over 20,000 it was 66 percent (4 out of 6). The size of the court, based on the number of filings in the year 2003, does not seem to be a factor in determining the administrative structure of the court.

**FIGURE 10: ADMINISTRATIVE STRUCTURE WITH JUDGE AND A PERSON FROM THE EXECUTIVE AND/OR WITHOUT JUDICIAL INVOLVEMENT BY FILINGS IN 2003**

<b>Number of filings in 2003</b>	<b>Total number of courts</b>	<b>Number with executive branch involvement</b>	<b>Percentage with executive branch involvement</b>
< 500	50	20	40%
500 – 1,999	48	29	60%
2,000 – 4,999	27	18	66%
5,000 – 19,999	19	17	89%
> 20,000	6	4	66%
<b>Total</b>	<b>150</b>	<b>88</b>	<b>59%</b>

In summary of Figure 9 and Figure 10, the findings show that a minority of the respondents (62 out of 150 or 41 percent) report only to the judge, which would seem to be the ideal administrative structure because it is the only administrative structure that allows for judicial independence. One respondent reports to the circuit court administrator/clerk, whom one can assume, with a degree of caution, reports to the judge, which would make this reporting

structure a part of the ideal structure, thus making it 63 or 42 percent – still a minority of the respondents.

Another 31 (21 percent) report both to the judge and to another city official. This joint reporting could be to the judge and a member of the executive branch of government (for example the city manager); to the judge and a member of the legislative branch of government (such as city council); or to the judge and both a member of the executive **and** legislative branches (such as city manager and mayor) of government. Those “other” city officials include city manager, assistant city manager, city administrator, prosecutor, chief of police, police sergeant, city finance director, court/business license coordinator, mayor, chairman of the board of trustees and city council.

One might be able to make a case for the court administrator/clerk, as a city employee, jointly reporting to both the judge and any of the following; city manager, city administrator, mayor or the city council if the reporting to the judge was on “court operations, policy and procedures” and the reporting to the city official was on “city policy and procedures”.

A stronger case, however, could be made for this being encroachment upon the independence of the judicial branch of government by people working in either the executive or legislative branches of government – or both.

Fifty-one (34 percent) report to only city officials within the executive or legislative branch of government. For 18 (12 percent) their sole supervisor was the city clerk; for another 10 (7 percent) their sole supervisor was the city manager/administrator; for another 7 (5 percent) their sole supervisor was the chief of police or, in one case, a police sergeant) for another 6 (4 percent) their sole supervisor was the city prosecutor. The city finance director was the sole supervisor for another 4 (3 percent) of the respondents. Three respondents believe and reported

that they do not report to anyone and are left totally without supervision and direction. This may or may not be better than being supervised by someone who does not understand the purposes and responsibilities of courts, court rules, how courts should operate and who does not accurately report and do not fight for the total needs of the court.

You will note in Figure 11, 12, 13, and 14 that these administrative structures do cause confusion on the part of the court administrator/clerk and that these court administrators/clerks do experience more problems than do their counterparts who report solely to the judge of the municipal court.

At this point, the discussion will begin looking at some of the problems caused by the administrative structures and how the problems the respondents reported fit in with our hypothesis. Do administrative structures where the court administrator/clerk reports solely to someone in the executive or the legislative branch of government cause confusion on the part of the court administrator/clerk as to the purposes and responsibilities of courts? Do court administrators/clerks who report to someone in the executive or legislative branch of government experience more problems than those court administrators/clerks who report solely to the judge of the municipal court?

This process will begin by looking at questions 11, 12, and 13 on the survey. The questions asked the degree of agreement on statements on purposes of courts, responsibilities of court, and other issues facing the courts.

#### **AGREEMENT WITH STATEMENTS ON PURPOSES, RESPONSIBILITIES AND OTHER ISSUES**

On the survey, Questions 12, 13 and 14 asked the respondents to indicate their degree of agreement with statements pertaining to the purposes of courts; to the responsibilities of the courts and agreement with statements pertaining to judicial decisions, plea agreements and the

judges protecting the administration boundaries of the court. The responses are shown in Figures 11, 12 and 13.

To generate or raise money for the city, while clearly not a purpose or responsibility of courts, was added to both questions (questions as to purpose of courts and responsibilities of courts) to see if there was agreement with this statement. It was believed that court administrators/clerks who were supervised by a member of the executive or legislative branch of government, especially someone in the finance department, would think and agree that this is one of the purposes and responsibilities of the court.

### **AGREEMENT ON PURPOSES OF COURTS**

Surely it is not a goal or a purpose of the justice system to produce revenue. Yet substantial numbers of the respondents said it was. Fifty-one percent of the respondents who do not report to the judge and twenty-seven percent of the respondents who do report to the judge agreed with the statement.

It would not be surprising that *municipalities* themselves viewed the generation of revenue from the issuance of traffic citations and court fines to be of some importance. It is perhaps more of a surprise to find that a substantial percentage (a combined 40 percent of those reporting to the judge and those not reporting to the judge) of municipal *court administrators/clerks* view it that way.

For the most part, except for “Generate revenue”, where there were 24-percentage points differences, there was general agreement between those who reported to the judge and those who did not report to the judge. Enhance social order and maintain rule of law, where those not reporting to the judge were 7 and 6 percentage points higher were noticeable exceptions.

However, of those reporting to the judge, less than 50 percent saw as one of the purposes of the court to enhance social order.

<b>FIGURE 11: VIEWS OF MUNICIPAL COURT ADMINISTRATORS/CLERKS ON COURT'S PURPOSES</b>		
<b>It is the purpose of the courts to:</b>	<b>Percent of Agreement for those reporting to Judge<sup>64</sup></b>	<b>Percent of Agreement for those not reporting to judge</b>
Do justice	92	92
Guarantee liberty	64	66
Enhance social order	49	56
Maintain rule of law	88	94
<b>Generate revenue</b>	<b>27</b>	<b>51</b>
Resolve disputes	63	61
Provide equal protection	81	82
Ensure due process	94	90
Rehabilitate persons convicted of crimes	31	29
Deter criminal behavior	69	64
Separate some convicted people from society	40	38

As one can see in Figure 11, for both those reporting to the judge and not reporting to the judge lower rates of agreement were given for the purposes of rehabilitate persons convicted of crimes and to separate some convicted people from society. It is not surprising that only 30 percent of the Missouri municipal court administrators/clerks agreed with a purpose of the courts is to rehabilitate persons convicted of crimes and that only 38 percent agreed with the purpose of separating some convicted people from society.

Two factors come into play here: 1) The maximum sentence in Missouri's municipal courts is a fine of \$500.00 and 100 days in jail; and 2) virtually all of the smaller communities do not have a jail and have to use (many times paying per diem) the county jail. It is reasonable to see where "separate some convicted people from society", not being a viable option, would then also not be seen as one of their purposes.

<sup>64</sup> Agreement rate is the number and/or percentage of respondents within that category who answered that they either agreed or strongly agreed with the purpose statement.

The same would be true of “rehabilitate persons convicted of crimes”. The author must confess that he questions rehabilitation of persons convicted of crimes as being a function of the court and believes a stronger case could be made for it being a function of the executive branch of government.

### **AGREEMENT ON RESPONSIBILITIES OF THE COURT**

As mentioned, in the list of questions used (Figures 11 and 12), all but one of the purposes or responsibilities listed is generally considered valid. While there was general understanding and agreement on many of these court purposes and responsibilities, one would not have expected such high numbers in the “neither agree nor disagree” column for several of the items.

Significantly, judicial independence was one of those. While a combined (those who report and those who do not report to a judge) 47 percent said it was the responsibility of the court to “be an independent check on other branches of government”, 20 percent disagreed and 33 percent neither agreed nor disagreed.

If we can’t convince those who work in our courts that this is an important aspect of courts in our system of government, we should not expect to do better with the public at large. Education of those who work in the courts, as well as the public and those who work in other branches of government, is needed.

Of concern and indication of the need for continued education of those who work in the courts is the fact that two court administrators/clerks who do report to the judge and nine court administrators/clerks who do not report to the judge said that they neither agreed or disagreed or totally disagreed with the statement that it is the responsibility of the courts to make impartial decisions. Another four respondents did not answer the question. If it is not the responsibility of

the courts to make impartial decisions then what are we about? One can look at each purpose and each responsibility and see that the highest percentage that any purpose got was 94 percent and the highest any responsibility got was 96 percent.

<b>FIGURE 12: VIEWS OF MUNICIPAL COURT ADMINISTRATORS/CLERKS ON COURT'S RESPONSIBILITIES</b>		
<b>It is the responsibility of the courts to:</b>	<b>Percent of Agreement for those reporting to Judge<sup>65</sup></b>	<b>Percent of Agreement for those not reporting to judge</b>
Make impartial decision	96	90
Ensure fairness under the law	96	96
Defend constitutional rights and freedoms	89	85
Provide equal justice for rich and poor	93	96
Be an independent check on other branches of government	56	42
<b>Raise revenue for cities through fines and fees</b>	<b>21</b>	<b>26</b>
Protect civil rights	76	77
Protect individual rights	85	91
Dispense punishment for crimes	89	82
Resist political pressure	75	80
Advance social and economic justice	44	46

### **AGREEMENT WITH STATEMENTS ON OTHER ISSUES**

Figure 13 shows the responses to four other questions on judicial independence. The question regarding plea agreement is the only statement that should receive low rates of agreements. All of the others should be 100 percent.

However, there is some question as to the Code of Judicial Conduct question. It does apply, by extension to the municipal court staff. The judge, by delegation and supervision, can hold the municipal court staff to the same level of conduct that the judge is held to by the Code of Judicial Conduct.

<sup>65</sup> Agreement rate is the number and/or percentage of respondents within that category who answered that they either agreed or strongly agreed with the responsibilities statement.

As one can see there is a fair amount of agreement between those who report to the judge and those who do not report to the judge on each of the questions. Those who report to the judge had 3 to 5 percentage point higher on each question. Unfortunately, they were also four percentage points higher on the question that should have had 0 agreement on. They also were not 100 percent on any of the questions that should have had 100 percent agreement

<b>FIGURE 13: VIEWS OF MUNICIPAL COURT ADMINISTRATORS/CLERKS ON OTHER ISSUES</b>		
<b>Question:</b>	<b>Percent of Agreement for those reporting to Judge<sup>66</sup></b>	<b>Percent of Agreement for those not reporting to Judge</b>
Because judges and court administrators/clerks are appointed/elected to make independent decisions, it is necessary for courts to maintain an administrative structure that is separate from the executive and legislative branches of government.	81	77
Judges should not interfere with agreements reached between prosecution and defense attorneys about charges that will be dismissed or modified when a defendant enters a guilty plea.	<b>30</b>	<b>26</b>
Judges must be vigilant in protecting the administration boundaries of the court. For example, judges of the court should not allow someone in the executive branch of government to influence the courts' impartial judging of cases.	93	89
The Code of Judicial Conduct applies to the judge and to the municipal court staff.	95	92

In summary, the answers to questions 12, 13 and 14, as reflected in Figures 11, 12 and 13 in and of themselves, do not indicate the degree of the problem. They do reflect that there is a fair degree of misunderstanding as to the purposes of courts and the responsibility of courts. While some of this may be explained away by circumstance, such as the city does not have a jail therefore “separate some convicted people from society”, may not be a resource, therefore not a

<sup>66</sup> Agreement rate is the number and/or percentage of respondents within this category who answered that they either agreed or strongly agreed with the statement.

purpose, one would expect a higher level of understanding based on the years of experience of those responding to the questions.

As mentioned by one court administrator/clerk: “Education of other branches of government is needed to understand the court role and that all court staff is included in that role.”

### **PROBLEMS CAUSED BY THE ADMINISTRATIVE STRUCTURE**

As is true in most human endeavors, not one of the administrative structures is without problems. While reporting to a judge is the highest reported structure, and as will be mentioned and discussed later in Figure 15, is the preferred administrative structure by the respondents (preferred by 137 or 77 percent of the responding court administrator/clerks), a problem appears to arise from the part-time status of three-fourths of the judges and seem to fall within the area of judicial accountability. *Remember that almost 76 percent of the judges are part time.* One court administrator with a part time judge said: “I have a part time (one day a week) judge who is not here enough to make a ‘good judgment’ decision in evaluating my work.” Another court administrator cuts to the heart of the matter when she stated:

“Part time judge means that most of the responsibilities fall on the clerk/administrator. Further workload can become easily backlogged due to lack of hours dedicated to the court by a part time judge. Part time judges really don’t know what all goes on in court and therefore do not realize the importance of staying on top of the work. I am pleased with our form of structure; however, I would like to see the part time judge take a role (however slight) in the municipal court (i.e., annual review, etc.)”

A third reported: “I am the only court clerk and we have court every 3 months. I do mostly everything on my own. If I have questions I call the judge or city prosecutor. I am the only structure we have!”

One must understand the judge/court administrator relationship. Court administrators and clerks look to the judge for leadership and to be a member of the leadership team, even

when the judge is part time. As one court administrator who reports to a part time judge and also reports to a person in the executive branch of city government said:

“I think the judge should be the department head for the court. We have to answer to someone who knows nothing about the court. Problem is the judge doesn’t really care. He shows up for court – does his thing and out the door he goes. He is not involved with the budget or personnel. Judge makes \$30,000 a year.” The court administrator/clerk added: “I have a problem with getting the judge to agree with me. I have asked that we have more court dates and even a morning court (once a month). He says no. We have a lot of attorneys certifying cases to the county court. They do this because they don’t like night court. It would help a lot to have a day court.”

**The greatest share of reported problems occurred for those who report either to city clerks or city finance personnel.** Three major problems seem to surface here:

1. The belief on the part of the court administrator/clerk that the city clerk or director of finance does not understand their job and could not do it if the court administrator/clerk is absent;
2. Conflicts of power seem to develop between these positions; and
3. Conflicts develop over non-court staff having access to closed court records that are not open to the public or non-court staff such as city clerk or director of finance.<sup>67</sup>

**Reporting to the city clerk was reported as the second highest (18 out of 150 for 12 percent) administrative structure within the municipal courts.** As mentioned, this administrative structure and reporting to the director of finance appears to be the two administrative structures that result in the most reported problems for the court administrator/clerk. On question 10, respondents who report to the city clerk accounted for 50 or 19 percent of all the problems identified by check marks on the survey indicating problem areas.

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<sup>67</sup> Reader is referred to the discussion of the Municipal Clerk Manual – Closed Records on page 17 or to that section in the Municipal Clerk Manual found in Appendix D.

One court administrator/clerk put it this way: “Unable to protect the integrity of the court. City clerk trying to make court like any other city office. Does not or refuses to recognize that we are a part of the state courts and presiding judge and municipal judge are actually the chain of command. With that, the mayor, city manager, and city attorney ignore Supreme Court Rule 37.”<sup>68</sup> Another court administrator who reports to a part time judge said: “Part of my duties include payroll and insurance issues, therefore the city clerk believes she is my supervisor in all areas, including evaluating me on court performance. Anytime the judge includes any written feedback, the city council does not receive it from her, therefore he now addresses it to the mayor.”

With regard to records, one administrator said:

“Area not secure. Anyone can and does have access to court records. Court files are not to be open to the general public and must not be available to non-court staff. The department head likes to remind you she is the department head and you have no right to an opinion or say-so in what will be done in your office. She has no training in the court. The city administrator believes the city clerk is right and knows what she is doing in regards to the court.”

**A particularly problematic reporting relationship has the court administrator/clerk reporting to a city finance director or finance official.** Four (3 percent) of the court administrator/clerks report to the director of finance and another four report to both the judge and director of finance. Court administrators/clerks who have this reporting relationship generally reported significant problems. On question 10, those who report to the director of finance accounted for 19 or 8 percent of the check marks on the survey indicating problems.

It should also be mentioned that on questions 12 and question 13 asking about agreement on purposes and responsibility of courts, the majority (three fourths) did not see generating money as either a purpose or responsibility of the courts. Six of the eight who report to the

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<sup>68</sup> This was the only mention by a court administrator/clerk that the municipal court is a part of the state court system.

director of finance and to both the judge and director of finance ranked generating revenue as a three or lower (3 = neither agree or disagree; 2 = disagree and 1 = strongly disagree). The other two gave them a ranking of four (agree). One however, did make the comment that “we get told it if we are not up to expected \$.” This shows that while the court administrator/clerk is aware that the purpose and responsibility of the court does not include generating revenue for the city, they may be under pressure from their supervisor to generate revenue. This will show up in the number of problems cited by those who report to someone in the finance department.

Another comment made by a court administrator/clerk was:

“The finance director has told us how we should run court and always questions procedures. She believes the fine schedule should not be approved by the judge. She has to ‘approve’ how we interact with the PD (Public Defender) and how we share information. I do not believe I can be fairly evaluated because she doesn’t know the court or how we are suppose to operate.”

Another court administrator/clerk who reports to the finance director said:

“In 2 previous cities where I was a clerk, the finance director, and assistant city manager did not allow the court to properly follow state statutes. Did not understand closed/open cases. Undermined the authority of the court administrator/clerk. Did not feel the judge should be in charge of the court – both thought they should be in charge of the court, yet neither had any understanding of the court, rules or its role.”

Another court administrator said:

“Current structure is difficult as I report to the judge but must also consult with and be evaluated by (at least in part) the finance director. He is our ‘Department Director Liaison’ with city management team, thus we must depend on him to represent us on critical issues. This does not work well if he disagrees with our request. Human resources has also interfered in the discipline and ultimate dismissal of an insubordinate, ineffective employee. It took months to ultimately terminate this employee and it cost the city thousands of dollars in overtime of other employees, lost time and an unsubstantiated worker’s comp claim. This claim would have never occurred had we terminated the employee months before as I requested. Generally, city hall leaves us alone and we function fairly independently. However, we have had interference in the past on critical issues and the judges have become involved. I do believe that this relationship is improving as my tenure increases.”

Another court administrator/clerk said: “Director of finance is only concerned with money, and does not understand court. D.O.F. (Director of Finance) continually double-checked everything we did, even to the point of calling O.S.C.A. and treasurer’s office to come and evaluate our procedures to make sure we were doing our job correctly. Both reports said we were.”

As one court administrator/clerk put it: “My city uses the court for one of their main sources of income with no regards to my training. The judge is appointed and part-time; therefore, he won’t overstep his boundaries. I don’t feel I get his back-up when really needed.”

The last court administrator/clerk on this subject wrote: “ The biggest challenge we face having the finance director as our day-to-day supervisor is that she herself could not step into our shoes and do our job. A good supervisor should understand the jobs of his/her subordinates inside and out. Our F.D.’s lack of knowledge of court has sometimes caused communication problems between us and her.”

**Positive comments were obtained from some of the court administrator/clerks who report, at least in part, to the city prosecutors.** Eight of the respondents (5 percent) answered that they reported to both the judge and the city prosecutor. Some of the problems with this administrative structure are obvious. First of all, the court administrator/clerk is reporting to someone who is a party to the litigation. This author finds this no more appropriate than having the court administrator/clerk report to a member of the defense bar. In addition, there is the opportunity for and/or appearance of conflicts of interest and ex parte communication.

However, the court administrators/clerks who have this structure reported some satisfaction with the structure. In the author’s opinion, this has to do with the fact that while 76 percent of the judges and 85 percent of the prosecutors are part-time they both are part of the

legal system and the court administrators/clerks feel comfortable with their knowledge of the legal system and how courts “should” operate. Court administrators/clerks feel comfortable with the prosecutor’s knowledge of the purposes and responsibilities of the courts; good prosecutors know how the court is supposed to function.

This may also explain why four (6 percent) when asked whom do you think the court administrator/clerk should report to said the city prosecutor (Figure 15). When asked why, two responded that “this individual understands the purposes of courts and how the court operates”. Two also responded: “this individual better understands the role of the court administrator/clerk.” One also said: “to ensure the separation of the different branches of government and to keep everything in accordance with the law.” It should be mentioned that all four of these currently report to the city prosecutor (one full time and three part time).

**Several comments noted that reporting, at least in part, to a city manager is a good way to make sure that the city officials are informed about the activities and accomplishments of the court, as well as its needs and problems.** Eleven court administrators/clerks responded they report to both the judge and the city manager/city administrator. While this is obviously reporting to both the person who performs judicial function and to a member of the executive branch of city government, it did receive several positive comments by the respondents. The major comments were that this administrative structure allowed the court administrator/clerk to keep the city manager/administrator informed about the activities and accomplishments of the court as well as the problems and needs of the court. This was seen as advantageous to both the court and to the city.

**The court administrator/clerk would like for the judge to be proactive on the part of the court in this relationship with the city manager (and in other administrative structures as well).** Being appointed and part time, some of the judges do not want to take on this task.

As one court administrator/clerk said:

“Current city manager is very supportive but very busy and finds it difficult to handle issues on a timely basis which results in stress and frustration for me. Judge is too concerned about protecting her contract and while the previous city manager enhanced her concern, we now have a city manager and prosecutor that provides an atmosphere which would allow her to finally step up to the plate and do her job in support of the court and staff and correct some long, ongoing problems.”

One respondent wrote: “Reporting to judge is good. However, city administrator is not as aware of the amount of work performed. He has the purse strings. We are last in line for upgrades.”

Reporting to the city manager is also seen by the writer, as positive action to one of Chief Justice Abrahamson’s threat to judicial independence, e.g., poor inter-branch relationships between the judiciary, the legislature, and the executive, marked by a lack of communication.<sup>69</sup>

**Should the Court administrator/clerk be a department head?** As a separate, yet closely related issue, there were several comments made regarding the court administrator/clerk being a department head. One comment was: “I personally have not had any outside interference from outside court personnel. However, I feel that the court administrator should be a department head, the same as every other department and report to the city manager on city related issues and to the judge on court related operations.”

Several comments, as mentioned, were made indicating that reporting, at least in part, to the city manager/city administrator was a good thing in that it keeps the executive branch of government better informed on the purposes, responsibilities, accomplishments, needs and

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<sup>69</sup> Shirley S. Abrahamson, “Judicial Independence as a Campaign Platform”, Bench & Bar of Minnesota, 2000, pp 6.

problems of the court. The need to be a department head may also serve that same purpose and perhaps boast the position of the court within the city. It also, however, gives the impression that the court is just another department of the executive branch of city government. This may be counterproductive. Perhaps a better solution would be for the court administrator/clerk to attend department head meetings for communication purposes but not to be designated as a department head.

**Also problematic are those courts in which the court administrator/clerk reports to the police department.** Eight (4 percent) of the court administrators/clerks said they reported to the chief of police. Again, the court administrator/clerk is reporting to one of the parties in the litigation. Most found this structure to their liking and, as with reporting to the city prosecutor, this appears to be because of the relationship the court administrator/clerk has with the chief of police. However, a court administrator/clerk who reports to the judge said: “The police chief tried to interfere – writes the ticket, then asks the prosecutor to drop or go easy on his favorites.”

A court administrator who does report to the chief said: “The chief of police talks to the prosecutor on how a case should be disposed of.” It should be mentioned, from our experiences, we do not find that unique to this administrative structure. As mentioned, most respondents found this structure to their liking (apparently because of good personal relationships with the police chief or police sergeant involved).

**In summary** of this section, when fifty two percent answered that they reported to someone outside of the judicial branch of government coupled with the fact that 91 percent answered that they did not have any regular scheduled meetings with the presiding judge of the circuit, and the fact that 76 percent of the municipal court judges are there only part time, one must come to the conclusion that judicial independence is a major problem within the Missouri

municipal courts. One court administrator/clerk provided this overall assessment of the tension that can arise when non-judicial personnel supervise the court:

“I am a firm believer in our constitution and the separation of power. Everyday I witness the Executive and Legislative branches of City Government violating Article II of our Constitution.

As a court administrator, I have always tried to maintain a certain degree of independence from the other offices of city government and I am finding this harder and harder and more frustrating all the time. I have lost several judges that I have worked for, because they stood up for what they believed the constitution stands for, and because they were appointed and not elected, they were ‘let go’ by a majority of the board of aldermen or mayor. This does not give us, as court administrators or court clerks, much security in our positions.”

**Respondents identified a number of areas of concern and the concerns appear to be higher among those who report, at least in part, to city officials rather than solely to a judge.** On question 10, respondents were asked, has your administrative structure (who you report to) caused you to . . . (do or experience a variety of things)? The responses can be seen in Figure 14. It should be mentioned that in Figure 14 because of the number of problems those who report to the city clerk or the finance director are reported separately from the executive.

At the bottom of Figure 14, is a total for each column, the number of problems identified (Total Problems Identified) and the number who reports to the person(s) identified at the top of the column (N as to “who do you report to?”). The total number of problems identified was then divided by the N in order to get Average Problem per N.

Looking at the Average Problem per N from left to right the lowest average problem (.62) is with those court administrators/clerks who report only to the judge of the municipal court. The average increases to almost three times higher for those reporting to the judge and executive (1.73); and to over three times higher for those who only report to someone in the executive branch of government (1.98), thus confirming the hypothesis.

**FIGURE 14: PROBLEMS CAUSED BY CURRENT ADMINISTRATIVE STRUCTURE – WHO DO YOU REPORT TO?**

Has your current administrative structure caused you to . . . ?	WHO DO YOU REPORT TO?					
	Judge	Judge/ Executive	Only Executive	City Clerk	Finance	Total
File a case that should not have been filed			1	1		2
Not to file a case that should have been filed	3		3			6
Change how a case should be decided		2	6	2		10
Change how a case was decided	2	5	4			11
Not send a disposition to the Department of Revenue		2	1			3
Release information to the public that was closed information			2			2
Not release information to the public that could have been released	1			1		2
Be directed to violate the judicial code of conduct				2	1	3
Undermine the authority of the Court Administrator/Clerk	2	8	10	5	1	26
Be unable to use the court's training money in the manner you thought it should be	2	3	3	3	3	14
Be unable to supervise or discipline court staff	1	2	1	3	2	9
Minimize your position of Court Administrator/Clerk	5	4	9	6	2	26
Experience stress	17	13	15	7	4	56
Experience hopelessness	4	8	7	4	1	24
Experience conflict with a person in the executive branch of government	7	8	7	5	1	28
Be threaten for your job/position	4	7	2	5	1	19
Hire someone you did not think was the best candidate	1		1	1	1	4
Lose control over how the court either Prepares or spends its budget	3	7	9	5	2	26
<b>Total Problems Identified:</b>	<b>52</b>	<b>69</b>	<b>81</b>	<b>50</b>	<b>19</b>	<b>271</b>
<b>N as to who do you report to?:</b>	84	40	41	20	4	189
<b>Average Problem per N (total/N)<sup>70</sup></b>	<b>.62</b>	<b>1.73</b>	<b>1.98</b>	<b>2.5</b>	<b>4.75</b>	<b>1.43</b>

<sup>70</sup> Average Problem per N is the total problems identified within each column divided by the N within that column. For example, for the column for the court administrators/clerks who report to the Judge, the total number of problems identified by them is 52. There were 84 court administrators/clerks who report to the judge, thus the N is 84. 52 problems identified by 84 court administrators/clerks equals .62 average problems per N.

Review of the types of reporting arrangements in place for those who noted these concerns or problems suggests that some of the supervisory arrangements are especially troublesome. While it is a small part of the overall sample, *all* of those who reported solely to a city finance director reported significant problems in response to question 10. Their Average Problem per N was 4.75. Again, confirming the hypothesis.

Similarly, the 20 who report to the city clerk identified 50 problems. The Average Problem per N for those court administrators/clerks who report only to the city clerk was 2.5. This is over four times higher than those reported by the court administrators/clerks who report only to the judge and 1.3 times higher than those court administrators/clerks who report only to the executive branch of government. Apparently, there is something inherently troublesome with these two administrative structures. Again, this data confirms the hypothesis.

While more study in this area is needed, it does appear that the court administrators/clerks who report to the city clerk or someone in finance have basically the same understanding of purposes and responsibilities of courts as those court administrators/clerks who report solely to the judge or even someone else who works in the executive branch of government but something within these two administrative structures causes major problems. The author suspects it may be because the city clerk and director of finance do not have the same goals and independence for courts that the court administrator/clerk does and this brings about power struggle that each needs to win. Comments, as quoted earlier from court administrators/clerks regarding the city clerk support this. Comments, such as: “Unable to protect the integrity of the court. City clerk trying to make court like any other city office. Does not or refuses to recognize that we are a part of the state courts and presiding judge and municipal judge are actually the chain of command.” And: “Part of my duties include payroll

and insurance issues, therefore the city clerk believes she is my supervisor in all areas, including evaluating me on court performance. Anytime the judge includes any written feedback, the city council does not receive it from her, therefore he now addresses it to the mayor.”

Comments concerning the director of finance, such as the following, also support this conclusion: “The finance director has told us how we should run court and always questions procedures . . .” A second court administrator/clerk said: “In 2 previous cities where I was a clerk, the finance director, and assistant city manager did not allow the court to properly follow state statutes. Did not understand closed/open cases. Undermined the authority of the court administrator/clerk. Did not feel the judge should be in charge of the court – both thought they should be in charge of the court, yet neither had any understanding of the court, rules or its role.” And a third added: “Current structure is difficult as I report to the judge but must also consult with and be evaluated by the finance director. He is our ‘Department Director Liaison with city management team, thus we must depend on him to represent us on critical issues. This does not work well if he disagrees with our requests.” All of these comments emphasize the conflict and the power struggles within these administrative structures.

Stress was the number one identified problem, mentioned by 30 percent of the respondents. One person said that “stress comes with the job” and that may well be. It would seem, though, that some of the reporting arrangements cause increased levels of stress, as well as other problems. For example, fifteen percent said they experienced conflict with a person in the executive branch of government. Fourteen percent said the reporting structure undermined the authority of the court administrator/clerk, minimized their position of court administrator/clerk and/or caused them to lose control over how the court either prepared or spent its budget.

A significant 13 percent said they had experienced “hopelessness” as a result of the overall reporting arrangement. More than 7 percent said it had affected the way in which training money for court staff could be used and more than 5 percent said the reporting structure had changed how cases are decided. Smaller numbers indicated improper handling of confidential information, failure to file required reports, and even directives to violate judicial conduct rules. One does not know if this was because of lack of knowledge of the judicial conduct rules, belief that they did not apply or as Justice Abrahamson pointed out: “their self-interest in winning cases overcomes their interest in an independent judiciary.”<sup>71</sup>

### **Control over budget and training issues:**

Earlier it was mentioned that 479.260 RSMo provided for the court to establish a judicial education fund in an account under the control of the municipal court. Above it was mentioned that more than seven percent of the respondents identified as a problem the fact that their administrative structure had affected the way in which training money for court staff could be used. This is an area of conflict between the court and cities in a number of locations, as reflected in comments such as: “Lack of training – lack of sufficient help when needed.” And “I feel that our court is ran very efficient with what I have to run it with. I wish there were more training that I could go to but our City is on a very tight budget and can’t always afford to spend the money to go to training. I do the best that I can always.”

The following comment, “Have not taken specific training on position as budget is controlled by city mayor/city council. They feel training seminars are too expensive”, by a respondent with the title of “city clerk/court administrator/clerk/treasurer” indicates that 479.260 RSMo is not being followed. Throughout this research the need for training is apparent both as a

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<sup>71</sup> Shirley S. Abrahamson, “Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence”, 64 Ohio St. L.J. 3, 2003.

problem and as part of the solution for the lack of understanding as to purposes and responsibilities of the courts. The legislature, in passing 479.260 RSMo, put control of training money in the hands of the municipal judge – yet in some cities people who work in the executive or legislative branch of local government successful usurp this authority.

To summarize, in this section, the discussion has focused on the current administrative structures and the problems the court administrators/clerks have experienced as a result of this administrative structure. Data from the respondents has shown that 41 percent of the court administrators/clerks report solely to the judge and another six percent report jointly to the judge and the city manager. The remaining 53 percent answered they report to someone else who works within the executive or legislative branch of government or to the judge and someone lower than the city manager within the executive branch of city government, to OSCA or to no one. Thirty-four percent report only to a city official who works within the executive or legislative branch of government.

The data shows some confusion on all of the purposes and responsibilities of courts by those who report to the judge and those who do not report to the judge. The major confusion was on the question: Is a purpose of the courts to generate revenue for the city? In my opinion, and the opinion of those experts who define purposes of court, it is not. Yet, 27 percent of those reporting to the judge agreed with that statement while 51 percent of those not reporting to the judge agreed with the statement. In regards to the responsibility of courts, 21 percent reporting to the judge and 26 percent of those not reporting to the judge agreed with the statement that it is the responsibility of the court to raise revenue for cities through fines and fees. On other issues the level of agreement was highest for the statements: The Code of Judicial Conduct applies to the judge and to the municipal court staff and Judges must be vigilant in protecting the

administration boundaries of the court. For example, judges of the court should not allow someone in the executive branch of government to influence the courts' impartial judging of cases. The latter statement had 93 percent agreement from those reporting to the judge and 89 percent agreement for those not reporting to the judge.

Figure 14, shows that the Average Problem per N is the lowest, at .62, for the court administrators/clerks reporting only to the judge and increases to 1.73 for those court administrators/clerks reporting to both the judge and someone in the executive branch and increases to 1.98 for those court clerks reporting to only someone within the executive branch of government. In addition, for those reporting to the city clerk the Average Problem per N is 2.5 and for those reporting to only someone in the finance department the Average Problem per N is 4.75.

All of these findings confirm the hypothesis that reporting to someone other than the judge will cause confusion on the part of the court administrator/clerk as to the purposes and responsibilities of the court and that the court administrator/clerk will have more problems than those court administrators/clerks who do report solely to the judge of the municipal court..

Let us now turn our attention to the question: Whom do you think the court administrators/clerks should report to and why?

**Most municipal court administrators/clerks in Missouri want a separation from the executive and legislative branches of government.** The vast majority of respondents want to report to the judge: 76 percent want to report only to the judge, while another 19 percent want to report to the judge and another city official (Figure 15).

Many of those suggesting dual reporting both to the judge and to the city manager/executive was due to the importance of the city official's understanding the court's

operations and any problems the court faced. A handful of respondents wanted to report to the city prosecutor or police chief; in each case, these respondents were suggesting the arrangement already in place in their city. Most, though, believed that it was especially important to make sure that judges not allow someone in the executive or legislative branch of city government to influence the judging of cases and that the court structure should be separate from the executive and legislative branch of city government (first question in Figure 13).

<b>FIGURE 15: RESPONDENTS PREFERRED REPORTING ARRANGEMENTS</b>		
<b>Who should the court administrator/clerk report to:</b>	<b>Number</b>	<b>Percent</b>
Judge	137	77%
Judge and city manager/administrator	24	14%
Judge and city prosecutor	5	3%
City manager/administrator	4	2%
City prosecutor	4	2%
Chief of police	2	1%
City clerk	2	1%
<b>Total</b>	<b>178<sup>72</sup></b>	<b>100%</b>

## CONCLUSIONS AND RECOMMENDATIONS

In this paper, the author established the importance and value of this study by reviewing the following eight critical areas: What is judicial independence? Why should judicial independence be important to us? What is the relationship between judicial independence and judicial accountability? What are the threats to judicial independence? What implications does this study have nationally? What basis for judicial independence exists for Missouri Municipal Courts? What are the purposes and responsibilities of courts? And, What would an ideal municipal court in Missouri look like and how would it be structured and operate?

<sup>72</sup> It should be mention that 10 did not answer the question and the following all received one vote: Judge/City Council, Judge/City Clerk, Judge/Mayor, Finance, Assistant City Manager and various combination of Judge and two or more members of the executive branch of government. Usually these were structures already in place in those cities.

In the methodology a six page, 15 question survey was developed in order to generate information on the following:

- To identify, within the state of Missouri, the various administrative structures of municipal courts
- To determine what, if any, problems are caused by the various administrative structures and how that administrative structure either help or hinder the municipal court in accomplishing its purpose
- To determine if there is an administrative structure of the municipal court that better serves the court in accomplishing its purpose and which maintains the independence and accountability of the municipal court as a part of the third branch of government

The survey was mailed to 473 municipal courts within the state of Missouri and 216 surveys were returned with 200 (42 percent) of them being valid.

The research identified the different administrative structures within the Missouri municipal courts and identified major problems of administrative structure and other issues that should be of concern to us all. The author identified that, consistent with the United States Constitution, the Missouri Constitution establishes three distinct departments – the legislative, executive and judicial – each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of power properly belonging to one of those departments, shall exercise any power belonging to either of the other.

The data shows that only 41 percent of the responding municipal courts within the state of Missouri are structured in such a way that the court administrator/clerk reports directly and only to the judge. In over 55 percent, the court administrator/clerk reports to the judge and someone in the executive or legislative branches of government or solely to someone within the

other two branches of government. In addition 3 percent report to OSCA or state they report to no one. Clearly reporting structures where the court administrator/clerk reports to the judge and someone in the executive or legislative branches of government or solely to someone within the other two branches of government are encroachment upon the independence of the judicial branch of government and its functions.

By personal testimony of those involved and data from the answers to survey questions, it has been shown that significant problems have resulted due to these administrative structures. There is confusion as to the purposes and responsibilities of court by both those who report only to the judge and those who only report to someone within the executive or legislative branch of government. When asked: “Do you agree with the statement that it is the purpose of the court to generate revenue?” 51 percent of those reporting to someone within the executive or legislative branch of government agreed. However, so did 27 percent of those who report only to the judge. It was a surprise to find such a substantial percentage viewing it that way.

It was surprising that only a combined 47 percent said it was the responsibility of the court to be an independent check on other branches of government, while 20 percent disagreed and 33 percent neither agreed nor disagreed. Even more disappointing to the author were the two who report to the judge and the nine who report only to someone in the executive or legislative branch of government who did not agree with the statement that it is the responsibility of the courts to make impartial decisions. Another four respondents did not answer the question.

On all of these issues, if we can't convince those who work in our courts of the purposes and responsibilities of the courts and that courts are and must be an independent branch of government, we should not expect to do better with the public at large. Education of those who

work in the courts, as well as the public and those who work in other branches of government is needed.

In looking at the Average Problem per N, the data shows that the court administrators/clerks who report to the judge have an average number of problems of .62 and this increases to 1.73 for the court administrators/clerks who report to the judge and executive and to 1.98 for the court administrators/clerks who only report to someone in the executive branch of government. The Average Problem per N is even higher, at 2.5 for the court administrators/clerks who report to city clerk and is highest, at 4.75 for those court administrators/clerks who report to someone in finance. All of this confirms the hypothesis that court administrators/clerks who report to someone other than the judge will experience more problems than the court administrators/clerks who report only to the judge.

The author believes that change must occur within the state of Missouri and perhaps in the other twenty-nine states with over 8,291 locally funded courts, such as municipal courts, city courts, town and village justice courts, justice of the peace courts, mayor courts and maybe even county courts. To bring about this change the following recommendations are made:

1. To educate the judges, court administrators/clerks and court employees that they are a part of a uniform court system. Two activities are planned in this area.
  - a) Making copies of this research and the article, *Judicial Independence in the Municipal Court: Preliminary Observations from Missouri*, written on the research and published in the *Court Review*, the Journal of the American Judges Association.
  - b) Making presentations. This author has agreed to do two presentations:  
One in March 2005 to about 100 Missouri municipal court administrators, and

another in May 2005 to about 350 Missouri municipal court administrators. The Missouri State Court Administrator, Michael L. Buenger may take part in this presentation. It is hoped that additional presentations will be scheduled.

2. To educate those working in the executive and legislative branch of government regarding judicial independence and that the Missouri municipal courts are a part of the judicial branch of government. Three activities are planned.
  - a) Asking the court administrators/clerks to share the articles and research with those working in the executive and legislative branch of government in their cities and especially those who report to someone who works in the executive or legislative branch of government.
  - b) Making additional copies of the research and article to those working in the executive and legislative branches of government.
  - c) Making presentations. Presentations could be to The Missouri Municipal League, Missouri Municipal Attorney Association and to civic and other professional groups.
3. To educate the city managers, other city officials and city councils regarding judicial independence and that the municipal courts are a part of the judicial branch of governments. The activities would be the same as above.
4. To educate OSCA about the disconnect as to their view of Missouri having a unified state court system and the perception of the court administrators/clerks that they are not a part of a unified state court system. As mentioned above, the presentation to the Missouri Association for Court Management would, hopefully, be with Michael

- Buenger, the Missouri State Court Administrator. Copies of the research would be made available to him. Further meeting, as needed would be scheduled.
5. To work with OSCA to bring about the following:
    - a) More involvement of the Presiding Judges in providing supervision and training for the municipal court judge, court administrators/clerks.
    - b) Wording within the Municipal Clerk Manual to reinforce the concept of the municipal courts are a part of a unified state court system.
    - c) Sections within the Municipal Clerk Manuals on how to deal with encroachments upon judicial independence.
    - d) Education, by the judicial branch of government, of the executive and legislative branches of government on judicial independence and how the court's administrative structure may encroach upon that judicial independence.
    - e) Supreme court rules that address the issues.
  6. To set up separate meetings the Office of State Court Administrator, the Presiding Judge of the 29<sup>th</sup> Judicial Circuit, the Judicial Committee of the Missouri State Legislature to bring about some of these changes.

The following activities have already been accomplished as part of the educational recommendations:

1. An article, *Judicial Independence in the Municipal Court: Preliminary Observations from Missouri* was written and published in the *Court Review*, Volume 41, Issue 2, Summer 2004, the Journal of the American Judges Association special issue on Judicial Independence. A copy of the article may be found in Appendix G.

2. With the permission of the American Judges Association, the same article has been submitted to the National Association for Court Management for republication in the *Court Manager*.

In conclusion, the author would like to repeat that he does not want to directly or indirectly imply anything negative about the municipal court administrator/clerks. They are doing the best they can under the circumstance. They truly are the spirit that keeps justice alive. As mentioned in the Acknowledgments, futurist Joel Barker states: "Vision without action is merely a dream. Action without vision is merely passing time. But if you combine vision with action you can change the world." It's time to change the world of municipal courts in the state of Missouri.

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## **APPENDIX A**

- **SEPARATION OF POWERS:**

**CONSTITUTIONAL POWERS AND CHECK AND BALANCES**

## SEPARATION OF POWERS

Branch	Constitutional Powers	Executive Counterbalances	Legislative Counterbalances	Judicial Counterbalances
<p><b>Executive</b></p>	<p>Discretion over when to enforce the law</p> <p>Discretion over how to run government services</p> <p>Sole Power to wage war (operational command of the military)</p> <p>Responsibility for negotiating treaties</p> <p>Power to appoint judges, diplomats, executive managers, and executive advisers</p> <p>Power to arrest, detain and search</p>	<p>Civilian and military chains of command constrain low-level executive officials to obey the policies of high-level officials.</p>	<p>Power to determine what laws exist</p> <p>Power to write laws to constrain the internal operation of government</p> <p>Power to write laws limiting searches, arrests, and detentions</p> <p>Power to make laws concerning what regulations may be declared by the executive</p> <p>Sole power to declare war</p> <p>Responsibility for ratifying treaties (Senate)</p> <p>Responsibility for confirming executive appointments (Senate)</p> <p>Power to set the budget of the executive</p> <p>Power to impeach and remove executive officers (two-thirds majority)</p> <p>Power to set limits</p>	<p>Acts as a neutral mediator when the executive brings criminal or civil enforcement actions, and has the power to stop inappropriate enforcement</p> <p>Issues warrants for searches and arrests</p> <p>May declare actions of the executive to be illegal</p> <p>Determines which laws apply to any given case</p>

## SEPARATION OF POWERS (continued)

<p><b>Legislative</b></p>	<p>Power to write laws</p> <p>Power to tax, borrow money, and spend money</p> <p>Sole Power to declare war</p> <p>Various other powers of the federal government</p> <p>Subpoena power</p>	<p>May veto laws (but this may be overridden by a two-thirds majority in both houses)</p> <p>May refuse to enforce certain laws</p> <p>May refuse to spend money allocated for certain purposes</p> <p>Sole power to wage war (operational command of the military)</p> <p>Responsibility for making declarations (for example, declaring a state of emergency) and promulgating lawful regulations and executive orders</p> <p>Executive Privilege</p>	<p>Each house is responsible for policing its own members</p>	<p>May declare laws unconstitutional and unenforceable</p> <p>Determines which laws apply to any given case</p>
<p><b>Judicial</b></p>	<p>Sole power to interpret the law and apply it to particular disputes</p> <p>Power to determine the disposition of prisoners</p> <p>Appointment for life</p> <p>Power to compel testimony and the production of documents</p>	<p>Responsibility to appoint judges</p> <p>Power to grant pardons</p>	<p>Sole power to pass Constitutional amendments (by two-thirds majority and with the consent of three-quarters of the states)</p> <p>Power to determine the size and structure of the courts</p> <p>Power to determine the budgets of the courts</p> <p>Responsibility for confirming judicial nominees</p> <p>Power to impeach and remove judges</p>	<p>The appeals process enforces uniform policies in a top-down fashion, but gives considerable discretion in individual cases to low-level judges</p> <p>May only rule in cases of an actual dispute brought between actual petitioners</p> <p>Polices its own members</p>

## **APPENDIX B**

- **THE CONFERENCE OF STATE COURT ADMINISTRATORS**  
**POLICY STATEMENT ON EFFECTIVE JUDICIAL**  
**GOVERNANCE AND ACCOUNTABILITY**
- **THE CONFERENCE OF STATE COURT ADMINISTRATORS**  
**RESOLUTION II**  
**IN SUPPORT OF PRINCIPLES OF EFFECTIVE JUDICIAL**  
**GOVERNANCE AND ACCOUNTABILITY**

# CONFERENCE OF STATE COURT ADMINISTRATORS

## Policy Statement

### **Effective Judicial Governance and Accountability**

From its inception nearly a half century ago, the Conference of State Court Administrators (COSCA) has worked to promote effective judicial governance and accountable, responsive judicial branch institutions that provide the highest quality of service to the public. For state courts to achieve effective judicial governance and full accountability in the performance of their responsibilities they must have the capacity to manage their affairs and develop and implement policies and practices in certain core areas of court administration. While the courts occupy a unique position within American government that demands independence, the other branches of government and the public have the right to hold the judiciary accountable for effective management of court business.

Today we reaffirm and seek to further these principles by offering the following specific policy perspectives.

All state court systems must strive to be accountable--that is, to serve the public with maximum effectiveness and responsiveness. Failure to either achieve or demonstrate accountability sets the stage for external criticism and attacks on particular decisions of individual judges and courts, and fosters an environment in which the other branches of government are more likely to diminish the judiciary's ability to govern its own affairs, e.g., by eroding court funding or micro-managing court practice and procedure. While vigilant of our constitutional prerogatives as a separate branch of government, the judiciary must go beyond merely accepting appropriate outside review and affirmatively welcome it as the best opportunity to educate the public and the other branches about the mission, accomplishments and needs of the third branch. It is in that context that the Judiciary will best be able to articulate how excessive interference with court operations can impair the ability of the courts to provide the public with the highest level of service.

We support a national effort by COSCA and CCJ, in partnership with NCSC, to more precisely identify the core responsibilities for which courts can and should be held accountable through a declaration of basic principles of judicial accountability. This process of identifying the core elements of judicial accountability, and their dependence on self-governance, will enable state court systems to present to their citizenry and coordinate branches of government a bold vision of the judiciary's role in our society, and to set forth in clear terms the conditions necessary to providing the public with the highest level of service.

There is a great deal that the third branch can do on a day-to-day level to promote self-governance and accountability. State courts should lead the debate and shape the issues on matters of judicial governance, as opposed to responding to the initiatives of others. To the extent possible, state courts should speak coherently and with one voice on system-wide issues, work to improve institutional relationships with the other branches of government, and fully utilize the resources of NCSC in support of their efforts to promote effective judicial governance.

COSCA is committed to being a full and active partner in promoting effective judicial governance and accountability.

Recommended By: Policy and Liaison Committee  
Adoption Date: COSCA Midyear Meeting, November 30, 2001  
Expiration Date: December 31, 2004

[MEMBERS](#)[POLICY](#)[STAFF](#)[HOME](#)

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## CONFERENCE OF STATE COURT ADMINISTRATORS

### Resolution II

#### **In Support of Principles of Effective Judicial Governance and Accountability**

WHEREAS, the Conference of State Court Administrators (COSCA) has worked to promote effective judicial governance and accountable, responsive state judicial branch institutions that provide the highest quality of service to the public;

WHEREAS, COSCA has prepared a Position Paper setting forth principles of effective judicial governance and accountability;

WHEREAS, the failure to be accountable can foster an environment in which: the other branches of government and the public do not understand the judiciary's role; the other branches are more likely to micro manage or otherwise diminish the judiciary's ability to govern its own affairs; and are more likely criticize particular decisions of individual judges and courts, and;

WHEREAS, there are certain core functions critical to judicial governance wherein the courts should have the capacity to manage their own affairs by virtue of being closest to the issues and in the best position to make decisions necessary for ensuring the highest level of public service;

WHEREAS, state courts cannot achieve effective governance without the capacity to manage their own affairs and develop and implement policies and practices in certain core areas critical to administering the courts;

WHEREAS, the process of identifying the core elements of judicial accountability will enable state court systems to present to the public and coordinate branches of government a bold vision of the judiciary's role in our society and articulate clearly the conditions necessary to providing the highest level of service;

NOW, THEREFORE, BE IT RESOLVED, that COSCA identifies the following core elements of judicial accountability for state court systems that are working to present to their citizenry and other branches of government a bold vision of the judiciary's role in our society

Courts should assure that:

#### **Court Performance**

- Cases are processed and disposed of fairly and expeditiously.
- Comprehensive data on filings, caseloads, case processing standards and goals, and expenditures are collected and made readily available.
- Courts institute processes for continuous self-assessment and improvement, including financial audits.
- The judiciary measures and reports on its performance using credible accountability tools, including court performance standards and measures.
- Modern technological innovations are fully utilized to provide complete, accurate and timely information to improve the efficiency and effectiveness of court adjudicative and administrative functions.
- Written information on individual courts, including their state and local operations and procedures, is widely available through electronic and traditional means.

#### **Access and Equality**

- All citizens receive equal justice and have equal access to the courts regardless of their backgrounds and economic circumstances.
- Racial, ethnic, gender and other forms of bias, real and perceived, are eliminated from the courts and the entire justice system.
- In designing administrative processes, first consideration is always given to the people served. In the development of forms, processes, and practices due consideration is given to consistency across judges and courts to minimize the adverse impact on access, fairness, and costs of litigation.

- Litigants involved in court proceedings believe that they have been heard and understand the decisions of the court.
- Courthouses and courtrooms are easily accessible, secure, clean, open to all and provide an environment conducive to the administration of justice.
- The public's tax dollars are expended in a cost effective manner in accordance with sound fiscal practices.
- Jurors' time is used efficiently; and jurors are treated with dignity, provided with all necessary tools and materials to carry out their responsibilities and compensated adequately.
- Processes are available that give citizens an opportunity to air complaints regarding the operation of the courts, and that courts are responsible to their constructive criticism

#### **Fairness and Courtesy**

- Judges and court personnel are courteous and knowledgeable.
- Time of lawyers, litigants, and witnesses is used effectively and due consideration is given to their scheduling needs in developing case assignment and scheduling systems.
- Members of the bar, whose conduct is regulated by the judiciary, act with competence, professionalism and civility, both inside and outside the courtroom.

#### **Judicial Leadership**

- Courts take an active leadership role in fostering positive institutional relationships with the other branches and justice system constituencies.
- Assume a more active role in the legislative process on matters affecting court operations and governance, including submission of appropriate legislative proposals.
- Establish inter-branch commissions and conferences to study and discuss the needs and problems of the courts and other issues of mutual concern.
- Develop public affairs offices that work actively to educate the other branches and the media about the judiciary and its adjudicative and administrative functions.

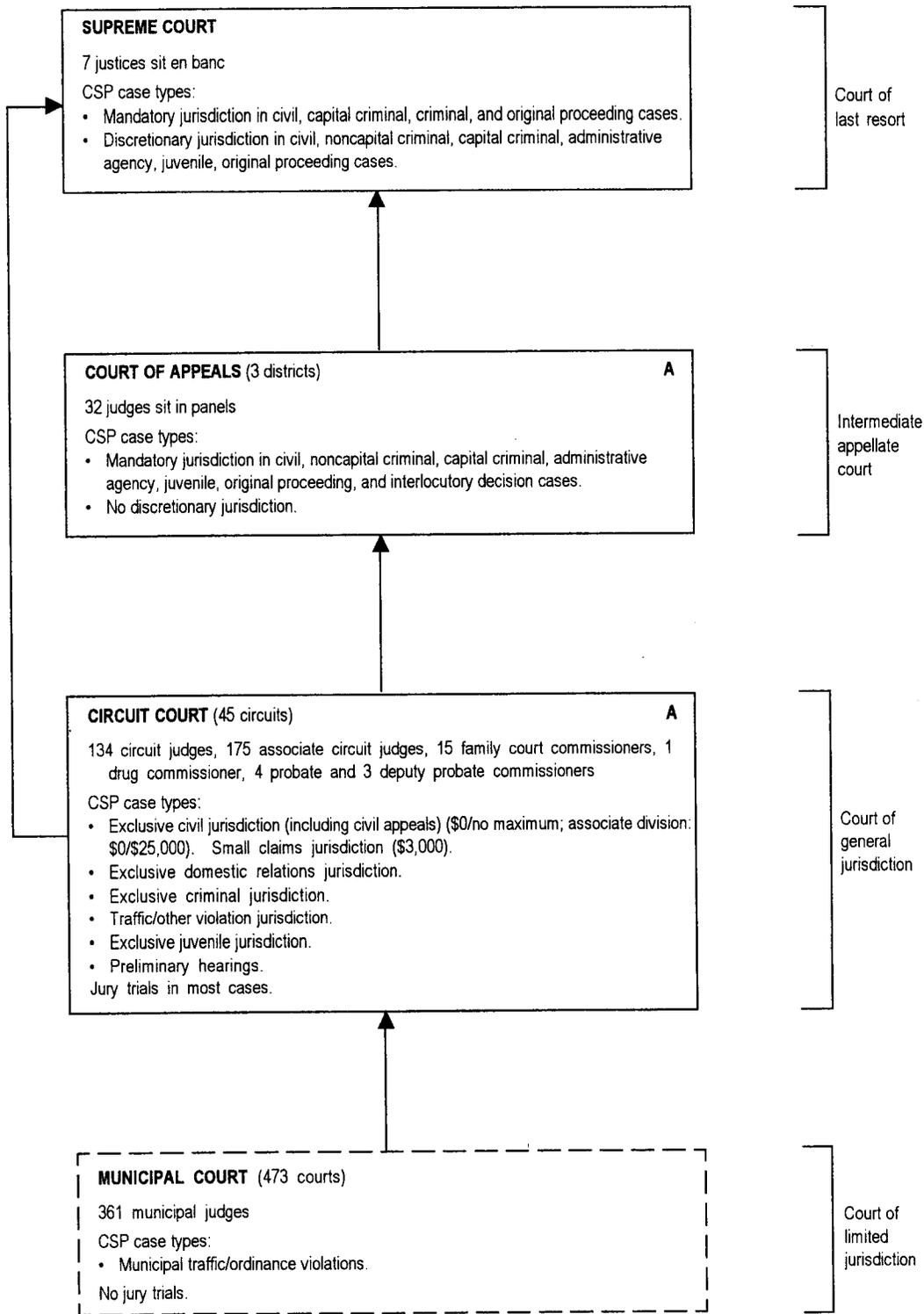
*Adopted by the Conference of State Court Administrators at their 2003 Midyear Meeting December 12, 2003.*

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## **APPENDIX C**

- **MISSOURI COURT STRUCTURE, 2002**
- **COURT WITH LOCAL FUNDING**

**MISSOURI COURT STRUCTURE, 2002**



## COURTS WITH LOCAL FUNDING

State	Court(s) with local funding	Number of courts
Alabama	Municipal Court	258
Arizona	Municipal Court	84
Arkansas	City Court	118
Colorado	Municipal Court	206
Delaware	Alderman's Court	8
Georgia	Municipal Court (Columbus)	1
	The City Court of Atlanta	1
Indiana	City Court	48
	Town Court	26
Kansas	Municipal Court	375
Louisiana	Justice of the Peace Court	390
	Mayor's Court	250
Michigan	Municipal Court	5
Mississippi	Municipal Court	223
Missouri	Municipal Court	473
Montana	Municipal Court	5
	Justice of the Peace Court	66
	City Court	81
Nevada	Municipal Court	18
	Justice Court	55
New Jersey	Municipal Court	544
New Mexico	Municipal Court	83
New York	Tow and Village Justice Court	1,487
North Dakota	Municipal Court	80
Ohio	Municipal Court	122
	Mayors Court	428
Oklahoma	Municipal Court Not of Record	340
	Municipal Court of Record	2
Oregon	Municipal Court	135
	Justice Court	30
Pennsylvania	Pittsburgh City Magistrates	1
Rhode Island	Municipal Court	16
South Carolina	Municipal Court	200
	Magistrate Court	286
Tennessee	Municipal Court	300
Texas	Municipal Court	877
	Justice of the Peace Court	834
Utah	Justice Court	139
Washington	Municipal Court	121
West Virginia	Municipal Court	122
Wisconsin	Municipal Court	224
Wyoming	Municipal Court	79
	Justice of the Peace Court	7

## **APPENDIX D**

- **THE MISSOURI CONSTITUTION**  
**ARTICLE II, THE DISTRIBUTION OF POWERS**
- **479.260 RSMo**
- **THE MISSOURI MUNICIPAL CLERK MANUAL**  
**CHAPTER ON ADMINISTRATIVE PROCEDURES**
- **ORGANIZATIONAL CHART OF MISSOURI'S JUDICIAL**  
**BENCH**
- **AUGUST 20, 1997 LETTER FROM RONALD L. LARKIN,**  
**ADMINISTRATOR OF THE OFFICE OF STATE COURTS**
- **MARCH 30, 2004 LETTER FROM COURT SPECIALIST,**  
**OFFICE OF STATE COURTS ADMINISTRATOR**

# *Missouri Constitution*

## Article II THE DISTRIBUTION OF POWERS Section 1

August 28, 2004

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### **Three departments of government--separation of powers.**

Section 1. The powers of government shall be divided into three distinct departments--the legislative, executive and judicial--each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.

Source: Const. of 1875, Art. III.

(1954) Land Clearance for Redevelopment Law (RSMo, § 99.300 et seq.), does not contravene this provision of the Constitution. State on Inf. Dalton v. Land Clearance for Redev. Auth., 364 Mo. 974, 270 S.W.2d 44.

(1958) Section 71.015 providing for action by city for declaratory judgment authorizing annexation of unincorporated areas is not an unlawful delegation of legislative power to the judiciary. City of St. Joseph v. Hankinson (Mo.), 312 S.W.2d 4.

(1960) City ordinance granting commission power to establish parking zones, with their time limitations and fixing the fees therefor to be collected through parking meters, held invalid as unlawful delegation of legislative power. Automobile Club of Mo. v. City of St. Louis (Mo.), 334 S.W.2d 355.

(1970) The courts have inherent authority to employ necessary personnel with which to carry out their functions, to fix compensation of these personnel, and to require appropriation and payment therefor. State ex rel. Weinstein v. St. Louis Co. (Mo.), 451 S.W.2d 99.

(1976) Portion of statute providing that violation of rule or regulation made pursuant to such statute is a misdemeanor is unconstitutional delegation of legislative power. State v. Raccagno (Mo.), 530 S.W.2d 699.

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Missouri General Assembly

# *Missouri Revised Statutes*

## **Chapter 479** **Municipal Courts and Traffic Courts** **Section 479.260**

August 28, 2004

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### **Court costs and fees, judicial education fund, purpose, administration.**

479.260. 1. Municipalities by ordinance may provide for fees in an amount per case to be set pursuant to sections 488.010 to 488.020, RSMo, for each municipal ordinance violation case filed before a municipal judge, and in the event a defendant pleads guilty or is found guilty, the judge may assess costs against the defendant except in those cases where the defendant is found by the judge to be indigent and unable to pay the costs. The fees authorized in this subsection are in addition to service charges, witness fees and jail costs that may otherwise be authorized to be assessed, but are in lieu of other court costs. The fees provided by this subsection shall be collected by the municipal division clerk in municipalities electing or required to have violations of municipal ordinances tried before a municipal judge pursuant to section 479.020, or to employ judicial personnel pursuant to section 479.060, and disbursed as provided in subsection 1 of section 479.080. Any other court costs required in connection with such cases shall be collected and disbursed as provided in sections 488.010 to 488.020, RSMo; provided that, each municipal court may establish a judicial education fund in an account under the control of the municipal court to retain one dollar of the fees collected on each case and to use the fund only to pay for:

- (1) The continuing education and certification required of the municipal judges by law or supreme court rule; and
- (2) Judicial education and training for the court administrator and clerks of the municipal court.

Provided further, that no municipal court shall retain more than one thousand five hundred dollars in the fund for each judge, administrator or clerk of the municipal court. Any excess funds shall be transmitted quarterly to the general revenue fund of the county or municipal treasury.

2. In municipal ordinance violation cases which are filed in the associate circuit division of the circuit court, fees shall be assessed in each case in an amount to be set pursuant to sections 488.010 to 488.020, RSMo. In the event a defendant pleads guilty or is found guilty, the judge shall assess costs against the defendant except in those cases where the defendant is found by the judge to be indigent and unable to pay the costs. In the event a defendant is acquitted or the case is dismissed, the judge shall not assess costs against the municipality. The costs authorized in this subsection are in addition to service charges, witness fees and jail costs that may otherwise be authorized to be assessed, but are in lieu of other court costs. The costs provided by this subsection shall be collected by the municipal division clerk in municipalities electing or required to have violations of municipal ordinances tried before a municipal judge pursuant to section 479.020, or to employ judicial personnel pursuant to section 479.060, and disbursed as provided in subsection 2 of section 479.080. Any other court costs required in connection with such cases shall be collected and disbursed as provided in sections 488.010 to 488.020, RSMo.

3. A municipality, when filing cases before an associate circuit judge, shall not be required to pay fees.

4. No fees for a judge, city attorney or prosecutor shall be assessed as costs in a municipal ordinance violation case.

5. In municipal ordinance violation cases, when there is an application for a trial de novo, there shall be an additional fee in an amount to be set pursuant to sections 488.010 to 488.020, RSMo, which shall be assessed in the same manner as provided in subsection 2 of this section.

6. Municipalities by ordinance may provide for a schedule of costs to be paid in connection with pleas of guilty which are processed in a traffic violations bureau. If a municipality files its municipal ordinance violation cases before a municipal judge, such costs shall not exceed the court costs authorized by subsection 1 of this section. If a municipality files its municipal ordinance violations cases in the associate circuit division of the circuit court, such costs shall not exceed the court costs authorized by subsection 2 of this section.

(L. 1978 H.B. 1634, A.L. 1982 S.B. 497, A.L. 1996 S.B. 869, A.L. 1997 S.B. 248)

Effective 7-1-97

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Missouri General Assembly

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# ADMINISTRATIVE PROCEDURES

Page: 1 of 9

Published: September 1995

Revised: August 2001

**Court Operating Rules:** 8, 13, and 16

**Revised Missouri Statutes:** 479.030, 479.060, 479.070, 479.080, and Chapter 610

**Supreme Court Rules:** 37.04, 37.49, 37.61, 37.62, and 37.68

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## INTRODUCTION

This chapter discusses the administrative responsibilities of judicial personnel in the municipal division courts, describes the separation of powers between the governmental branches, and outlines the duties of the municipal judge and municipal clerk. If there are questions regarding the statements below, discuss the issues with the municipal judge.

### 1.1 GENERAL ADMINISTRATION

#### **Three Departments of Government** (Article II of the Missouri Constitution)

The powers of government shall be divided into three distinct departments--the legislative, executive, and judicial. Each department shall be separate from the other departments, no person within one of the departments shall exercise powers belonging to one of the other departments, except where the constitution expressly permits. (See Organizational Charts in Appendix A.)

#### **Presiding Judge** (Supreme Court Rule 37.04)

Article V, Section 15(3) of the Missouri Constitution, adopted by the voters in 1976, creates the position of presiding judge for each judicial circuit. The presiding judge has general administrative authority over all divisions of the circuit court within the circuit, including the municipal divisions.

If the municipal judge has any questions concerning the administration of the court, the presiding judge may be contacted for assistance.

#### **Municipal Judge**

The municipal judge is the chief judicial officer of the municipal court and, as such, assumes the primary responsibility for the administration of the court. General administrative duties of the municipal judge include the following:

- Preparing the municipal court budget
- Supervising the court staff
- Ensuring that complete and accurate case records and accounting records are being maintained.

In most municipalities, at least one clerk is appointed to perform the routine clerical functions required of the court, but it is the municipal judge's responsibility to determine record keeping policy and procedure and to see that such policies and procedures are carried out correctly and efficiently.

**Municipalities May Establish A Violations Bureau** (Supreme Court Rule 37.49)

Any judge having original jurisdiction of any animal control, housing, or traffic violations may establish, by court order, a violations bureau (VB). The municipality is required to have an ordinance authorizing the violations bureau. The judge shall designate a violations clerk who will handle these violations. Offenses resulting in personal injury or property damage, operating a motor vehicle while intoxicated or under the influence of alcohol or drugs, operating a motor vehicle with a counterfeited, altered, suspended or revoked license, or fleeing or attempting to elude an officer may not be handled in the violations bureau.

**Municipalities To Notify Circuit Clerk** (Section 479.030 RSMo)

Every municipality with a population of less than 400,000, which elects to have a municipal judge or judges, shall send written notification of the existence of the municipality to the circuit clerk of the county where the municipality is located.

The circuit clerk should notify the Office of the State Courts Administrator when they know a new municipal court has been established. The municipal court will be added to a mailing list and be notified of training seminars, judge certification sessions, and other news of interest.

**Municipalities To Provide Clerks, Courtroom** (Section 479.060 RSMo)

Where municipal violations are to be tried before a municipal judge or judges, the governing body of the municipality shall provide by ordinance for a clerk or clerks and such non-judicial personnel as may be required for the proper functioning of the municipal court. The municipality is also required to provide a suitable courtroom in which to hold court.

### **Municipal Court Budget (Article II of the Missouri Constitution)**

Each municipal court should have its own operating budget that is set apart from other city departments' budgets. The municipal judge is responsible for preparing the budget and supervising expenditures.

If the municipality and the municipal judge are unable to resolve a budget dispute, Supreme Court Operating Rule 13 gives either party the authorization to file a request for a settlement conference with the presiding judge of the circuit. The municipal judge has the burden of proof that the budget request is reasonable. The presiding judge will issue a written recommendation following the conference.

The municipality may seek review of any recommendation of the presiding judge regarding the municipal division's budget request by filing a petition for review with the Judicial Finance Commission acting as the Municipal Finance Commission. The municipal judge has the burden of proof that the budget request is reasonable. The Commission will issue a written recommendation following review of the issues.

### **Trials**

According to Supreme Court Rule 37.61 traffic cases are to be heard separately from other types of cases, if practical. Municipal judges generally hear most traffic and ordinance cases on the same docket. Associate judges hearing traffic cases and municipal cases will typically have a separate docket for the traffic cases from other case types the judge is assigned.

The prosecutor must be present in court for all hearings in order to present evidence and represent the case for the city. (Section 479.120 RSMo)

## **1.2 RECORDKEEPING PROCEDURES**

### **In General**

Section 479.070 RSMo provides that the municipal judge:

shall keep a docket in which he shall enter every case commenced before him and the proceeding therein and he shall keep such other records as required. Such docket and records shall be records of the circuit court. The municipal judge shall deliver said docket and records and all books and papers pertaining to his office to his successor in office or to the presiding judge of the circuit.

The following sections cover recommended record keeping procedures for municipal division courts. These recommendations are generally consistent with record keeping practices recommended for the circuit and associate circuit divisions.

### **Court Docket**

The court docket lists all cases set for hearing or trial on a particular date. The docket is typically prepared a day or two before court and includes information such as the defendant's name, the date of the offense, the charge, and name(s) of the arresting officer(s). In many courts, the judge and the clerk use a copy of the docket as a worksheet to record the activity that occurs in each case during the court hearing. Many courts place all VB cases on the docket for assistance with case tracking. This practice aids the court with case record keeping after the hearings on the docket are complete.

### **Closed Records (Chapter 610 RSMo)**

Closed records as defined in Chapter 610 RSMo are those records that are to be inaccessible to the general public (for example, cases that have been nolle prossed or dismissed, or where the accused was found not guilty). Also, if imposition of sentence is suspended in the case, the records are closed when the case is finally terminated. Closed records are to be accessible only to the defendant and to specific agencies for specific purposes as allowed in Section 610.120 RSMo. According to Section 610.105 RSMo the disposition portion of the record can be disclosed.

The court should designate an area that is inaccessible to the public, preferably a locked cabinet, where all closed records can be kept together. A closed record includes the case file, case index card, financial records where a name is listed, and any other information pertaining to the confidential case.

### **Court Clerk (Section 479.060 RSMo)**

Section 479.060.1 RSMo provides that "where municipal violations are to be tried before a municipal judge or judges, the governing body of the municipality shall provide by ordinance for a clerk or clerks. . ." The primary duty of the clerk is to carry out the day-to-day ministerial duties of the court. In this capacity, the clerk files cases, calendars cases, maintains all case records, and accounts for all money due and paid to the court.

In some communities, court clerks by necessity assume additional responsibilities for the city such as those of police dispatcher, police clerk, or city clerk. In these situations, the city mayor, chief of police, or another non-court city employee often exercises administrative authority over the clerk in all job capacities, including record keeping responsibilities for the court. This practice is

inappropriate because of the constitutional provision of separation of powers. The judge, not the mayor or the chief of police, is primarily responsible for the records of the court and as such, should direct the record keeping operations of the court. The clerk reports directly to the judge concerning the record keeping of the court. The duties of the court clerk are separate and independent from any other duties performed for the city. Records of the court, both public and closed, should not be made available to non-judicial personnel (such as the prosecutor, the city attorney, police officers, the mayor, city council members, or the public), except under the supervision of the court clerk or the judge as authorized by statute.

### **Records Transfer/Destruction (Court Operating Rule 8)**

Missouri Supreme Court Operating Rule 8 (C.O.R. 8) provides for the transfer and destruction of court records. The rule describes specific procedures that must be followed if a municipal court wishes to transfer or destroy court records. The court does not have the option to transfer or destroy records unless the provisions of C.O.R. 8 have been met.

In general, the Rule states that before a municipal division court transfers or destroys any of the records, the following steps must be taken:

- A written offer of the records must be sent to the Secretary of State Archives indicating the age and type of cases to be destroyed or transferred.
- If the records are not accepted by Archives, notice of the availability of the records must be sent to county, city, or regional archival associations, to museum associations, or similar organizations.

**NOTE:** Chapter 610 RSMo closed records may not be transferred, only destroyed.

- If the required offers have been made, the municipal court judge must request that the presiding judge of the circuit issue an order of destruction or transfer of records. See Court Operating Rule 8 found in Appendix D, for a more thorough explanation of these requirements. (See Section 5.2 Records Retention Destruction)

### 1.3 REPORTING REQUIREMENTS

#### **Reporting To The Municipality (Section 479.080.3 RSMo)**

Within the first ten days of every month, the court must submit to the municipality a list of all cases heard during the preceding month. The report may be prepared most easily by making copies of the previous month's court docket which shows all case disposition information.

**NOTE:** If a record is closed under Chapter 610, RSMo, the court should not include the name of the defendant in the monthly report. Closed cases are those that are nolle prossed, those that are dismissed, and those in which the defendant is found not guilty. For these cases, the court should provide all the required information, but black out or leave off the defendant's name.

#### **Reporting To The Missouri State Highway Patrol (Section 302.225.1 RSMo and Supreme Court Rule 37.68)**

The court must report certain case disposition information on moving traffic violations, alcohol and drug-related traffic offenses, and all convictions while driving a commercial motor vehicle to the State Highway Patrol. The report is to be completed within ten days of disposition and is made by submitting the completed "Abstract of Court Record" portion of the Uniform Complaint and Summons, or by completing a "Record of Conviction" form. See "Traffic Case Processing Procedures" found in Chapter III. Refer to Section 302.225.1 RSMo and Supreme Court Rule 37.68 for further details.

#### **Reporting To The Department Of Revenue (Section 595.045 RSMo)**

A \$7.50 Crime Victims' Compensation Fund (CVC) surcharge shall be assessed in all traffic violation cases (moving and non-moving) and other municipal ordinance violation cases. Do not assess the surcharge if the case is dismissed, or if the state, county, or municipality is liable for costs.

At least monthly, the CVC surcharge is to be disbursed as follows:

#### **MUNICIPAL CASES FILED IN A MUNICIPAL COURT**

- 95% (\$7.13 of each fee) to the Missouri Department of Revenue
- 5% (\$.37 of each fee) to the general revenue fund of the city treasury

**MUNICIPAL CASES FILED IN AN ASSOCIATE COURT**

- 80% (\$6.00 of each fee) to the Missouri Department of Revenue
- 20% (\$1.50 of each fee) to the county treasury

For each check prepared, the clerk should be able to identify each case number by the amount included in the total. (See Section 595.045.3 RSMo and Section 4.2 of this handbook for further details.)

**1.4 FINANCIAL PROCEDURES**

**Accounting Guidelines**

The municipal court must have an organized and efficient accounting system that ensures accurate reporting of all transactions and provides sufficient documentation for audit purposes. It is the judge's responsibility to ensure that all necessary accounting records are prepared and retained.

In some municipalities, the court has turned over all accounting-related duties to a city employee other than a court employee. Relinquishing these duties to non-court personnel does not relieve the court of the responsibility to ensure that all accounting records are prepared and retained. For this reason, courts are strongly encouraged to maintain their own financial records.

If the city presently handles these duties and, upon the court's request, refuses to authorize the court to establish and maintain its own financial records and bank accounts, the court should document this refusal. The documentation may prove useful in the event an audit determines that the court monies were improperly handled or that the financial records are incomplete.

The Office of State Courts Administrator has established recommended accounting procedures for municipal divisions. Refer to these Guidelines for specific accounting recommendations. (See Section 4.4 of this handbook for further details.)

**1.5 COURT FACILITIES**

**In General**

The following section provides general guidelines for facilities of municipal courts. Some of the recommendations can be implemented by rearranging existing facilities, while others may entail remodeling or the purchase of furniture or equipment. Obviously, not all courtrooms can be arranged as suggested. Each judge should strive to establish a court that operates professionally, efficiently, and safely with the resources and facilities available.

## **Court Location**

The municipal court should be located in a quiet and easily accessible area. The court should not be located in a private residence, on the property of a private citizen; in a building used by the judge for private business purposes; or at a police station, sheriff's office, or other law enforcement agency office.

## **Court Security**

Policies and procedures should be established to ensure, as much as possible, that persons appearing before the court or employed by the court are safe from harm, and that all the records and property of the court are protected against theft or accidental or intentional damage.

Preventive measures should be taken where possible. For example, the presence of a bailiff or a police officer at all court proceedings will reduce the possibility of violence or general disruption; a barrier, such as a railing in the courtroom may help prevent unwelcome intrusions in the trial or bench area of the courtroom. Defendants should not be allowed to handle their case files without court supervision. Collection of money should not occur in an area where theft and escape could occur easily.

## **Courtroom**

The courtroom should be separate from the clerk's office, the judge's chambers, the conference room, the restrooms, and the storage areas. The courtroom should be large enough to accommodate all interested parties, without overcrowding, including witnesses, attorneys, court personnel, and the general public. According to the Americans with Disabilities Act of 1990, the courtroom must be physically accessible to all persons, including persons with disabilities. Special attention should be given to cleanliness, acoustics, lighting, heating, and ventilation. No commercial advertising should be displayed anywhere in a courtroom.

The courtroom should be clearly divided into a trial area and a spectator area. The trial area should be separated from the spectator area by a railing or space. Where possible, entrances should be at the rear of the spectator area for the public and at the front of the trial area for the judge. Each entrance should have a door that can be closed to minimize outside noise while court is in operation.

The trial area should include an elevated bench area, a clerk's desk and chair, a counsel table (preferably two) with chairs, and a witness chair. The bench area should be elevated so the judge's level is two or three steps higher than the rest of the room. The bench area should include a chair for the judge and a large desk with at least one drawer for storage. An American and a state flag should stand behind the bench, one on each side of the judge. A witness chair should be placed to one side of the judge's desk at the front of the elevated area.

The remainder of the trial area should include (1) a desk and chair for the clerk, preferably directly below the bench; (2) two counsel tables, each with two or more chairs located at least six feet away from the bench; and (3) a blackboard and magnetized traffic board with cars and accessories for clarifying testimony.

The spectator area should have enough fixed chairs or benches to accommodate the court's usual number of observers. Benches or seats should be far enough apart to provide leg and elbow room and to avoid causing discomfort.

### **Clerk's Office**

The clerk's office should be located far enough away from the courtroom to minimize any office noise that might occur during court proceedings.

According to the Americans with Disabilities Act of 1990, the clerk's office and the courtroom must be physically accessible to all persons, including persons with disabilities.

The clerk's work area in the office should be separated from the public entrance area by a counter or a large work table. This arrangement allows for convenience in conducting business, and also helps to prevent unauthorized people from routinely entering work or records storage areas while in the office.

### **Cameras In The Courtroom (Court Operating Rule 16)**

As of July 1, 1995, Court Operating Rule 16 allows for broadcasting, televising, recording or taking of photographs in all judicial circuits and in the Missouri Appellate courts in the state. This rule applies to the municipal courts as divisions of the circuit courts.

The Supreme Court will appoint a media coordinator, upon receipt of a recommendation from the presiding judge of the circuit. Media coordinators have already been appointed in many circuits. The media coordinator is responsible for working with the media representatives to ensure coverage is conducted in accordance with Court Operating Rule 16. (See Appendix E) The Supreme Court has prepared a "Judicial Handbook for Cameras in the Courtroom". Copies of the handbook can be obtained by contacting:

Supreme Court of Missouri  
Court Operating Rule 16, Judicial Handbook Cameras in the Courtroom  
P.O. Box 150  
Jefferson City, 65102  
(573) 751-4144

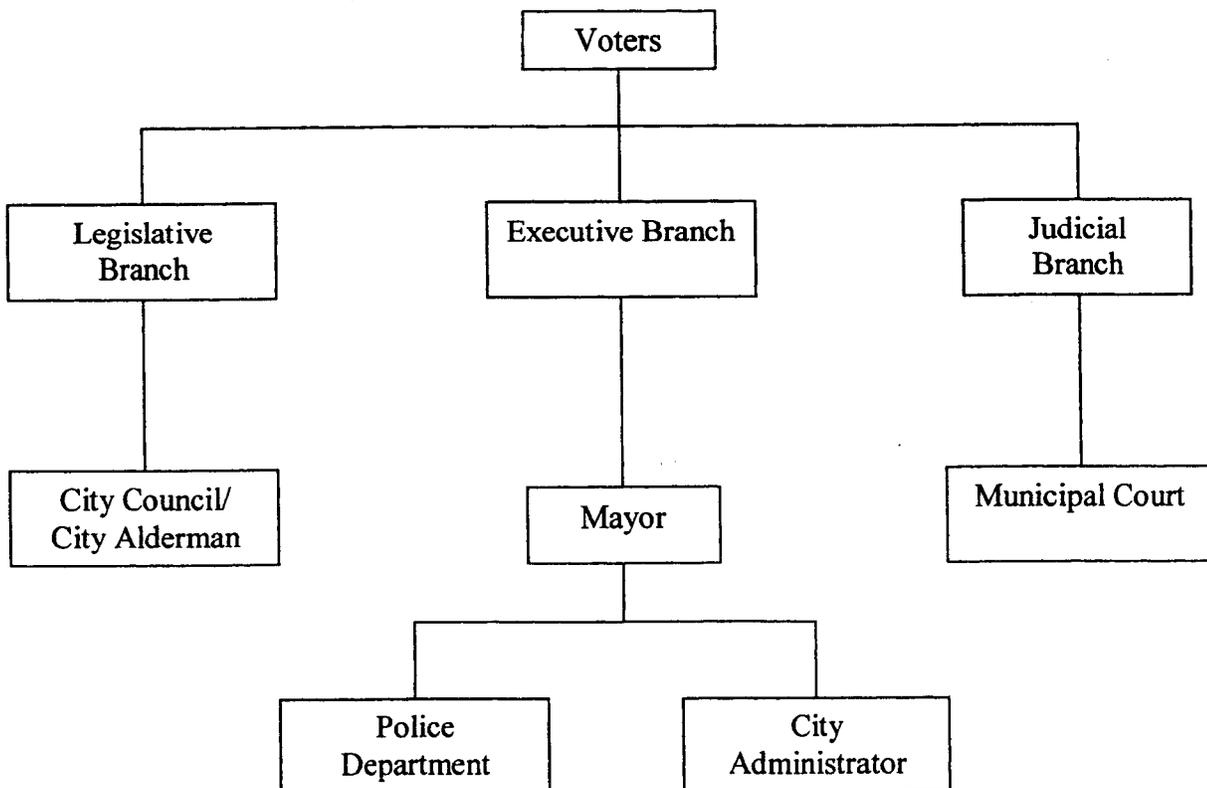
MISSOURI CONSTITUTION

ARTICLE II  
THE DISTRIBUTION OF POWERS

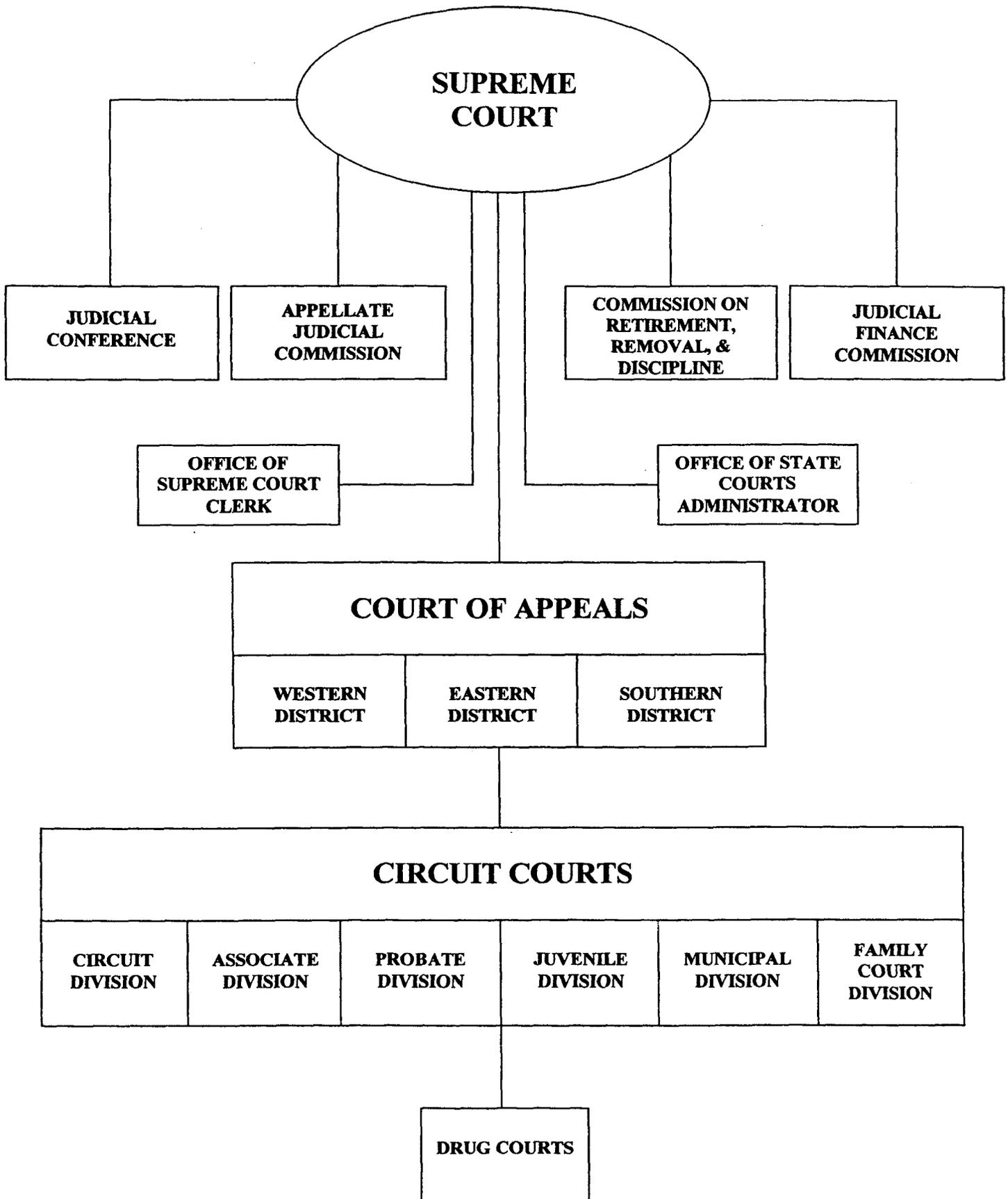
**Section 1. The departments of government – separation of powers.**

The powers of government shall be divided into three distinct departments – the legislative, executive and judicial – each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.

CITY GOVERNMENT



# ORGANIZATIONAL CHART OF MISSOURI'S JUDICIAL BRANCH





## OFFICE OF STATE COURTS ADMINISTRATOR

2112 Industrial Drive  
P.O. Box 104480  
Jefferson City, Missouri  
65110

RONALD L. LARKIN  
ADMINISTRATOR

August 20, 1997

PHONE (870) 751-4377  
FAX (870) 751-4440

Mrs. Margaret Kelly, CPA  
State Auditor  
Office of the State Auditor  
P. O. Box 889  
Jefferson City, MO 65102-0889

Dear Mrs Kelly:

This letter addresses a concern repeatedly expressed to us by court staff concerning the State Auditor's recommendation that the courts work with local law enforcement agencies to ensure that all uniform traffic tickets are accounted for. This recommendation is commonly included as an "audit finding" in the reports issued by your office concerning the municipal courts. The following are reasons why I believe this recommendation is inappropriate for the courts.

1. Statutory responsibility for tracking the traffic tickets rests with the law enforcement office. Section 300.675.1 RSMo, provides, "The municipality shall provide books containing uniform traffic tickets as prescribed by Supreme Court Rule 37.46." Subsection 2 provides "Such books shall be issued to the chief of police or his duly authorized agent, a record shall be maintained of every book so issued and a written receipt shall be required for every book." This language provides that: (1) the municipality (executive branch) is responsible for initially ordering and accounting for the books of uniform traffic tickets and (2) the municipality is responsible for issuing the books to the chief of police (executive branch) and maintaining records including a receipt for each book issued to the chief of police.  
  
Subsection 3 of Section 300.675 RSMo, further provides that the chief of police is responsible for issuing the ticket books to individual officers and obtaining a written receipt for each book issued to the officers and the chief of police shall maintain "a record of every such book and each set of citations contained therein." This language says that the chief of police (executive branch) rather than the municipal court (judicial branch) is responsible for maintaining records of each citation.
2. Courts do not receive all of the ticket forms written by officers. Tickets are written in error, accidentally destroyed, or not filed with the court by the prosecutor - which is the office that determines which tickets the court will receive.
3. The municipal court neither has the time nor the authority to perform this task of verifying that the police department and the PA have done their jobs. Also, the court

**Letter to Mrs. Margaret Kelly  
August 20, 1997  
Page Two**

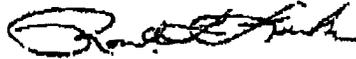
has a constitutional and statutory responsibility to maintain its independence. If the municipal court has knowledge that a defendant had more than one ticket, but the PA did not file all of the tickets in the court, it could prejudice or appear to prejudice the court's viewpoint on tickets that are actually filed with the court.

4. The logic used does not seem to be consistent between the Associate Divisions and the Municipal Divisions. In the Municipal Divisions, the recommendation is made for the municipal court to help track the ticket numbers but at the county level the recommendation is made to the County Sheriff to track the ticket numbers.

In summary, the State Auditor's recommendation that the municipal court account for all uniform traffic tickets appears to be in conflict with Article II of the Missouri Constitution which requires a separation of powers between the three branches of government.

Based on the above, I am requesting that the State Auditor's Office discontinue suggesting that court staff assist with the process of tracking uniform traffic tickets. The recommendation should be made to the police department, or some other office within the Executive Branch of city government.

Respectfully,



Ronald L. Larkin



**SUPREME COURT OF MISSOURI  
OFFICE OF STATE COURTS ADMINISTRATOR**

**MICHAEL L. BUENGER**  
ADMINISTRATOR  
**DAVID S. COPLEN**  
DIRECTOR OF  
ADMINISTRATION  
AND BUDGET  
**NANCY GRIGGS**  
DIRECTOR OF  
COURT SERVICES  
  
PHONE (573) 751-4377

2112 Industrial Drive  
P.O. Box 104480  
Jefferson City, Missouri  
65110

**JIM ROGGERO**  
DIRECTOR OF  
INFORMATION TECHNOLOGY  
**LINDA EVANS**  
DIRECTOR OF JUDICIAL  
DEPARTMENT EDUCATION  
**GARY WAIT**  
DIRECTOR OF JUVENILE AND  
ADULT COURT PROGRAMS  
  
FAX (573) 751-5540

**MEMORANDUM**

**TO:**

**FROM:** Carrie Wolken CW

**RE:** Administrative Procedures in Municipal Court

**DATE:** March 30, 2004

In response to your e-mail dated March 11, 2004, I have compiled the following information regarding the general administration by municipal courts of Missouri. I apologize for not sending this information in a timely manner, I have been out of the office unexpectedly for 2 weeks.

I would like to begin by stating what Missouri Constitution writes regarding the separation of powers. Article II of the Missouri Constitution states the powers of government shall be divided into three distinct departments – the legislative, executive, and judicial. Each department shall be separate from the other department, no person within one of the departments shall exercise powers belonging to one of the other departments except where the constitution expressly permits.

That being said, we continue down the chain of command and Supreme Court Rule 37.04 and Section 479.020 RSMo both state who shall have general administrative authority over court personnel:

**37.04. Supervision of Courts Hearing Ordinance Violations**

The presiding judge of the circuit shall have general administrative authority over the judges and court personnel of all divisions of the circuit court hearing and determining ordinance violations within the circuit. The judges of all such divisions shall be subject to the rules of the circuit court that are not inconsistent with this Rule 37.

This information leads us up to the fact that the municipal clerk's direct supervisor should be the municipal judge. The municipal judge is the chief judicial officer of the municipal court and, as such, assumes the primary responsibility for the administration of the court. General administrative duties of the municipal judge include the following:

- ➔ Preparing the municipal court budget
- ➔ Supervising the court staff
- ➔ Ensuring that complete and accurate case records and accounting records are being maintained.

(Municipal Clerk Manual section 1.1)

To sum this up, the city clerk should not have any administrative authority over the municipal court clerk as these are two separate divisions of government. The municipal clerk should report to the municipal judge and the judge has final say over what occurs in the municipal court.

I hope this gives you some help in understanding the set up of municipal courts and helps clear up any problems you are encountering in your court. If you need any other information, please feel free to contact me at (573) 526-8866 or via e-mail at [Carrie.Wolken@courts.mo.gov](mailto:Carrie.Wolken@courts.mo.gov).

## **APPENDIX E**

- **SURVEY COVER LETTER**
- **SURVEY**

Alexander Curchin, Judge

Lawrence G. Myers, M.A., C.C.A.  
Court Administrator

August 6, 2004

Dear Fellow Court Administrator/Court Clerk:

For those of you who do not know me, I am Larry Myers and I am the Court Administrator for the Joplin, Missouri Municipal Court. I am taking an Institute for Court Management (ICM) course and as a part of the course I am undertaking a research project focusing on the court structures of Municipal Courts in Missouri.

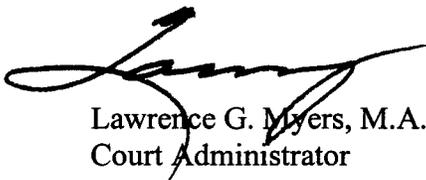
The focus of my project is to survey the Missouri Municipal Courts in order to understand all of the different ways that we are structured and the strengths and problems, if any, created by the different administrative structures. I am aware that size of court, number of filings and part time staff and Judges all play a part in our structure and that such structure may make our jobs easier or harder.

**I need your help in completing the survey and sending it back to me by August 20, 2004. Your survey is important to me and to this project.** Please take 15 minutes of your precious time and complete your survey and mail it back to me. I am assuring you that your responses will be private and confidential. I will not report individual responses to any of the survey items. Instead, I will only present data in aggregate form.

Once the data collection is complete, I hope to document the various ways that Municipal Courts in Missouri are structured and to make recommendations to the Office of State Court Administrator to include additional information on Municipal Court structure in the Municipal Clerk Manual. It is hoped that this information, based on sound principles, will improve the administration of justice and make your job easier. **Your help and your survey are critical.**

I appreciate your cooperation in this research endeavor. With quality data from you and the other Municipal Courts in Missouri, it will be possible to provide you, judges, court staff and policy makers with valuable information about court structure and how important a role it plays in the administration of justice. Please feel free to contact me if you have any questions. I appreciate your help and valuable input.

Sincerely,



Lawrence G. Myers, M.A., C.C.A.  
Court Administrator

## MUNICIPAL COURT SURVEY

Please provide us with the following information:

### BACKGROUND INFORMATION

1. a) Your job title: \_\_\_\_\_
- b) Years of service with the court:  
\_\_\_\_ 0–5 yrs    \_\_\_\_ 6–10 yrs    \_\_\_\_ 11–15 yrs    \_\_\_\_ 16–20 yrs    \_\_\_\_ Over 20 yrs
- c) I am \_\_\_\_ full time    \_\_\_\_ part time
- d) If part time, do you also work for other departments within the City? If so please put a check mark for each department you work in:  
\_\_\_\_ City Clerk    \_\_\_\_ Prosecutor    \_\_\_\_ Public Defender    \_\_\_\_ Police  
\_\_\_\_ Other (Please specify) \_\_\_\_\_
- e) Number of staff, excluding the Judge(s), that work in the court: \_\_\_\_\_.
- f) Number of Judge(s) \_\_\_\_ part time    \_\_\_\_ full time

### COURT INFORMATION

2. Name of your Court (optional): \_\_\_\_\_
3. Number of filings in 2003: \_\_\_\_\_
4. Is your Chief City Prosecutor \_\_\_\_ full time or \_\_\_\_ part time?

### ADMINISTRATIVE STRUCTURE

5. During the hours that you work in the Court please check the primary person to whom you report: (**if possible, please provide a copy of your organizational chart when you mail back the survey**)  
\_\_\_\_ Judge    \_\_\_\_ City Manager    \_\_\_\_ Judge/City Manager    \_\_\_\_ City Clerk  
\_\_\_\_ Director/someone in Finance    \_\_\_\_ City Prosecutor    \_\_\_\_ Chief of Police  
\_\_\_\_ Other (Please Specify): \_\_\_\_\_

6. Who conducts your performance evaluation? \_\_\_\_\_  
 Year last evaluated (optional): \_\_\_\_\_
7. Who do you think the Court Administrator/Court Clerk should report to?  
 \_\_\_ Report to the Judge     \_\_\_ Report to the City Manager  
 \_\_\_ Report to Judge/City Manager     \_\_\_ Report to the City Prosecutor  
 \_\_\_ Report to Director/Someone in Finance     \_\_\_ Report to Chief of Police  
 \_\_\_ Other (Please Specify) \_\_\_\_\_
8. Why would you prefer this administrative structure? Please check all that apply:  
 \_\_\_ This individual understands how the Court operates  
 \_\_\_ To ensure the separation of the different branches of government  
 \_\_\_ To maintain the independence of the Court  
 \_\_\_ This individual understands the purposes of Court  
 \_\_\_ This individual better understands the role of the Court Administrator/Court Clerk  
 \_\_\_ Other, Please Specify: \_\_\_\_\_
9. Do you have regularly scheduled meetings with the Presiding Judge of the Circuit?  
 \_\_\_ Yes     \_\_\_ No
10. Has your current administrative structure (who you report to) caused you to . . . ?  
*“Please check any that applies:”*  
 \_\_\_ file a case that should not have been filed  
 \_\_\_ **not** to file a case that should have been filed  
 \_\_\_ change how a case should be decided  
 \_\_\_ change how a case was decided  
 \_\_\_ **not** send a disposition to the Department of Revenue  
 \_\_\_ release information to the public that was closed information



## GOALS, PURPOSES AND RESPONSIBILITIES OF MUNICIPAL COURTS

12. Please indicate your degree of agreement with the following purposes of Municipal Courts:

	<b>How Strongly Agree or Disagree</b>					
	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree	Not Applicable/ Don't Know
<b>The purposes of Municipal Courts are to:</b>						
Do justice	1	2	3	4	5	NA
Guarantee liberty	1	2	3	4	5	NA
Enhance social order	1	2	3	4	5	NA
Maintain rule of law	1	2	3	4	5	NA
Generate revenue	1	2	3	4	5	NA
Resolve disputes	1	2	3	4	5	NA
Provide equal protection	1	2	3	4	5	NA
Ensure due process	1	2	3	4	5	NA
Rehabilitate persons convicted of crimes	1	2	3	4	5	NA
Deter criminal behavior	1	2	3	4	5	NA
Separate some convicted people from society	1	2	3	4	5	NA

13. Following is a list of phrases, which some people say are the responsibilities of Courts. Please indicate your degree of agreement with the following phrases:

	<b>How Strongly Agree or Disagree</b>					
	Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree	Not Applicable/ Don't Know
<b>It is the responsibility of the Courts to:</b>						
Make impartial decisions	1	2	3	4	5	NA

13. **(Continued)** Following is a list of phrases, which some people say are the responsibilities of Courts. Please indicate your degree of agreement with the following phrases:

	<b>How Strongly Agree or Disagree</b>					
	<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Neither Agree or Disagree</b>	<b>Agree</b>	<b>Strongly Agree</b>	<b>Not Applicable/ Don't Know</b>
<b>It is the responsibility of the Courts to: (continued)</b>						
Ensure fairness under the law	1	2	3	4	5	NA
Defend constitutional rights and freedoms	1	2	3	4	5	NA
Provide equal justice for rich and poor	1	2	3	4	5	NA
Be an independent check on other branches of government	1	2	3	4	5	NA
Raise revenue for cities through fines and fees	1	2	3	4	5	NA
Protect civil rights	1	2	3	4	5	NA
Protect individual rights	1	2	3	4	5	NA
Dispense punishment for Crimes	1	2	3	4	5	NA
Resist political pressure	1	2	3	4	5	NA
Advance social and economic justice	1	2	3	4	5	NA

14. Please indicate your agreement with the following statements:

- a) Because Judges and Court Administrators/Clerks are appointed/elected to make independent decisions, it is necessary for courts to maintain an administrative structure that is separate from the Executive and Legislative Branches of government.

<b>Strongly Disagree</b>	<b>Disagree</b>	<b>Neither Agree or Disagree</b>	<b>Agree</b>	<b>Strongly Agree</b>	<b>Not Applicable/ Don't Know</b>
1	2	3	4	5	NA

b) Judges should not interfere with agreements reached between prosecution and defense attorneys about charges that will be dismissed or modified when a defendant enters a guilty plea.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree	Not Applicable? Don't Know
1	2	3	4	5	NA

c) Judges must be vigilant in protecting the administration boundaries of the Court. For example, the Judges of Court should not allow someone in the Executive Branch of Government to influence the Court's impartial judging of cases.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree	Not Applicable/ Don't Know
1	2	3	4	5	NA

d) The Code of Judicial Conduct applies to the Judge and to the Municipal Court staff.

Strongly Disagree	Disagree	Neither Agree or Disagree	Agree	Strongly Agree	Not Applicable/ Don't Know
1	2	3	4	5	NA

15. In addition, I would like to make the following comments regarding the current administrative structure of my court:

---



---



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I sincerely appreciate the time you have taken to answer this survey. **Please feel free to call me if you have any questions.**

**Please mail by August 20, 2004 this survey, and your organizational chart if one is available, to:**

Lawrence G. Myers, M.A., C.C.A.  
 Court Administrator  
 Joplin Municipal Court  
 303 East Third Street  
 Joplin, Missouri 64801  
 Phone: 417/624-0820 ext 236  
 Fax: 417/625-4734  
 Email: [LMyers@joplinmo.org](mailto:LMyers@joplinmo.org)

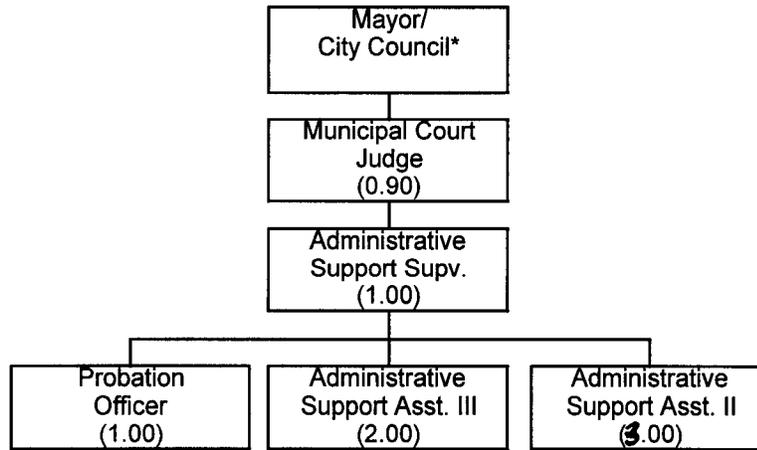
## APPENDIX F

- **Organization Charts**

**City of Columbia**  
**City of Concordia**  
**City of Crestwood**  
**City of Dellwood**  
**City of Hannibal**  
**City of Joplin**  
**City of Lake Saint Louis**  
**City of Mansfield**  
**City of Maryland Heights**  
**City of Moberly**  
**City of Piedmont**  
**City of Raymore**  
**City of Republic**  
**City of Richland**  
**City of South West City**  
**City of Springfield**  
**City of Sunset Hills**  
**City name not given**  
**City name not given**  
**City name not given**



City of Columbia - Municipal Court  
8.90 FTE Positions



\* Positions not included in Municipal Court's FTE count.

# *City of Concordia*

*County of Lafayette, Missouri*

## **CIRCUIT COURT, MUNICIPAL DIVISION**

**618 S. MAIN STREET, P.O. BOX 847  
CONCORDIA, MO 64020**

**PHONE 660-463-2228  
FAX 660-463-7574**

① JUDGE KELLY HALFORD  
② PROSECUTING ATTY. JAMES HALL

③ CHIEF OF POLICE HERB BRYSON  
COURT CLERK NANCY HOLSTEN

④ City Admin. Robert

*Chain of Command*

**citizens of the City of Crestwood**

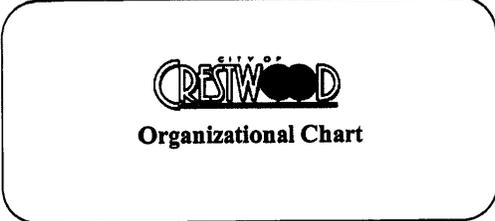
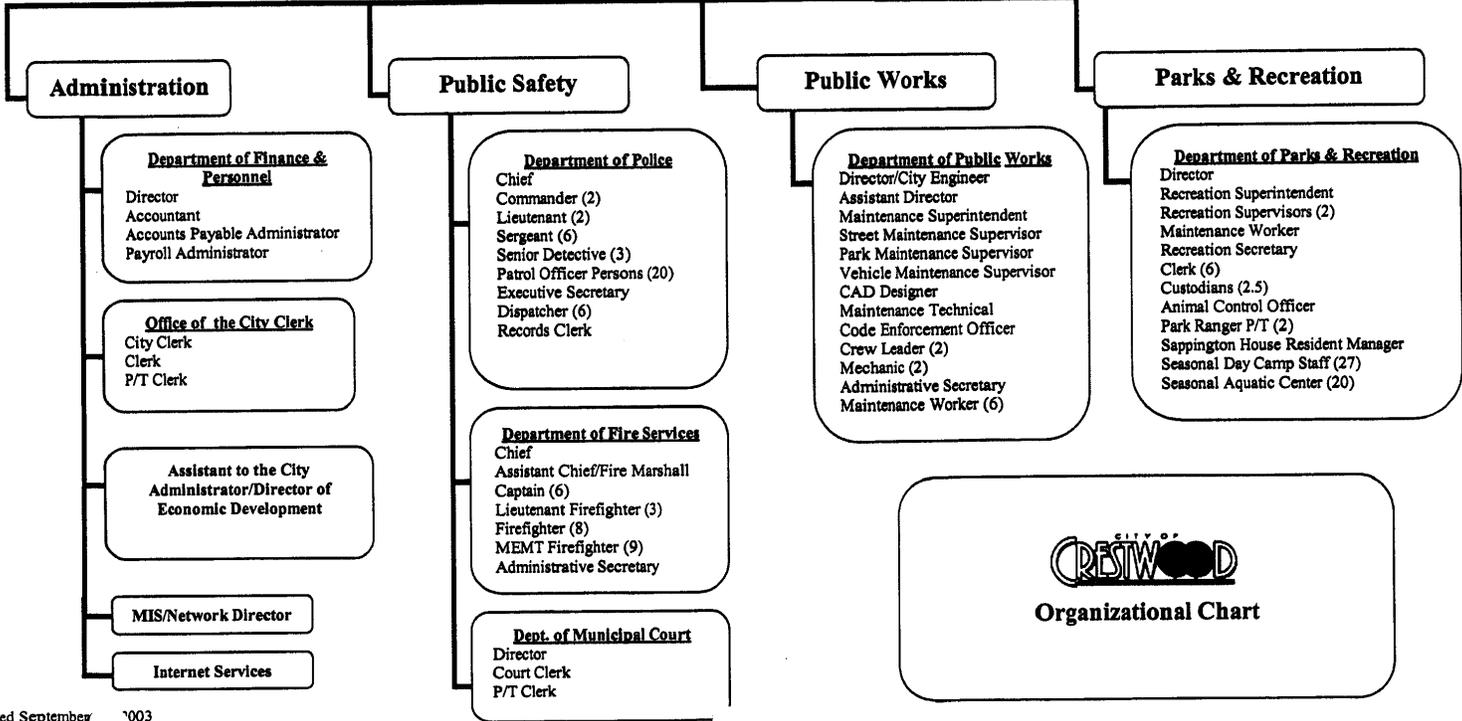
**The Honorable James E. Robertson, Mayor & Board of Aldermen (8)**

- Boards & Committees**
- Animal Control Board
  - Board of Zoning Adjustment
  - Fire Board
  - Planning, Zoning & Architectural Review Board
  - Police Board
  - Public Works Board
  - Sign Commission
  - Tax Increment Financing Commission
  - Ways & Means Committee

**Executive Secretary/Office Manager**

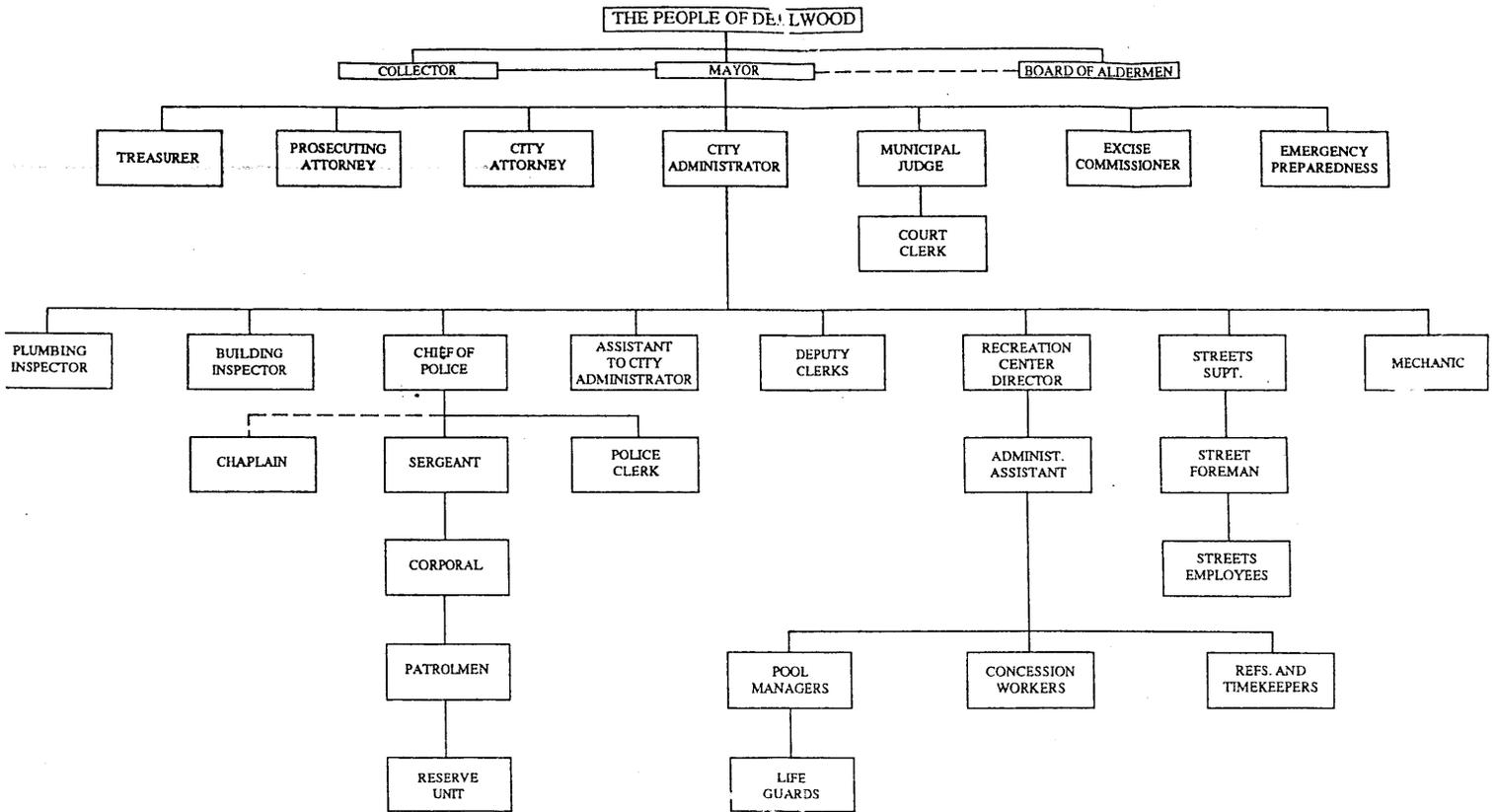
**City Administrator**

**City Attorney**



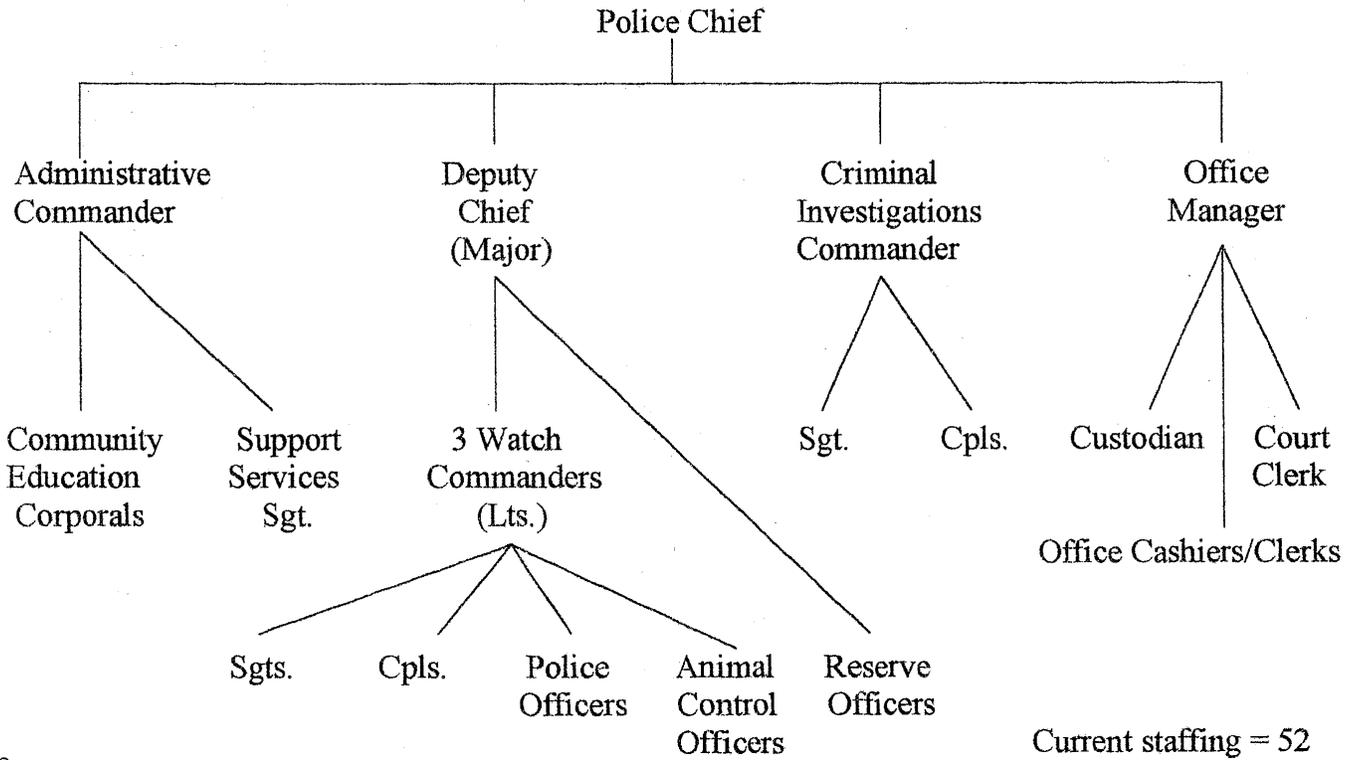
vised September 2003

# CITY OF DELLWOOD, MISSOURI ORGANIZATION CHART



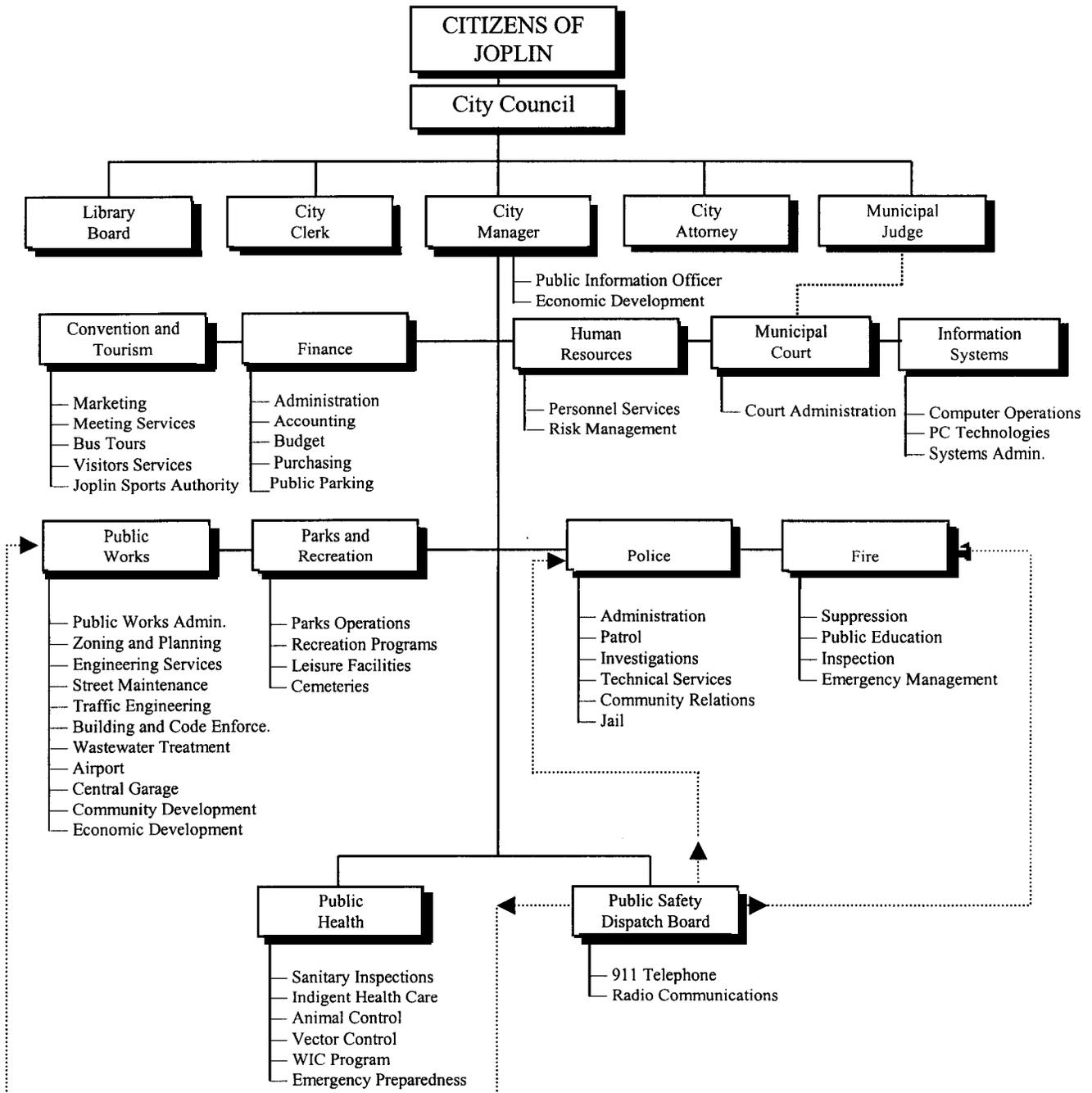
# Police Department

02/20/01

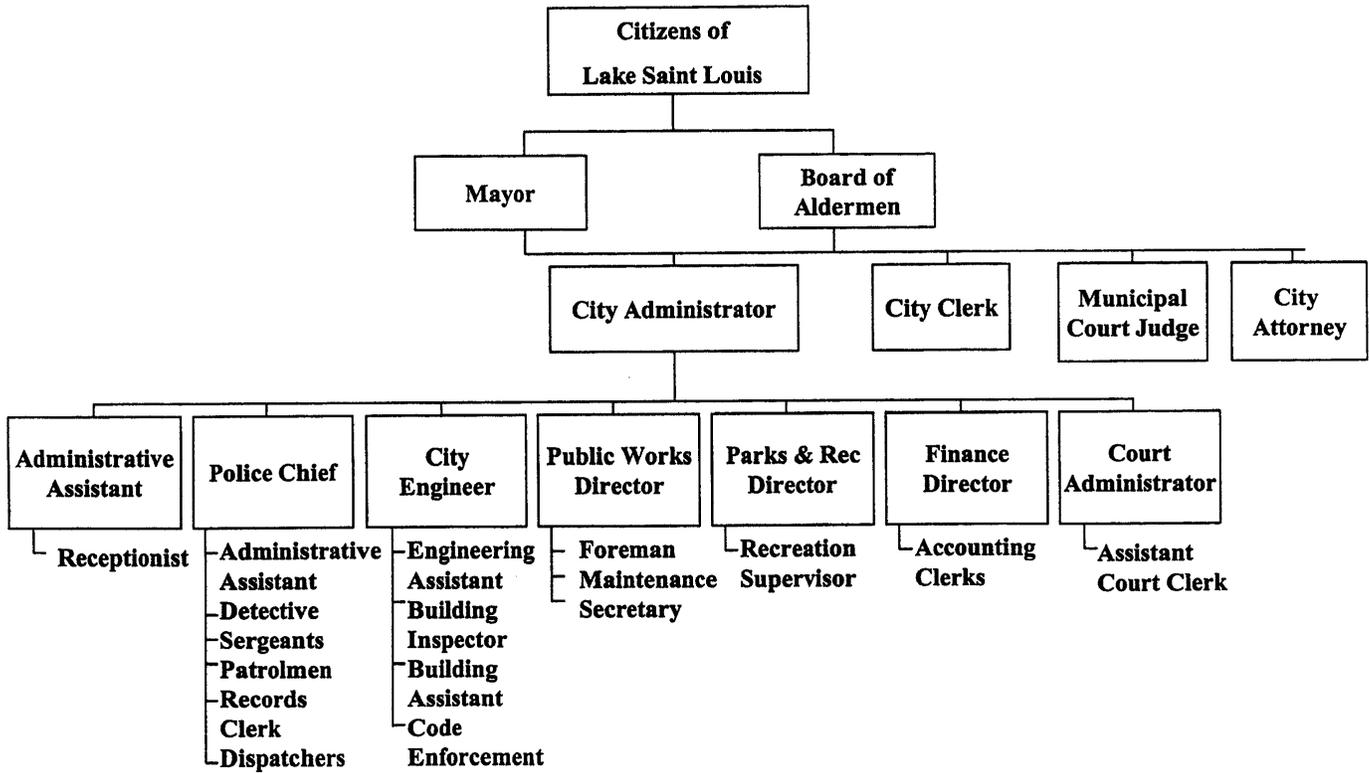


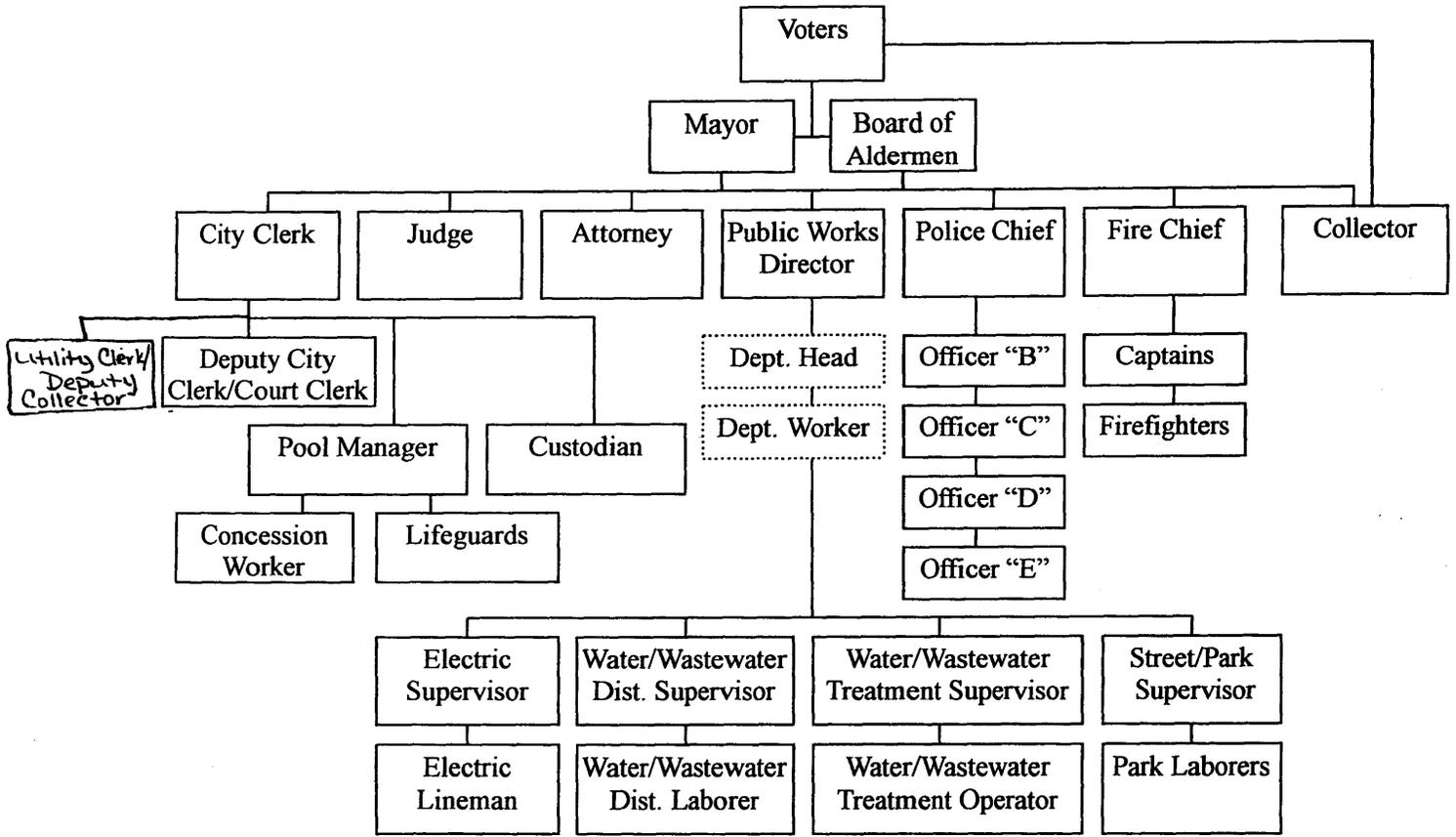
6

# CITY OF JOPLIN, MISSOURI



# City of Lake Saint Louis 1999 Organization Chart

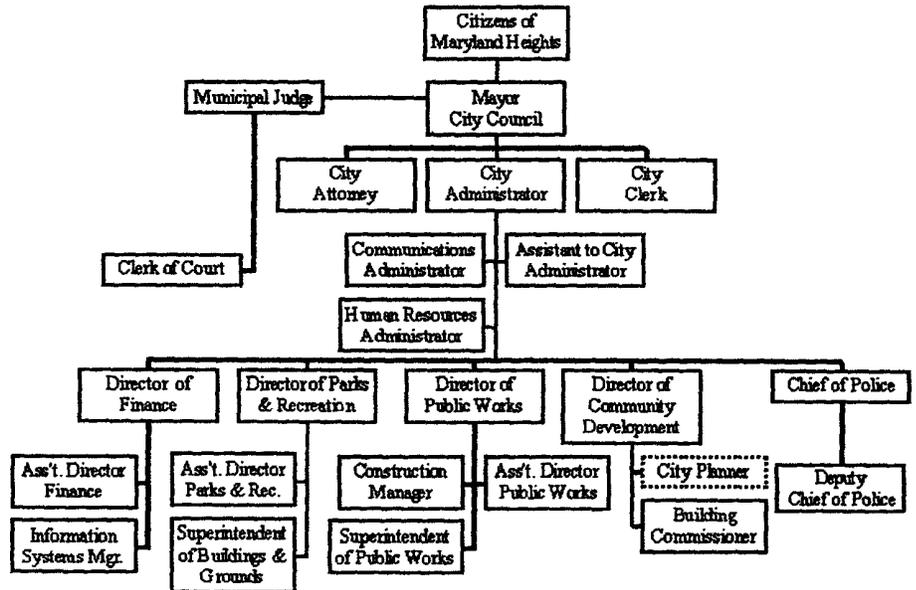




## City of Mansfield



## Organization Chart

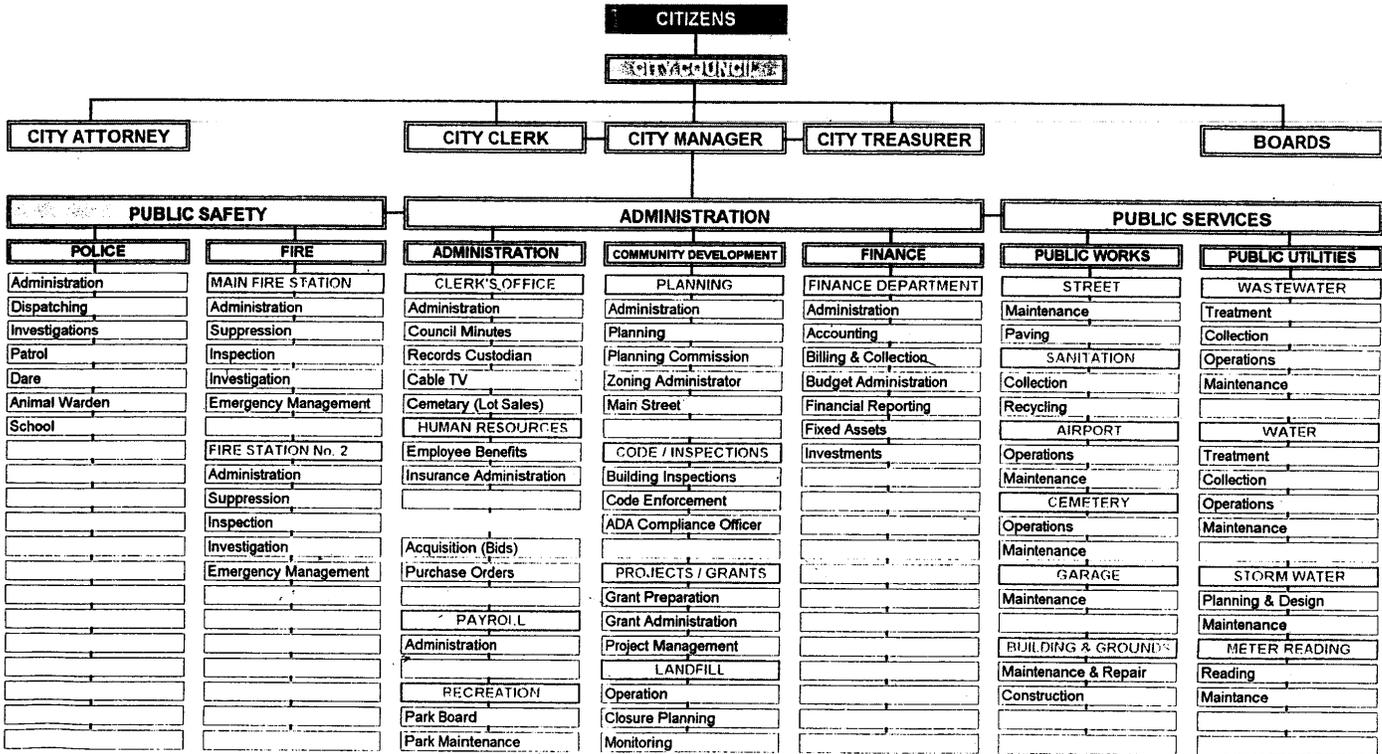


### Personnel

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Administration	10.39	11.04	11.04
Finance	11.25	11.25	11.25
Community Development	15.25	16.25	16.00
Public Works	37.75	36.75	36.00
Police	93.40	93.40	93.40
Municipal Court	3.30	4.15	4.15
Parks & Recreation	44.65	43.70	41.30
Human Services	1.95	2.50	2.25
<b>Total Personnel (FTE)</b>	<b>217.94</b>	<b>219.04</b>	<b>215.39</b>

City of Moberly, MO  
Organizational Chart

Date: 11.20.2002

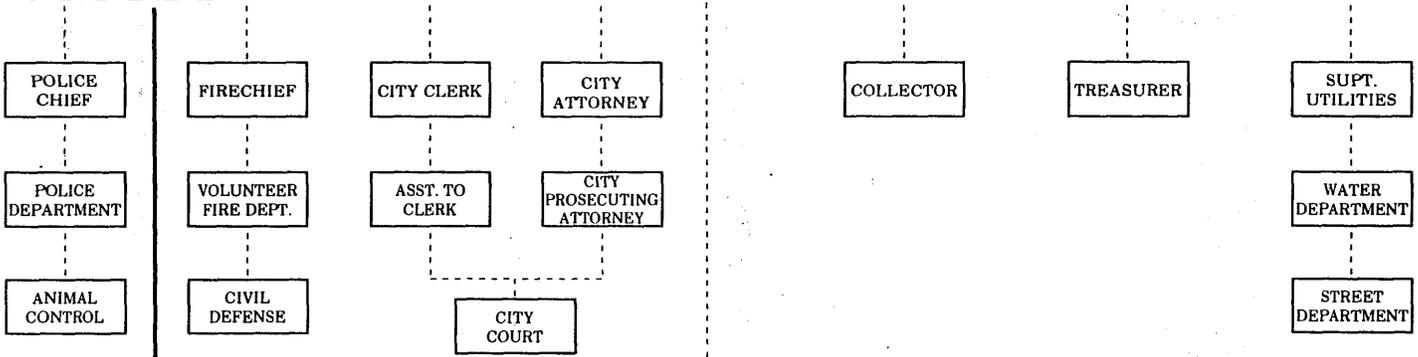


APPENDIX A

**ORGANIZATION CHART - 1997**  
**CITY OF PIEDMONT**

MAYOR

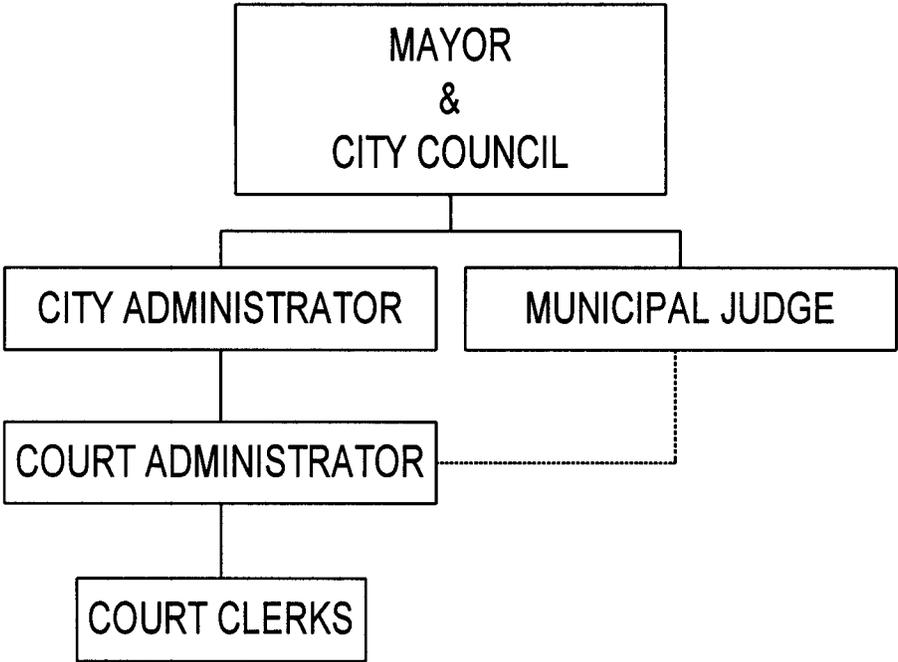
CITY COUNCIL - 4 MEMBERS



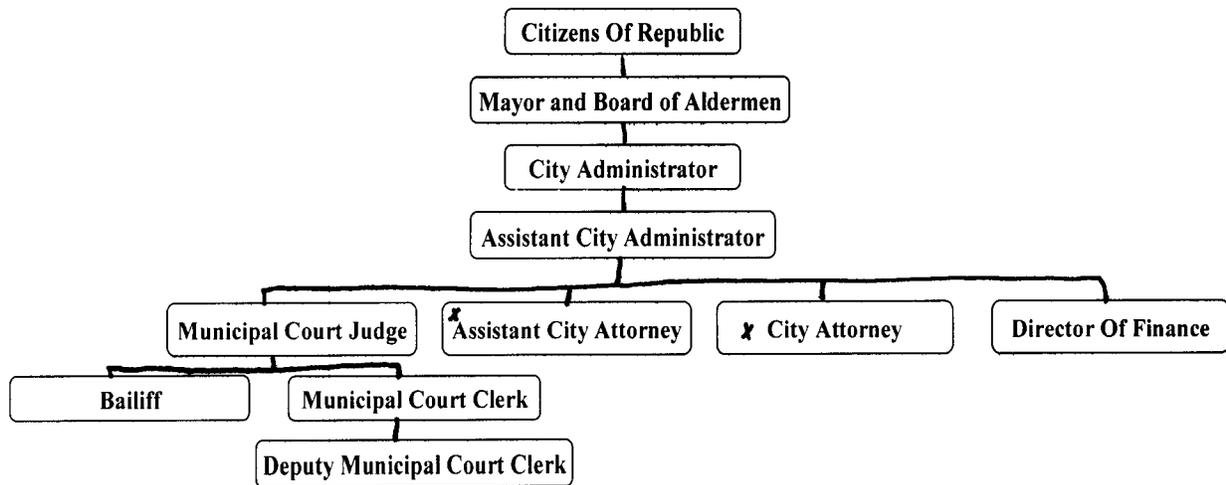
ADVISORY BOARDS



# MUNICIPAL COURT



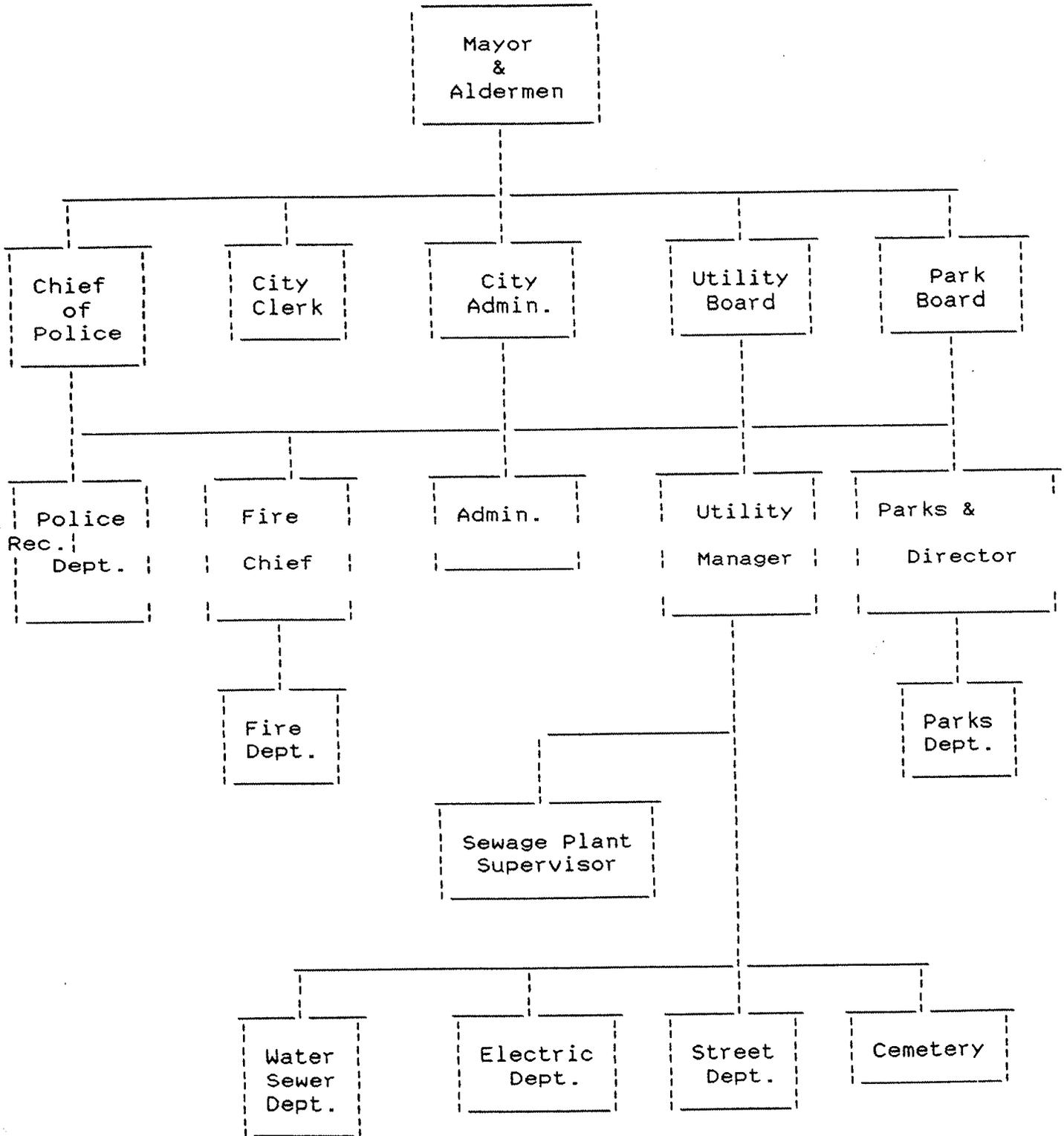
# Organizational Chart



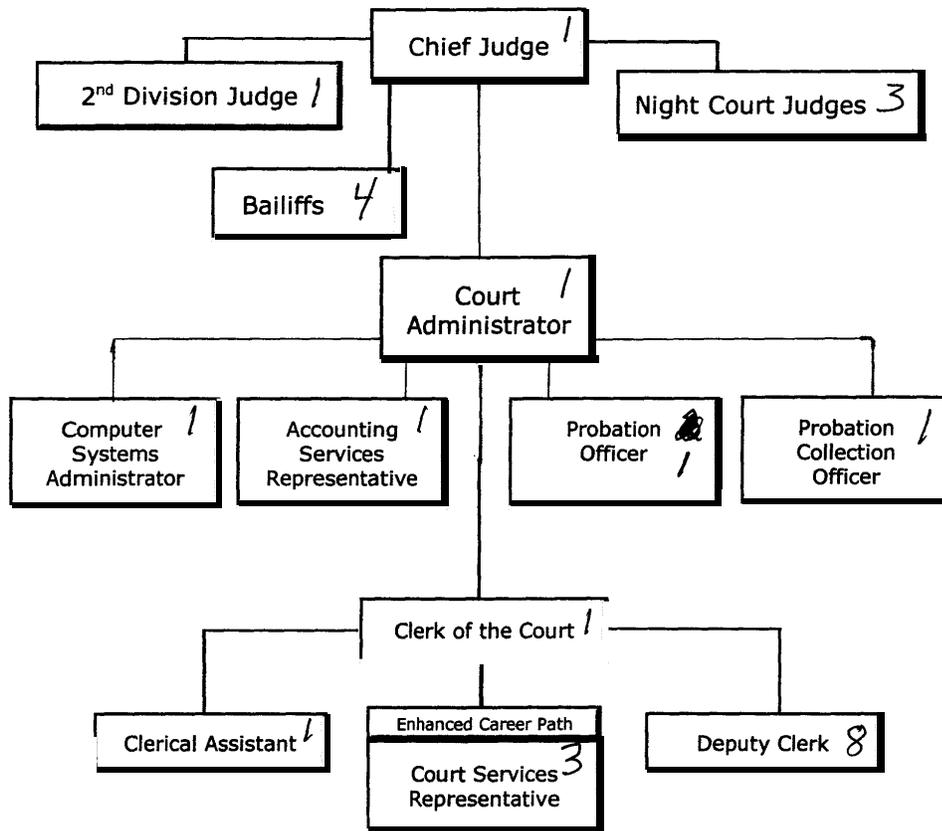
\* These positions are now the same person.

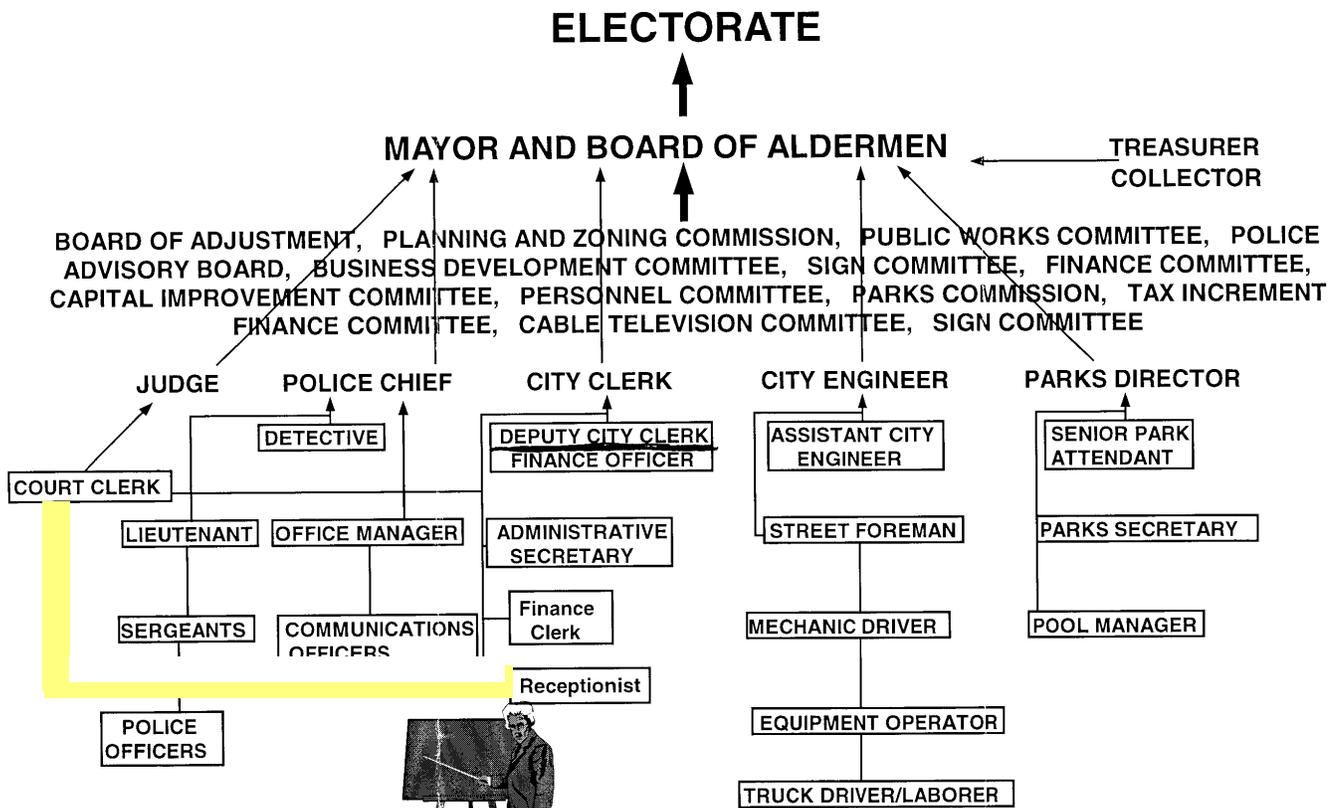
CITY OF RICHLAND

ORGANIZATIONAL CHART

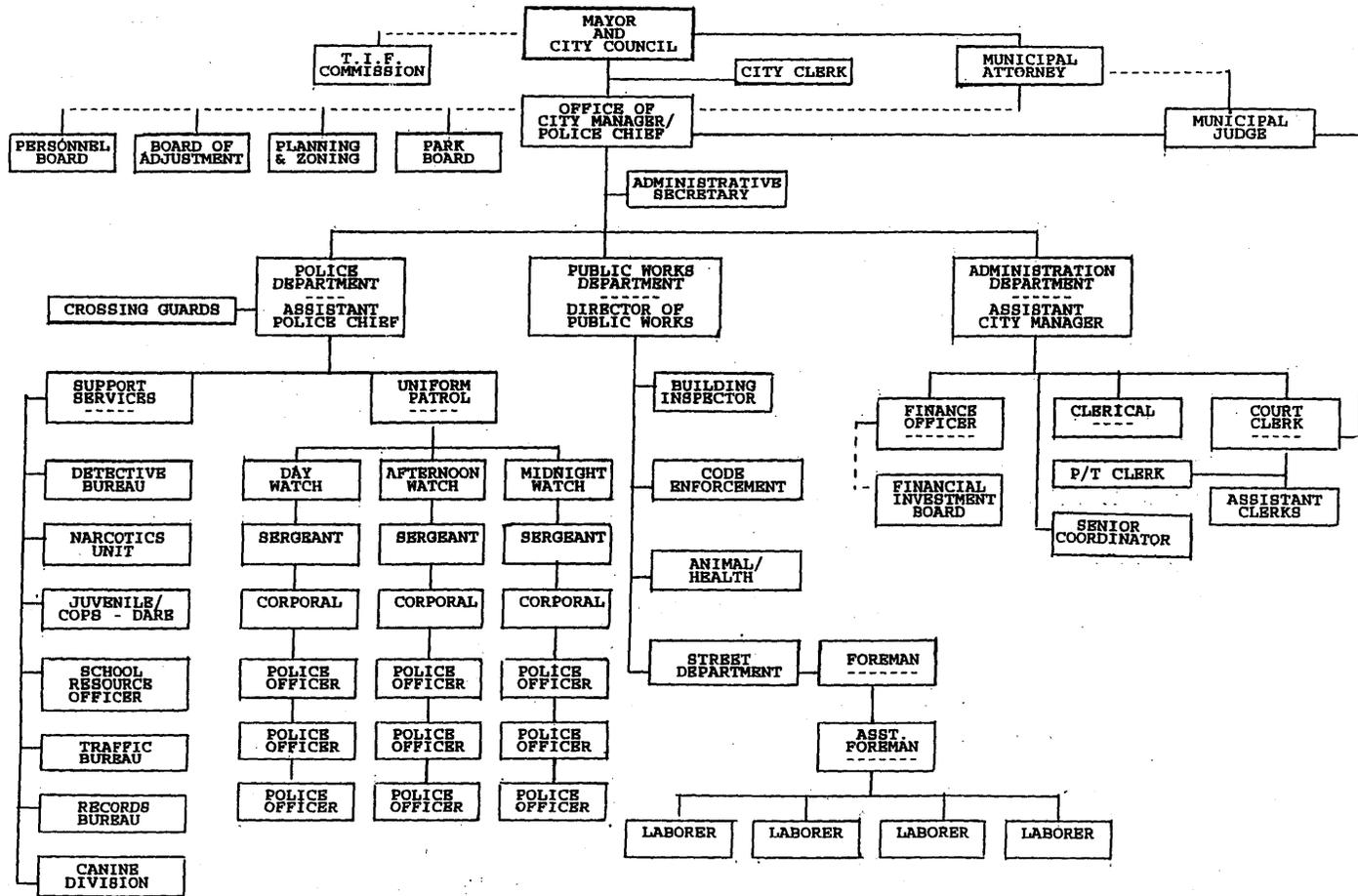








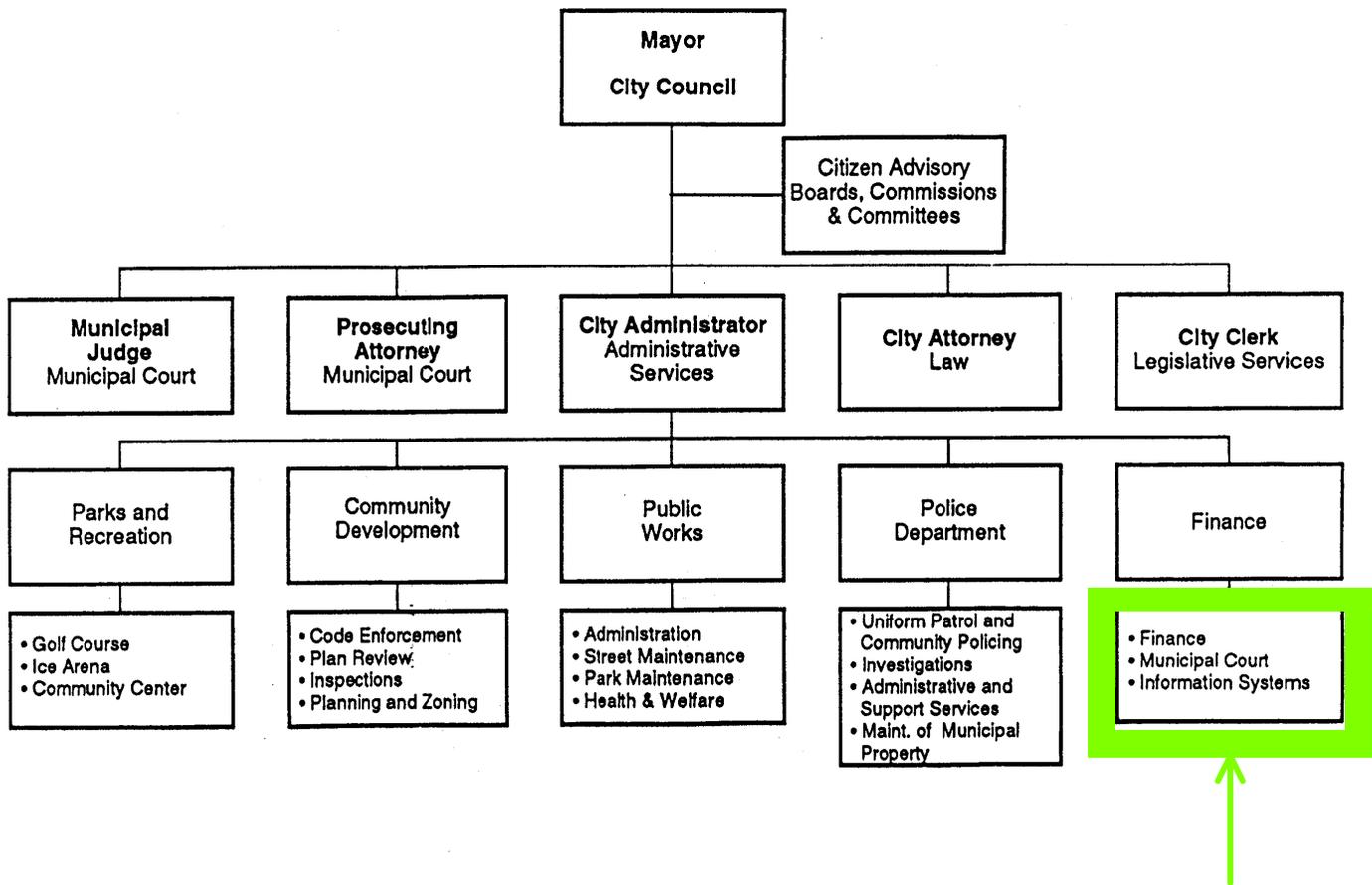
**ORGANIZATIONAL CHART FOR THE CITY OF SUNSET HILLS**

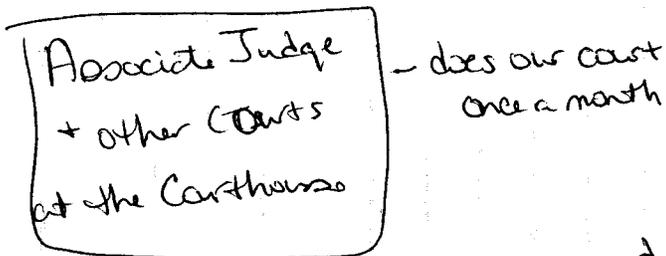
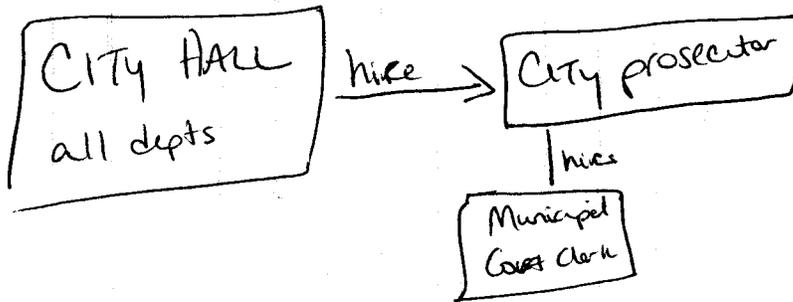


———— LINE OF AUTHORITY  
 - - - - - ADVISORY/INDIRECT AUTHORITY

-27-

APPROP





Rough draft of my organization  
as I see it - not sure prosecutor shows on  
City Hall's organization chart.

## APPENDIX G

- **JUDICIAL INDEPENDENCE IN THE MUNICIPAL COURT:  
PRELIMINARY OBSERVATIONS FROM MISSOURI**

**An article published in Volume 41 Issue 2 Summer 2004 *Court Review*  
The Journal of the American Judges Association and submitted to the  
National Association for Court Management for republication in a  
future issue of the *Court Manager*.**

# Judicial Independence in the Municipal Court: Preliminary Observations from Missouri

Lawrence G. Myers

**S**tudies of judicial independence abound. Yet most of them focus on the federal courts, even though the overwhelming bulk of the contacts between the public and the courts take place in state and municipal courts.<sup>1</sup> And there are real questions about judicial independence at the state and local level.

Preliminary results from a recent survey of the municipal courts in Missouri show significant structural and attitudinal barriers to judicial independence. The results are preliminary in light of the deadline for this issue: only a relatively short time was available to analyze the responses before submitting this article. Even the early returns suggest real problems, however.

A 15-question survey was sent August 6, 2004 to all of the 473 reported municipal courts in Missouri. The questionnaire was designed to assess the administrative structure of each court, problems that might be associated with that structure, and attitudes about the role and purpose of the court. Responses were requested within two weeks. By the end of August, 198 survey responses had been received. That represents a return rate of 43% once the 11 cities that reported they no longer have a municipal court are eliminated. While a slightly higher response rate would have been preferable,<sup>2</sup> since we cannot determine the extent to which the views of non-responders differ from those who returned the surveys, the responses appear to provide a great deal of useful information.

Before turning to the substantive results, we should consider the characteristics of those who responded. Almost half of the respondents worked in courts that had fewer than 1,000 case filings during all of 2003 (Figure 1). Thus, a significant portion

of these courts will necessarily be part-time in nature. Another 16% worked in courts with 5,000 or more case filings per year and a total of 34% worked in courts with 2,000 or more case filings per year. Thus, the sample included significant numbers for all sizes of municipal courts found in Missouri.

In total, for those who responded and answered the question on number of filings for 2003, more than 847,000 case filings were represented. That is a lot of people, and yet many courts are very small and located in rural Missouri. A few have dockets every workday of the week; many have court once a month; and some have court only once every three months.

Most of the respondents were court clerks, although two were judges (Figure 2). About three-fourths of the respondents were court clerks; about one-fourth worked both as a court clerk and also had a separate, executive branch job title.

This article does not address the constitutional and statutory provisions governing the courts of Missouri. To do so would exceed the scope of this article and the space available in this issue of *Court Review*. Suffice it to say, for purposes of this article, that there are both constitutional and statutory provisions that appear to provide for separation of powers of the judiciary in Missouri—and that the office of the Missouri State Court Administrator has taken the position that the doctrine of separation of powers does apply to the municipal courts of Missouri.<sup>3</sup>

## PRELIMINARY OBSERVATIONS

The respondents were very open in their replies to this survey. For example, although providing the name of their court

## Footnotes

1. The excellent 1997 report of the American Bar Association's Special Commission on Separation of Powers and Judicial Independence is a case in point. Focused on the federal courts, the commission report included a brief segment on judicial independence in the state courts. That section began: "The focus of this study is on judicial independence in the federal courts; limited time and resources have not allowed a detailed examination of the intrusions, both real and apparent, on the independence of the state courts. Nevertheless, since 97% of all litigation occurs in the state courts, the Commission felt it was essential to survey the major issues affecting state judicial independence, if only briefly." AMER. BAR ASS'N, AN INDEPENDENT JUDICIARY: REPORT OF ABA SPECIAL COMMISSION ON SEPARATION OF POWERS AND JUDICIAL INDEPENDENCE § 5 (1997), available at <http://www.abanet.org/govaffairs/judiciary/report.html> (last visited October 9, 2004).
2. The "standard" for an adequate response rate in a mail survey has long been considered to be 50%. E.g., EARL R. BABBIE, SURVEY RESEARCH METHODS 165 (1973); EARL R. BABBIE, THE PRACTICE OF

SOCIAL RESEARCH 242 (5th ed. 1989). Professor Shari Seidman Diamond has suggested that when the response rate is below 50%, "the survey should be regarded with significant caution as a basis for precise quantitative statements about the population from which the sample was drawn." Shari Seidman Diamond, *Reference Guide on Survey Research*, in FEDERAL JUDICIAL CENTER, REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 245-46 (2d ed. 2000). Here, of course, we are not trying to make "precise quantitative statements" about the exact percentages of Missouri municipal court officials who have a specific opinion. Rather, we are trying to gauge what problems may exist to at least some degree given the administrative structures now in place. Thus, we consider the response rate sufficient for our purpose and would note that it likely exceeds that of most mail surveys. See PAMELA L. ALRECK & ROBERT B. SETTLE, THE SURVEY RESEARCH HANDBOOK 45 (1985) (finding that response rates above 30% are rare in mail surveys).

3. See Letter from Ronald L. Larkin, Missouri State Court Administrator, to Margaret Kelly, Missouri State Auditor, Aug. 20, 1997 (on file with the author).

**FIGURE 1: SURVEY RESPONDENTS BY SIZE OF COURT**

Size of Court by No. of Filings in 2003	
Less than 500	33%
500-999	16%
1,000-1,999	17%
2,000-4,999	18%
5,000-9,999	7%
10,000-19,999	5%
Greater than 20,000	4%
	100%

**FIGURE 2: JOB TITLES OF SURVEY RESPONDENTS**

Job of Survey Respondent		
Court administrator or court clerk	143	72%
Court clerk plus executive branch job	53	27%
Judge	2	1%
Total	198	100%

was optional, more than 75% did so—and close to 60% made additional comments. Many shared horror stories. Some of those will be included along the way as we review the data and some preliminary observations from that data.

**Many of the municipal courts in Missouri do not have staff who work only for the municipal court.** Seventy-two percent of respondents reported a title that could be classified either as court administrator or court clerk, while 27% reported that their title of court clerk was in conjunction with another position—one that would be characterized as part of the executive branch of government. For example, 29 respondents (15%) listed titles either as city clerk, city clerk/court administrator, or court clerk. Others had additional titles such as police dispatcher, records clerk, city collector, communications supervisor, police municipal clerk, or even “city clerk/prosecutor/police/maintenance.”

**Most of Missouri’s municipal court staff work only part-time for the court.** Seventy-six percent of the judges and 88% of the city prosecutors were reported to work only part-time in those jobs. In addition, 36% of the respondents who serve as court clerks or administrators themselves worked only part-time. Many of the others, while full-time city employees, are not full-time within the courts. Rather, they also work in city departments within the executive branch of government. Nearly half (48%) of the respondents listed at least one other city department in which they work. At least one court clerk is a contract employee who is paid for hours worked and works only as needed.

The part-time status of many of the judges undoubtedly affects the way in which business is handled. One clerk said, “Actually, I am pretty well on my own. The judge isn’t here, but if there is something I just can’t handle I try to get the judge.” Another noted the difference in availability between the city clerk and the judge: “The city clerk is here all the time. The judge is only here while court is in session one evening a month.”

**Of major concern, only about half of the municipal court administrators and clerks report to the judge. Even among those who do report to the judge, many also report to another official of city government or even to the local police department.** A minority of the respondents (44%) report only to the judge, which would seem to be the ideal (Figure 3). Another 21% report both to the judge and to another city official. Those “other” city officials include prosecutors, chiefs of police, and city finance directors. Thirty-four percent report only to city officials. For 9%, their sole supervisor is the city prosecutor; for another 9%, the sole supervisor is the city police chief (or, in one case, a police sergeant). The city finance director, collector, or another city employee in the finance department either was the sole supervisor, or supervised along with the judge, for 5% of the court clerks. Perhaps the two who are not confused over separation between the branches of government are the lucky two who answered that they did not report to anyone!

**FIGURE 3: REPORTING STRUCTURE FOR COURT CLERK**

Court administrator/clerk reports to:		
Judge	86	44%
Judge and city prosecutor	14	7%
Judge and city manager/administrator	11	6%
Judge and director of finance	5	3%
Judge and other city officials	10	5%
Circuit court clerk	1	1%
City clerk	20	10%
City manager/administrator	11	6%
Chief of police or other police officer	9	5%
City prosecutor	9	5%
Director of (or other person in) finance dept.	4	2%
Various other city officials	12	6%
No one	2	1%
	194	100%

As is true in most human endeavors, not one of the administrative structures was without problem. For those who reported to a judge, the greatest problems appear to arise from the part-time status of three-fourths of the judges. One court administrator said, “I have a part-time (one day a week) judge

who is not here enough to make a 'good judgment' in evaluating my work." Another put it this way: "Part-time judge means that most of the responsibilities fall on the clerk/administrator. Further workload can become easily backlogged due to lack of hours dedicated to the court by a part-time judge. Part-time judges really don't know what all goes on in court and therefore do not realize the importance of staying on top of the work. I am pleased with our structure; however, I would like to see the part-time judge take a role (however slight) in the municipal court (i.e., annual review, etc.)."

These court administrators and clerks look to the judge for leadership, even when the judge is part-time. As one court administrator who reports to a part-time judge and a person in the executive branch of city government said, "I think the judge should be the department head for the court. We have to answer to someone who knows nothing about the court. Problem is the judge doesn't really care. He shows up for court—does his thing and out the door he goes. He is not involved with the budget or personnel. Judge makes \$30,000 a year." That clerk added, "I have a problem with getting the judge to agree with me. I have asked that we have more court dates and even a morning court (once a month). He says no. We have a lot of attorneys certifying cases to the county court. They do this because they don't like night court. It would help a lot to have a day court."

The greatest share of reported problems occurred for those who report either to city clerks or city finance personnel. Three major problems seem to surface here: (1) the belief on the part of the court administrator that the city clerk or director of finance does not understand their job and could not do it if the court administrator or clerk is absent; (2) conflicts of power seem to develop between these positions; and (3) conflicts develop over non-court staff having access to closed court records that are not open to the public. One court administrator put it this way: "Unable to protect the integrity of the court. City clerk trying to make court like any other city office. Does not or refuses to recognize that we are a part of the state courts and presiding judge and municipal judge are actually the chain of command. With that, the mayor, city manager, and city attorney ignore [state court rules]." With regard to records, one administrator said: "Area not secure. Anyone can and does have access to court records. Court files are not to be open to the general public and must not be available to non-court staff. The department head likes to remind you she is the department head and you have no right to an opinion or say-so in what will be done in your office. She has no training in the court. The city administrator believes the city clerk is right and knows what she is doing in regards to the court."

Positive comments were obtained from some of the court administrators and clerks who report at least in part to city prosecutors and city managers. With respect to prosecutors (who, like the judges, are often part-time), we suspect this is related strongly to the prosecutor's knowledge of the legal system. Court administrators feel comfortable with their knowledge of the purposes and responsibilities of the courts; good prosecutors know how the court is supposed to function. Several comments noted that reporting at least in part to a city manager is a good way to make sure that city officials are informed about the activities and accomplishments of the

court, as well as its needs and problems. This was seen as advantageous to both the court and to the city.

A particularly problematic reporting relationship has the court administrator or clerk reporting to a city finance director or finance official. Administrators who had this reporting relationship generally reported significant problems. As one administrator put it, "My city uses the court for one of their main sources of income with no regards to my training. The judge is appointed and part-time; therefore, he won't overstep his boundaries. I don't feel I get his back-up when really needed." Another said, "In two previous cities where I was a clerk, the finance director and assistant city manager did not allow the court to properly follow state statutes. Did not understand closed/open cases. Undermined the authority of the court clerk. Did not feel the judge should be in charge of the court—both thought they should be in charge of the court, yet neither had any understanding of the court, its rules, or its role."

Also problematic are those courts in which the court clerk or administrator reports to the police department. Most respondents, though, found this structure to their liking (apparently because of good personal relationships with the police chief involved).

One administrator provided this overall assessment of the tension that can arise when the court is supervised by non-judicial personnel: "As a court administrator, I have always tried to maintain a certain degree of independence from the other offices of city government and I am finding this harder and harder and more frustrating all the time. I have lost several judges that I have worked for, because they stood up for what they believed the Constitution stands for, and because they were appointed and not elected, they were 'let go' by a majority of the board of aldermen or mayor. This does not give us, as court administrators or court clerks, much security in our positions."

**Most court administrators and clerks want a separation from the executive branch of government.** The vast majority of respondents wanted to report to the judge: 76% wanted to report only to the judge, while another 19% wanted to report to the judge and another city official (Figure 4). Many of those who suggested dual reporting both to the judge and to a city official suggested that this was important for the city officials to understand the court's operations and any problems faced there. A handful of respondents wanted to report to the city prosecutor or police chief; in each case, these respondents were suggesting the arrangement already in place in their city. Most, though, believed that it was especially important to make sure that judges not allow someone in the executive branch of city government to influence the judging of cases, and that the court structure should be separate from the executive branch of city government (Figure 8).

**Respondents identified a number of areas of concern. Concerns appear to be higher among those who report at least in part to city officials, rather than solely to a judge.** Respondents were asked to say whether "your current administrative structure (who you report to) [has] caused you to" do or experience a variety of things. The number one response, at 26%, was that it had caused them to experience stress

**FIGURE 4: RECOMMENDED REPORTING ARRANGEMENT**

Who should the court administrator/clerk report to:	
Judge	76%
Judge and city manager/administrator	13%
Judge and city prosecutor	6%
City manager/administrator	2%
City prosecutor	2%
Chief of police	1%

(Figure 5). A significant 11% said they had experienced “hopelessness” as a result of this reporting arrangement. More than 10% said it had undermined the authority of the court and caused a loss in control over how the court handles its budget. More than 5% said it had affected the way in which training money for court staff could be used or had changed how cases are decided. Smaller numbers indicated improper handling of confidential information, failure to file required reports, and even directives to violate judicial conduct rules.

Preliminary review of the types of reporting arrangements in place for those who noted these concerns or problems suggests that some of the supervisory arrangements are especially troublesome. While it is a small part of the overall sample, all of those who reported solely to a city finance director reported significant problems in response to this question. Similarly, 61% of those who reported to a city clerk and 73% of those who reported to the judge and a city manager reported one or more of these problems, while only 22% of those who reported solely to a judge reported one of them. The incidence of these problems was in the middle ground for those who report both to a judge and a prosecutor: 42% of those respondents reported at least one of these listed problems as a result of the reporting structure.

One person said that “stress comes with the job” and that may well be. It would seem, though, that some of the reporting arrangements cause increased levels of stress, as well as other problems.

**A substantial number of respondents viewed one of the court’s important roles as generation of revenue.** Surely it is not the goal of a justice system to produce revenue. Yet substantial numbers of the respondents said it was. Almost even numbers agreed and disagreed with the statement that “It is the responsibility of the courts to raise revenue for cities through fines and fees” (Figure 6). Thirty-one percent agreed and 34% disagreed, while the rest neither agreed nor disagreed. Similarly, 31% agreed that one of the purposes of municipal courts is to “generate revenue,” while 36% disagreed and the rest neither agreed nor disagreed (Figure 7). It would not be surprising that *municipalities* themselves viewed the genera-

**FIGURE 5: PROBLEMS CAUSED BY CURRENT ADMINISTRATIVE STRUCTURE**

Has your current administrative structure caused you to:	
Experience stress	26%
Experience conflict with a person in the executive branch of government	13%
Undermine the authority of the court	12%
Minimize your position of court administrator/court clerk	12%
Experience hopelessness	11%
Lose control over how the court either prepares or spends its budget	11%
Be threatened for your job/position	9%
Be unable to use the court’s training money in the manner you thought it should be	7%
Change how a case should be decided	5%
Change how a case was decided	5%
Be unable to supervise or discipline court staff	5%
Not to file a case that should have been filed	3%
Hire someone you did not think was the best candidate	2%
File a case that should not have been filed	2%
Not send a disposition to the Dept. of Revenue	2%
Be directed to violate the judicial code of conduct	2%
Release information to the public that was closed information	1%
Not release information to the public that could have been released	1%

tion of revenue from the issuance of traffic citations and court fines to be of some importance. It is perhaps more of a surprise to find that a substantial percentage of municipal *court officials* view it that way.

**Education of those working in the courts appears to be needed, as the respondents did not uniformly show a clear understanding of the court’s role.** Several questions in the survey were designed to determine the extent to which court administrators and clerks correctly perceived the court’s role and function. Questions were developed based on the Core Competency Curriculum Guidelines developed by the National Association for Court Management<sup>4</sup> and the Trial Court Performance Standards,<sup>5</sup> each of which summarizes the basic purposes and roles of the trial courts.

4. See *Core Competency Curriculum Guidelines: What Court Leaders Need to Know and Be Able to Do*, 18 CT. MANAGER No. 2 (2003).  
 5. See Pamela Casey, *Defining Optimal Trial Court Performance: The*

*Trial Court Performance Standards*, Winter 1998 COURT REVIEW, at 24, available at <http://aja.ncsc.dni.us/courtrv/cr35-4/CR35-4Casey.pdf> (last visited October 9, 2004).

In the list of questions used (Figures 7 and 8), all but one of the responsibilities or purposes listed are generally considered valid. Only the generation of revenue is not a purpose of the courts at all. While there was general understanding of many of these court responsibilities, one would not have expected such high numbers in the “neither agree nor disagree” column for several of the items. Significantly, judicial independence was one of those. While 49% said it was the responsibility of the court to “be an independent check on other branches of government,” 20% disagreed and 33% neither agreed nor disagreed. If we can’t convince those who work in our courts that this is an important aspect of courts in our system of government, we should not expect to do better with the public at large. Education of those who work in the courts, as well as the public and those who work in other branches of government, is needed.

**Missouri’s municipal courts have dedicated, hard-working,**

**and service-oriented court administrators and clerks who are doing the best they can under the circumstances.** I do not mean for this article to imply, directly or indirectly, anything else. These are good people trying to do the best they can to do their jobs and to accomplish the goals of their courts.

Some of the comments received reflect this quite well:

- “My judges and prosecutors all have a good working relationship.”
- “My court is in super order. We all respect each other and trust each other.”
- Structure is wonderful! No problems with my individual court.”
- “My court is so small, there is no one else to answer to but the city clerk.”
- “Equal treatment for all is our goal. Administration does not influence the judicial process.”
- “As a small municipal court, we try to carry out justice in a

**FIGURE 6: VIEWS OF MUNICIPAL COURT OFFICIALS ON COURT’S PURPOSES**

The purposes of municipal courts are to:	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
Do justice	63%	33%	3%	0%	1%
Guarantee liberty	38%	38%	19%	3%	2%
Enhance social order	27%	34%	27%	9%	4%
Maintain rule of law	60%	34%	4%	0%	1%
Generate revenue	10%	21%	33%	23%	13%
Resolve disputes	26%	47%	12%	12%	2%
Provide equal protection	46%	42%	10%	3%	1%
Ensure due process	56%	38%	4%	2%	0%
Rehabilitate persons convicted of crimes	8%	25%	39%	20%	9%
Deter criminal behavior	24%	46%	18%	11%	2%
Separate some convicted people from society	14%	28%	31%	18%	8%

**FIGURE 7: VIEWS OF MUNICIPAL COURT OFFICIALS ON COURT’S RESPONSIBILITIES**

It is the responsibility of the courts to:	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
Make impartial decisions	68%	26%	3%	2%	1%
Ensure fairness under the law	61%	37%	2%	0%	1%
Defend constitutional rights and freedoms	58%	33%	7%	2%	1%
Provide equal justice for rich and poor	62%	34%	3%	0%	1%
Be an independent check on other branches of government	23%	26%	33%	15%	4%
Raise revenue for cities through fines and fees	10%	21%	35%	20%	14%
Protect civil rights	41%	41%	12%	4%	1%
Protect individual rights	46%	46%	5%	3%	0%
Dispense punishment for crimes	46%	43%	10%	4%	1%
Resist political pressure	53%	32%	10%	4%	1%
Advance social and economic justice	22%	31%	38%	9%	1%

**FIGURE 8: VIEWS OF MUNICIPAL COURT OFFICIALS ON OTHER QUESTIONS**

The purposes of municipal courts are to:	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	Total
Because judges and court administrators/clerks are appointed/elected to make independent decisions, it is necessary for courts to maintain an administrative structure that is separate from the executive and legislative branches of government.	87 52%	63 38%	14 8%	2 1%	1 1%	167 100%
Judges should not interfere with agreements reached between prosecution and defense attorneys about charges that will be dismissed or modified when a defendant enters a guilty plea	11 6%	39 22%	40 22%	71 40%	18 10%	179 100%
Judges must be vigilant in protecting the administration boundaries of the court. For example, judges of the court should not allow someone in the Executive Branch of government to influence the court's impartial judging of cases.	109 59%	61 33%	9 5%	4 2%	1 1%	184 100%
The Code of Judicial Conduct applies to the judge and to the municipal court staff.	114 61%	59 31%	7 4%	0 0%	8 4%	188 100%

fair process to all parties in our court. I feel very strongly about that.”

- “I work for an excellent judge. He is honest, fair, and follows the letter of the law. Therefore, I have no concerns.”

The views expressed here are necessarily tentative and preliminary. More work needs to be done to analyze the data from this survey, to consider its meaning, and to review options for improvement. Nonetheless, despite the best efforts and work by the judges and staff of the Missouri municipal courts, problems do exist. At least in part, they appear to result in many places from the structural issues involved in setting up a part-time court. No doubt they also result from a failure to think through the ramifications of structure and the need for courts at all levels of an effective justice system truly to be independent. In addition, better training and education of court staff—with clear direction from higher-ups within the court system itself—certainly would help.



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**FUTURE AJA CONFERENCES**

**2005 Midyear Meeting**  
Sanibel Island, Florida  
May 12-14

Sundial Beach Resort  
\$125 single/double

**2005 Annual Conference**  
Anchorage, Alaska  
September 18-23

Hotel Captain Cook  
\$135 single/double

**2006 Midyear Meeting**  
Coeur d'Alene, Idaho  
May 18-20

Coeur d'Alene Resort  
\$130 deluxe room;  
\$160 premier room

**2006 Annual Meeting**  
New Orleans, Louisiana

Hotel Monteleone  
\$169 single/double

**2007 Midyear Meeting**  
Newport, Rhode Island

**2007 Annual Conference**  
Vancouver, British Columbia