

# CHAPTER I. - INTRODUCTION

Judge Frank J. Vatterott

Section	Page Number
1.1 Scope of Chapter.....	3
<b>MISSOURI COURT SYSTEM .....</b>	<b>3</b>
1.2 The Missouri Judicial Branch.....	3
<b>STATUTES/RULES/ORDINANCES .....</b>	<b>5</b>
1.3 Statutes.....	5
1.4 Supreme Court Rules .....	5
1.5 Local Court Rules .....	6
1.6 Ordinances .....	6
<b>THE MUNICIPAL DIVISION JUDGE .....</b>	<b>7</b>
1.7 The Role of the Judge .....	7
1.8 The Judicial Office Defined.....	7
1.9 The Court and its Place in the Administration of Justice – Judge Wilson’s Famous “Box Theory” .....	7
1.10 The Opening Statement by the Judge .....	9
1.11 Personal Characteristics.....	11
1.12 Conclusion .....	12

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## **CHAPTER 1 INTRODUCTION**

### **1.1 SCOPE OF CHAPTER**

This chapter addresses the structure of the Missouri Judicial Branch, the legal references which govern procedure in municipal divisions and the role of the judge generally.

## **MISSOURI COURT SYSTEM**

### **1.2 THE MISSOURI JUDICIAL BRANCH**

Missouri's first constitution, adopted in 1820 as the state prepared to enter the Union, placed the judicial power in a Supreme Court, chancery courts, and circuit and other courts which were to be established by the legislature. Over the years, the structure of the judicial branch has changed; most recently in 1979. In that year, the state judicial system was reorganized in compliance with an amendment to Article V of the Constitution that had been adopted by the voters in 1976. The new judicial article reorganized all former courts of limited jurisdiction into a single trial court as part of Missouri's unified judicial system.

The Supreme Court is the state's highest court in this system, with statewide jurisdiction. The Court of Appeals, Missouri's intermediate appellate court, consists of three districts, established by statute, with general appellate jurisdiction in all cases not within the jurisdiction of the Supreme Court. The third tier is a circuit court, divided into 45 circuits, with original jurisdiction over all cases and matters, civil and criminal. The circuit court tier also contains four divisions: probate, associate, family (formerly juvenile), and municipal.

### **A. THE SUPREME COURT**

The Supreme Court of Missouri is established by Article V, Section 1 of the Missouri Constitution. It is the highest court in the state and its decisions are controlling over all other state courts. The Supreme Court, which is comprised of seven judges, has extensive responsibilities in two areas: judicial proceedings and administration of the state courts.

The Supreme Court's judicial responsibilities are clearly defined in Missouri's Constitution. Article V, Section 3 gives the Supreme Court exclusive appellate jurisdiction in all cases involving the validity of a United States treaty or statute, the validity of a Missouri statute or constitutional provision, the construction of the revenue laws of Missouri and the title to any state office.

The Supreme Court also has authority to issue certain motions and writs. Cases which are not within the Supreme Court's exclusive appellate jurisdiction may be transferred to the Supreme Court from the Court of Appeals when important issues warrant a decision by the state's highest court.

In addition to its judicial responsibilities, the Supreme Court must administer the Judicial Branch of Missouri's state government. Under Article V, Section 4 of the Missouri Constitution, the

Supreme Court is vested with supervisory authority over all Missouri courts, including municipal courts, and is permitted to delegate this power.

The judicial article implemented in 1979 assigned broad administrative authority and responsibility to the Supreme Court. Under the administrative concept of a unified court system, the Supreme Court has the ultimate responsibility for superintending all courts in Missouri. To effectively execute these expanded responsibilities, the Supreme Court appoints a clerk of the Supreme Court to assist in administering the business of the Supreme Court and a state courts administrator to assist in administering the courts of Missouri.

Article V, Section 5 of the Missouri Constitution also requires the Supreme Court to promulgate general rules relating to practice, procedure and pleading in all state courts and administrative tribunals.

The Supreme Court has the authority and responsibility to establish rules regarding judicial transfers and to make temporary transfers of judicial personnel when justice requires.

## **B. THE COURT OF APPEALS**

Article V, Section 1 of the Missouri Constitution establishes a Court of Appeals consisting of districts as prescribed by law. The Missouri Court of Appeals is divided by Chapter 477, RSMo into three districts: the Eastern District, the Western District, and the Southern District.

The Court of Appeals has general appellate jurisdiction in all cases except those within the exclusive jurisdiction of the Supreme Court as specified in Article V, Section 3 of the Missouri Constitution. The Court of Appeals also has original jurisdiction over remedial writs.

Each district of the Court of Appeals has appellate jurisdiction over cases which arise in the counties of that district. The Eastern District has appellate jurisdiction over those cases arising in 25 eastern counties and in the City of St. Louis. The Western District hears cases which originate in 45 counties of western Missouri. The Southern District has appellate jurisdiction over cases which arise in 44 counties of southern Missouri.

## **C. THE CIRCUIT COURT**

### **(Including the Municipal Divisions)**

The judicial article adopted in 1979 reorganized the courts of Missouri into one level of trial courts. Article V, Section 1 of Missouri's Constitution establishes Missouri circuit courts as the only trial court in the state with jurisdiction over all cases — criminal and civil.

The circuit court consolidates functions of previous limited jurisdiction courts: magistrate, probate, municipal, common pleas and the St. Louis Court of Criminal Corrections. The probate division hears probate matters, associate circuit division generally hears matters previously heard by magistrates, the family division hears juvenile and other domestic matters, and the municipal division hears local ordinance violations.

There may be other divisions as established by local court rule, such as family court commissioners and trial de novo commissioners on administrative traffic matters.

Cases originally filed in municipal court and in associate divisions may be reviewed through the process of filing an application for a trial de novo. A request for a jury trial must be certified directly to the presiding judge for assignment to be heard on the record, thereby eliminating the possibility of a trial being heard twice by a jury.

Article V dictates that the state of Missouri be divided into convenient judicial circuits of contiguous counties. There are now 45 judicial circuits comprising of from one to five counties and the city of St. Louis.

The circuit courts have three levels of jurisdiction: circuit, associate circuit, and municipal. Circuit jurisdiction includes all cases whether criminal or civil. Circuit judges may hear and determine all cases and matters within the jurisdiction of the circuit courts.

Associate circuit jurisdiction includes civil matters that do not exceed \$25,000, misdemeanor or infraction matters, and felony matters prior to the filing of the information. Associate circuit judges also hear municipal ordinance violations in municipalities that have less than 400,000 people, and have no municipal judge. They also hear small claims matters and various other matters. Associate judges may by agreement of the parties or assignment by the presiding judge, hear any matter pending in the circuit court.

Municipal division jurisdiction includes only municipal ordinance violations. The municipality may choose to designate a municipal judge or, as provided under Article V, the governing body of any municipality with a population less than 400,000 may elect to have an associate circuit judge hear municipal matters in the first instance. There are about 500 municipal courts and about 300 are held in the city chambers and several hundred cities have their cases heard by an associate circuit court judge at the county courthouse.

## **STATUTES/RULES/ORDINANCES**

### **1.3 STATUTES**

The laws of the state of Missouri as formulated and adopted by the legislature are found in Missouri Revised Statutes (typically cited as RSMo). Various chapters in the statutes address issues that concern municipalities and the courts, but Chapter 479, RSMo "Municipal Courts," is the chapter that primarily relates to municipal division courts.

### **1.4 SUPREME COURT RULES**

#### **A. PROCEDURAL RULES**

The Supreme Court, pursuant to its authority under Article V of the state constitution, promulgates rules of court practice and procedure which are published in the Missouri Rules of Court. Of particular importance to municipal divisions is Rule 37, discussed in this publication, which governs the procedures in all courts of this state have original jurisdiction of ordinance violations. Another important rule, Rule 18, involves mandatory municipal judge education requirements and non-lawyer judge certification.

In general, when there is a conflict between a statute and a Supreme Court procedural rule, the rule will supersede the conflicting statute regardless of the date either became effective. An exception to this hierarchy would be if the rule was intended to "change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right to trial by jury, or the right of appeal." In this situation, statute would supersede rule because the constitutional specifically prohibits the court from adopting rules that would change these procedures.

A second exception to the hierarchy of "rule over statute" is found in Article V, Section 5, which states "Any rule may be annulled or amended in whole or in part by a law limited to the purpose." Case law has indicated that in order to change a rule that is within power of the court to promulgate, the law must specify the rule number that is intended to be changed and be limited only to that particular rule change.

## **B. ADMINISTRATIVE RULES**

Article V, Section 4 of the state constitution gives the Supreme Court "general superintending control over all courts and tribunals." Pursuant to this authority, the court promulgates administrative rules that are published and distributed by the Office of State Courts Administrator. These rules deal with such topics as court automation, record keeping, preparing transcripts from electronic recordings, local court rules, circuit court personnel, accounting records retention and destruction, and the Judicial Finance Commission. Municipal divisions are specifically included in [Court Operating Rule 8](#), which deals with records retention and destruction, and [Court Operating Rule 13](#), which addresses the resolution of budget disputes between the municipal division court and the municipality.

[Court Operating Rule 4](#) deals with court accounting, and mandates accounting procedures. The judge is responsible for oversight of the accounting for the court.

### **1.5 LOCAL COURT RULES**

Authority to establish local court rules governing traffic and ordinance violations is found in Rule 37.05. These rules, which are drafted and approved by the circuit and associate division judges of the circuit, address the general administration of the courts; court procedures regarding case activities such as discovery, pretrial motions, continuances, and dismissals; and the internal organization of the courts themselves. Rules relating to particular actions, such as judge disqualifications, requests for jury trials or requests for trial de novo are also typically addressed.

All municipal judges should review the local court rules of their circuit and make certain that the practices and procedures of their courts are not inconsistent with these rules. Some circuits, for example, set maximum fines to be set for the traffic violations bureau. (To obtain a copy of the local court rules in your circuit, contact the presiding judge or the circuit clerk of the county where the municipal court is located.)

### **1.6 ORDINANCES**

Sections 77.590 and 79.110, RSMo authorize third and fourth class cities to enact ordinances to assist in maintaining order and effective government in the city as long as they are not inconsistent with the laws of this state. Section 478.230, RSMo, which addresses the jurisdiction

of municipal judges, states "A municipal judge may hear and determine municipal ordinance violation cases of the municipality or municipalities making provision for the particular municipal judge." The municipal judge may only hear cases based on violations of city ordinances; if there is no ordinance, there is no basis for prosecution in the municipal division.

Sections 77.590 and 79.470, RSMo establish the maximum penalties that may be imposed for ordinance violations in third and fourth class cities. The penalties written into city ordinances may not exceed these limits, and the municipal judge may not exceed or alter ordinance penalty provisions when imposing sentences for individual violations.

## **THE MUNICIPAL DIVISION JUDGE**

### **1.7 THE ROLE OF THE JUDGE**

This section originally was written in 1972 by the late Judge James May and revised in 1990 by the late Judge McCormick Wilson. The latest revisions are mainly in editing and are not substantive changes.

### **1.8 THE JUDICIAL OFFICE DEFINED**

Public impression of justice and its administration is formed more in municipal courts than in any other court of the state. The judge as judicial officer will instill in that individual his or her lasting image of our judicial system and this should never be forgotten.

If a judge loses control of the court, if a judge is discourteous, inattentive or antagonistic to any party, the judge creates a distrust of the judicial system.

A municipal judge should strive to be efficient, decisive, attentive, courteous, and possessed of good common sense. Humor has its place to place people at ease, but it should not be a common occurrence.

Judicial conduct off the bench is extremely important. This is even more important for the judges of the municipal court who are part-time judges. People will not ignore the way a judge behaves in other pursuits in determining what sort of judge he or she is. Most people would likely judge you, as a judge, by what they see you do away from the courtroom. A judge cannot expect to be permitted to behave poorly in his or her business or his or her private law practice and still have people consider that person to be a fair judge.

### **1.9 THE COURT AND ITS PLACE IN THE ADMINISTRATION OF JUSTICE – JUDGE WILSON’S FAMOUS “BOX THEORY”**

Years ago, persons viewed a municipal court as an arm of law enforcement. This impression is still somewhat prevalent today, especially in this era of red light cameras. There are ways to avoid this. One way is to have physical facilities that clearly show that the court is separate and independent from the police department. More importantly is to have an understanding of the judge's place. Judge McCormick Wilson developed and taught, for many years, his "box theory" to remind us of the court's place in the scheme of things within the criminal justice system.

Judge Wilson asked his listeners to imagine small wooden boxes, with lids which were used to hold chalk when the judge was in grade school.

Each box represents a separate person. The first of these boxes is assigned to the law enforcement officer. It is the officer's job to observe and investigate complaints or violations of municipal ordinances, and the officer alone decides whether or not to issue a citation or summons for a municipal ordinance violation or just a warning. The officer's box is of course subject to the instructions of his or her superior officer. An officer decides which persons sign a summons, promising to appear or which persons instead go to the station to post bond. These decisions are based on training and experience, and the seriousness of the situation. The law enforcement officer is a professional and this is his "box."

The second box in the sequence of things is the prosecutor's box. The prosecutor takes the facts from the first box and exercises discretion as to whether charges are to be filed. Each charge must be viewed in light of the municipal ordinances on the books. Is this a serious case? Can the case be made? The prosecutor must decide whether a case is frivolous or whether it is something that the city would want to pursue. The prosecutor should know which officers make good witnesses and which defendants make bad defendants. The prosecutor is a professional. He or she processes the case in his or her "box" and then, by signing the information and filing it with the judge's clerk, hands it into your box.

The third box is the box of the municipal judge. By the time the case has reached the judge, at least two persons have touched it. The municipal judge's job of course, is to adjudicate and penalize when necessary. But just as there is discretion an officer whether to write a ticket, and there is discretion in the prosecutor whether to sign the information, there is discretion in the judge more than saying "Guilty. Fine of \$25.00 plus costs."

A municipal judge, in his or her box, the court, must be responsible to the public to see that there is a fair balance between the rights of the individual and the rights of society. You should make sure that you explain what it is that you are doing. A good judge makes an extra effort to explain to each person whose case is being heard just what is happening. Judge Wilson advised that the judge should act somewhat like a schoolteacher explaining it to his or her class.

Judge Wilson cautioned that there is inevitably some mixing together of the boxes. Obviously, in trials and frequently during the taking of a plea of guilty, the officer will be called upon to tell his or her story and what if anything was told to him or her by the defendant. He or she does this as a witness and he or she does it in the judge's box. The prosecutor too, must present his or her case forcefully either at the trial level or at the time of sentencing. These are essential parts of what each does in the administration of justice, and they do them in the judge's box.

The fourth box is that of the circuit court system, which will hear cases that you have already heard, when an application for trial de novo is filed.

Judge Wilson's parable is simple but powerful. Everyone concerned with the administration of justice has a box and the system will work best if everyone stays in his or her own box.

Municipal judges do not live in a vacuum. Often, in front of a municipal judge is one who may be a friend of the mayor or an acquaintance of the president of the board of alderman. The

prosecutor and the judge may be friends. The judge may know that the mayor has certain pet peeves, for example, hot rodders or housing cases. The judge must make it clear to all that the court is independent and hears the cases brought before the court without any outside influence. Judge Wilson suggests that a judge should ask himself or herself this question, in order to monitor one's own conduct — "Is this really in my box?"

Sometimes police officers become upset if they lose their case. A police officer is an important person, but in court, he or she is just like any other witness. The police officers do not run the court, nor does the prosecutor. The prosecutor's job is to present evidence, not to run the court. Sometimes, a police officer will say to a defendant, "If you plead guilty, the judge will suspend the imposition of sentence and send you to traffic school." That is not the role of the police officer and the police officer should be told that he or she is not to predict what the judge will do. Similarly, the prosecutor, even though he or she has complete discretion in whether to prosecute a case, does not have the authority to set fines. If a case is plea-bargained, it is subject to the approval of the court as to the fine or other disposition.

In some jurisdictions, the prosecutor is a powerful personality and attempts to dominate the judge. This should never be the case in your court. The prosecutor should stay in the prosecutor's box, and you in your box.

What has been said about the officer and the prosecutor applies equally to the mayor and to the councilpersons. They have no business interfering with the court system. A city with a mayor who is permitted to "fix tickets", set bonds, or influence the prosecutor or judge what to do is a city with a poor judge. Neither the mayor, the board of aldermen, nor anyone outside the courtroom should talk to you about any particular case.

## **1.10 THE OPENING STATEMENT BY THE JUDGE**

Rule 37 requires the judge to inform the defendant of rights that are set forth in the rules. It would be very difficult in a typical municipal courtroom for the judge to recite every single right and procedure to each individual defendant. Most judges have adopted an "opening statement" which answers a lot of questions ahead of time. Many courts have a brochure entitled "Your Rights in Municipal Court" which further explains rights. It is suggested that the brochure be given out to all persons as they enter the courtroom and the judge should also make a statement.

The opening speech that I have developed over many years is as follows:

Each of you here has been charged with a violation or violations of one or more ordinances of the city. As your name is called you should come forward. The prosecutor will read the charge or charges that the city has made against you. After the prosecutor has done so, you may plead guilty, not guilty or guilty with an explanation as to each charge.

If you feel that you did not violate the ordinance or if you are uncertain whether you violated it or not, you may wish to enter a plea of not guilty. If you plead not guilty, we will set the case for trial. Either before me or before a jury, which ever you choose.

At the trial, the prosecuting attorney must prove beyond a reasonable doubt each of the essential elements of the charge that the city has brought against you. At the trial, you have all the rights of any defendant in a criminal trial in the state of Missouri. Among those rights are the right to be present when the witness testifies against you, the right ask those witnesses questions, or have your lawyers ask them questions, to make sure that the testimony that the city's witnesses are giving is not only truthful, but complete.

You have the right to call witnesses to testify on your behalf in the case. You yourself have the right to testify in the case if you want, but you do have to testify if you do not want to. If you do not testify, neither the jury nor I will draw any inference from your failure to testify.

If you are convicted here, you have the right to a trial de novo in the county circuit court unless you have a trial by jury.

You may also choose to plead guilty. If you plead guilty, you are saying that you admit that what you did violated the ordinance. You give up your right to a trial and to an appeal. If you plead guilty, I will generally set a fine. I may hear what the prosecuting attorney has to say, and listen to what you have to say about the circumstances in your case.

The penalty in this will be a fine instead of a jail sentence unless I specifically, personally, individually advise you there is practical possibility of a jail sentence in your case. If you do not hear anything from me regarding a jail sentence, there will not be one. If you do hear something, about that, then you may wish to continue the case to seek an attorney.

Each person here has a right to be represented by a lawyer of his or her choice at his or her own expense, at any stage of this proceeding, if you want to hire a lawyer, tell me that you would like to do so and I will continue your case for a reasonable time for this purpose. I have no authority to appoint a public defender in a case where there is a practical possibility of a jail sentence so if your case is one in which the only penalty will be a fine, there is no reason for you to request the appointment of an attorney. However, if there is a practical possibility of a jail

sentence in your case and you do not have an attorney to represent you and no money with which to hire a lawyer, I will appoint a public defender to represent you.

You may plead guilty with an explanation. This is not the opportunity to tell me a story you just made up while you were sitting here. But if you have something that you feel is important for me know, please tell me. It may or may not affect what I do. An example is to plead guilty with an explanation to not producing an insurance card when requested to do so by the police officer. If there was insurance on the car you were driving at the time of the stop, but you could not at the time find the card, but now you have located it, you may show it to me and that will most likely affect what I do with the case.

If you still have any questions about what I have talked about, wait until the charge has been read to you and then ask me your question and I will try to answer it. However, I cannot give legal advice.

(You should mention payment of fines, continuances for payment, etc.)

## 1.11 PERSONAL CHARACTERISTICS

There are several important characteristics a judge must possess which are obvious but sometimes ignored. They are as follows:

**Patience:** As a judge, you must take time to make sure that the defendant has time to explain himself or herself in court and has an option to bring out everything he or she has in his or her defense. You should give him or her your undivided attention and listen. If he or she wants to hand you a paper, such as the repair bill to fix a speedometer, or an insurance card, you should look at it carefully. If you decide to rule against the defendant anyway, you should explain why the defense offered was not really a defense. Tell the defendant if you are going to take his or her explanation into consideration when setting the penalty. By your patience, you have helped that person and the others in the courtroom understand our system of justice.

**Courtesy:** It goes without saying that judges must always strive to be courteous. This is particularly important in night court where the judge may have worked all day as a lawyer or in another profession, and may be understandably tired. It is extremely important to remember that the person in front of you is a human being and has dignity and should be treated with respect.

You should not diminish another's importance or self worth by being demeaning to them. Judges should address a person by Mr., Mrs., Miss, or Ms. In your courtroom the town drunk and the chief of police should be treated in an identical courteous manner.

Judge Wilson made it a rule that he was going to be the most polite person in the courtroom and he was going to be the last one to behave in an unmannerly manner.

**Common Sense:** Never overlook common sense. In a minimum housing case, should the defendant be fined heavily when he fixed the problem immediately at great expense to himself, such as putting on a new roof? Should a person be given a month to try to obtain a valid license?

It is easy to fine people and not think about the consequences. A good judge should use common sense to determine what is fair. As Judge Wilson aptly put it, "It is much worse to apply the rules unfairly than to have failed to apply the rules exactly in an attempt to be fair."

## **1.12 CONCLUSION**

Being a judge is continuing learning experience. Each judge should strive with all of his or her strength to uphold the dignity of the court at every court session. Each court session should be a better display of patience, courtesy and common sense than the last. As each defendant appears before you, make it clear that, to you, this is an important case. Defendants want to know that you have paid attention to them, have thought about what to do, and have come up with a fair and equitable ruling.

A good judge is continually educated and continues to do a better and better job. Those who do not care to improve are doomed to be a poor judge.