

**PROSECUTOR
BEST
PRACTICES**

Created by the
Missouri Municipal
Attorneys Association
Municipal Prosecutors
Committee

**OVERVIEW
OF
PRESENTATION**

- Reviewing Citations and Issuing Charges
- Minimum Operating Standards related to fines
- Discovery Requests
- Restitution
- Probation Revocation
- Prosecutor Records Retention
- Trial Preparation
- Separation of Prosecution and Court Functions
- Immigration issues within Municipal Court
- Deferred prosecution as an alternative

MAIN PROSECUTING DUTIES

- ✓ Review tickets/citations for issuance of charges
- ✓ Make Recommendations to the Court for disposition of cases
- ✓ Represent county/city at any preliminary hearings
- ✓ Negotiate with Defense Counsel
- ✓ Prepare for trial (make witness decisions, contact and prep witnesses, etc.)
- ✓ Subpoena witnesses in preparation of trial
- ✓ Proceed to trial
- ✓ Motion the Court to revoke probation when needed
- ✓ Dispose of Prosecutor Files in accordance of law.

REVIEWING CITATIONS AND ISSUING CHARGES

- Missouri Supreme Court Rule 37.34: "All ordinance violations shall be prosecuted by information. An information charging the commission of an ordinance violation may be based upon a violation notice..."
 - Violation Notice = ticket written by law enforcement
 - Rule 37.33 states the required content for Violation Notices.
 - Rule 37.35 provides what content is needed for Informations.
- Prosecutors should look to make sure the traffic ticket contain both sets of required contents if the traffic ticket written by the officer will be used as your Information.

Violation Notices (Rule 37.33)



- Name and Address of Court
- Name of the Prosecuting County or Municipality
- State the name of the accused
- State the date and place of the ordinance violation as definitely as can be done
- State the facts that support a finding of probable cause to believe the violation was committed
- Cite chapter and section of ordinance alleged to have been violated

Information Content (Rule 37.35)



- State the name of the defendant
- State plainly the essential facts
- State date and place of ordinance violation as definitely as can be done
- Cite chapter and section of the ordinance alleged to have been violated
- MUST BE IN WRITING AND SIGNED BY PROSECUTOR

FILING BY INFORMATION (NOT USING VIOLATION NOTICE AS YOUR CHARGING DOCUMENT)

- Ticket is destroyed
- Arrest pending review
- Prosecutor issuing additional charges

Minimum Operating Standard #1

- Municipal Divisions shall ensure that when individuals must be held in jail in the interests of justice, this is done strictly in accordance with the principals of due process of law.
- RSMo. 479.353(2) No person is sentenced to confinement on "minor traffic violations" or "municipal ordinance violations" with the exception of violations:
 - Involving alcohol or drugs
 - Endangering the health or welfare of others
 - Involving eluding or giving false information to police officers

Minimum Operating Standard #4

- Municipal divisions shall neither assess nor collect unauthorized fines, costs, or surcharges
 - Fine and costs assessed on MTV's do not exceed \$225
 - Fines and costs assessed on MOV's meet the mandatory maximum schedule in RSMo. 479.353
 - Dismissal on Payment of Court Costs NOT permitted.

Minor Traffic Violations

- A minor traffic violation is any municipal traffic violation not explicitly excluded from the statute.
- Exclusions:
 - Accident or injury
 - Involving a commercial motor vehicle
 - DOR is authorized to assess more than four points
 - Exceeding the speed limit by more than 19 mph
 - Violation occurred within a construction or school zone.
- Maximum Fine \$225, No Jail

Municipal Ordinance Violations

- Defined as: a municipal or county ordinance violation prosecuted for which penalties are authorized by statutes under sections 64.160, 64.200, 64.295, 64.690, 64.895, 67.398, 71.285, 89.120, and 89.490.
- These sections relate to property or structures located on the property (more commonly known as code or housing violations)
- **Fine schedule**
 - First time offense: no more than \$200
 - Second offense within a year of first, no more than \$275
 - Third offense within a year of the first, no more than \$300
 - Fourth or subsequent violation capped at \$450

DISCOVERY REQUESTS

- Supreme Court Rule 37.54
 - "Discovery shall be permitted solely in the judge's discretion as justice requires"
 - According to this rule, before Defense counsel is entitled to any discovery, they must first file a written motion for discovery, set it for hearing, give the prosecutor proper notice of that hearing, and argue to the Judge why they are entitled to any evidence the prosecutor may have.

Joyce v. Mullen



- Circuit attorney had a long standing practice of deleting victims and witnesses' phone numbers, dates of birth, social security numbers, and last known addresses from the police reports before providing those reports to defense counsel. She offered to produce the victims and witnesses to defense counsel at her office for deposition or interview instead.
- She believed that Rule 25.03 was unconstitutional in light of the Missouri Constitutional amendment which provided that crime victims have a right to be reasonable protected from a defendant

Joyce v. Mullen (cont.)

- The Court held that the prosecutor can redact phone numbers, dates of birth, and social security numbers from the police reports and witness statements, but the redaction made must be obvious, so that defense counsel knows that the information is being withheld.
- What does this mean? Get out your sharpie and redact all phones numbers, DOB's, and social security numbers prior to sending discovery to defense counsel.
- Also be sure to check witness statements for personal information (phone numbers, DOB's, SS #'s)

RESTITUTION

- Prosecutors can seek restitution in accident cases, stealing cases, property damage cases, etc.
- Negotiate plea deal conditions on the payment of restitution
- Talk to victims of the crime. Let them know that payment of restitution is not guaranteed. There is always civil court.

Restitution Letter sent by PA Assistant to Defense Counsel

Defense Attorney
123 Main Street
St. Peters, MO 63376

RE: St Charles County vs. Lightning McQueen, Cause # 13000000-1

Dear Defense Attorney,

We have received your entry of appearance and request for recommendation in the above mentioned case(s). Before we can provide a recommendation we will need to determine if restitution has been made to the victim(s) in this matter. Please provide our office proof of restitution by **2/1/2018**. If your client's insurance company paid for the damages caused during this incident, please provide our office with a letter from the company on their letterhead stating your client had insurance coverage on the date of the accident.

Once the information is received the file will be reviewed for recommendation.

Sincerely,

PA Assistant
St Charles County Counselor's Office

MOTION TO REVOKE PROBATION

- RSMo. § 559.036.7
 - The prosecuting attorney may file a motion to revoke probation at any time during the term of probation
 - Notice to appear to answer charge of violation shall be served upon probationer.
 - The Court may immediately enter an order suspending the period of probation (this is important to file)
 - The probation shall remain suspended until the court rules on the prosecutor's motion.

Be aware of *State ex rel. Strauser v. Martinez*, 416 S.W.3d 798 (Mo. 2014) - courts can lose jurisdiction over the probation for failure to make every reasonable effort to rule on the pending probation revocation motion while Defendant is on probation.

PROSECUTOR RECORDS RETENTION

- Prosecutor Schedule differs from the Court's Schedule
- Different Procedures and Schedules for each type of case below:
 - Charge File (Pros 001)
 - Criminal Case Files (Pros 002)
 - Traffic Enforcement Records (Pros 009)
 - Deferred Prosecution Case Files (Pros 008)

All found on Missouri Secretary of State website:
www.sos.mo.gov/CMSImages/LocalRecords/Prosecutor.pdf

Charge File (card file)

- A listing of charges filed, can be alphabetical by person or chronological by charge
- Content: Name of Defendant, charge, date of filing, disposition
- RETENTION: 75 years

Criminal Case Files

- What you probably refer to as "Prosecutor File"
- What might be in your file?
 - Copy of the ticket/information
 - Any motions filed with the court
 - Criminal Histories, DOR print outs
 - Police Reports ****
 - Other documents used at trial
- It is a record of proceedings against a given defendant on misdemeanors and serious traffic violations
- Everything that is NOT simple traffic tickets
- DWI files and DWS/R files are included in this (anything that could potentially be enhanceable)

RETENTION:

- All DWI's- 10 years
- Enhanceable Misdemeanors- 10 years
- All other Misdemeanors, Infractions, Ordinance, or Other Violations- 3 years

Traffic Enforcement Records

- All non-serious traffic offenses
- No DWI's or DWS/R

RETENTION: UNTIL FINAL DISPOSITION

- Once the case is closed, trash that PA file on simple Traffic
- Note: This does not include "CHARGE FILE"

Deferred Prosecution Case Files

- Active or Inactive Deferred Prosecution Files
- Cases Not Filed (refused tickets)
- Dismissals (NP's)

• RETENTION: 1 year

Trial Prep

- Subpoena witnesses for Trial
 - Get a list of trials sent to Prosecutor by Clerk
 - Fill out Subpoenas and provide to Clerk for signature
 - Send fully executed subpoenas to civil process

Muni Court trials in a nutshell

- Three things a prosecutor must prove
 1. Jurisdiction/Venue
 2. Ordinance/elements of the crime
 3. ID of the Defendant

Trial Preparation continued....

Certified copy of the ordinance

A must-have for any circuit court appeals, handy for muni court trials

A city may prove its ordinance in one of three ways:

1. In accordance with the first clause of RSMo 490.240- a handwritten or printed certified copy of the ordinance
2. In accordance with the second clause of RSMo 490.240- the prosecutor can bring into a court a printed volume of the current municipal ordinances published by the city and reference that volume in trial
- OR 3. under RSMo 479.250- adducing a certified copy of the ordinance or filing a certified copy of the ordinance with the clerk of the court and provided that it is kept by the clerk readily available for inspection by the parties, the court can take judicial notice of it.

See *City of Joplin v. Klein*, 345 S.W.3d 351 (MO App. SD 2011).

Separation of Prosecution and Court Functions

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Immigration Issues in Municipal Court

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Deferred Prosecution

Greg Young

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