

SUPREME COURT RULE 37 AND NEW MUNICIPAL COURT MINIMUM OPERATING STANDARDS

The Missouri Supreme Court recently issued its Order amending subdivision 37.04 of Missouri Supreme Court Rule 37, adding an appendix establishing minimum operating standards for municipal courts. The amended Rule reaffirms the importance of maintaining divisions between the judicial and executive/legislative branches of the City or town, i.e., elected and appointed officials, and in particular the Police Department and the Prosecuting Attorney's Office, on the one hand, and the municipal court on the other.

Much of the amended Rule 37.04 and the minimum standards merely restate the law currently in effect. However, there are a number of new requirements that municipalities need to be aware of and begin implementing as quickly as possible. The key changes involve:

- a. separation of court personnel from other municipal functions;
- b. clear identification of court operations and space as distinctly judicial (at least when it is being used by the court); and
- c. maintaining nearly full-time court clerk availability.

Municipalities should not wait until July before beginning to make the necessary changes to achieve compliance. In fact, despite the Rule's effective date being July 1, 2017, OSCA has indicated that the appendix and, therefore, the minimum standards, became effective immediately. As such, it would be prudent for municipal judges to submit to the presiding judge of their circuit the certification of compliance with minimum operating standards as set forth in the appendix by Jan. 1, 2017.

THE NEW MINIMUM STANDARDS

The Supreme Court adopted ten "Minimum Standards" along with numerous other requirements through the amended Rule 37 and its appendix. Much is merely a restatement of existing rules and state statutes¹ that have previously been

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adopted. The new Rule 37.04 provides that the presiding judge of the circuit shall have the superintending authority over the municipal courts within its circuit. The appendix to the Rule adopts the substantive material relative to municipal court operations.

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 principles of due process of law."

Pursuant to this provision, municipal courts are required to comply with Section 479.360.1 RSMo, which mandates the following:

1. Procedures are in place to prevent defendants from being held longer than 48 hours on minor traffic violations and 72 hours on other violations without being heard by a judge in person, by telephone or via video conferencing.
2. The Municipal Court must make "reasonable efforts" to communicate to the Police Department the "24-hour rule," i.e. Defendants are not to be held more than 24 hours without a warrant after arrest. See 544.170.1 RSMo.
3. No jail to coerce payment of fines and costs unless the Court has found the Defendant in contempt pursuant to the procedure prescribed by Rule 37.65.
4. No additional charge of Failure to Appear for a minor traffic violation.
5. The municipal court must have a duty judge available at all times.
6. Bond schedules may only be used under certain circumstances, which is where an individual is arrested without a warrant and held less than 24 hours pursuant to Sections 479.360.1(2) and 544.170(1) RSMo, and Rule 37.17.
7. Warrants may only be issued upon a finding that reasonable grounds exist to believe that the Defendant

will not appear upon a summons or that the accused poses a danger to a crime victim, the community, or any other person. Rule 37.43(b).

8. Warrants must be signed by the Judge, unless the Clerk is authorized to sign them consistent with Rule 37.45(b)(6).
9. The Municipal Court must have a procedure in place to ensure that when a case is dismissed or otherwise finally resolved, or when the circumstances authorizing the issuance of a warrant no longer exist, the Judge recalls and cancels any outstanding warrants as soon as practicable.
10. No confinement for “minor traffic violations” or “municipal ordinance violations” as defined in 479.350 RSMo with limited exceptions.
11. Strict adherence to procedures before allowing confinement for non-payment of fines and costs. Rule 37.65 details the procedure that must be followed.

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

The Municipal Court must be in compliance with several of the requirements set forth in Section 479.360.1 RSMo, namely: a. Procedures exist to conduct indigency hearings; b. Alternative payment plans are utilized, and; c. a Community

Service option is offered with no fees. The Court must have procedures in place to stay execution of fines and costs or utilize installment payment plans. If probation fees are assessed, the Court must consider defendant’s financial status when assessing probation fees and advise defendants of their rights to have individualized consideration of ability to pay.

Standard #3: “Municipal Divisions shall not condition an indigent defendant’s access to a judicial hearing or the granting of probation upon the payment of fines or fees.”

No fee for trial de novo fee to be assessed if defendant is indigent. No prepayment of any fee is to be charged to a defendant requesting a jury trial. Probation may not be conditioned upon defendant’s ability to pay authorized probation fees and surcharges.

Standard #4: “Municipal Divisions shall neither assess nor collect unauthorized fines, costs, or surcharges.”

1. Fines and costs assessed on “minor traffic violations” cannot exceed \$225.
2. Fines and costs assessed on “municipal ordinance violations” must comply with the schedule in 479.353(1) (b) RSMo, which is: (1) \$200 for a first offense; (2) \$275 for a second offense; (3) \$350 for the third offense; and (4) \$450 for the fourth and any subsequent offense within any 12 month period.
3. Fines shall not exceed the amounts authorized by law.



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requirements for all municipal judges (including provisional and special judges). Judges who are lawyers are required to complete (and provide documentation of completion to the presiding judge): An orientation course completed within 12 months of beginning to serve as a Judge, 5 hours of judicial CLE annually, and 2 hours of judicial ethics CLE annually. There is also specific study for non-lawyer judges.

7. Municipal Judges, including substitute or provisional, are to provide a copy of their CLE compliance form to the Presiding Judge of the Circuit Court.

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

1. Courtrooms must be open to the public and large enough to reasonably accommodate the public, parties and attorneys.

2. Procedures must exist for payment of fines and costs electronically online or by mail for all minor traffic violations.

3. Must make available free online access to information regarding pending cases, warrants and dockets or must be actively pursuing court automation.

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

This is probably the most significant Standard under the new Rule 37, and the one that requires the greatest amount of consideration to ensure compliance.

1. Court personnel cannot perform any other functions for the municipality that constitute an actual or apparent conflict of interest. Work for the police or prosecutor by the court clerk is specifically described as such a conflict. In its November revision, the Court stated that the clerk can perform other work for the municipality so long as there is no actual or apparent conflict. This should involve a specific consideration as to whether other tasks required of clerks cause the appearance of a conflict. This may require a major reorientation of clerks and duties compared to what may be present practice.

2. Court personnel when performing court-related functions work solely under the direction and supervision of the judge.

3. Judges and court personnel are not subject to informal pressure, discipline, firing or threats of non-retention or non-reappointment resulting from the performance of judicial duties in a manner that upholds independence of the judiciary.

4. Only court costs authorized by state law are permitted. Comment - The Rule allows for the OSCA Bench Card on municipal court costs to be used as a reference, which is available at <http://www.courts.mo.gov/file.jsp?id=38954>.

5. No Dismissed on Payment of Costs (DPC) permitted.

6. Court costs are not assessed against indigent defendants. Comment - The Supreme Court has already issued a model local rule 69.01 designed to determine indigent status.

7. Courts must offer “no fee” community service.

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

1. All municipal judges, including provisional judges, must be selected pursuant to municipal ordinance or charter.

2. Mechanism must be in place to check for judicial conflicts by Rule 37.53(b)(2).

3. The Municipal Judge must comply with Rule 37.53(d) and Section 479.230 RSMo when a change of judge request is granted or the judge recuses him or herself.

4. Once a motion to disqualify, motion for jury trial or motion for trial de novo is filed, the Judge complies with all rules relative to the limitation of their authority and only acts within the scope of their powers and when they have subject matter jurisdiction.

5. All trial de novo requests must be certified to Circuit Court within 15 days.

6. Specific minimum training and continuing education

4. Judges and court personnel are not subject to informal pressure, discipline, firing or threats of non-retention or non-reappointment that are designed to encourage or require the court to operate in such a way as to maximize revenue or to meet specified revenue targets, whether stated or not.
5. Municipal court facility must be designed in such a way as to convey an appearance that it is a separate and independent branch.

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

1. Again, the courtroom needs to be large enough to reasonably accommodate the parties, attorneys and the public. Also, must be open to people of all ages.
2. Municipal Court must maintain a clerk’s office that is open and accessible to the public at least 30 hours per week during regular business hours for the purpose of paying fines and providing information. This was revised in November to provide that the Clerk may provide service up to 15 of the 30 hours per week by telephone, email or other electronic communication, if the Court does not have sufficient staff.
3. Municipal Court must allow access to open court records in accordance to Supreme Court Operating Rules 2 and 4.

Standard #9: “Municipal divisions shall advise litigants of their rights in court.”

Defendants must be advised of all their rights and a “Notice of Rights in Municipal Division,” in a form approved by or substantially similar to that approved by the Supreme Court must be provided to all defendants. The notice must also be prominently displayed at the Clerk’s office and in the courtroom. The notice must be printed as a handout and on the city’s website. The Judge’s announcements must be heard in the courtroom and to those waiting outside.

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

This standard restates early requirements but also requires:

1. By January 1st and July 1st of every year (starting 2017), every Municipal Judge must certify that they are in compliance with the minimum operating standards and must complete and submit a “Minimum Operating Standards Form” to the presiding judge.
2. Municipal Courts must maintain a Clerk’s office that



organizes and preserves judicial records and that handles bookkeeping and money handling obligations in compliance with recommendations from the Office of State Courts Administrator (OSCA) and the Missouri State Auditor’s Office.

3. The Judge must certify substantial compliance with 479.301.1(subsections 1 to 10) RSMo.

Additional Requirements: The appendix to Rule 37 also spells out that the Municipal Court must be aware of the following statutory and rule requirements, which are summarized as follows: *Chapter 479 RSMo*:

- Municipal Courts in certain larger charter cities (St. Louis City, Kansas City and Springfield only² – see Section 479.011 RSMo) can hold administrative hearings in limited circumstances.
- Judges cannot serve as Judge in more than 5 municipalities.
- The municipality must notify the Circuit Clerk of the Court’s existence.
- Municipal Courts must employ their own staff.
- Fines and costs must be paid into the municipality’s treasury at least on a monthly basis.
- A monthly list of cases must be provided to the municipality within 10 days of the end of each month.
- The Judge must receive instruction on the laws related to intoxication-related traffic offenses.
- A written policy for reporting intoxication-related traffic offenses to the central repository must be adopted and provided to OSCA and the highway patrol.
- A Semi-annual disposition report of intoxication-

related traffic offenses must be provided to the Circuit Court en banc.

Supreme Court Rule 37:

1. All informations must be signed by the Prosecutor.
2. The violations bureau schedule of fines and costs must be prominently posted.
3. The Municipal Division must take reasonable steps to ensure that, where applicable, the accused is advised of the fine schedule at the time of receiving a violation notice.
4. If a violations bureau has been adopted, it must process only those violations authorized.
5. The Municipal Court must utilize a written “Waiver of Counsel” form.

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

1. The Municipal Court must maintain complete and accurate records.
2. The Municipal court must ensure proper disposition of all cases are documented and signed by the Judge, if required by law.
3. An information must be signed by the Prosecutor and filed in each case prosecuted. The Prosecuting attorney must review and sign all tickets and review and approve all amended and dismissed tickets.
4. All warrants must be signed by the Judge or the Clerk at the Judge’s specific direction and issued timely.
5. The Municipal Court must have procedures in place to generate monthly reports of Court activity and submit such reports timely to OSCA and to the municipality.
6. The Municipal Court must regularly back up computer data and ensure it is stored in a secure off-site location and its recovery is tested on a regular basis.
7. The Municipal Court must require unique user IDs and passwords for each employee. User access must be periodically reviewed.

Financial and Bookkeeping (Section 483.075.1 RSMo):

1. The Municipal Court should segregate accounting duties to the extent possible. If not possible, then there must be periodic independent review of court records.
2. Accurate records must be maintained to account for all payments received and deposited. Receipts must be used and documented in all cases.
3. The Municipal Court must reconcile receipts to deposits.
4. The Municipal Court must perform monthly bank reconciliations.
5. The Municipal Court must develop procedures to ensure monthly distributions are made accurately and timely.

6. If payment plans are utilized, they must be in writing and signed by defendant.
7. The Municipal Court must maintain bond coverage for all personnel with access to Municipal Court monies.
8. The Municipal Court must ensure that all bond receipts are recorded and deposited in a timely manner.
9. The Municipal Court must develop procedures to identify and calculate the information required by 479.359 RSMo regarding limits on revenues derived from minor traffic and municipal ordinance violations.

Although the Rule and appendix is lengthy, most municipalities will find that they may already be in compliance with many aspects. Municipal courts and municipalities should begin working immediately on obtaining compliance with those provisions that do require changes in the way the municipal court is currently operating. Municipalities need to ensure that there is separation of Court personnel from other functions, clear identification of Court operations and space as distinctly judicial (at least when it is being used by the Court), and nearly full-time Court Clerk availability.

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(Endnotes)

1 *Much of these statutory requirements stem from items enacted by Senate Bill 5 (2015), as amended by Senate Bill 572 (2016). Several of the provisions of Senate Bill 5 are subject to legal challenge, which is currently being considered by the Missouri Supreme Court.*

2 *There is a fourth category of Home Rule City that can hold administrative hearings, which are cities having a population between 73,500 and 75,000 inhabitants. As of the 2010 census, no city in Missouri fell within that range. This range was adopted after the 2000 census, but before the 2010 census. The City of St. Joseph had a population of 74,078 as of the 2000 census, so it appears as if this was intended to be the fourth municipality that can hold administrative hearings in limited circumstances.*