


MCAA 2023: The Dos and Don'ts of Working With Your Police Department

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General Considerations

- “[M]unicipal courts comprise a substantial percentage of U.S. judicial operations. There are over 7,500 such courts in thirty states scattered across the country, they adjudicate over three and a half million criminal cases every year, and they collect over two billion dollars for local jurisdictions.”


Alexandra Natapoff, Criminal Municipal Courts, 134 Harv. L. Rev. 964, 966 (2021).



General Considerations

- If the elected officials or police department leadership attend court or try to influence the judge, this leads to a perception that the court is not independent.
- If police department employees communicate with court employees outside of the court room about pending matters, this leads to a perception that the court is not independent.
- When the court staff are police department employees or under the supervision of the police department, this leads to a perception that the court is partial in favor of the police and prosecution.
- If the process is fair, defendants are more likely to accept negative outcomes.

Adapted from Self-Assessment of Municipal Court Best Practices, Georgia Municipal Association, Inc.



General Considerations

- “Court operations and staffing should be physically and functionally separate from day-to-day interactions with city agencies other than for required, official court duties. It is especially important to guard against comingling police and prosecution activities with day-to-day court-related activities. To do so risks violating the court’s responsibility to remain neutral and independent both in fact and appearance. Casual *ex parte* communications regarding cases and case information involving police or prosecution with the court breaches that duty as well as job-sharing between the court and police or prosecution functions.”

Quoted from “Missouri Municipal Courts: Best Practice Recommendations,” prepared by the National Center for State Courts.



Ex Parte Communications

- Judicial Canon 3(B)(7), judge shall not initiate or consider *ex parte* communications. Applies to communications with both prosecution and defense.
- See, for example, *Matter of Mendelsohn*, 433 S.C. 237, 238, 857 S.E.2d 555, 556 (2021). Judge “drafted the following note to City of Charleston Police Officer ‘Can you see your way clear to a dismissal? Thanks...’ Respondent attached the note to a February 7, 2019 City of Charleston traffic ticket [the police officer] issued to P.K. P.K. is Respondent’s brother-in-law.”
- See also *In re O’Kelley*, 361 S.C. 30, 603 S.E.2d 410 (2004). Associate municipal judge’s reduction of parking tickets issued to his relatives, employees, and acquaintances to warnings outside of court violated Canons of the Code of Judicial Conduct requiring judge to uphold integrity of the judiciary, avoid impropriety, respect and comply with the law, not allow relationships to influence his conduct, perform duties impartially, and not permit *ex parte* communications.



Ex Parte Communications

- The standards may be relaxed in summary court.
- For example, see Advisory Committee on Standards of Judicial Conduct, Opinion No. 11-2014. Prior to bond hearings, law enforcement may provide certain information about the defendant (criminal record, charges pending, incident reports) directly to the judge.
- The parties may consent to expedite a plea.
- Court staff might assist defendants who are not represented by counsel.
- Finally, if police officers prosecute your cases, *ex parte* communications may sometimes be appropriate to ensure consistency among cases.



Ex Parte Communications

- The municipal clerk of court is not directly subject to the rules on *ex parte* communications.
- But the clerk should know the rules and can act as a gatekeeper.
- Moreover, the clerk should be aware of perceptions that may be created by communications with either law enforcement or with defendants.



Limitations on Police Department and Municipal Court

- Handbook: "[T]he supervision of court staff by law enforcement personnel is highly discouraged. This avoids the appearance of impropriety and maintains judicial impartiality."
- AG Opinion October 2, 2007 (police officer): "[M]unicipal police officers often serve as prosecutors against those being tried.... Furthermore, even if the municipality employs an attorney to prosecute charges, municipal police officers often are witnesses in such cases. Because municipal courts possess criminal jurisdiction, an apparent conflict could arise due to the police officer's need to prosecute or testify at municipal court hearings. Under these circumstances, an individual may not be able to act as a neutral and detached arm of the court with regard to his or her role as clerk of court or in executing the duties of the clerk of court if the individual is also serving as a police officer for the same municipality. Thus, we strongly advise that a municipal police officer not serve as or perform the functions of the clerk of court for the municipality in which he serves, as the possibility of an apparent conflict of interests is almost unavoidable."



Limitations on Police Department and Municipal Court

- AG Opinion September 11, 2003 (police records clerk): "The same reasoning would apply with greater force to the municipal judge than even the Clerk of the Municipal Court.... We agree with your conclusion that it presents a conflict of interest or, at the very least, the appearance of a conflict, for a town employee also to serve as a Municipal Judge. This is particularly true where, as here, at least some of the duties involved as a town employee touch upon or relate to law enforcement. Serving as clerk for the police department could well present a clear conflict of interest to one's duties as a municipal judge."



Limitations on Police Department and Municipal Court

- Advisory Committee on Standards of Judicial Conduct, May 31, 2001. “[I]t is improper for the Municipal Clerk [of Court] to also hold the position of Records Clerk for the Police Department.”
- AG Opinion December 5, 1996 (police records clerk): “[T]he Town of Saluda is contemplating hiring a clerk. Apparently, this clerk would assist you in your position of Clerk-Treasurer and assist the Saluda Police Department in filing and completing reports. Your question is whether that clerk may be permitted to do general paperwork, set up docket sheets, and receive payment for traffic fines for the Municipal Court and type warrants for the Assistant Judge.... [I]t would not be appropriate for an individual to work simultaneously for the Police Department and the Municipal Court.”



Limitations on Police Department and Municipal Court

- AG Opinion July 25, 2002 (victims' advocate): “A clerk of court, when performing the duties of clerk, is an arm of the court itself. The municipal court is part of the unified judicial system created by Article V of the State Constitution. The court is constitutionally required to remain 'neutral and detached' in the performance of its exclusively criminal functions, such as the issuance of warrants.... Where the Clerk of Court of Westminster, whose duties relate almost exclusively to the administration of the municipal court, also performs the duties of Victims' Advocate, it could be alleged that an inherent conflict of interest exists in such a relationship.”



Limitations on Police Department and Municipal Court

- Dual Office Holding: The municipal clerk of court probably holds an “office” for constitutional purposes. See AG Opinions October 15, 2003; September 12, 2003; July 25, 2002; August 5, 1992; and August 18, 1981.