



# **Municipal Courts: A Guide for Municipal Elected Officials**

**December 1, 2017  
First Edition**

## FOREWORD

As of the date of publication, 399 of the 538 Georgia municipalities operate their own municipal court. These courts are as varied and diverse as the people of the state itself. The Atlanta Municipal Court operates at a non-stop pace with daily court sessions to serve Atlanta's over 400,000 residents, while many other municipal courts operate in municipalities only a few hundred persons in population, some holding court as infrequently as once every other month. Despite the diversity in the municipalities of the state every municipal court must follow the same laws and rules to make sure the court is run properly and in a way that respects the constitutional rights of everyone brought before the court. It is important to remember that there are no special laws for smaller municipal courts. The same standards which apply to the largest municipal courts also apply to the smallest municipal courts.

To help educate elected municipal officials on necessary components of municipal court operations, the Georgia Municipal Association is pleased to provide the first edition of **Municipal Courts: A Guide for Municipal Elected Officials** to our members. This edition contains information on and from statutory law and case law relating to the operations of municipal courts in Georgia. Additionally, this publication contains information from the Uniform Rules of Municipal Courts of the

State of Georgia, promulgated in December 2011, and from other sources relevant to the Georgia municipal courts.

We express our thanks to Alison Earles, GMA Associate General Counsel, and Rusi Patel, GMA Senior Associate General Counsel, for their work on this handbook and other materials created to help municipal elected officials understand the operation of their municipal court. Additionally, we thank Michael Wedincamp and Glenn Hull, two students at Georgia Southern University pursuing their Masters in Public Administration, whose research on key issues related to Georgia's municipal courts has been invaluable. We also want to thank Brittany Schmidt, student at Mercer University School of Law, class of 2017, for her help drafting and editing of this publication. Finally, we thank the Administrative Office of the Courts and its staff, the Council of Municipal Court Judges and the Council of Municipal Court Clerks for their input and assistance during the creation of this publication. Municipal officials should rely on their city attorney to apply the law and judicial interpretations to the specific situations they face. By reading this publication, city officials will gain a working knowledge of municipal courts. Equipped with this knowledge, we hope they will recognize potential problem situations when they arise and seek legal counsel to insure compliance with the law. The opinions expressed in this publication should not be used or taken as legal advice.

## TABLE OF CONTENTS

INTRODUCTION .....	7
CHAPTER ONE – Georgia’s Judiciary System .....	8
CHAPTER TWO – Independence of Municipal Courts.....	12
Separation of Powers .....	12
The Municipal Court Judge and Municipal Governing Authority.....	14
Municipal Court Personnel .....	14
Supervision of Municipal Court Personnel.....	16
CHAPTER THREE – The Municipal Court Judge .....	17
A.    The Rules that Govern the Municipal Court Judge.....	17
Municipal Court Judge as an Attorney .....	17
Selection of a Municipal Court Judge.....	18
Judicial Ethics .....	18
B.    Training for Municipal Court Judges .....	19
Training Requirements.....	19
Creditable Training for Municipal Court Judges .....	20
C.    Removing the Municipal Court Judge .....	21
Terminating the Employment or Contract of a Municipal Court Judge .....	21
A Municipal Court Judge is NOT an At-Will Employee .....	21
Removal of an Appointed Municipal Court Judge .....	22
Removal of an Elected Municipal Court Judge .....	23
CHAPTER FOUR – The Municipal Court Clerk .....	24
A.    Role of the Municipal Court Clerk.....	24
B.    Training of the Municipal Court Clerk .....	24
C.    Judicial Accounting by the Municipal Court Clerk .....	25
The Georgia Superior Court Clerks Cooperative Authority .....	25

Remittance of Costs, Fees, and Surcharges .....	26
Partial Fine Payment .....	26
Creating a Local Fine Add-On.....	28
CHAPTER FIVE – Jurisdiction of the Municipal Court.....	28
A.    Definitions.....	28
B.    The Offenses .....	30
CHAPTER SIX – Funding of the Municipal Court.....	32
A.    Necessity of a Municipal Court.....	32
Municipal Police Department/Code Enforcement .....	33
B.    Bail, Fines, and Fees in the Municipal Court .....	33
Bond and Bail .....	33
Determining Fine Amounts for Particular Offenses .....	34
CHAPTER SEVEN – Liability and Constitutional Rights.....	35
A.    Liability Issues in the Municipal Court.....	35
Constitutional Rights of Defendants in Municipal Court .....	36
B.    Public Defenders .....	36
C.    Interpreters .....	38
D.    Right to a Jury Trial .....	39
CHAPTER EIGHT – Municipal Court Prosecutors .....	39
A.    Benefits of a Municipal Court Prosecutor.....	39
B.    Who Can Be the Municipal Court Prosecutor.....	41
Requirements to be a Municipal Court Prosecutor .....	41
City Attorney as the Prosecutor .....	41
Assistant District Attorney or Assistant Solicitor General as Prosecutor.....	41
C.    The Office of Prosecuting Attorney of Municipal Court .....	42
Establishing the Office of Prosecuting Attorney of Municipal Court .....	42
Appointing a Prosecuting Attorney .....	43
Term of Office for a Municipal Prosecuting Attorney .....	43
Legal Practice Restrictions on Municipal Court Prosecuting Attorneys .....	44
When the Prosecuting Attorney is Unavailable or Disqualified.....	44
Powers of the Municipal Court Prosecuting Attorney.....	45

Compensation of Municipal Court Prosecuting Attorney .....	46
Training of Municipal Court Prosecuting Attorney .....	46
Employment of Additional Prosecutorial Staff.....	48
D. Municipal Court Prosecutors and Pre-Trial Programs .....	48
Pre-Trial Intervention and Diversion Program .....	48
CHAPTER NINE – Punishment in the Municipal Court .....	50
APPENDIX .....	i

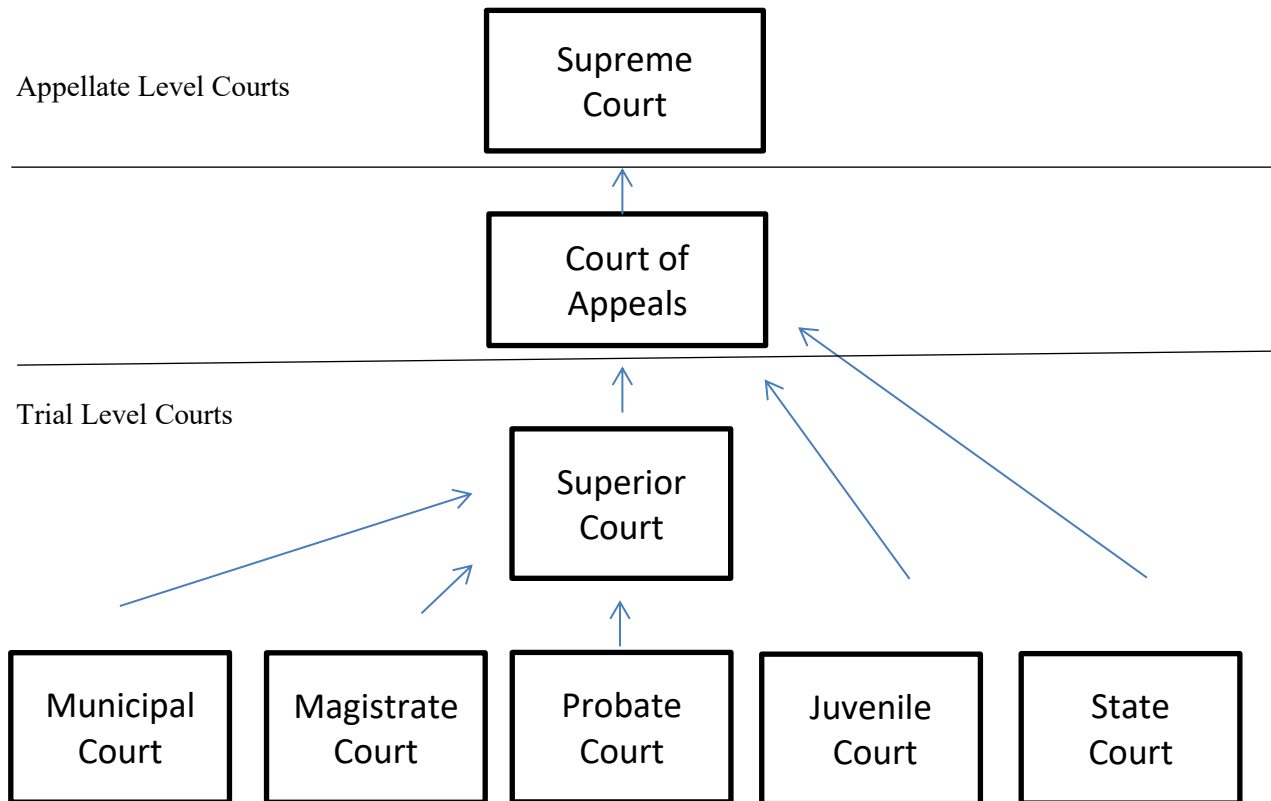
## INTRODUCTION

A properly run municipal court promotes public safety, improves quality of life and inspires confidence in the city and its leadership. Operating a municipal court improperly can create distrust of the city's police force, which threatens public safety. Moreover, improper operation of the court can lead to loss of certain kinds of federal funds, costly litigation and damage to the city's brand. Municipal courts should never be utilized for purposes of revenue generation. While a municipal court may generate revenue, such revenue generation should always be treated and viewed as a side-result of the promotion of justice and should not be the purpose of operating a municipal court.

By reviewing this publication municipal elected officials and municipal employees will gain a greater understanding of municipal courts, their operations, and the laws which govern them.

GMA has prepared a city self-assessment of municipal court best practices, a model municipal court judge ordinance and contract, a model municipal court prosecutor ordinance, and a model contract with a probation service provider in the Appendix to this publication. These documents should help city leaders take immediate action to make sure municipal courts function on the correct side of the law.

## CHAPTER ONE – Georgia’s Judiciary System



Georgia’s judiciary system consists of three tiers, all of which are vested with the judicial power of the state. The first tier is considered the “trial level” and it includes municipal court, magistrate court, probate court, juvenile court, superior court and state court. Most courts at this level have limited jurisdiction, which means they only hear certain types of cases.<sup>1</sup> At this level, evidence is first presented and considered. Municipal courts fall within this tier of courts. Unlike some other courts, municipal courts cannot have jury trials. If a defendant requests a jury trial in municipal court,

<sup>1</sup> . Superior Court is the only trial court of general jurisdiction, which means it hears and reviews various types of cases. State courts, Juvenile courts, Probate courts, Magistrate Courts, and Municipal courts are trial courts of limited jurisdiction. (Appeals from certain Probate Courts go directly to the Court of Appeals. Additionally, certain appeals from Superior Courts go directly to the Supreme Court.)



the case must be bound over to a court which can have jury trials, typically state or superior court. Appeals from municipal court typically go to the Superior Court.

The second tier includes the Court of Appeals. The Court of Appeals has appellate jurisdiction, which means it can review decisions from the lower level. The third tier is the highest level of review in Georgia and it is made up of the Supreme Court. The Supreme Court is commonly referred to as the “Court of Last Resort” because it has exclusive appellate jurisdiction and the ability to answer questions of law. Courts in general are governed by Article VI of the Georgia Constitution, relating to the judiciary, and various state laws, though as you will read further municipal courts don’t always fall cleanly within the laws which apply to other courts in Georgia.

## Municipal Courts

In the past there were many different names for a municipal court.

***FAQ: Are mayors' courts, police courts, recorders' courts and corporate courts different from municipal courts?***

No. The Georgia laws on municipal courts can be confusing and outdated by referring to the municipal court as a “corporate court,” “corporate courts,” “police court,” “police courts,” “recorder's court,” “recorders' courts,” “mayor's court,” and “mayors' courts.”<sup>2</sup> However, whenever such terms are used to refer to a court of a municipal corporation, state law has stricken the term and replaced it with “municipal court.”<sup>3</sup> Although state law has made this declaration, sometimes municipal charters themselves have not caught up with state law and are still using other terms to identify a municipal court. If your city's municipal charter references the municipal court by one of these other names, it does not change the fact that such court is a municipal court under Georgia law.

Instead of falling under the provisions of Article VI of the Georgia Constitution, municipal courts are mostly governed by statute. Specifically, Chapter 32 of Title 36 of the Official Code of Georgia contains many of the state statutes which govern municipal courts.<sup>4</sup> Additional statutes relating to the operations of municipal courts can be found in other areas of the Georgia code.

---

<sup>2</sup> O.C.G.A. §6-32-1. For future reference, when confronted with a statutory citation such as O.C.G.A. §36-32-1, such citation is an abbreviation for Official Code of Georgia Annotated (O.C.G.A.) followed by the section symbol (§). The number represents the title of the Georgia code, followed by the chapter in that title, followed by the code section. In this example the 36 represents the title, the 32 the chapter of that title, and the 1 the code section in that chapter.

<sup>3</sup> O.C.G.A. §36-32-1(a).

<sup>4</sup> O.C.G.A. §36-32-1.

These statutes grant municipal courts the power to hear certain misdemeanor criminal offenses, certain civil offenses, and certain quasi-criminal offenses. See Chapter Five for examples of these types of offenses. Georgia’s municipal courts hear well over a million cases annually.<sup>5</sup> All municipal courts are required to submit caseload reports to the Administrative Office of the Courts.

These cases include offenses originating from: ordinance violations; misdemeanor drug offenses traffic offenses; serious traffic offenses such as driving under the influence; and other misdemeanor offenses for which municipal courts have jurisdiction. Since the municipal court is the only exposure many people may have to the judicial system it is of utmost importance that municipal courts be conducted properly, ensuring the protection of civil rights of any defendant brought before the court.

***FAQ: Our city is pretty small and our court does not convene all that often, do we still have to follow all of the same rules and procedures as those big-city courts?***

Yes. Emphatically, yes. The United States Constitution, the Georgia Constitution, and all federal and state laws which apply to municipal courts in large cities in Georgia apply equally to the smallest municipal courts.

---

<sup>5</sup> Georgia Municipal Court Caseload, <http://www.georgiacourts.org/content/caseload-reports>

## CHAPTER TWO – Independence of Municipal Courts

### Separation of Powers

The separation of powers is the “division of governmental authority into three branches of government — legislative, executive, and judicial — each with specified duties on which neither of the other branches can encroach.”<sup>6</sup> The founders of the United States adopted the principle of separation of powers in the United States Constitution, and Georgia and other states adopted it in their own constitutions.<sup>7</sup> In practice, the separation of powers principle establishes the checks and balances in government to prevent overreach from any one branch of the government and prevent consolidation of power in any one branch of government.

Separation of powers in relation to Georgia’s municipal courts, however, has a complicated history. In Ward v. City of Cairo, the Supreme Court of Georgia held that it was not a violation of the separation of powers doctrine for a city government to require that it approve service contracts for the municipal court.<sup>8</sup> The Court

---

<sup>6</sup> SEPARATION OF POWERS, Black’s Law Dictionary (10th ed. 2014)

<sup>7</sup> Ga. Const. art. I, §2, ¶ III.

<sup>8</sup> Ward v. City of Cairo, 276 Ga. 391, 393, 583 S.E.2d 821, 823 (2003).

acknowledged that, while separation of powers is an essential doctrine that exists in order to keep the departments of government separate, there will always be some overlap. The Court held that because the municipal court financially impacts the municipal governing authority, the judicial function of the court and the executive function of the governing authority will always overlap. Because of this overlap, it is not a violation of separation of powers to require that the governing authority approve certain aspects of the municipal court (e.g. service contracts, employment contracts, etc.).

In municipal courts the separation of powers means that the municipal governing authority does not have the power to overrule judicial decisions of the court. This means that city elected officials cannot insert themselves in the judicial decisions of the judge.<sup>9</sup>

Although the municipal governing authority tends to have some power over the municipal court: setting the budget, paying salaries, employee retention, etc., the municipal governing authority does **not** have the power to make judicial decisions. The ability to make judicial decisions remains with the court itself, and any attempt of the municipal governing authority to make judicial decisions should be viewed as a potential violation of the separation of powers. Such violations should and will be taken seriously and can lead to costly litigation for the city.

---

<sup>9</sup> The Ward v. City of Cairo decision may cause confusion and make it seem like municipal courts are not subject to the separation of powers principle of the Georgia Constitution at all. However, a closer reading of past Georgia Supreme Court decisions reveals that the separation of powers principle is alive and well in Georgia's municipal courts. Additionally, the Georgia Attorney General has recently issued an unofficial opinion distinguishing actions based upon judicial authority from actions taken based upon the authority of a city charter. *See* Op. Att'y Gen. No. U2014-2.

## The Municipal Court Judge and Municipal Governing Authority

If a municipal governing authority disagrees with the judicial findings of its municipal court judge and subsequently tries to impose its own will on judicial decisions, the municipal court will no longer be an independent judicial body but a mere rubber stamp of the will of the municipal governing authority. **This should not and cannot be allowed to happen.**

The United States Supreme Court held, in one of its earliest and most famous decisions, that it “is emphatically the province and duty of the judicial department to say what the law is.”<sup>10</sup> When the executive or legislative bodies of a government attempt to influence the ability of the judiciary and make judicial decisions, the rule of law begins to fail. The United States is a country predicated on the supremacy of legal doctrine, and it is important that municipal elected officials and other non-court personnel not interfere in the judicial operations of the municipal court.

## Municipal Court Personnel

### ***FAQ: Are judges, clerks, and prosecutors required for a municipal court?***

While state law does not explicitly mandate a municipal court having a judge, a clerk, or a prosecuting attorney, each of these positions can play a vital role in the adjudication of justice for a municipal court. A municipal court **cannot** properly function and would subject the city to numerous lawsuits without a municipal court judge and a municipal court clerk. Therefore, an implied mandate for municipal courts to have a municipal court judge and municipal court clerk, is understood.

---

<sup>10</sup> Marbury v. Madison, 5 U.S. 137, 177, 2 L. Ed. 60 (1803)

### Municipal Court Judges:

A municipal court judge is not explicitly mandated by state law.<sup>11</sup> However, it would be impossible to actually hold municipal court without a municipal court judge. For more information on the role of the municipal court judge, please refer to Chapter 3 of this publication.

### Municipal Court Clerks:

By law, every municipal court has a municipal clerk. A person becomes a municipal court clerk based on his or her actions, even if the city does not designate him or her has a municipal court clerk. O.C.G.A. § 36-32-13 defines “municipal court clerk” as the primary person most directly responsible for the administration of a municipal court other than a judge of the municipal court. This section imposes training requirements on municipal court clerks.

A municipal court would fail to operate properly, would likely violate a number of laws, including the constitutional rights of defendants, and would run into a host of other issues without a properly trained court clerk. A municipal court operating without a properly trained municipal court clerk is an invitation to litigation. For more information about municipal court clerks, please refer to Chapter 4 of this publication.

### Municipal Prosecuting Attorneys:

Whether a municipal court has an actual prosecuting attorney (usually titled as a prosecutor or solicitor) is a much more complicated issue than a municipal court having a judge or a designated municipal court clerk. While a municipal court cannot logically operate without a municipal court judge and a municipal court clerk, there are a number of municipal courts which operate without a municipal court

---

<sup>11</sup> O.C.G.A. Section 36-32-2(b) states that the Code shall not be construed to require the governing authority of any municipal corporation to appoint a judge.

prosecuting attorney. For more information on having a prosecuting attorney, please refer to Chapter 8 of this publication.

## **Supervision of Municipal Court Personnel**

While municipal court personnel are typically municipal employees, they also are part of a separate branch of government because of their judicial duties. This makes supervision of municipal court personnel complicated, but still necessary. While a municipal governing authority should not impede judicial personnel in the performance of their judicial duties, the governing authority does need to supervise personnel. Municipal courts may handle large amounts of money, through the payment of fines, and proper supervision and accountability is necessary to ensure that such fine amounts are accounted for and distributed to the correct locations.

Municipal governing authorities, municipal councilmembers, mayors, and managers often find it difficult to supervise court personnel because they are not usually fully aware of court personnel duties. Municipal court judges and clerks are required to take annual training classes, and it is not reasonable to expect a municipal councilmember, mayor, or even manager to know the details of that training or particular job duties of municipal court personnel. However, not having the details of training or job duties does not relieve municipal officeholders of their duties to supervise court personnel.

Supervising court personnel should involve ensuring that they receive all appropriate and required trainings and being open to finding them resources to help them answer questions. In addition, it involves reviewing complaints against court personnel, monitoring contract requirements with the judge, and reviewing annual probation reports required by law to be provided to the municipal governing authority. It also



may involve utilizing an appropriately trained party to audit financial accounts and utilizing an appropriately trained party to conduct forensic audits of municipal court operations to determine how court practices might be improved. Supervision should not include repeated or regular attendance at court and interference with court personnel in their judicial duties, which includes interference with judicial decisions of the court.

## CHAPTER THREE – The Municipal Court Judge

### A. The Rules that Govern the Municipal Court Judge

***FAQ: Can the mayor be the municipal court judge?***

No. If your municipal charter refers to your municipal court as a “mayors’ court” it **does not** mean that the mayor is allowed to preside as the judge. Although, some municipal charters refer to municipal court as a “mayors’ court,” this term is outdated and should no longer be used in practice. In 1994, the Judicial Qualifications Commission (JQC) deemed it improper for a mayor to be the municipal court judge of the same city.<sup>12</sup> The JQC held that for a judge to “simultaneously serve as the Chief Executive Officer of the same city inevitably leads to a loss of public confidence in the integrity and impartiality of the judiciary.”<sup>13</sup>

### Municipal Court Judge as an Attorney

A state law enacted in 2011 requires municipal court judges to be licensed to practice law in Georgia and to be an active member in good standing with the State Bar of

---

<sup>12</sup> JQC No. 196.

<sup>13</sup> Id.

Georgia.<sup>14</sup> However, the Georgia General Assembly created an exception to that rule which states municipal court judges who began service on or prior to June 30, 2011 are **not** required to be practicing attorneys. Any municipal court judge who began service after June 30, 2011, is required to be a practicing attorney and be in good standing with the State Bar of Georgia.

Regardless of one's status as an attorney, all municipal court judges are required to comply with the training requirements applicable to all municipal court judges, discussed in detail in this chapter.

## **Selection of a Municipal Court Judge**

The city charter usually sets out the process a city must follow in selecting a new municipal court judge. Some examples of processes include: the mayor has sole power to appoint; the city council has sole power to appoint; the mayor and council appoint; or the judge must be elected. City officials should consult with their city attorney and review the city charter when selecting a new municipal court judge to ensure the proper procedure is followed.

## **Judicial Ethics**

All judges and judicial candidates in the State of Georgia are bound by the Georgia Code of Judicial Conduct. These rules can be found on the State Bar of Georgia and Georgia Supreme Court websites.<sup>15</sup> The rules detail standards of ethical conduct for judges and judicial candidates. When reviewing complaints about a judge or determining whether it is appropriate to terminate a judge's contract, it is a good idea to review this information and discuss it with the city attorney.

---

<sup>14</sup> O.C.G.A. §36-32-1.1

<sup>15</sup> <https://www.gabar.org/barrules/handbookdetail.cfm?what=rule&id=522> (retrieved August 1, 2017); [http://www.gasupreme.us/wp-content/uploads/2016/09/Code\\_of\\_Judicial\\_Conduct\\_09\\_22\\_16.pdf](http://www.gasupreme.us/wp-content/uploads/2016/09/Code_of_Judicial_Conduct_09_22_16.pdf) (retrieved August 1, 2017)

The Judicial Qualifications Commission (JQC) conducts investigations and hearings on complaints of ethical misconduct by Georgia judges.<sup>16</sup> The JQC also has the ability to issue Advisory Opinions regarding appropriate judicial conduct. These opinions can be found utilizing a search on the JWC website ([www.gajqc.com](http://www.gajqc.com)) and cover a variety of legal issues that affect all levels of Georgia courts, including municipal courts.

## **B. Training for Municipal Court Judges**

### **Training Requirements**

Municipal court judges are required to complete twenty (20) hours of training within one year after becoming a new municipal court judge.<sup>17</sup> To remain a municipal court judge an additional twelve (12) hours of training must be completed each year after the initial certification is obtained.<sup>18</sup>

The Georgia Municipal Courts Training Council (GMCTC) is required by law to keep records of training completed by municipal judges and judges of courts exercising municipal court jurisdiction.<sup>19</sup> The best method for determining whether a municipal court judge has obtained the required training is to contact the Georgia Municipal Courts Training Council.<sup>20</sup> The city in which the judge presides is required by law to pay for the cost of the judge's training.<sup>21</sup> A municipal court judge can preside over courts in multiple municipalities. It is a good idea for all cities employing such a judge enter into cost-sharing agreement.

---

<sup>16</sup> Ga. Const. art. VI, § 7, ¶ VI

<sup>17</sup> O.C.G.A. §36-32-27

<sup>18</sup> *Id.*

<sup>19</sup> O.C.G.A. §36-32-11(b).

<sup>20</sup> As of the date of this publication, such records may be obtained by contacting the Trial Court Liaison for the Council of Municipal Court Judges, LaShawn Murphy, at [LaShawn.Murphy@georgiacourts.gov](mailto:LaShawn.Murphy@georgiacourts.gov)

<sup>21</sup> O.C.G.A. §36-32-11 (d).

## Creditable Training for Municipal Court Judges

Creditable training for a municipal court judge includes training sessions offered by the Institute of Continuing Judicial Education for Georgia and municipal court specific training. According to the Georgia Municipal Courts Training Council (GMCTC), any judge who utilizes a training given by the Institute of Continuing Judicial Education in a given year must attend municipal court specific training the following year. The GMCTC will also consider classes conducted by certain judicial education entities for purposes of recertification, but only if the judge had previously attended the recertification program sponsored by the GMCTC.<sup>22</sup>

Credit is **not** given for mandatory Continuing Legal Education programs, which are training courses available to all attorneys, not just judges.

If the municipal court judge does not complete the required training during the year, the GMCTC is required to notify the JQC, which will then have the power to remove the judge from office unless it finds that the failure was caused by facts beyond the control of the judge.<sup>23</sup> Although not explicitly stated in state law, the failure of a municipal court judge to receive training could have dire consequences for the operation of the municipal court and the legality of any convictions imposed by the improperly trained judge. The GMCTC, however, does have the ability to extend the time for compliance with training requirements on a case-by-case basis for hardship reasons only.<sup>24</sup>

---

<sup>22</sup> Id.

<sup>23</sup> O.C.G.A. §36-32-11(c).

<sup>24</sup> Policy Statement of the Georgia Municipal Courts Training Council, *supra*.

## **C. Removing the Municipal Court Judge**

### **Terminating the Employment or Contract of a Municipal Court Judge**

In the past, a municipal court judge's employment or contract could be terminated without cause. Due to concerns that this conflicted with the principle of separation of powers and led to terminations of judges due to disagreements over judicial acts, the law was changed in 2016. **Effective July 1, 2016, Georgia law prohibits the termination of a municipal court judge's employment or contract without cause.**

This legislation requires that municipal court judges be guaranteed a term of at least one year in office, and such term must be written in a contract or in an ordinance or a charter.<sup>25</sup> Once a municipal court judge is appointed he or she cannot be removed from that position for at least the minimum set forth in the contract, ordinance, or charter unless his or her conduct has been determined to fall within one of the causes of removal listed in the statute. A model ordinance and model contract providing for a term of office of the municipal court judge can be found in the Appendix of this publication.

### **A Municipal Court Judge is NOT an At-Will Employee**

Georgia law now only allows an appointed municipal court judge to be removed during his or her term by a two-thirds' vote of the entire membership of the governing authority of the municipal corporation for willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance, conduct prejudicial to the administration of justice which brings the judicial office into disrepute, or disability seriously interfering with the performance of duties, which is, or is likely to become, of a permanent character.<sup>26</sup> In addition to the statutorily listed reasons, a

---

<sup>25</sup> O.C.G.A. §36-32-2.

<sup>26</sup> O.C.G.A. §36-32-2.1(b)(1).

municipality may remove an appointed municipal court judge by enacting additional conduct in the municipal charter which may lead to the judge's removal.<sup>27</sup>

### **Removal of an Appointed Municipal Court Judge**

An appointed municipal court judge can only be removed by following the procedure set forth in Georgia law. First, a written petition setting forth the grounds for removal of a judge signed by one or more members of the governing authority of the municipal corporation must be submitted to the governing authority.<sup>28</sup> Once such a petition has been submitted, the governing authority may consider the petition and determine if it relates to and *adversely affects* the administration of the office of the judge and the rights and interests of the public.<sup>29</sup> If, by majority vote, the governing authority determines that there is an adverse impact, the judge can be suspended without further action for up to 60 days pending a final determination pursuant to state law.<sup>30</sup> Any judge who has been suspended "shall continue to receive the compensation from his or her office until the final determination on the petition or expiration of the suspension."<sup>31</sup> If the suspension period expires with no formal resolution then the judge is automatically reinstated.<sup>32</sup>

Any removal proceedings of an appointed municipal court judge must be held in an open hearing by the governing authority.<sup>33</sup> The judge against whom the charges have been brought has to be provided a copy of the charges at least ten days prior to the hearing.<sup>34</sup> At the conclusion of the hearing the governing authority can determine

---

<sup>27</sup> O.C.G.A. §36-32-2.1(b)(2).

<sup>28</sup> O.C.G.A. §36-32-2.1(c).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> O.C.G.A. §36-32-2.1(d).

<sup>33</sup> O.C.G.A. §36-32-2.1(e).

<sup>34</sup> *Id.*

whether or not to remove the judge from office.<sup>35</sup> The governing authority is allowed to adopt rules governing the procedures at these hearings as long as the rules comply with due process rights.<sup>36</sup> If the judge is removed by a two-thirds' vote of the entire membership of the governing authority, as provided for in the law, the judge will still have a right to appeal the decision to the superior court of the county in which the municipal corporation is situated.<sup>37</sup>

The city is allowed to temporarily fill a vacancy in a judgeship for a period not longer than 90 days, but the person appointed to be a temporary judge must meet all of the same qualifications to serve as a municipal court judge as a permanent judge.<sup>38</sup>

### **Removal of an Elected Municipal Court Judge**

A small minority of municipal court judges are elected and not appointed. The new law concerning the removal of appointed municipal court judges does not apply to elected municipal court judges. Elected municipal court judges can be removed from office by the Judicial Qualifications Commission or by the voters at the time of election.

---

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> O.C.G.A. §36-32-2.1(g).

## **CHAPTER FOUR – The Municipal Court Clerk**

### **A. Role of the Municipal Court Clerk**

The municipal court clerk is the primary person most directly responsible for the administration of a municipal court other than a judge of the municipal court. He or she is most directly responsible for ensuring that fine amounts collected are remitted to the proper funds, ensuring that all necessary forms are available at each court date, reporting convictions, document processing, and many other duties. Municipal court clerks are often responsible for handling large amounts of money because of the amounts of fines that are often collected by municipal courts. This is why it is necessary to select a municipal court clerk with care.

### **B. Training of the Municipal Court Clerk**

Any municipal court clerk hired on or after July 1, 2006, is required to complete a minimum of 16 hours of training “related to the operation of municipal court as prescribed by the Georgia Municipal Courts Training Council within his or her first year of service as a municipal court clerk.”<sup>39</sup> After the first year of training the municipal court clerk is required to have annual training of 8 hours a year.<sup>40</sup> Georgia

---

<sup>39</sup> O.C.G.A. §36-32-13(b)(1).

<sup>40</sup> O.C.G.A. §36-32-13(b)(2).



law requires the governing authority of the municipality which employs the municipal court clerk to pay for all “reasonable costs and expense of training.”<sup>41</sup>

The Georgia Municipal Courts Training Council is responsible for keeping records of training of the municipal court clerks.<sup>42</sup> If there is any year in which a municipal court clerk fails to complete the required training, the Georgia Municipal Courts Training Council is required by law to notify the governing authority as well as the chief municipal court judge of the municipality.<sup>43</sup> Therefore, the governing authority is on notice that the clerk did not receive training, and must take immediate action to resolve the issue. While the law is silent as to the repercussions to the clerk and to court decisions made in a court with a clerk who has not received appropriate training, such facts can certainly be used against a city in potential litigation.

### **C. Judicial Accounting by the Municipal Court Clerk**

#### **The Georgia Superior Court Clerks Cooperative Authority**

Municipal court clerks must handle payments to the court in accordance with specific rules established by the Georgia Superior Court Clerks Cooperative Authority (GSCCCA). The GSCCCA was created by statute in 1993 “to provide a cooperative for the development, acquisition, and distribution of record management systems, information, services, supplies, and materials for superior court clerks of the state.”<sup>44</sup>

State law mandates that the GSCCCA “shall act as collecting and remitting agent with respect to costs, fees, and surcharges for certain costs, fees, or surcharges by any clerk of court.”<sup>45</sup> A number of the costs, fees, and surcharges required to be charged on every fine in a municipal court are subject to these provisions in state law requiring the GSCCCA to act as the collecting and remitting agent. Those

---

<sup>41</sup> O.C.G.A. §36-32-13(b)(3).

<sup>42</sup> O.C.G.A. §36-32-13(c).

<sup>43</sup> O.C.G.A. §36-32-13(d).

<sup>44</sup> O.C.G.A. §15-6-94.

<sup>45</sup> O.C.G.A. §15-21A-3(b).

surcharges applicable to municipal courts are listed below under “Partial Fine Payment.”

### **Remittance of Costs, Fees, and Surcharges**

Each municipal court clerk is required by law to remit to the GSCCCA “all such funds to the authority by the end of the month following the month in which such funds are received.”<sup>46</sup> The clerk is also required to report to the GSCCCA any such funds received within 60 days “after the last day of the month in which such funds are received.”<sup>47</sup> All clerks remitting or reporting such funds shall use the prescribed procedures and forms created by the GSCCCA in reporting and remitting funds.<sup>48</sup> These rules and regulations go into great detail on how such costs, fees, and surcharges are remitted to the GSCCCA. First, such funds “collected by the court shall be held in an account separate from the city and county general fund.”<sup>49</sup> The rules and regulations also detail the remittance of funds from criminal fines and surcharges, including requirements for reports submitted to the GSCCCA.

The GSCCCA is allowed by law to retain one percent of the funds it receives from courts, but in no event is it allowed to retain more than \$500,000.00 per fiscal year.<sup>50</sup> The GSCCCA is required to remit the amounts meant to be collected for certain state designated funds.<sup>51</sup> Additionally, any interest earned by such funds while in the possession of the GSCCCA is also required to be remitted to the state general fund.<sup>52</sup>

### **Partial Fine Payment**

The rules and regulations of the GSCCCA state that any partial payments of fines “remitted to any clerk or other court officer should not be held beyond the end of the month following the month in which such payments are received.”<sup>53</sup> Partial payments of fines are required to be paid out in a priority list “made to comply with

---

<sup>46</sup> O.C.G.A. §15-21A-4(a)(1).

<sup>47</sup> Id.

<sup>48</sup> O.C.G.A. §15-21A-4(b).

<sup>49</sup> Rules and Regulations of the Georgia Superior Court Clerks Cooperative Authority. R. 2.1.

<sup>50</sup> O.C.G.A. §15-21A-5(a).

<sup>51</sup> Id.

<sup>52</sup> O.C.G.A. §15-21A-5(c).

<sup>53</sup> Rules and Regulations of the Georgia Superior Court Clerks Cooperative Authority. R. 7.1.

the provisions of O.C.G.A. 15-21A-4(a) with regard to partial payment priorities in courts other than State and Superior Courts.”<sup>54</sup>

Any partial payments on fines imposed and collected by municipal courts are to be disbursed out in the following priority schedule:<sup>55</sup>

1. Peace Officer Annuity and Benefit Fund
2. Any retirement fund (as may be applicable)
3. Law Library (LL)
4. Peace Officer, Prosecutor and Indigent Defense Fund (POPIDF –A)
5. Peace Officer, Prosecutor and Indigent Defense Fund (POPIDF –B)
6. City/County Governing Authority
7. Jail Construction and Staffing (JAIL)
8. Crime Lab Fee (CLF)
9. Georgia Crime Victims Emergency Fund (CVEF)
10. Indigent Defense Application Fee (IDAF)
11. Drug Abuse Treatment and Education Fund (DATE)
12. Local Victim Assistance Program (LVAP)
13. Brain and Spinal Injury Trust Fund (BSITF)
14. Safe Harbor Fund (SHF)
15. Driver Education and Training Fund (DETF)

***FAQ: Is a municipal court judge allowed to waive surcharges and add-on fees due to financial hardship?***

Yes. If the judge determines that fines or fees must be waived or reduced, that will cause the surcharge portion to be waived or reduced. The judge is allowed to waive or reduce any fine (including the add-on fees and surcharges) if he or she determines that the defendant is unable to pay. See Appendix for more information about hardship determinations.

<sup>54</sup> Rules and Regulations of the Georgia Superior Court Clerks Cooperative Authority. R. 7.13.

<sup>55</sup> <https://www.courttrax.org/partialOther.asp>

## Creating a Local Fine Add-On

While the law does not expressly forbid a city from creating its own fine add-on it is most likely not allowed and the creation of a local fine add-on, such as a technology fee, by ordinance could create liability issues for a municipality. Such local fine add-ons are most likely not allowed because state law clearly sets out which fine add-ons must be collected and there is no statutory authority existent for a city to create such fine add-on locally. If a municipal court desires to have another fine add-on the best course of action would be to seek and obtain local legislation specifically allowing the fine add on in the General Assembly.

## CHAPTER FIVE – Jurisdiction of the Municipal Court

### A. Definitions

**Arraignment** is the initial step in a criminal prosecution when the person accused of a crime is brought before the court to hear the charges against him or her to enter a plea. At arraignment, the accused person has a right to a trial by jury.<sup>56</sup> The **Arraignment Calendar** is a document containing cases scheduled for arraignment. These cases are not ready for trial as the accused have not entered a plea. A **plea** is the defendant's response to a criminal charge, which can be a plea of guilty, not guilty, or *nolo* contendere (no contest).

At arraignment, if the accused asserts their right to a trial by jury the case must be transferred to a court which is authorized to have jury trials. If the accused desires a trial in municipal court before a judge without a jury, the accused must execute a written waiver of the right to trial by jury at arraignment. The waiver may be revoked by writing to the court. The court must approve the revocation of the waiver and allow the case to be bound over for a jury trial unless the court makes specific findings that the revocation will substantially delay or impede the cause of justice.<sup>57</sup>

---

<sup>56</sup> Unif. R. Mun. Ct. Ga. 22.

<sup>57</sup> Id.

The arraignment is a vital tool for municipal courts, as many defendants seek to explain what led to their being charged with an offense, but are not actually challenging their guilt. The arraignment, therefore, is useful because when the court calls cases on the arraignment calendar it allows the judge to listen to specific circumstances and tailor punishments to fit such specific circumstances for defendants who are not actually challenging their own guilt. The judge or an individual designated by the judge sets the time of arraignment unless it is waived via the defendant or via the operation of law.<sup>58</sup> Notice of the date, time, and place of arraignment is to be delivered to the clerk of the court and sent to attorneys of record, defendants, and bondsmen.<sup>59</sup>

The **trial** is a formal examination of the evidence to make a determination of legal claims.<sup>60</sup> A **bench trial** is a trial where the judge makes the determination of the legal claims. A **jury trial** is a trial where a jury makes the determination of the legal claims.

The **trial calendar** is a document containing the schedule of pending cases ready for trial. It can include matters scheduled for motions, pleas, trial or other judicial action.

The **docket** is a formal record of the proceedings of a court. It is similar to an index of court records and includes significant dates of events, names and contact information for all interested persons, dates and nature of all official actions sought and/or taken.

**Bail** is money paid to the court as a guarantee that the person charged will come to court when required. If the person doesn't come to court, the amount is kept by the court. If the person comes to court, the amount is returned. It may be in the form of cash, property, or a bail bond, and may be unsecured.

A **Bail Schedule** is a list that sets the amount of bail a defendant is required to pay in order to ensure that he or she will return to court. Bail amounts should be set with the purpose of making sure the person will return to court. In many cases, the

---

<sup>58</sup> **Id.**

<sup>59</sup> **Id.**

<sup>60</sup> TRIAL, Black's Law Dictionary (10th ed. 2014)

amount is based on the nature of the offense a person is charged with. However, since the purpose of bail is to ensure return to court, pre-set bail schedules that appear to set bail in an amount similar to the fine may be found unlawful. A judge has the discretion to reduce the amount. Each jurisdiction has its own rules pertaining to the schedule and the judge is the person responsible for setting the schedule.

***FAQ: Does the trial have to be on the same date or time as the arraignment?***

No. Some municipal courts have the arraignment on a different date than the trial. One reason for separating the arraignment from the calendar is that many people simply want a forum to provide an explanation to why they committed an offense, knowing full well that they have committed the offense. Typically, the police officer or code enforcement officer who issued the citation does not need to be present for the arraignment. However, if the court has arraignments on a different day or time than the trial it may cause defendants to come to court on multiple occasions.

## **B. The Offenses**

Municipal courts in Georgia have very limited jurisdiction. Mostly, municipal courts hear violations of Georgia's traffic laws and municipal ordinances, but the courts also have the ability to hear a small number of other state criminal offenses.

### **Traffic Offenses**

For traffic offenses, municipal courts have the right to conduct bench trials, receive pleas of guilty and nolo contendere (no contest), and impose sentences upon defendants violating any and all criminal laws of the state relating to traffic upon the public roads, streets, and highways where the penalty for the offense does not exceed the grade of misdemeanor.<sup>61</sup> In misdemeanor traffic cases, upon the request

---

<sup>61</sup> O.C.G.A. §40-13-21(a)

of a defendant who has made, in writing, a knowing, intelligent, and voluntary waiver of his right to be present, the court may accept a plea of guilty or nolo contendere in absentia.<sup>62</sup> Many traffic offenses may be adopted by ordinance into the city code.<sup>63</sup>

## **Other State Misdemeanor Offenses**

Georgia's municipal courts have been granted jurisdiction to hear cases involving possession of one ounce or less of marijuana, possession of drug related objects, operating a motor vehicle without insurance, operating a vehicle without an emission inspection, shoplifting property valued under \$500, furnishing, purchase and possession of alcoholic beverages by persons under the age of 21, criminal trespass, and littering.<sup>64</sup>

## **Ordinance Violations**

Municipal courts also have the ability to hear cases involving violations of municipal ordinances. Ordinance violations are usually misdemeanor offenses but can also be quasi-criminal or civil in nature. For example, they might include park curfew violations or failures to pick up dog waste. Municipalities cannot enact ordinances which render illegal behavior that is already illegal under state law (unless specifically so authorized). For example, a city cannot enact an ordinance against murder or public intoxication, because state law already makes these illegal.

---

<sup>62</sup> Unif. R. Mun. Ct. Ga. 25.

<sup>63</sup> O.C.G.A. §40-6-372

<sup>64</sup> O.C.G.A. §§36-32-6; 36-32-7; 36-32-8; 36-32-9; 36-32-10; 36-32-10.1; 36-32-10.3.

## CHAPTER SIX – Funding of the Municipal Court

### A. Necessity of a Municipal Court

*If your city's reason for having a municipal court is in any way related to revenue, it is likely you have a municipal court for the wrong reasons.*

If the city is relying on fine revenue generated by the municipal court to pay for the municipal court's operations or if the city is relying on fine revenue from the municipal court to supplement the general fund, municipal elected officials should take a deep look at whether the municipal court is a necessity for the municipality and whether it actually improves the safety and quality of life in the community.

We have all heard the maxim: Justice is blind. If a city relies on a municipal court for revenue, whether to fund the municipal court itself or to supplement the general fund of the city, justice cannot truly be blind. Instead, the court might be inclined to find defendants guilty of violations and imposing stiff financial penalties upon such persons. When a city becomes dependent on municipal court revenues, the goal of serving justice may be impaired, the court may not be viewed as legitimate by members of the community, and public confidence in the municipal governing authority itself could be severely undermined. The municipal court is not the only court in Georgia which can prosecute misdemeanor offenses. A city could arrange for its misdemeanor offenses to be prosecuted in one of the other trial level courts with jurisdiction over misdemeanor offenses. Currently, over 130 cities in Georgia do not have a municipal court.



## **Municipal Police Department/Code Enforcement**

Having a municipal police department (or municipal police officer) or code enforcement officer is often a prerequisite for being able to operate a municipal court. Although it is common for a city with a municipal police department or code enforcement officer to have a municipal court, it is possible for a city to arrange to have either one without the other. By coordinating with another trial court, a city may have its own police department or code enforcement officer without having its own municipal court.

### **B. Bail, Fines, and Fees in the Municipal Court <sup>65</sup>**

#### **Bond and Bail<sup>66</sup>**

According to state law, if there is a bail schedule, it must be set up by the municipal court judge.<sup>67</sup> It is critically important that the municipal court judge set the bail schedule and make independent determinations of bail amounts without interference by the governing authority. The governing authority should not recommend or attempt to influence the judge as he or she performs this judicial act. The schedule must reflect the judge's determination of the amount of money

---

<sup>65</sup> Bail practices and the use of bail schedules have been the subject of intense scrutiny. The Council of Economic Advisers notes in its December, 2015 issue brief *Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor*, "bail systems that are not focused on securing the safety of the public and appearance of the defendant, and fail to take into account a defendant's ability to pay can result in the detention of low-risk defendants simply because they are unable to post bail." Detaining low risk offenders is costly to taxpayers, due to the costs of detention (including medical care for the detained individual.) Moreover, detention leads to family disruption, loss of income and in many cases loss of employment.

<sup>66</sup> The U.S. Supreme Court has identified two legitimate purposes for bail: assurance of future appearance at court and community safety. See *U.S. v. Salerno*, 481 U.S. 739 (1987). Bail schedules that set the amount that must be paid in order for an arrestee to be released immediately can serve as a starting point for a judge when determining bail. However, imposing bail without any kind of judicial review may be found an unconstitutional deprivation of the arrestee's right to due process as well as result in great risks to public safety. See *Bail Schedules: A Violation of Judicial Discretion?* Lindsey Carlson, Criminal Justice, Volume 26, Number 1, Spring, 2011. "American Bar Association recommendation: "financial conditions should be the result of an individualized decision taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge." ABA Standard 10-5.3(e) at 110. The commentary of this Standard notes "the practice of using bail schedules leads inevitably to the detention of some persons who would be good risks but are simply too poor to post the amount of bail required by the bail schedule. They also enable the unsupervised release of more affluent defendants who may present real risks of flight or dangerousness, who may be able to post the required amount easily and for whom the posting of bail may be simply a cost of doing 'business as usual.'" (ABA Standard 10-5.3 (e) (commentary) at 113.)

<sup>67</sup> O.C.G.A. §17-6-1(f)(1).

required to ensure reappearance at court. If the risk of failure to appear is low, the bail should be very low or the judge should authorize the defendant to sign his or her own bond. The Atlanta Municipal Court has implemented a “sign own bond” policy that has been very successful. If the city is involved in setting the bail schedule, or if bail is imposed without review by the judge, the schedule could be viewed as a policy of the city and could subject the city to litigation.

### **Determining Fine Amounts for Particular Offenses**

To determine the fine amount for an offense, it is necessary to see if the state has set a maximum or minimum fine amount for the offense. Then, it is necessary to check the city’s charter for any additional limits.

As an example one might look at the state’s driving under the influence (DUI) laws.<sup>68</sup> In Georgia, a first DUI offense requires a fine of not less than \$300 and not more than \$1,000 in addition to mandatory community service and a number of other penalties.<sup>69</sup> Similarly, subsequent offenses within a ten year period have additional penalties imposed upon them. Beyond specific state criminal statutes setting minimum and maximum punishments, state law also limits municipalities from having “fines and bond forfeitures in excess of \$1,000.00” per offense.<sup>70</sup> A city charter may further limit a city’s maximum fine per offense or bond forfeiture amount to an amount below \$1,000.00.

Once minimum and maximum fine amounts have been identified, the next step is determining the roles of the municipal governing authority and of the municipal court judge in setting fines. The maximum and minimum penalties for a violation of a municipal ordinance are set forth in the ordinance and are approved by the municipal governing authority. The method of approving an ordinance may vary from city to city based upon different quorum requirements and voting privileges.

A judge may not exceed a maximum fine set by law. However, the judge is required to reduce a fine below the minimum amount set by law or convert the fine to an alternative punishment (other than incarceration), such as community service, in

---

<sup>68</sup> O.C.G.A. §40-6-391.

<sup>69</sup> Id.

<sup>70</sup> O.C.G.A. §36-35-6(a)(2).

circumstances involving financial hardship.<sup>71</sup> For example, if a municipal ordinance set the minimum fine amount for a violation of that ordinance to be \$50 and a defendant has been found to be in violation of this ordinance, a judge must reduce or waive the fine or convert it to community service, or some other appropriate penalty after determining that the defendant is unable to pay or demonstrates a significant financial hardship. The same is true for minimum fines established by state law.

It is important for municipal elected officials to understand that the municipal court judge is the decision maker on determining the fine amount (or penalty in general) for any particular offense, subject to the maximums and minimums set by law and the requirement to waive, reduce or convert fines when the defendant has a significant financial hardship.<sup>72</sup> Recommending fine amounts or advising the court on penalties on specific cases is inappropriate and violates the principle of separation of powers.

## **CHAPTER SEVEN – Liability and Constitutional Rights**

### **A. Liability Issues in the Municipal Court**

The Department of Justice shone a spotlight on constitutional violations by municipal courts when it dedicated twenty pages of its March 4, 2015, report on the investigation of the Ferguson Police Department to the Ferguson municipal court.<sup>73</sup> The chapter starts “The Ferguson municipal court handles most charges

---

<sup>71</sup> See O.C.G.A. Section 42-8-102(e); Self-Assessment Checklist Exhibit A.3 Bench Card. The judge exercises judicial discretion when determining the penalty for a specific offense.

<sup>72</sup> See Appendix, Self-Assessment Checklist Reasons for Affirmation Note 10 for a discussion of class actions based on failure to properly determine financial hardship and waive fines and fees. See Exhibit A.3 for a Bench Card on the process a judge should follow.

<sup>73</sup> See [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

brought by the FPD, and does so not with the primary goal of administering justice or protecting the rights of the accused, but of maximizing revenue.”<sup>74</sup> National law firms and civil rights groups continue to bring high-profile class actions against cities and counties across the country for violating constitutional rights when operating courts. These cases result in damage to the government’s brand, attorneys’ fees, forced adoption of new policies and procedures, forced training, and ongoing monitoring.<sup>75</sup> Municipal courts carry out a variety of functions that can create liability issues.

### **Constitutional Rights of Defendants in Municipal Court**

A municipal court must ensure that defendants are able to exercise a number of different constitutional rights. If the defendant is unable to exercise one of these rights, the municipal court and the city could be subject to lawsuits.

#### **B. Public Defenders**

First, defendants in municipal court facing charges for which a possible penalty is incarceration have a right to legal counsel. If such a defendant can’t afford an attorney and wants one, the city must provide legal counsel to the defendant at no charge to the defendant.<sup>76</sup> The United States Supreme Court clarified this fundamental right to counsel when it stated that anyone facing the possibility of incarceration is entitled to a government provided lawyer if he or she cannot afford one.<sup>77</sup> A large majority of criminal offenses that may be brought in municipal courts in Georgia carry the possibility of incarceration. Even if the municipal court has never and will never sentence someone to jail for a particular offense, the right to counsel exists due to the mere possibility of incarceration.

A public defender is an attorney who is paid from public funds to represent indigent persons in criminal cases. If a city has a municipal court, the municipal governing authority is responsible for funding public defenders in its own municipal court. It is not possible to satisfy this obligation by sending cases to another court when an

---

<sup>74</sup> Ferguson report, p. 42.

<sup>75</sup> See Self-Assessment Checklist Reasons for Affirmations Note 10 and sample Settlement of ACLU lawsuit against DeKalb County.

<sup>76</sup> Gideon v. Wainwright, 372 U.S. 335 (1963).

<sup>77</sup> Alabama v. Shelton, 535 U.S. 654 (2002).

indigent person requests a public defender. A municipal court cannot punt a case to another court simply because it does not want to pay for a public defender.

Public defenders throughout the state of Georgia are all members of the Georgia Public Defender Council. This council is responsible for assuring that adequate and effective legal representation is provided, independently of political considerations or private interests, to indigent persons who are entitled to representation.<sup>78</sup>

### **Public Defender Funding**

Cities must pay for public defender services almost entirely from general assets and the application fees they charge indigent defendants who request free legal counsel. Georgia law permits a municipal court to retain 50% of bond forfeitures to pay for public defender services.<sup>79</sup> However, in order to retain these amounts, the city must verify that a specified process for determining indigent status is followed.<sup>80</sup> This statute has yielded almost no funding at all for public defenders. Although courts are permitted to charge a fifty dollars (\$50) application fee, many do not do so.<sup>81</sup> Reports from the Georgia Superior Court Clerks' Cooperative Authority from 2009 – 2016 show that only two courts retained this money. One hundred ten dollars (\$110.00) was retained in 2010 and one hundred twelve dollars (\$112.00) was retained in 2011. In order to retain funding for a public defender, the governing authority must verify that applicants qualify as indigent persons.<sup>82</sup> The methodology for verification and funding of this process is established by the governing authority, and auditable information substantiating this process must be produced as requested by the Georgia Public Defender Council or its director.<sup>83</sup>

### **Qualifications for Representation**

In order to be represented by a public defender, a defendant must be an indigent person as defined by state law. For municipal courts, the definition of an indigent individual eligible for representation by a public defender is:

---

<sup>78</sup> O.C.G.A. §17-12-1)(c)

<sup>79</sup> See O.C.G.A. §§ 15-21-73 and 15-21-74

<sup>80</sup> *Id.*

<sup>81</sup> O.C.G.A. §15-21A-6; See Appendix for sample form

<sup>82</sup> O.C.G.A. §17-12-80(a)

<sup>83</sup> *Id.*

A person charged with a misdemeanor, violation of probation, or a municipal or county offense punishable by imprisonment who earns less than 100 percent of the federal poverty guidelines unless there is evidence that the person has other resources that might reasonably be used to employ a lawyer without undue hardship on the person or his/her dependents.<sup>8485</sup>

The municipal court must have procedures and forms consistent with state law in order to determine indigence and to appoint counsel to defendants who apply and qualify for appointed counsel.<sup>86</sup> Further, the Georgia Public Defender Standards and the rules governing public defenders are incorporated in municipal courts to the extent that they are applicable.<sup>87</sup>

### **C. Interpreters**

Municipal courts are required by law to provide interpreters and other language services to any defendant who has limited English proficiency and to those who are deaf or hard of hearing at no cost to the defendant.<sup>88</sup> Courts must provide access to free interpreter services in order to protect defendants' constitutional rights to due process of the law. These rights exist regardless of whether the defendant is a citizen, a legal resident, or is in the United States in violation of immigration law. Failure to provide free access to these services exposes the city to the risk of litigation. This requirement applies to all courts, regardless of size, and a city can never charge a defendant any fee for using interpreter services.<sup>89</sup> The Georgia Supreme Court Commission on Interpreters is developing a model protocol for courts to help them meet their obligations to provide interpreters and other language services. A city cannot charge a fee to a defendant for the costs of providing an interpreter or other language services.

---

<sup>84</sup> O.C.G.A. §17-12-2(6)(A); This inquiry about indigence is different than the one the judge must make when determining whether it is necessary to waive, reduce or convert fines. See Self-Assessment Checklist Exhibit A.3 for the inquiry about whether a significant financial hardship exists.

<sup>85</sup> See Self-Assessment Checklist Affirmation Reasons Note 7.

<sup>86</sup> Unif. R. Mun. Ct. Ga. 21.

<sup>87</sup> Id.

<sup>88</sup> Ramos v. Terry, 279 Ga. 889 (2005); Ling v. State, 288 Ga. 299 (2010); Drope v. Missouri, 420 U.S. 162 (1975)

<sup>89</sup> See Self-Assessment Checklist Exhibits A.1 and A.2 for bench cards on providing free interpreter services for those who do not speak English and those who are deaf or hard of hearing.

## **D. Right to a Jury Trial**

Defendants charged with a misdemeanor have a constitutional right to a jury trial, even if the misdemeanor is only punishable by a small fine.<sup>90</sup> In contrast, defendants charged only with violation of an ordinance do not have a right to a jury trial.<sup>91</sup> Municipal courts in Georgia cannot hold jury trials. Therefore, municipal courts must follow a rigorous process for notifying defendants charged with misdemeanors of their right to a jury trial, obtaining a written waiver of the right to a jury trial, and ensuring that any misdemeanor defendant who requests a jury trial is transferred to a court that holds jury trials.

## **CHAPTER EIGHT – Municipal Court Prosecutors**

### ***FAQ: What is the difference between a prosecutor and a solicitor?***

For municipal courts, prosecutor and solicitor mean the same thing. In a municipal court, the attorney charging the defendant with violating the law may be referred to as a prosecutor or a solicitor, and using one term over another will not have any impact on his or her powers or abilities.

## **A. Benefits of a Municipal Court Prosecutor**

Georgia law does not require a municipal court to have a prosecuting attorney in the municipal court. The Georgia Uniform Municipal Court Rules specifically state that it is not the intent of the rules to be construed to require any municipal court

---

<sup>90</sup> Geng v. State, 276 Ga. 428 (2003).

<sup>91</sup> Id.

to employ prosecuting attorneys.<sup>92</sup> Therefore, neither state law nor the rules governing municipal courts in Georgia mandate that a municipality hire or retain a prosecuting attorney for the municipal court.

However, the benefits of having a municipal court prosecuting attorney are numerous. First and foremost, having a municipal court prosecutor creates a clear separation in job duties for each city employee present in the court. In municipal courts where there is not a prosecutor present, oftentimes the police officer or code enforcement officer who issued the citation and is the witness for the prosecution also acts in a prosecutorial capacity. While in many situations this can work without a hitch, in some situations this creates problem in marking a clear line between being a witness to the infraction and prosecuting the infraction. More problematic are those situations which cause the municipal court judge to begin asking prosecutorial questions to a defendant. While judges are trained and are ethically bound to avoid such lines of questioning, not having a prosecutor in the municipal court can create pressures on the municipal court judge that are otherwise avoidable.

Another benefit of having a prosecuting attorney in the municipal court is that the presence of the prosecuting attorney adds at least one more legal mind other than the judge who is constantly in the court, interacting with court personnel and with police officers. Having a prosecuting attorney eliminates almost any possibility of a conflict for the city's police officers and for the municipal court judge. With job duties clearly laid out, a prosecuting attorney can help police officers clearly and succinctly provide the evidence needed for a successful prosecution. Additionally, having a prosecuting attorney helps the police officers in situations where the defendant has their own legal counsel. A defense attorney can sometimes utilize the law to outmaneuver law enforcement officials in presenting a successful defense for their client. Having a prosecuting attorney provide a counter-point to the legal maneuvers of a defense attorney can help the successful prosecution of offenses and ease the minds of the city's police and code enforcement officers.

---

<sup>92</sup> Unif. R. Mun. Ct. Ga. 1.



## **B. Who Can Be the Municipal Court Prosecutor**

### **Requirements to be a Municipal Court Prosecutor**

Any person appointed to be the prosecuting attorney for a municipal court is required to be a member in good standing with the State Bar of Georgia and be admitted to practice in the appellate courts of the state.<sup>93</sup> The appellate courts of the state include the Georgia Court of Appeals and the Supreme Court of Georgia. Additionally, any assistant prosecuting attorney in the municipal court must also be a member in good standing with the State Bar of Georgia<sup>94</sup> or they must satisfy the provisions of the Third-Year Practice Act, a law which allows third-year law students to assist prosecuting attorneys under proper supervision.<sup>95</sup>

### **City Attorney as the Prosecutor**

So long as the city attorney meets the legal requirements, he or she can be the municipal court prosecuting attorney. Many municipalities utilize the city attorney to prosecute some or even all cases brought before the municipal court. Of course, utilizing the city attorney as the prosecuting attorney in the municipal court requires agreement with the city attorney for such person to carry out the prosecuting duties. Utilizing the city attorney also requires municipal elected officials to think carefully before deciding who conducts prosecutions in the municipal court. While the large majority of cases brought in a municipal court are not complicated, legally, they do involve areas of the law that may be unfamiliar to the city attorney. Some cities utilize an attorney other than the city attorney to prosecute the large majority of cases in the municipal court but rely upon the city attorney to prosecute municipal ordinance violations. The logic behind such a tactic is largely based upon the fact that the city attorney likely wrote the ordinance being prosecuted and, thus, knows it better than almost anyone else.

### **Assistant District Attorney or Assistant Solicitor General as Prosecutor**

An assistant district attorney or assistant solicitor general may be used to prosecute cases in the municipal court, but this can only be done with the prior written consent of the district attorney or solicitor general who employs such assistant

---

<sup>93</sup> O.C.G.A. §15-18-92.

<sup>94</sup> O.C.G.A. §15-18-99.

<sup>95</sup> O.C.G.A. §15-18-22.

district attorney or assistant solicitor general.<sup>96</sup> A municipality that wants to use such an attorney to prosecute in the municipal court must do so by entering into a contract with the district attorney or the solicitor-general employing such attorney.<sup>97</sup> However, any municipality utilizing an assistant district attorney or assistant solicitor general runs a large risk of the employing district attorney or solicitor general withdrawing his/her consent to have his/her subordinate attorneys prosecute in the municipal court. If an employing district attorney or employing solicitor general chooses to withdraw their consent they are required by law to provide written notice to the city at least 30 days prior to the assistant district attorney or assistant solicitor general ceasing their service to the city.<sup>98</sup> The potential benefit of utilizing an attorney from the district attorney's office or solicitor general's office is that they may have prosecuted more complicated cases than they will see in the municipal court. However, it is also possible that the assistant district attorney or assistant solicitor general assigned to a municipal court may have little to no experience. These are all factors that a municipality should weigh before choosing to enter into an agreement to utilize these attorneys for prosecution in the municipal court.

### **C. The Office of Prosecuting Attorney of Municipal Court**

#### **Establishing the Office of Prosecuting Attorney of Municipal Court**

State law dictates that any municipality creating the office of prosecuting attorney of municipal court must send a copy of the resolution or ordinance creating such office to the Prosecuting Attorneys' Council of the State of Georgia.<sup>99</sup> This state law was enacted in 2012. It does not mandate a city create such office but it does mandate that any city which does create such office send the ordinance or resolution to the Prosecuting Attorneys' Council. At the time of enactment, GMA created a model ordinance for cities to help them comply with this law, should the city choose to create the office of prosecuting attorney of municipal court. This model ordinance can be found in the Appendix to this publication. The ordinance or resolution creating the office of prosecuting attorney of municipal court needs

---

<sup>96</sup> O.C.G.A. §15-18-92.

<sup>97</sup> O.C.G.A. §15-18-91.

<sup>98</sup> O.C.G.A. §15-18-92.

<sup>99</sup> O.C.G.A. §15-18-91.

to be sent to the Prosecuting Attorneys' Council, and they have allowed for such document to be emailed to them at [info@pacga.org](mailto:info@pacga.org).<sup>100</sup>

### **Appointing a Prosecuting Attorney**

Georgia law requires the municipal court clerk or other person designated by the municipal governing authority to notify the Prosecuting Attorneys' Council of Georgia of the name of any person to be the prosecuting attorney of a municipal court within thirty (30) days of such appointment.<sup>101</sup> This was also part of the state law that was enacted in 2012. GMA has also created a model resolution for cities to send to the Prosecuting Attorneys' Council that will help satisfy this requirement. The Prosecuting Attorneys' Council has also created a model form which can be utilized to help satisfy this requirement, though it should be noted that the Prosecuting Attorneys' Council form fails to ask which municipality the prosecuting attorney represents in lieu of asking whether the prosecuting attorney will be prosecuting full-time or part-time. Both models are available in the Appendix of this publication. Whether using the model resolution, model form, or city made document which names the person who will be the prosecuting attorney of municipal court in your city they can all be emailed to the Prosecuting Attorneys' Council at [info@pacga.org](mailto:info@pacga.org).

### **Term of Office for a Municipal Prosecuting Attorney**

State law dictates that the prosecuting attorney of municipal court shall serve a term of office to be determined by the governing authority of the municipality.<sup>102</sup> This means that the prosecuting attorney needs to have a designated term, but the length is entirely up to the governing authority of the city.

State law requires the prosecuting attorney of municipal court to take and file any oaths required by state law in Chapter 3 of Title 45 of the Georgia Code. Additionally, the prosecuting attorney of municipal court must take and subscribe to the following oath: "I swear (or affirm) that I will well, faithfully, and impartially

---

<sup>100</sup> Prosecuting Attorneys' Website. [www.pacga.org](http://www.pacga.org)

<sup>101</sup> O.C.G.A. §15-18-91.

<sup>102</sup> O.C.G.A. §15-18-91.

and without fear, favor, or affection discharge my duties as prosecuting attorney of the (City)(Town) of (here state the municipality).”<sup>103</sup>

Much like the choice as to whether your city hires a prosecuting attorney of municipal court, the decision as to whether such employee is a full-time employee or a part-time employee is entirely up to the governing authority of the municipality.<sup>104</sup> The municipal governing authority determines whether to have a prosecuting attorney in the municipal court and whether the prosecuting attorney of municipal court is a full-time or part-time prosecuting attorney.

### **Legal Practice Restrictions on Municipal Court Prosecuting Attorneys**

All full-time prosecuting attorneys and all full-time of the prosecuting attorney of a municipal court are not prohibited from engaging in the private practice of law.<sup>105</sup> According to state law, any part-time prosecuting attorney in a municipal court is allowed to engage in the private practice of law but is specifically prohibited from practicing privately or appearing in any matter in which that prosecuting attorney has exercised jurisdiction.<sup>106</sup> Furthermore, the Georgia Rules of Professional Conduct have recently been amended to specifically state that “a part-time prosecutor who engages in the private practice of law may represent a private client adverse to the state or other political subdivision that the lawyer represents as a part-time prosecutor, except with regard to matters for which the part-time prosecutor had or has prosecutorial authority or responsibility.”<sup>107</sup>

### **When the Prosecuting Attorney is Unavailable or Disqualified**

The municipal governing authority should have in its agreement with the prosecuting attorney some notification procedure established in the event that he or she is unavailable or disqualified. Such a procedure should be established so the city can take appropriate steps in advance to assure that a case is not delayed and the defendant is not inconvenienced unnecessarily. However, even with a procedure in place, circumstances may cause the prosecuting attorney to become unavailable suddenly or realize he or she has a conflict after the court calendar

---

<sup>103</sup> O.C.G.A. §15-18-93.

<sup>104</sup> O.C.G.A. §15-18-94.

<sup>105</sup> O.C.G.A. §15-18-94(b).

<sup>106</sup> O.C.G.A. §15-18-94(c).

<sup>107</sup> Ga. Rules of Prof. Conduct R. 1.7(d) (2016).

commences. In those situations, the particular case or cases may need to be rescheduled. If the municipal governing authority does have advance notice of the unavailability or disqualification of the prosecuting attorney the municipality “shall provide for the appointment of a substitute prosecuting attorney.”<sup>108</sup> If the municipality cannot find a substitute prosecuting attorney the city attorney, assuming he or she was not already the prosecuting attorney, may prosecute cases until a prosecuting attorney or substitute prosecuting attorney is available or appointed.<sup>109</sup>

### **Powers of the Municipal Court Prosecuting Attorney**

Besides being the only person under the law allowed to create and implement a pre-trial intervention and diversion program for the municipal court, the prosecuting attorney of municipal court has a number of statutory duties and authorities.

The prosecuting attorney of municipal court has the duty and authority to represent the municipality in prosecuting any violations of laws or ordinances which are within the jurisdiction of the municipal court, in the appeal of any case which was originally prosecuted in the municipal court, in any case prosecuted in the municipal court where the convicted party challenges the conviction through *habeas corpus* (challenging the conviction as an unlawful detention), to administer oaths and aid the judge, and to perform any other duties that may be required by law or ordinance.<sup>110</sup>

Additionally, the prosecuting attorney has the authority to “file, amend, and prosecute any citation, accusation, summons, or other form of charging instrument authorized by law for use in the municipal court.”<sup>111</sup> The prosecuting attorney can also dismiss, amend, or formally decline to prosecute any case within the jurisdiction of the municipal court.<sup>112</sup> Furthermore, the prosecuting attorney has the authority to “reduce to judgment any fine, forfeiture, or restitution imposed by

---

<sup>108</sup> O.C.G.A. §15-18-95.

<sup>109</sup> *Id.*

<sup>110</sup> O.C.G.A. §15-18-96(a).

<sup>111</sup> O.C.G.A. §15-18-96(b)(1).

<sup>112</sup> O.C.G.A. §15-18-96(b)(2).

the municipal court as part of a sentence in an ordinance case or forfeiture” of a bond which has not been paid after an order of the court.<sup>113</sup> Finally, the prosecuting attorney can request and utilize assistance from other prosecuting attorneys.<sup>114</sup>

### **Compensation of Municipal Court Prosecuting Attorney**

State law provides that the prosecuting attorney of municipal court shall be compensated by the municipality which is utilizing his or her services, as provided by local law or as provided by the governing authority of the municipality.<sup>115</sup> The prosecuting attorney is also entitled to be “reimbursed for actual expenses incurred in the performance of his or her official duties in the same manner and rate as other municipal employees.”<sup>116</sup>

### **Training of Municipal Court Prosecuting Attorney**

There are no specific hourly training requirements in state law for the prosecuting attorney of municipal court. All practicing attorneys, whether a prosecuting attorney or not, are required to complete twelve annual continuing legal education hours of actual instruction in an approved continuing legal education activity during each year, one hour of which must be in ethics and another hour of which must be in professionalism.<sup>117</sup> While state law does not provide for specific training requirements for the prosecuting attorney of municipal court, it does provide for the Prosecuting Attorneys’ Council of Georgia to “conduct or approve for credit or reimbursement, or both, basic and continuing legal education courses or other appropriate training programs for the district attorneys, solicitors-general, and other prosecuting attorneys of this state and the members of the staffs of such officials.”<sup>118</sup>

The Prosecuting Attorneys’ Council, however, has its own set of rules governing training and only allows prosecuting attorneys of municipal court to attend its training if the municipality has complied with the requirements of state law in creating an office of prosecuting attorney of municipal court and notifying the

---

<sup>113</sup> O.C.G.A. §15-18-96(b)(3).

<sup>114</sup> O.C.G.A. §15-18-96(b)(4).

<sup>115</sup> O.C.G.A. §15-18-97.

<sup>116</sup> *Id.*

<sup>117</sup> State Bar Governance Rules, R. 8-104 (2016).

<sup>118</sup> O.C.G.A. 15-18-45(a).

Prosecuting Attorneys' Council of the creation of such office and the name of the prosecuting attorney in such office.<sup>119</sup> Additionally, part-time prosecuting attorneys of municipal court who are also engaged in the private practice of law are only eligible to attend Prosecuting Attorneys' Council training programs which are "designed to specifically address the prosecution of those state criminal offenses the court in which they prosecute has trial jurisdiction."<sup>120</sup> Part-time municipal court prosecuting attorneys are effectively excluded from the Prosecuting Attorneys' Council's Summer and Winter Conferences because these conferences include training on state criminal offenses that cannot be heard in municipal courts.<sup>121</sup>

The Prosecuting Attorneys' Council is "authorized to provide reimbursement, in whole or in part, for the actual expenses incurred by any district attorney, solicitor-general, or other prosecuting attorney of this state or any member of the staffs of such officials in attending any such approved course or training program from such funds as may be appropriated or otherwise made available to the council."<sup>122</sup> State law provides for state funds to be appropriated to the Prosecuting Attorneys' Council for "prosecutorial officers' training"<sup>123</sup>, but the Prosecuting Attorneys' Council specifically does not reimburse municipal prosecuting attorneys for their expenses in training from these appropriated funds unless "funding for the program authorizes such reimbursement and the course announcement specifically states that part-time prosecuting attorneys and municipal prosecuting attorneys will be eligible for reimbursement."<sup>124</sup> Although state funds are supposed to be available in funding municipal prosecuting attorneys through the Prosecuting Attorneys' Council, this rarely occurs. As a result, compensation of municipal prosecuting attorneys falls upon the municipality.<sup>125</sup>

---

<sup>119</sup> Prosecuting Attorneys' Council of Georgia Policy Manual, R. 7.1(4)(a)(5)(A) (2013).

<sup>120</sup> Prosecuting Attorneys' Council of Georgia Policy Manual, R. 7.1(4)(a)(5)(B) (2013).

<sup>121</sup> Prosecuting Attorneys' Council of Georgia Policy Manual, R. 7.1(4)(b) (2013); While part-time prosecuting attorneys of municipal court are eligible to attend Prosecuting Attorneys' Council courses related to the prosecution of DUI and other traffic offenses, as of the publication of this guidebook, the last time that it provided a training solely for municipal court prosecutors was in the summer of 2014.

<sup>122</sup> O.C.G.A. §15-18-45(a).

<sup>123</sup> O.C.G.A. §15-21-77.

<sup>124</sup> Prosecuting Attorneys' Council of Georgia Policy Manual, R. 7.1(8)(a)(2) (2013).

<sup>125</sup> O.C.G.A. §15-18-97.

## **Employment of Additional Prosecutorial Staff**

Any additional staff employed by the prosecuting attorney are subject to the provisions of local law or as may be authorized by the governing authority of the municipality.<sup>126</sup> Furthermore, the prosecuting attorney of municipal court is allowed to “define the duties and fix the title of any attorney or other employee of the prosecuting attorney’s office.”<sup>127</sup> Any such personnel are required to be compensated by the municipality.<sup>128</sup> This law means that it is imperative that the municipality has procedures in place to require the prosecuting attorney to gain approval from the municipality, whether by the municipal governing authority or the city manager, before hiring new employees.

## **D. Municipal Court Prosecutors and Pre-Trial Programs**

### **Pre-Trial Intervention and Diversion Program**

Having a prosecuting attorney allows the municipality to take advantage of state laws providing for the creation of a pre-trial intervention and diversion program. Only a prosecuting attorney is allowed to create a pre-trial intervention and diversion program.

Pre-trial intervention and diversion programs provide an alternative to prosecuting offenders in the criminal justice system.<sup>129</sup> Upon the request of the prosecuting attorney and with his or her advice and express written consent the city can enter into a written contract with any entity or individual to monitor program participants’ compliance with the program.<sup>130</sup> The prosecuting attorney of the municipal court creates the program and sets the written guidelines for defendants to be eligible to participate in the program.<sup>131</sup> The guidelines set by the prosecuting attorney are required to consider the nature of the crime, the prior arrest record of the offender, and the notification and response of the victim.<sup>132</sup> The guidelines can have more considerations as well. One limitation in the state law on such

---

<sup>126</sup> O.C.G.A. §15-18-98.

<sup>127</sup> Id.

<sup>128</sup> Id.

<sup>129</sup> O.C.G.A. §15-18-80.

<sup>130</sup> Id.

<sup>131</sup> Id.

<sup>132</sup> Id.



programs is that the prosecuting attorney cannot accept a defendant into the program who has been charged with an offense for which the law provides a mandatory minimum sentence of incarceration that cannot be suspended, probated, or deferred.<sup>133</sup>

Having a pre-trial intervention and diversion program benefits the defendant and the municipality. Defendants who successfully complete these programs spend less time in court and avoid the financial, employment, and social consequences of having a criminal conviction on their records.

Municipalities benefit because pre-trial intervention and diversion programs can significantly reduce the caseload of the municipal court. A reduction in the caseload may mean that city police officers will spend less time tied up in the municipal court and more time patrolling the streets. A reduction in caseloads can also mean more time for the municipal court clerk and other court personnel to fulfill other job duties.

The prosecuting attorney may charge a program fee, not to exceed \$1,000, for the administration of the pre-trial intervention and diversion program. Unlike fines associated with a conviction, fees associated with a pre-trial intervention and diversion program are not financial penalties for convictions subject to the state laws governing fine add-ons and disbursements. The municipal court prosecuting attorney should consult with the city attorney to address proper handling of individuals with financial hardships in these pre-trial intervention and diversion programs. Eligibility for such programs should not be based on an individual's ability to pay the fee.

---

<sup>133</sup> Id.; (e.g. mandatory minimum sentence for a conviction of driving under the influence, O.C.G.A. §40-6-391)

## **CHAPTER NINE – Punishment in the Municipal Court**

Each municipal court in the state of Georgia is authorized via the Georgia Code to impose any punishment up to the maximums specified by Georgia law for the offenses that appear before the court.<sup>134</sup> State misdemeanor offenses carry up to a \$1,000 fine or a maximum of one year in prison. Ordinance offenses carry up to a \$1,000 fine and six months incarceration, unless the charter provides for a lesser maximum punishment.

### **Taking of Liberty: Incarceration and Probation**

Jailing after arrest requires a prompt determination by a judge of whether the arrested individual should be released between the arrest and the scheduled court proceedings, and the proper amount of bail. In some cases, the municipal court judge identifies certain violations for which the arrested individual may sign his or her own bond (without paying any bail). For example, City of Atlanta “failure to appear” arrest warrants for failure to appear in court for certain traffic violations will not result in any jail time. The arrested individual signs his or her own bond, and the arrest itself serves as punishment for failure to appear in court and ensures that the individual shows up for the next scheduled court proceeding.

For convicted offenders, the municipal court may impose sentences of incarceration up to six months,<sup>135</sup> but sentences of incarceration may not exceed any lower limits set forth in the municipality’s charter.<sup>136</sup> Incarceration as an immediate punishment for an offense is rare. As a punishment, incarceration is expensive and risky. It is expensive because the city pays the cost of the jail as well

---

<sup>134</sup> O.C.G.A. §36-32-1(c)

<sup>135</sup> O.C.G.A. §36-32-1(c)

<sup>136</sup> O.C.G.A. §36-32-6(d)

as all medical costs of the incarcerated individual. In addition, incarcerations may result in “debtor prison” lawsuits if an individual is unable to pay for bail sufficient to procure release and the municipal court judge does not hold a bail hearing within a very short period. Incarceration may never be imposed for a failure to pay a fine if the defendant is unable to pay the fine due to a significant financial hardship. However, the defendant may be incarcerated for failure to perform mandated community service or failure to meet non-financial obligations of the sentence, such as drug testing.

In Georgia, probation is the most common method of “taking of liberty” punishment in municipal courts.<sup>137</sup> Municipal courts have original jurisdiction over ordinance violations and misdemeanors that could result in incarceration and thus, when a defendant in such a case has been found guilty upon verdict or has pled guilty or nolo contendere, the court can hear and determine the question of the probation of such defendant instead of incarceration.<sup>138</sup>

The judge establishes the conditions of probation, which should only include conditions authorized in the city’s agreement with the probation supervision service provider.<sup>139</sup> The court may use its discretion to place a defendant on probation under the supervision and control of a probation officer for all or a portion of his/her sentence. The court may also impose a sentence upon the defendant but stay and suspend the execution of the sentence, or any portion of it. The period of probation or suspension shall not exceed the maximum sentence of incarceration.<sup>140</sup> Additionally, the court has the power to suspend or revoke probation at any time.

Effective July 1, 2015, the Department of Community Supervision’s Adult Misdemeanor Probation Oversight Unit (“Oversight Unit”) is the sole entity responsible for issuing rules and regulations that apply to probation service providers in Georgia. New Department of Community Supervision Board Rules for

---

<sup>137</sup>See <https://www.prisonpolicy.org/reports/50statepic.html> for a comparison of Georgia rates of probation to rates of other states “One reason why Georgia’s use of probation has ballooned to these levels is that the state uses privatized probation . . . “

<sup>138</sup> O.C.G.A. §42-8-102

<sup>139</sup> See Model Probation Services Contract in the Appendix.

<sup>140</sup> *Id.*

Probation were effective February 14, 2017, and all contracts between cities and probation service providers must comply with requirements in these Rules by January 1, 2018.<sup>141</sup> The Oversight Unit maintains a copy of every contract between a city and probation service provider and performs audits for compliance with the contract terms and with the Rules. The Oversight Unit sends audit reports to municipal judges that identify areas of concern and non-compliance, so it is important to address review and response to such reports in the city's service agreement with the judge. In addition, probation service providers are required to submit quarterly reports to municipal judges that describe all fees collected from individuals on probation. The annual version of this report must be submitted to the city's governing authority. If these reports or audit results indicate that a probation service provider is collecting fees for services that were not authorized by the judge as conditions of probation, or otherwise failing to follow the terms of its contract, the city's governing authority must determine whether continuing the contract is appropriate.

Probation is commonly used as a method for paying fines or penalties in installments, or for supervision of community service that is required instead of fines or incarceration. Effective July 1, 2015, probation service providers may not charge any more than three months of supervision fees for "pay only probation." "Pay-only probation" means the defendant was placed on probation supervision solely because of inability to pay the fine and surcharges upon sentencing. In many cases, municipal court judges re-set a case to provide the individual additional time to pay rather than placing him or her on probation, which includes ongoing supervision that may not be necessary and often results in the addition of monthly supervision fees of \$30 or more per month.

### **Taking of Property: Fines and Fine Add-Ons**

The municipal court is authorized to impose various financial punishments, including fines upon individuals convicted of an offense, with the alternative of

---

<sup>141</sup> The Model Probation Services Contract was designed to comply with these rules, and has been reviewed by DCS Adult Misdemeanor Probation Oversight Unit and determined to meet the minimum requirements.

other punishment in the event that such fines are not paid, and a sentence consisting of any combination of penalties provided to the municipal court.<sup>142</sup>

The municipal court may impose fines of up to \$1,000 (unless further restricted by the city charter<sup>143</sup>), the payment of which is conditioned on other punishment, sentences of community service work, or a combination of those. The court may also require the payment of a fine, fees, or restitution as a condition of probation.<sup>144</sup> When probation supervision is required, the court may require the payment of a probation supervision fee as a condition of probation. When determining the financial obligation of a defendant, the court may consider:

- (1) The defendant's financial resources and other assets, including whether any such asset is jointly controlled;
- (2) The defendant's earnings and other income;
- (3) The defendant's financial obligations, including obligations to dependents;
- (4) The period of time during which the probation order will be in effect;
- (5) The goal of the punishment being imposed; and
- (6) Any other factor the court deems appropriate.

Fines must be waived, reduced, or converted to community service or other alternative punishment for individuals with significant financial hardships.<sup>145</sup> It is important to remember that fines are a form of punishment, not a source of revenue generation. Additionally, fine amounts, within the bounds of state and local law, are determined by the municipal court judge on an individual basis.

Community service may be offered as an alternative to a fine or as a condition of probation with primary consideration given to offenders who have committed traffic violations, ordinance violations, misdemeanors in which there was no injury, destruction, or violence, and other offenders upon the discretion of the court.<sup>146</sup> The court may confer with the party interested in community service to determine

---

<sup>142</sup> O.C.G.A. §36-32-5

<sup>143</sup> O.C.G.A. §36-32-6(d)

<sup>144</sup> O.C.G.A. §42-8-102

<sup>145</sup> See Bench Card in the Appendix.

<sup>146</sup> O.C.G.A. §42-3-52

if it is an appropriate punishment for each specific offender. If community service is ordered by the municipal court, the court is required to order no less than 20 hours and no more than 250 hours in cases involving traffic or ordinance violations or misdemeanors. Such community service is required to be completed within one year of sentencing.<sup>147</sup> The court may also convert fines, statutory surcharges, and probation fees to community service on the same basis as it allows a defendant to pay a fine through community service.<sup>148</sup> Municipal court judges utilizing community service as a form of punishment should maintain a list of approved community service agencies and should have a procedure for obtaining confirmation that the community service has been completed.

### **Taking of Privilege (Suspension of Driver's License)**

Failure to appear in court on the date stated in a traffic ticket often results in suspension of the offender's driver's license. This, in turn, leads to additional charges of driving on a suspended license. To have a driver's license reinstated, the defendant must provide proof of the disposition and pay a reinstatement fee to the Department of Driver Services.

### **Punishment - Municipal Court Judge Determines**

The municipal court judge determines the appropriate punishment, up to the maximum punishments set forth by law or in the city's charter. The judge is always permitted, and may be required, to reduce or eliminate fines or fees or impose community service as the sole form of punishment. City leadership should never interfere with the judge's determination of punishment in any specific situation. Punishment is a judicial decision, and interference by any city employee or member of the governing body interferes with the independence of the court and may result in violations of the law.

City leadership can support the operation of a court that complies with applicable law and enhances the city's brand by continually reminding city staff and the

---

<sup>147</sup> Id.

<sup>148</sup> O.C.G.A. §42-8-102

governing body of the role of the municipal court – to promote public safety and justice. Punishments must be designed to support those goals.

## **APPENDIX TO MUNICIPAL COURTS: A GUIDE FOR ELECTED OFFICIALS**

**July 17, 2020**

### **SELF-ASSESSMENT CHECKLIST & AFFIRMATIONS**

[Georgia Municipal Association's \("GMA's"\) Municipal Court Best Practices Self-Assessment](#) (7/14/2020)

[GMA's Sample Annual Report & Affirmation of Municipal Court Judge and Clerk](#) (7/14/2020)

### **MODEL ORDINANCES & RESOLUTION**

[GMA's Model Ordinance – Appointing Municipal Court Judge with Service Agreement and Maximum Term of Office](#) (7/14/2020)

[GMA's Model Ordinance - Municipal Court Judge Term \(No Reference to Service Agreement\)](#) (1/1/2018)

[GMA's Model Ordinance - Appointing Municipal Court Prosecuting Attorney](#) (1/1/2018)

### **SAMPLE AGREEMENTS**

[GMA's Sample Municipal Court Judge Employment Service Agreement \(Judge is Employee of City\)](#) (7/14/2020)

[GMA's Sample Municipal Court Judge Independent Contractor Service Agreement \(Judge is Independent Contractor\)](#) (7/14/2020)

[GMA's Sample Private Probation Services Agreement & Letter of Alignment with Service Agreement Standards](#) (1/3/2018)

### **LINKS TO FORMS (as visited July 17, 2020)**

[Prosecuting Attorneys' Council of Georgia Municipal Court Prosecutor Registration Form](#)

[DCS Misdemeanor Oversight Probation Service Provider Service Agreement Checklist](#)

[Georgia Public Defender Standards Council Application for Public Defender Services](#)