



SUPREME COURT OF MISSOURI
OFFICE OF STATE COURTS ADMINISTRATOR

2112 Industrial Drive
P.O. Box 104480
Jefferson City, Missouri
65110

PHONE (573) 751-4377
FAX (573) 522-6152

KATHY S. LLOYD
STATE COURTS
ADMINISTRATOR

11 May 2015

**A REPORT BY THE STATE COURTS ADMINISTRATOR'S OFFICE AND JUDGE ROY L. RICHTER
TO THE SUPREME COURT OF MISSOURI
CONCERNING ONGOING EFFORTS TO IMPROVE THE STATE'S MUNICIPAL DIVISIONS**

In her January 2015 state of the judiciary address to a joint session of the Missouri General Assembly in Jefferson City, Missouri Chief Justice Mary R. Russell discussed the need to review Missouri's municipal court divisions – not just in Ferguson, which had been at the forefront of media coverage, but statewide. She said:

Municipal divisions play an important role in enforcing local laws, and they handle more than two-thirds of all cases filed in our state courts. For many people, the municipal divisions are the first and only contact they have with the court system. And, as we all know, first impressions can be lasting impressions.

From a local municipal division to the state Supreme Court, Missouri's courts should be open and accessible to all. Courts should primarily exist to help people resolve their legal disputes. If they serve, instead, as revenue generators for the municipality that selects and pays the court staff and judges – this creates at least a perception, if not a reality, of diminished judicial impartiality.

Courts must give consideration to those unable to pay any fine that is imposed. To that end, the Supreme Court recently adopted a new rule – that if people demonstrate they are unable to pay a fine, municipal judges will be required to give them more time to pay it.

We in the judiciary are aware that you, too, will be giving thoughtful consideration to improving the municipal divisions. It is important that those municipal divisions that are not working well do not overshadow the many divisions around our state that do. But as the Rev. Dr. Martin Luther King Jr. once wrote, "We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."¹

¹ Missouri's chief justice delivers 2015 State of the Judiciary address, <http://www.courts.mo.gov/page.jsp?id=82876>, last visited May 1, 2015.

In March 2015, the United States Department of Justice’s civil rights division issued its report regarding the Ferguson municipal court division, and the Supreme Court of Missouri transferred a longtime state court judge – Missouri Court of Appeals Judge Roy Richter – to handle the city’s municipal cases until further order of the Court and to implement needed reforms to court policies and procedures in Ferguson to ensure the rights of defendants are respected and to help restore the integrity of the system.² Additionally, the Court asked experts in court administration to study the practices and processes in the Ferguson court. This report reflects their findings and suggestions.

***Municipal court divisions should focus on fairness and the rule of law,
not on maximizing revenue.***

An undercurrent throughout the DOJ report is the concern that Ferguson’s practices – through both its police and court – focus on maximizing revenue for the city rather than administering justice or protecting the rights of the accused.³

This is a concern shared by the Supreme Court of Missouri. As Chief Justice Mary R. Russell noted in her annual state of the judiciary address to a joint session of the Missouri General Assembly in January 2015, “It is important to ensure that municipal divisions throughout the state are driven not by economics, but by notions of fairness under the rule of law.”⁴

Some areas of concern outlined in the DOJ report focus on specific practices of the Ferguson police. For example, the report notes Ferguson police frequently issue three or more citations per stop.⁵ As Judge Richter explains in his remarks to open court, however, the police and the court play different roles, noting the police have a duty to enforce ordinances passed by the city council, and that the courts do not issue citations or make arrests.⁶ As parts of different constitutional branches of government, the courts have no authority over day-to-day operations of law enforcement officers.

Other areas of concern in the DOJ report focus on specific behaviors of the Ferguson court’s former judge and clerk. For example, the report notes examples in which the former clerk refused to take a defendant’s partial payment toward her outstanding balance⁷ and in which the former judge said it was not uncommon for him to add additional charges and assess additional fines if a defendant challenged a citation in court.⁸ In March 2015, however, the city terminated the clerk’s employment, and the judge resigned. Also in March 2015, the Court appointed Judge

² See Supreme Court of Missouri reassigns Ferguson municipal division cases and accompanying order at <http://www.courts.mo.gov/pressrel.nsf/fa1bcbaea6d7c117862567670079a321/7f70e2b78919dca486257e030077b4ec?OpenDocument>, last accessed May 11, 2015.

³ See, e.g., DOJ report at 42.

⁴ Missouri’s chief justice delivers 2015 State of the Judiciary address, <http://www.courts.mo.gov/page.jsp?id=82876>, last visited May 11, 2015.

⁵ DOJ report at 52.

⁶ See Different roles in the system section of Judge Richter’s introductory remarks at <http://www.courts.mo.gov/page.jsp?id=86273#roles>, last accessed May 11, 2015.

⁷ DOJ report at 42.

⁸ DOJ report at 49.

Richter to serve as the Ferguson municipal judge, effective March 16, 2015, and continuing until further order of the Court.⁹

The “failure to appear” charge and related fines have been eliminated.

The DOJ report criticized the Ferguson court for regularly imposing a separate “failure to appear” charge if a defendant missed court appearances or missed a required fine payment.¹⁰ It noted the Ferguson court had collected more revenue for failure to appear charges than for any other charge.¹¹

As the DOJ report states, the Ferguson city council repealed the “failure to appear” ordinance in September 2014.¹² Judge Richter reports that, at least since he became responsible for the city’s municipal cases in March 2015, no fees have been imposed for a defendant’s failure to appear in court.

Fines have been made more uniform.

The DOJ report also gave substantial attention to the amount of fines for various municipal charges, suggesting these penalties are driven by financial interests.¹³ The report noted that the Ferguson court charged hundreds of dollars in fines for single violations, with the city’s fines at or near the top of about 70 municipal court divisions in the St. Louis region and above regional averages for many offenses.¹⁴

Effective April 1, 2015, Judge Richter adopted for the Ferguson municipal division a new violations bureau schedule of fines for designated offenses¹⁵ – animal control violations, housing violations and certain traffic violations, as authorized by section 479.050, RSMo, and Supreme Court of Missouri Rule 37.49. This uniform fine schedule, being used throughout St. Louis County, brings the fines more in line with those imposed statewide.¹⁶ Court administration experts agree the fines in this revised schedule appear to be in line with other courts. They note that keeping fines reasonable increases a defendant’s ability to pay.

Additionally, although not noted in the DOJ report, the Ferguson city council in September 2014 repealed a number of fees it had been assessing to defendants through its municipal court division. Specifically, the council repealed or abolished:

⁹ Supreme Court of Missouri reassigns Ferguson municipal division cases and accompanying order at <http://www.courts.mo.gov/pressrel.nsf/fa1bcbaea6d7c117862567670079a321/7f70e2b78919dca486257e030077b4ec?OpenDocument>, last accessed May 11, 2015.

¹⁰ DOJ report at 42-43.

¹¹ DOJ report at 43.

¹² DOJ report at 42.

¹³ DOJ report at 43.

¹⁴ DOJ report at 52.

¹⁵ See Ferguson Municipal Division Violations Bureau Schedule of Offenses and Fines, effective April 1, 2015, at <http://www.courts.mo.gov/file.jsp?id=85317>, last accessed May 11, 2015.

¹⁶ See Municipal divisions section of Judge Richter’s introductory remarks at <http://www.courts.mo.gov/page.jsp?id=86273#withoutappearance>, last accessed May 11, 2015.

- Fees relating to city-imposed towing;
- A “continuance fee;”
- Witness fees;
- The “warrant fee” associated with issuing or recalling arrest warrants; and
- A “court service cost.”

Further, the city council in September 2014 set a ceiling on its budget item for municipal court revenue at 15 percent of the total estimated revenue.

Court administration experts have identified a number of remaining ordinances disclosing fees not supported by state law. Although Judge Richter ended the practice of imposing these fees, court administration experts recommend the city council should repeal these ordinances:

- Section 13-60 Withdrawal of Complaint – a fee of up to \$75 plus court costs when an individual withdraws a complaint that resulted in a violation being issued;
- Section 13-63 Parole and Probation – establishes a special deterrent fee; and
- Sections 13-70(2), (3) and (5) Costs – impose costs for serving warrants, mileage and sheriff costs.

The court considers a defendant’s ability to pay a fine, offers alternatives to fines and will not arrest a person for inability to pay a fine.

The DOJ report notes concern that the Ferguson court had not been providing defendants with a process to seek a fine reduction due to financial incapacity, had not been considering a person’s ability to pay a preset fine amount (such as those in the court’s former traffic violations bureau schedule) and had not provided defendants the opportunity to modify a preset fine amount.¹⁷ The report argued such a practice violates the requirement of section 560.026, RSMo, to proportion a fine to the burden its payment will impose in view of the defendant’s financial resources.¹⁸ It further noted that a payment plan is not a substitute for an initial determination of a defendant’s ability to pay.¹⁹

As Chief Justice Russell told the legislature in her state of the judiciary address, the Court in December 2014 adopted a new version of Rule 37.65²⁰ to require a judge, in a municipal division case in which a fine has been assessed but it appears the defendant lacks the means to pay the fine, to grant the defendant time in which to pay the fine, permit the defendant to make installment payments, modify the method of payment, or waive collection of part or all of any unpaid portion of the fine. Although, due to the notice and comment period, the rule does not take effect until July 1, 2015, Judge Richter already has adopted the rule for the Ferguson court.

¹⁷ DOJ report at 53.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Supreme Court of Missouri’s Order dated December 23, 2014, re: Rule 37.65 Fines, Installment or Delayed Payments – Response to Nonpayment, at <http://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfd8f8625662000632638/fe656f36d6b518a886257db80081d43c?OpenDocument>, last accessed May 11, 2015.

The DOJ report notes the Ferguson court does offer payment plans but suggested the terms of those plans, such as the monthly amounts owed, were too harsh and criticized the court for routinely treating one missed or incomplete payment as a failure to appear, resulting in issuance of an arrest warrant.²¹ The report states that “nearly all” arrest warrants issued in Ferguson resulted from missing a single required fine payment or missing consecutive court appearances.²² Judge Richter and court administration experts point out that this statement cannot be substantiated and, therefore, could be misleading. Arrest warrants are issued because of missed court appearances only. The nature of the court appearance itself is not tracked – whether it be an initial appearance or a trial appearance or an appearance at which a defendant was to make a scheduled payment under a payment plan.

Regardless, these issues have been ameliorated. As noted earlier, the Ferguson city council in September 2014 repealed its “failure to appear” ordinance. And, at least since Judge Richter became responsible for the Ferguson municipal cases, arrest warrants have not been issued for missed payments. As he explains to defendants appearing before him in the Ferguson court:

If you plead guilty but cannot pay the full amount of the fine and costs today, you may enter into a payment agreement I will expect you to comply with the agreement you make – if you do not, court staff will send you a letter and tell you that you need to come back to court to explain why you aren’t holding up your end of the agreement. ... [J]ust come to court, show me that you are trying to hold up your end of the agreement and explain why you are having trouble making payments so we can work out a better payment plan for you. I am a reasonable person, and I will work with you.²³

Court administration experts recommend that the Ferguson court consider requiring a defendant to complete a written payment agreement when fines and costs are not paid in full when the case is disposed. They further recommend requiring a minimum payment at disposition – typically set elsewhere in the state at \$35 to \$50 – and then lowering the minimum installment amount to \$25, which they suggest could improve a defendant’s ability to comply with the payment agreement and reduce the number of times a defendant has to return to court. Court administration experts further recommend that the Ferguson court’s online payment system make clear that individuals are permitted to make partial payments, which would make the payment process more convenient for the defendant.

Court administration experts agree that requiring a financial statement can serve as a useful tool in establishing a payment agreement. They note, however, that it is a time-consuming task for the defendant to complete the financial statement and for the court to review and verify the information it contains. The experts recommend, therefore, that the court discuss payment options with the defendant and establish more reasonable payment options by lowering the monthly required payment when necessary and documenting the terms of the payment arrangement in a signed payment agreement.

²¹ DOJ report at 53, 56-58.

²² DOJ report at 55.

²³ See What to expect of court, and what the court expects of you section of Judge Richter’s introductory remarks at <http://www.courts.mo.gov/page.jsp?id=86273#expectations>, last accessed May 11, 2015.

The DOJ report notes that Ferguson started a community service program in February 2014 as an alternative to paying fines but criticized that the program is available primarily only for individuals 19 years old or younger.²⁴ The report notes that city council members had been discussing expanding this service to others unable to pay fines.²⁵ Court administration experts report that the age limit for this community service program – available through Eastern Missouri Alternative Sentencing Services (EMASS) – recently has been expanded to include defendants younger than 23 years old.

Judge Richter reports that the city is in the process of establishing a broader community service program in lieu of fines and further notes that such a program is available in very few municipal court divisions.

The court is improving methods of paying fines and making clear no one will be arrested for inability to make a payment.

The DOJ report noted that the Ferguson court long has accepted payments by mail and recently had begun accepting payments online, although it criticized the Ferguson court’s website for not making clear what payment options a defendant might have.²⁶

Judge Richter and court administration experts have learned the “Ferguson municipal court website” that was the focus of the DOJ remarks – <http://www.fergusoncity.com/60/The-City-Of-Ferguson-Municipal-Courts> – is maintained by city information technology staff, not the court itself, and was disabled temporarily by a distributed denial-of-service attack by the hacker group Anonymous. All agree it is essential to get the website back up and running properly, although it should be noted that neither Judge Richter nor the Missouri court administration officials have any authority over the city information technology employees who maintain the municipal division content on the city’s website. The “online payment” section of the city’s website remains inoperable,²⁷ and the city’s municipal court page fails to direct users to the online payment vendor the court uses.²⁸

Links to this online payment vendor are available through the Ferguson page on the Your Missouri Courts website at <http://www.courts.mo.gov/page.jsp?id=8862>.²⁹ Prior to court, defendants charged with violations that do not require a court appearance may plead guilty and pay in full through the online vendor.³⁰ Otherwise, they must appear in court, plead guilty if that

²⁴ DOJ report at 54.

²⁵ *Id.*

²⁶ DOJ report at 51.

²⁷ See <https://mo-ferguson2.civicplus.com/ePayment>, last accessed May 11, 2015 (stating “ePayment coming soon!”).

²⁸ The Ferguson court uses an online payment vendor, The Payment Group, which makes payments for Ferguson available online at <https://www.trafficpayment.com/SelectCCity.aspx?cid=533&cname=Ferguson&sid=25&sname=Missouri&AspxAutoDetectCookieSupport=1> (last accessed May 11, 2015).

²⁹ This page, last accessed May 11, 2015, also can be reached by navigating to www.courts.mo.gov, then using the “About Your Courts” drop-down menu to select the “Municipal Divisions” link, then selecting “Ferguson” from the alphabetical list of municipalities,

³⁰ Full payments may be made at <https://www.trafficpayment.com/InvoiceInfo.aspx?csdId=533>, last accessed May 11, 2015.

is their wish, and then enter into a payment agreement with the court. These defendants then can make their payment installments through the online vendor.³¹

Court administration experts note that the section of the online vendor payment system for partial payments states that payments must be at least \$100 or a defendant's case will be placed into warrant status.³² This statement is incorrect and conflicts with the Ferguson court's practice – both before Judge Richter's appointment and since – of accepting smaller payments from defendants. Accordingly, court administration experts and Judge Richter recommend that the Ferguson court ask its online payment vendor to correct this statement and to make clear that a defendant may make a lower payment without worrying about being placed into warrant status.

The DOJ report criticized the Ferguson court staff for not being available during the court's posted business hours of 8 a.m. to 5 p.m., noting DOJ staff observed that the court payment window to have closed by 4:30 p.m. on days when the court did not have an evening docket and that, on at least one occasion when the window was open, a person wishing to make a payment was unable to get the attention of court staff.³³ As noted earlier, the city terminated the former court clerk's employment in March 2015. Judge Richter reports that he has instructed current Ferguson court staff to be available to accept payments during the business hours posted. He suggests that, if the court staff routinely need to close the window early to finish processing their work before the close of business, they should change the business hours posted to reflect the time they actually close the window.

The DOJ report describes a public perception throughout the St. Louis region that individuals will be arrested if they cannot pay their fines in full immediately.³⁴ Court administration experts recognize that neither Judge Richter nor court staff in Ferguson can control practices of their counterparts in surrounding municipalities, but they hope the efforts of those now working with the Ferguson court might help alleviate public concerns about the court.

Judge Richter makes clear to each defendant with whom he comes into contact that no one will be sent to jail for an inability to pay.³⁵ In fact, he encourages defendants to come to court and explain their circumstances so that he might come up with an alternative arrangement that will work for them, including a different payment plan or the opportunity for community service, as discussed above.³⁶ Judge Richter's explanation of what a defendant should expect of the court is available online as well.³⁷

Judge Richter and court administration experts report that court staff are encouraged to allow two continuances should a scheduled court date be inconvenient for a defendant. A continuance is not considered a missed appearance. It only is if a defendant simply fails to appear at three scheduled

³¹ Partial payments pursuant to a payment plan may be made at <https://www.trafficpayment.com/InvoiceInfo.aspx?csdId=532>, last accessed May 11, 2015.

³² See <https://www.trafficpayment.com/InvoiceInfo.aspx?csdId=533>, last accessed May 11, 2015.

³³ DOJ report at 51-52.

³⁴ DOJ report at 48.

³⁵ See What to expect of court, and what the court expects of you section of Judge Richter's introductory remarks at <http://www.courts.mo.gov/page.jsp?id=86273#expectations>, last accessed May 11, 2015.

³⁶ See *id.*

³⁷ See Ferguson Municipal Division web page on the Your Missouri Courts website, <http://www.courts.mo.gov/page.jsp?id=8862>, last accessed May 11, 2015.

appearances that a warrant will be issued. Based on their observations, court administration experts report that Ferguson court staff are willing to make payment arrangements when a defendant appeared in court to discuss his or her case with the judge. As such, they note, warrants are a last resort used only to ensure legal compliance.

Court administration experts have observed court clerk staff interacting with the public and report that the clerks communicate to each individual that there are payment options. The experts report the clerks treated each individual with respect and, when an individual did not have the amount due, the clerks provided written information about how much to pay and what to do if the individual could not pay the amount at the assigned due date.

The Ferguson court has improved its practices and procedures and is working to ensure defendants understand their rights and responsibilities in the municipal court division.

The DOJ report criticized the Ferguson court's procedures, which it suggested were constitutionally deficient and functioned to impede a person's ability to challenge or resolve a municipal charge.³⁸ It said the court imposed severe penalties for failing to meet court requirements, including adding fines and fees to the underlying violations.³⁹ Examples the report described, however, focused on what appeared to be retaliatory conduct of the former municipal judge or former municipal court clerk when a defendant attempted to raise legal claims in court.⁴⁰ As noted earlier, however, in March 2015, the city terminated the former court clerk and the municipal judge resigned.

The DOJ report further stated the lack of clear and consistent information about a defendant's rights and responsibilities creates a barrier to the defendant's ability to resolve a case.⁴¹ For example, the report cited incomplete or incorrect information on the citation issued by the police, causing confusion for both the defendant and the court.⁴² Specifically, the report noted instances when court staff had to contact police to determine what ordinance had been violated or facts supporting the violation.⁴³

Court administration experts suggest the city adopt – as required by Supreme Court of Missouri Rule 37.33(c), which also sets forth what contents a violation notice must contain – a violation notice substantially in the form of the uniform citation set out in Supreme Court Form 37A with such additions as may be necessary to adapt the uniform citation to the jurisdiction. As Judge Richter has explained to individuals appearing in the Ferguson municipal court division, however, the police are part of a separate branch of government from the courts⁴⁴ and, as such, the court does not have authority over the day-to-day operations of law enforcement officials.

³⁸ DOJ report at 42.

³⁹ *Id.*

⁴⁰ *See, e.g.*, DOJ report at 43-44.

⁴¹ DOJ report at 44.

⁴² DOJ report at 45-46.

⁴³ *Id.*

⁴⁴ *See* Different roles in the system section of Judge Richter's introductory remarks at <http://www.courts.mo.gov/page.jsp?id=86273#roles>, last accessed May 11, 2015.

The court treats defendants courteously and ensures they understand their rights.

The DOJ report listed additional concerns about the manner in which the former municipal judge conducted Ferguson court proceedings, including that the judge did not listen to testimony, did not allow all pertinent witnesses to testify before rendering a decision, and retaliated against those attempting to raise legal claims to the charges against them.⁴⁵ As noted earlier, the former municipal judge resigned in March 2015, and Judge Richter has been responsible for the court proceedings since March 16.

Judge Richter reports that he strives to treat each defendant courteously, ensuring they are aware of their rights, and that he has instructed court clerk staff to do so as well. Court administration experts report that, in the court proceedings they have observed, Judge Richter has been attentive and willing to listen to defendants as well as any defense counsel who may appear.

Court administration experts also report observing Judge Richter explaining the court process at the beginning of each docket and, if a defendant was not present in court when the docket began, Judge Richter explains the process to the defendant one-on-one. Specifically, he explains:

- The Missouri court system and how municipal divisions work – including the kinds of municipal violations for which a person can pay a fine without appearing in court and those for which the law requires the person to appear;
- The different roles of the city council, city prosecutor and municipal court division;
- A defendant’s rights in the municipal court division; and
- What a defendant can expect of the municipal court division and what the court expects of the defendant.

In addition, all of this information – plus the location and hours of the Ferguson court as well as the dates and times when court dockets are held in Ferguson – have been made available on the state judiciary’s website.⁴⁶ As noted earlier, the Ferguson court website is part of the city of Ferguson’s website and, therefore, its content is controlled not by the court but by city information technology employees. Further, as explained earlier, that website was the subject of a distributed denial-of-service attack by the hacker group Anonymous.

The DOJ report expressed concern that the Ferguson court’s procedures were ambiguous, were not written down and were not available to the public on the court’s website or elsewhere.⁴⁷ Inasmuch as the judge and court clerk subject to the DOJ review – which revealed concerns about ad hoc practices⁴⁸ – no longer are employed by the city, these issues have been addressed. Judge Richter reports that he conducts the court in accordance with Supreme Court of Missouri Rule 37 governing municipal court divisions as well as applicable state statutes.

⁴⁵ DOJ report at 43-44.

⁴⁶ See Ferguson Municipal Division web page on the Your Missouri Courts website, <http://www.courts.mo.gov/page.jsp?id=8862>, last accessed May 11, 2015. This page also can be reached by navigating to www.courts.mo.gov, then using the “About Your Courts” drop-down menu to select the “Municipal Divisions” link, then selecting “Ferguson” from the alphabetical list of municipalities.

⁴⁷ DOJ report at 45.

⁴⁸ See, e.g., DOJ report at 46.

The court has established a comprehensive violations bureau schedule and has made clear what violations do NOT require court appearances.

The DOJ report was critical of the Ferguson court for requiring defendants to appear in court too frequently⁴⁹ and for not making clear what violations require a court appearance and what violations may be handled through the violations bureau schedule.⁵⁰ Specific examples included requiring a court appearance for violations such as failure to remove leaf debris, overgrown vegetation and a dog creating a nuisance.⁵¹ As noted earlier, the former judge who required such appearances resigned his position in March 2015; such appearances no longer are required.

Under state law, courts may establish a “violations bureau” as a mechanism by which a defendant may plead guilty to certain offenses and pay the corresponding fine and costs without appearing in court. Under state law, a violations bureau is permitted to handle only a limited number of offenses; all others require court appearances. *See* section 476.385, RSMo; *see also* Supreme Court of Missouri Rule 37.49.

Specifically, section 476.385.2 provides: “In no event shall any schedule of fines adopted [in a violations bureau] include offenses involving:

- 1) Any violation resulting in personal injury or property damage to another person;
- 2) Operating a motor vehicle while intoxicated or under the influence of intoxicants or drugs;
- 3) Operating a vehicle with counterfeited, altered, suspended or revoked license; and
- 4) Fleeing or attempting to elude an officer.

Under state law, a municipality is allowed – but is not required – to adopt a traffic violations bureau. Section 479.050, RSMo. Under Rule 37.49, a court may adopt a violations bureau to handle violations involving animal control, housing and traffic, except the traffic violations outlined in section 476.385.2 (and reiterated in Rule 37.49(c)), for which state law requires a court appearance.

As noted earlier, Judge Richter adopted a new traffic violations bureau schedule for the Ferguson court effective April 1, 2015.⁵² He reports that he included in this schedule every Ferguson ordinance violation that the law permits to be handled without a court appearance; any offense not listed on the schedule requires a court appearance.

This new violation bureau schedule is posted at the Ferguson court payment window and clearly indicates those offenses for which a person need not make an appearance. This should alleviate prior court clerk practices, as noted in the DOJ report, of attempting to make their own assessments of when a person must appear in court and when a person is not required to do so.⁵³

⁴⁹ To the extent the DOJ report expresses concern about the number of defendants required to appear in court, it should be noted that a large majority of the violations charged involve those for which state law requires a court appearance. *See, e.g.*, Municipal Divisions section of Judge Richter’s introductory remarks at <http://www.courts.mo.gov/page.jsp?id=86273#withoutappearance>, last accessed May 11, 2015.

⁵⁰ DOJ report at 44, 48-50

⁵¹ DOJ report at 48.

⁵² *See* Ferguson Municipal Division Violations Bureau Schedule of Offenses and Fines, effective April 1, 2015, at <http://www.courts.mo.gov/file.jsp?id=85317>, last accessed May 11, 2015.

⁵³ DOJ report at 46.

Judge Richter reports that this prior practice has ceased, noting this is a determination a court clerk should *not* make.

Court administration experts recommend that the city train law enforcement officers about what violations require a court appearance and what violations do not. To this end, Judge Richter reports that Ferguson court staff are preparing a handout for officers to give to persons receiving citations that will indicate whether the citation may be handled without a court appearance.

The court follows the procedure mandated by law for notifying defendants of the consequences of failing to appear in court or pay a court fine.

The DOJ report expresses concern that Ferguson court officials did not ensure that defendants receive actual notice of the consequences of not appearing in court or not paying a fine – such as being subject to arrest or a driver’s license suspension – before issuing an arrest warrant or seeking a license suspension.⁵⁴ The report noted it is the practice of court staff to send a letter to a person who misses a required court appearance setting a new court date and informing the defendant that missing the next court date will result in an arrest warrant being issued.⁵⁵ This procedure is precisely what is required by state law.⁵⁶ Judge Richter reports he requires adherence to this procedure and has directed court clerk staff to place a copy of the letter in the court file along with a notation of when the letter was mailed.

Court administration experts report that letters regarding missed court dates and warrants are generated automatically by the case management system (ITI) the city purchased for its municipal court division. The experts report these letters clearly indicate the reason for the letter, the cases and charges, whether the defendant needs to appear, how much the defendant owes, and when the defendant must make the payment. These letters and warrants are not generated for 48 hours after a court date to allow defendants time to pay if they missed their court appearance. Warrants issued in the system are not enforced for an additional week, as they await the judge’s signature, allowing a defendant more time to resolve the matter.

The DOJ report expresses concern that, when these letters of notice are returned to the court as undeliverable, the court staff make no additional effort to notify the defendant.⁵⁷ The only address the court has for each defendant, however, is the one the defendant provided to the officer who issued the citation. If the defendant moves, it is the defendant’s responsibility to notify postal authorities of a forwarding address. The court has no additional means of locating a defendant to send another letter, nor does the law require it to do so.

The DOJ report notes that, if a defendant misses a second court date, the court issues an arrest warrant without any confirmation that the defendant actually received notice of the second court date.⁵⁸ Missouri law, however, does not require any such confirmation; this is not a circumstance when the law requires notice by certified mail, which would be prohibitively expensive for all municipal court cases and cannot be recouped.

⁵⁴ DOJ report at 46-47.

⁵⁵ DOJ report at 46.

⁵⁶ Section 302.341, RSMo.

⁵⁷ DOJ report at 47.

⁵⁸ *Id.*

The court is improving the process for handling bonds for arrest warrants.

The DOJ report expressed concern about the process of clearing a warrant by paying a bond, noting that court clerks sometimes canceled a bond for defendants they deemed sympathetic, leading to arbitrary and confusing application of the procedures.⁵⁹ Judge Richter reports he has directed court staff they are not authorized to cancel arrest warrants.

According to the DOJ report, Ferguson police have difficulty finding a warrant in the warrant drawers.⁶⁰ Court administration experts report that the warrant drawers are not the court's files but rather contain the Ferguson police department's copies of warrants to be served. Court administration experts report the Ferguson court staff make warrant entries into the Missouri Uniform Law Enforcement System (MULES) and, when a warrant is issued and returned, maintain both the court file and the police file. The court administration experts recommend that maintenance of the warrant drawers should be the sole responsibility of the Ferguson police department records clerks, not any Ferguson court staff, who should be responsible only for the court records.

The DOJ report notes concern regarding how long a defendant might be held if the defendant is unable to post bond and that high bond amounts, sometimes greater than the fine for the underlying offense.⁶¹ It described the bond practices as "unclear and inconsistent" – noting the court and police used different bond schedules – resulting in a "haphazard" bond system in which some are arrested erroneously and others pay bond but are not credited as having done so.⁶² The report notes the prior municipal court clerk permitted defendants appearing to pay their bond amounts before a certain time to pay a lesser amount than the defendants appearing to pay their bonds later in the day.⁶³ As noted earlier, the municipal court clerk whose actions are described was terminated by the city in March 2015.

As the DOJ report notes, the Ferguson court in December 2014 set forth a new bond schedule for warrantless arrests, providing that, for all but 14 code violations, a defendant arrested shall be released on the person's own recognizance within 12 hours regardless of whether the defendant paid the bond amount.⁶⁴ Judge Richter reports that, to the extent a defendant is unable to pay the bond amount, the defendant may raise this issue with him when the defendant appears in court.

Judge Richter and court administration experts report that this new bond schedule has been provided to both the Ferguson court staff and the Ferguson police department and that court clerks have been told they must be fair and impartial to all defendants, may not show sympathetic tendencies to one defendant or another, and must follow the same procedure consistently. Court administration experts further report that – based on their observations of the controls over procedures to post, log and place the bond form and money in the court's locked drop box; verification of the bond log between the court and the police department; and deposit procedures – the procedures appear to provide adequate internal controls.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ DOJ report at 47, 58-61.

⁶² DOJ report at 59.

⁶³ *Id.*

⁶⁴ DOJ report at 58 fn 34 and 59.

The DOJ report expressed concerns about the Ferguson court’s bond forfeiture practices.⁶⁵ Specifically, the report noted that a forfeited bond is deposited into the city’s general fund and is not applied to the amount of the defendant’s underlying fine.⁶⁶

Court administration experts report that, based on their observations, the court is following standard bond forfeiture procedures. They explain that a bond is forfeited only when a defendant fails to appear in court to dispose of his or her case. This is not an automatic process. Prior to forfeiting a bond, a court sets a bond forfeiture hearing, sends a notice of the hearing to the defendant and conducts the hearing. If the defendant does not appear at the forfeiture hearing, the bond is forfeited. The experts further explain that, because the case has not been disposed at this time, no fines or costs are due – and so there is no fine to which a bond could be credited. Further, because the case has not been disposed, the defendant still is presumed not guilty and, if later determined to be not guilty, the defendant will owe no fines at all.

The court follows state law regarding suspension of a defendant’s driver’s license.

The DOJ report notes concerns about policies that “exacerbate the harms of Missouri’s law” requiring license suspension when a person fails to appear on a moving violation charge and that this law imposes a hardship on defendants.⁶⁷ As the report notes, section 302.341.1, RSMo, requires automatic suspension of the driver’s license⁶⁸ of anyone who fails to make timely payment of a traffic citation for a moving violation or who fails to appear in court regarding a moving violation.⁶⁹ The report then outlines the statutorily required process a court is to follow – to notify the defendant, by ordinary mail at the last address shown on court records, that if the defendant does not dispose of the charges and fully pay the fine within 30 days, the court is required to direct the Missouri Department of Revenue to suspend the defendant’s driving privileges.⁷⁰ The report notes that, under the statute, the suspension “shall remain in effect” until the court with the pending charge asks that the noncompliance suspension be set aside.⁷¹

To the extent the department of justice is concerned with the law itself or its practical effects, such concerns address matters of public policy within the purview of the state legislature, not the courts. Judge Richter notes that the manner in which a court follows this procedure is a matter of state law, not court policy. He reports he is unaware of any court – at the municipal or state level – that issues a compliance letter to the Missouri Department of Revenue until the defendant has satisfied his or her obligation to the court, noting that the court has authority to work with the defendant about how the fine is paid. To the extent the DOJ report notes that court clerk staff have issued such letters at their discretion, Judge Richter reports that the clerk staff have been instructed to cease such practices, as this is beyond the scope of their authority.

⁶⁵ DOJ report at 61-62.

⁶⁶ DOJ report at 61.

⁶⁷ DOJ report at 44.

⁶⁸ Section 544.045, RSMo, permits a person charged with violating a traffic ordinance to deposit his license in lieu of bail and requires a court to notify the director of revenue if a driver fails to appear at the proper time to answer the charge.

⁶⁹ DOJ report at 50.

⁷⁰ DOJ report at 51 fn 28, quoting section 302.341.1, RSMo.

⁷¹ DOJ report at 50.

Court administration experts who have observed this practice in the Ferguson court report that the Ferguson court follows the statutory process under sections 302.341 and 544.045 to report noncompliance by a defendant in a moving traffic violation case and that, if a suspension notice is returned in the mail as undeliverable, the clerk makes a notation in the case management system to that effect and places the letter in the case file.

The Ferguson court is open and accessible to defendants and the public.

To help educate the public about the importance of coming to court and to help alleviate fears that a person will be arrested for an inability to pay a fine, Judge Richter has offered a thorough explanation of how the court works and the importance of coming to court so he has an opportunity to work with a defendant. He explains the consequences state law provides if they fail to come back to complete their obligations, including suspension of driving privileges pursuant to section 302.341, RSMo.⁷² He tells them, given these consequences, that it is much better they come to court so he may work with them.⁷³ He makes clear:

The bottom line is that if you have a court date, you need to come to court. If you do not, and your case is something other than a traffic matter, the only real option I have is to issue a warrant for your arrest. You will NOT be arrested for not having your payments made, but you may well get arrested if you refuse to come to court. So just please come to court so we can work with you.⁷⁴

Further, Judge Richter ensures that all defendants appearing before him understand that they are presumed not guilty and that they are entitled to a trial at which the prosecutor will be required to prove they are guilty.⁷⁵ He reports that the Ferguson court hears cases both in the evening and in the daytime, giving a defendant the flexibility to request a continuance to a more convenient time. Judge Richter notes that offering both daytime and evening court appearance times is unusual for either a municipal or state court.

Both the DOJ⁷⁶ and Judge Richter report that the Ferguson court does not exclude children, offering further flexibility for parents to appear in court. And, as the DOJ report notes,⁷⁷ the presiding judge of the St. Louis County circuit court in June 2014 directed the county's municipal court divisions that they must permit children in the courtroom and may not otherwise hinder public attendance at court sessions.

While the DOJ report describes individuals being treated dismissively or worse by Ferguson court staff and the municipal judge,⁷⁸ the former court clerk and municipal judge have not been with the court since March 2015. Judge Richter reports that he has directed clerk staff to treat everyone with courtesy and respect.

⁷² See What to expect of court, and what the court expects of your section of Judge Richter's introductory remarks at <http://www.courts.mo.gov/page.jsp?id=86273#expectations>, last accessed May 11, 2015.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ DOJ report at 49.

⁷⁷ *Id.*

⁷⁸ *Id.*

The DOJ report expresses concern that some individuals may have to wait in inclement weather to enter the courtroom.⁷⁹ Court administration experts have observed the Ferguson court since Judge Richter began hearing cases in March 2015. They report observing security personnel processing people through the metal detector as quickly as possible so they would not have to stand in the rain. Court administration experts note that, when the court is able to begin using its new courtroom at the court and police facilities, the metal detector will be placed further into the building, providing more shelter for persons waiting to be screened through security. Court administration experts note that, although this new courtroom's seating capacity is smaller than that of the city council chambers, the new courtroom offers additional seating in the hallway outside the courtroom and in the lobby of the building. In addition, court administration experts have been advised by Ferguson court staff that turnover in local police officers and policy changes in the police department appear to have decreased the number of tickets being written, which will reduce the number of potential defendants for any given docket.

Additional recommendations should improve the Ferguson court's ability to function fairly and impartially and improve the integrity of its records.

The DOJ report discussed in some part the close relationship among the city prosecutor (who also serves as city attorney), the city police, the Ferguson court staff and the city itself, although it did not make specific findings with regard to potential conflicts of interest. Such potential conflicts, however, do cause concern for both Judge Richter and the court administration experts who have observed the Ferguson court operations. It should be noted, at the outset, that the clerk staff are hired and paid by the city of Ferguson, not a circuit court, which poses some practical problems in terms of ensuring appropriate supervision.

Recommendations should help insulate the Ferguson court staff from the police and prosecutor, ensuring better checks and balances.

Inherent in some of the problems regarding warrants (as described above at pages 4-8) is the fact that – until very recently – the court staff were required to report to the chief of police. As a result, the police were relying on court staff rather than police records clerks to maintain police records. This also may attribute to the concern the DOJ report expressed about court clerk staff contacting arresting officers to amend citations to include additional information both the court and defendant need⁸⁰ as well as problems with the manner in which warrants are filed and maintained.⁸¹ Such a reporting structure potentially compromises the separation our government is to have between the judicial branch – of which the court is a part – and the executive branch – of which the police are a part.

To the extent the city has shifted supervision of the court clerk staff from the police chief to the city finance manager, this poses another potential conflict of interest, as the city finance manager – as a part of the executive branch of government – could place undue pressure on the clerk staff

⁷⁹ DOJ report at 49.

⁸⁰ DOJ report at 45-46.

⁸¹ DOJ report at 47.

– who are part of the judicial branch of government – to focus on revenue rather than fairness and due process of law.

Judge Richter and the court administration experts recommend the Supreme Court of Missouri bring in outside experts – such as through the National Center for State Courts – who are well-versed in the operations of municipal courts in large municipalities elsewhere in the country, to help develop a best-practices approach to the most appropriate reporting structure for the clerk staff within their employment by city government.

Similarly, the DOJ report discusses in some part concerns with the city prosecutor’s fine recommendations being used to increase revenue for the city as well as the interaction between the prosecutor and court staff.⁸² Court administration experts, however, have identified a concern about a potential conflict of interest. The experts learned, through their observations of the Ferguson court, that the court staff are responsible for handling work for the prosecutor – who is part of the executive branch of government but who does not maintain a file separate from that maintained by the court, a part of the judicial branch of government. Additionally, it appears the prosecutor does not review case files unless an attorney enters an appearance or unless the judge or defendant ask questions about the file or unless a defendant otherwise requests a trial. Further, it appears the prosecutor does not review case filings until after they are filed in the court; instead, the police file the citations, the court staff open a file, and only sometime thereafter does the prosecutor review the case.

Such a practice is inconsistent with Supreme Court of Missouri Rule 37.34, which requires all municipal ordinance violations to be prosecuted by information, and Rule 37.35, which requires the information to be in writing, signed by the prosecutor and then filed in the court with jurisdiction over the ordinance violation. Such steps are necessary to ensure due process, so that defendants are not charged unless the prosecutor has reason to believe there is sufficient evidence to bring the charge. The court administration experts and Judge Richter recommend the prosecutor follow all provisions of Rule 37 – including the specific duty under Rule 37.35 – in reviewing, signing and filing informations for prosecution of municipal ordinance violations. Judge Richter reports the prosecutor has told him she reviews all offenses for which a police report was written.

Further, as noted in the DOJ report, the prosecutor has authorized the court staff to communicate fine recommendations when requests are received from attorneys.⁸³ In such a situation, the court staff are working on behalf of the prosecutor, although they send recommendations on Ferguson court letterhead. As noted above, the prosecutor does not see a filing or fine recommendation until court is in session and then reviews the file and recommendation only if an attorney has filed an appearance and wishes to discuss the recommendation. Court administration experts and Judge Richter recommend that any request for a fine recommendation should be directed to the prosecutor and not to the court staff.

Similarly, the DOJ report notes that requests for discovery are filed with the court, and court staff respond to those requests and maintain copies in the court files; the prosecutor does not see the

⁸² DOJ report at 53.

⁸³ DOJ report at 44.

discovery requests.⁸⁴ As noted above, the Ferguson prosecutor does not maintain a case file separate from the official file record maintained by the court. As such, prosecutor and court documentation is commingled in the same file, although Judge Richter reports that court staff keep the prosecutor's documentation in a sealed envelope in the file. Court administration experts recommend that these records be better segregated, noting that Supreme Court of Missouri Operating Rule 4.22 restricts access to case files by individuals other than court personnel, and that all requests for discovery should be directed to the prosecutor and not to the court staff. The experts and Judge Richter recommend that further study be undertaken regarding the practicalities of a small municipality, which may lack sufficient administrative support staff, maintaining strict lines between the municipal court clerks and municipal prosecutor in the maintenance of files.

Recommendations should improve the integrity of the Ferguson court's electronic records.

Although not addressed directly in the DOJ report, court administration experts also reviewed the electronic system the Ferguson court uses to manage its cases. The Ferguson police department has contracted with a vendor called ITI to provide a case management system to the court. Several areas of concern are apparent in this system.

First, the Ferguson court lacks physical control over the database containing all its case management data, which is hosted off-site, away from the court facility. Further, no backup copies of the case management data are provided to the court staff. Such practices violate Supreme Court of Missouri Operating Rule 1.10 (COR 1.10), which requires: "Data processing for all courts shall be handled on computer equipment managed and controlled by the court." This is necessary for the court to ensure the continued integrity of all the case data for which it is responsible. Neither has the Ferguson court requested or received any exemption to COR 1.

Second, the contract between the city and the vendor does not specify which staff of the vendor have access to the Ferguson court's case management data, nor does it specify any safeguards to ensure only authorized vendor staff have access to the court's case management data. Additionally, the contract does not specify that the Ferguson court owns all case management data. Further, the contract fails to state what permitted use, if any, the vendor may have of the case management data. This poses substantial concerns about unauthorized access to confidential case information, including but not limited to social security numbers and other personal information, in violation of Supreme Court of Missouri Court Operating Rule 2 (COR 2).

Court administration experts, therefore, recommend the city authorize the Ferguson court to acquire and use a case management system as contemplated by COR 1 that will protect the integrity of the data and ensure no access to data except as provided by COR 2.

⁸⁴ *Id.*