

Municipal Court Q & A

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A. Supervision and Management

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1. Q: *Does a city or town have to maintain a municipal court?*

A: Yes, with qualifications. A.R.S. § 22-402 gives municipalities the option of maintaining a court to handle municipal cases or entering an intergovernmental agreement to have either a justice court with jurisdiction within the municipality or another municipal court within the same county handle those cases. This statute requires municipalities to maintain a judicial function using one of these options.

2. Q: *Are municipal courts part of the state judicial department or the municipal government?*

A: In Winter v. Coor, 144 Ariz. 56, 695 P.2d 1094 (1985), the Arizona Supreme Court held that magistrate (municipal) courts are part of the integrated judicial department of this state, citing Article VI, § 1 of the Arizona Constitution. Therefore, it is clear that municipal courts are not just a department of municipal government but are also part of the state judicial department and therefore must be administered as a separate branch of municipal government and be subject to the administrative authority of the Supreme Court pursuant to Article 3, § 1.

3. Q: *What is the proper relationship between the municipal court and city or town?*

A: In Winter v. Coor, the Supreme Court held that municipal judges are judicial officers, not officers or agents of the town. The Court further acknowledged the necessity of maintaining municipal courts as fair, independent, and impartial tribunals and the importance of preserving the public's perception of these courts as impartial and unbiased. So, while the judge is selected in the manner set forth in the local charter or ordinances, and the judge's compensation is set by the governing body of the city or town, any other authority over the municipal court is limited by the need for the courts to operate in a fair, independent and impartial manner. Interference that impedes the court from carrying out the impartial administration of justice violates the separation of powers provision of the Constitution of the State of Arizona and the fundamental principals of our constitutional form of government. The municipal court, consistent with relevant constitutional provisions, statutes, and case law, should maintain its independence from the executive and legislative branches, while recognizing that this should be accomplished in a cooperative manner.

4. Q: *Does a city or town have the authority to audit the court?*

A: Yes, with qualifications. The chief executives of the judicial branch of city or town government and of the county (the presiding municipal judge and the presiding superior court judge respectively), should be advised in advance of any proposed audit or review. If a municipal judge is suspected of misconduct or illegality, the presiding superior court judge and Supreme Court should be immediately notified. Fiscal or management audits or an organizational review of a municipal court can proceed with the agreement of the presiding judge as to the timing, scope and nature of the audit in order to minimize the disruption of judicial proceedings. This agreement should not be unreasonably withheld. However, no judicial decision of a court should be included as the subject of an audit or review.

The presiding superior court judge and the presiding municipal judge should be given the results of any such audit or review so these judges may determine what responsive action is warranted. Of course the results of these audits and reviews may be considered in the court budget process and the judge's contract renewal process. The local government should defer to the judge's determination of the financial needs of the court and the advisability of implementing any recommendations unless the judge's determination is arbitrary, capricious or unreasonable.

5. Q: *Can a city or town council set the hours that a municipal court is open?*

A: Yes, with qualifications. The city or town legislative body may set the hours of the municipal court in the same manner as the hours of other municipal offices are established to the extent the hours of the municipal court are not set by other authority such as the Arizona Rules of Court or by the presiding judge of the county. The hours may not be set in such a manner as to unreasonably impede the public's access to justice or impair the court's ability to conduct its business. The presiding judge's recommendation regarding the optimal hours of court operation should be sought and given great deference.

6. Q: *Can a city or town require the court to provide night sessions?*

A: Yes, with qualifications. Whether municipal judges are required to hold night sessions, in addition to regular day time hours, is a contract matter between the judge and the city or town. However, support staff for such sessions must be provided so as not to affect the regular operation of the court during the other hours it is open.

7. Q: *Can a city or town require the judge to hold court every business day? Can compliance with the ordinance be used as a criterion for evaluating the judge's performance?*

A. No. Such an ordinance would be unreasonably intrusive upon the administration of the municipal court and is, therefore, inconsistent with separation of powers principles.

Due to illness and other necessary absence for personal reasons, no officer or employee can perform or reasonably be expected to perform assigned duties every day of the year except holidays. Leave policies are established for employees to provide for absence for personal reasons. Of course, a leave policy for judges could be adopted as well. Leave policies and practices are matters of internal court administration appropriately within the authority of the presiding municipal judge to operate the court in a manner that best serves the administration of justice.

The ordinance may also interfere with the requirement that a judge attend mandatory training, such as new judge orientation and the annual judicial conference, and perform special duties as assigned that require a judge to be away from the judge's regular judicial duties. As provided in Article 6, § 1 of the Arizona Constitution, the municipal court is part of the integrated judicial department of the state. All Arizona courts and the judges of these courts are subject to the Article 6, § 3 administrative supervisory authority of the chief justice. The chief justice has exercised this authority to require all judges to obtain a minimum of 16 hours of judicial education each year and any additional judicial education required to maintain competence in the law. The chief justice also issues an administrative order each year requiring every judge to attend the state judicial

conference unless there is a need to be excused. Requiring all judges to meet minimum judicial education requirements and to attend the annual judicial conference clearly fosters the integration of the judicial department contemplated in § 1 by allowing consistent administrative direction and judicial education of all judges. Article 6, § 3 also authorizes the chief justice to make special assignments of judges that may occasionally remove a judge from regular judicial duties at the local court.

Consistent with separation of powers, an ordinance could require that the municipal court be open and appropriately staffed to conduct court business as provided in the referenced ordinance. This is also consistent with the approach to court hours taken in Article 6, § 17 which requires that the superior court be open except on non-judicial days, and the requirement in A.R.S. § 38-401 which requires that all state offices be open at specified times. But requiring that each judge be present at all times that the court is open goes far beyond what is reasonably needed to assure that the court be open and operating effectively and, instead, intrudes upon the presiding municipal judge's discretion to manage the court in a manner that achieves this legitimate objective of local government.

The city or town council clearly has responsibility and authority to evaluate judges in order to determine whether a judge should be appointed for an additional term. However, judges cannot be evaluated based upon compliance with such an ordinance. A judge cannot be negatively evaluated for not being present at the judge's court due to absence for legitimate personal reasons or to perform other professional duties as discussed above. While a judge's unscheduled absence or poor attendance at court could be an issue for evaluation, any real problem with court operations would be manifested by complaints from attorneys or parties, failure to meet deadlines and/or failure to carry a reasonable case load. For the reasons stated above, these are legitimate bases for evaluating judges rather than the number of days the judge sits in court.

B. Budget and Finances

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1. *Q: Is the presiding municipal judge required to follow the city or town budget procedures, including the purchase of equipment and supplies by the court?*

A: Yes. The presiding judge of the municipal court must follow the budgeting procedures established by the city or town. However, the budget process must yield funding necessary for the proper operation of the court. The municipal court must follow city or town expenditure procedures unless the municipal court has adopted the Judicial Branch Procurement Code. Every court is required to adhere to some procurement procedure. The authority of the municipal judge to make individual expenditures within the court's budget should be equivalent to the authority of the manager to make expenditures within executive department budgets.

2. *Q: What authority does the municipal judge have to move funds between budget line items?*

A: The authority of the presiding municipal judge over the court's budget is as provided by the city or town council. In order to avoid separation of powers conflicts between the presiding judge, the manager, and the council, the council should provide funding for the court in a manner that allows the presiding judge some flexibility regarding how the monies are allocated. For example, the state judicial department budget is appropriated

as a “lump sum.” A lump sum budget permits the presiding judge to administer the court within reasonable overall budget limitations. It also avoids placing the manager in the role of having to monitor court expenditures in a manner that intrudes upon the authority of the presiding judge or interferes with court operations. As noted above, the presiding judge already has independent authority under state statutes to manage and expend monies collected or granted pursuant to statute.

3. Q: *Does the city or town manager have the authority to dictate how funds appropriated to the court should be spent?*

A: No. If the monies at issue are state funds, such as judicial collection enhancement monies granted to the court under A.R.S. § 12-113 or time payment fees authorized to be expended under A.R.S. § 12-116, these monies may be spent only for the purposes stated in such grant or authorization. These funds are expressly provided for use “by the court” which means the presiding judge rather than the manager. Additionally, state statutes and the terms of grants typically prohibit use of state funds to supplant local funds otherwise supporting court operations. If the monies at issue are generated pursuant to a local ordinance, the ordinance should provide how expenditure of the monies is authorized. Such ordinances should respect separation of powers principles by providing the presiding judge discretion over expenditure of monies dedicated to funding court operations. The court is simply not part of the city or town administration subject to the supervision of the manager. Rather the court is part of the judicial branch of municipal and state government subject only to the judicial appointments, reasonable policy-making and appropriations authority of the council.

4. Q: *Can the city or town require other municipal officers to collect fine, sanction, restitution and bond payments?*

A: No. Under the direction of the presiding judge, the court should collect all fine, sanction, restitution and bond payments imposed by the court and deposit them with the city or town treasurer as required by A.R.S. §§ 22-407 and 41-2401.

Rule 26.12(b), Rule of Criminal Procedure, provides that payment of a fine, restitution, or both, shall be made to the clerk of the superior court unless the court expressly directs otherwise. A.R.S. § 22-423 extends this rule to municipal courts. Although A.R.S. § 22-404 provides for ultimate payment to the city or town treasurer of all fines and forfeitures collected, the statute clearly implies that the municipal court should collect the payments. Other statutes also require or imply that procedure. With regard to bail and civil sanction deposits, A.R.S. § 22-424 requires the judge to designate a deputy other than a law enforcement officer to accept bail bonds on behalf of the court during hours when the court is not open. The judge must also designate a person to accept deposits for civil traffic violations on behalf of the court.

Further, A.R.S. § 28-1559 requires every judge, magistrate or hearings officer to, “keep a record of each official action by the court...and the amount of civil penalty, fine or forfeiture resulting from every traffic complaint deposited with or presented to the court...” Pursuant to the requirements of this section, it appears that fines and forfeitures should be collected by the court in order to ensure the accuracy of the records that the court is required to maintain. The authority to determine who receives such payments and deposits clearly rests with the municipal court judge, not the local financial officer. Consistent with judicial department Minimum Accounting Standards, the disposition of the

funds received may be provided by ordinance or city policy to the extent it is not otherwise provided by law.

5. Q: *Can the city or town require the court to collect fees in addition to those provided in A.R.S. § 22-404?*

A. Yes. A.R.S. § 22-404(E) provides that any city or town may establish and assess fees for court programs and services. In addition, the attorney general has determined that a local ordinance may authorize fees for other municipal services to be collected by the courts. If the particular fee is subject to deferral, reduction or waiver, then the judge has discretion as to the amount imposed. Cities or towns may not establish fees where the fee setting authority has been specifically pre-empted by the state legislature.

6. Q: *Can the city or town authorize the “writing-off” of fines and civil sanctions that are determined to be uncollectible?*

A. Yes, with qualifications. There is currently no statutory authority that would allow courts to forgive outstanding obligations in total. While the city or town may adopt procedures to “write-off” court obligations owed to the city or town, amounts to be transmitted to the state general fund or other state agencies can only be written off by the state or those agencies pursuant to state law.

C. Personnel

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1. Q: *Can a city or town council refuse to renew a judge's contract without cause?*

A: Yes. The Winter case provides for at least a two-year term for municipal judges in which the judge could only be removed for cause while Jett v. City of Tucson 180 Ariz. 115, 882 P.2d 426 (1994) recently suggested "Under contemporary standards, a 4-year term seems appropriate." These cases imply that at the end of the term the judge can be removed without cause. However, as with any "at will" employment situation, a judge cannot be removed for any reason which violates state or federal law or is contrary to public policy.

2. Q: *Who has authority to hire, supervise, discipline and terminate court employees, the municipal judge or the local government?*

A: The appellate courts of this state have consistently held that the employees of courts within the state must be under the direct control and supervision of the presiding officer of each court. While there are no cases that specifically address the issue of control over municipal court employees, Winter v. Coor made it clear that municipal courts are a part of the state's integrated judiciary. Court personnel who are directly connected with the operation of the court should be controlled by the court. Therefore, municipal court should have exclusive authority to hire, supervise, discipline, and fire its employees unless the court elects to receive assistance from another department of the local government such as the human resources office.

3. *Q: What authority does the city or town manager have concerning hiring personnel and the need for a position?*

A: The manager should have a limited role or no role in court personnel matters depending upon the duties assigned to the manager. In order to function as a separate branch of municipal and state government the personnel of the court must be subject to the exclusive control of the presiding judge. This includes employee hiring, supervision, dismissal and compensation consistent with reasonable personnel, job classification and budget policies. The manager should have a role in these matters only if the manager also serves as the human resources director. Otherwise, the presiding judge should look to the human resources director for advice on these matters concerning court employees just as the manager should look to the human resources director for advice concerning other municipal employees. Consistent with separation of powers principles, the presiding judge should have the opportunity to make recommendations to the city or town council concerning the need for court positions. The budgeting policies or ordinances adopted by the council should state what, if any, role the manager has in evaluating the need for court positions. Budget related decisions such as this must be made ultimately by the council.

4. *Q: Do the city or town manager and finance department have veto power on travel arrangements regarding mandatory judges' meetings or seminars?*

A: No. As provided in Article 6, § 1 of the Arizona Constitution, the municipal court is part of the integrated judicial department of the state. All Arizona courts and the judges of these courts are subject to the Article 6, § 3 administrative supervisory authority of the chief justice. All judges are required to obtain a minimum of 16 hours of judicial education each year and any additional judicial education required to maintain competence in the law. The chief justice also issues an administrative order each year requiring every judge to attend the state judicial conference unless there is a need to be excused. Requiring all judges to meet minimum judicial education requirements and to attend the annual judicial conference clearly fosters the integration of the judicial department contemplated in § 1 by allowing consistent administrative direction and judicial education of all judges. This conference and seminars designed for judges typically include hotel arrangements that place the judge in close proximity to education programs, meetings and the other judges as part of the conference or seminar. Attendance at the judicial conference and seminars is a necessary cost of operating the municipal court and should be accommodated in the local travel policies and budget. Therefore, there should be no basis for the manager or the finance department to veto attendance at these events. Of course, the court must operate within reasonable budgetary limitations and reimbursement for travel should be governed by reasonable travel policies which apply equally to travel by council members, administrative employees and municipal judges.

5. *Q: Are the personnel rules adopted by a city or town also applicable to employees of the court?*

A: Yes. City or town personnel rules apply to municipal court employees unless these rules interfere with the independent operation of the court. Accordingly, presiding judges may adopt reasonable judicial personnel rules in order to operate independently and effectively as a court. Separate judicial personnel rules which are inconsistent with city or town rules concerning some matters such as hiring, supervision and dismissal of employees may be reasonable. On the other hand, separate rules concerning matters

such as employee benefits may be unreasonable. The effect of rules on the ability of the court to operate independently must be considered. The Supreme Court has adopted administrative orders which set reasonable minimum standards for courts addressing sexual harassment allegations and the needs of persons with disabilities and for judges involved in appointing special judicial officers.

As the chief executives of co-equal branches of government, the presiding municipal judge and the city or town manager should make every effort to reach agreement regarding which local personnel rules apply to court personnel, which rules need to be modified to recognize the independence of the court and which personnel matters should be governed by separate rules covering court employees. Rules which make the manager the ultimate authority over other local employees should not be applied to court employees. Instead, the presiding municipal judge stands in the place of the manager with respect to court employees. Where agreement cannot be reached, the reasonable judgment of the presiding municipal judge should prevail.

6. Q: *When hiring additional court employees, do the existing personnel procedures apply?*

A: Yes. The same response which applies to personnel matters addressed above applies to personnel rules concerning hiring.

7. Q: *If court employees are not covered by city or town personnel regulations, is the local government liable for discrimination suits?*

A: Yes. Municipal judges are statutorily officials of municipal government just as Supreme Court justices are statutorily officials of state government. Any liability resulting from the official acts of these judges are liabilities of the municipalities and state respectively. The degree of executive control over these acts does not affect this liability.

8. Q: *Who has authority over employees assigned to the court on a part-time basis?*

A: The presiding municipal judge should have full authority over all court employees during the time they are performing judicial duties including part-time employees who perform other duties for the city or town. For the portion of their employment during which part-time employees perform judicial duties, they should be governed by personnel policies established by the court. The court should not be required to hire and retain a part-time employee simply because that employee is performing other duties for the city or town. The principles of separation of powers and conflict of interest preclude assigning an employee court duties and duties related to the administration of justice in the executive branch of municipal government such as the police department or the prosecutor's office.

9. Q: *Can the city or town conduct performance reviews of the presiding municipal judge?*

A: Another implication of the Winter and Jett cases is that since councils have discretion regarding renewal of a municipal judge's contract, they must have the discretion to review the performance of that judge prior to renewal. Of course, the review should be

performed in a manner which does not interfere with the judge's duties and should carefully avoid criteria for non-renewal that are contrary to federal or state law or public policy. Municipalities may use the results of audits and reviews conducted by the city or town and any review conducted by judiciary.

10. Q: *What is the proper method of evaluating a municipal judge's performance?*

A: The city or town council with the assistance of the presiding judge of the county and the Administrative Office of the Courts should develop and implement a system for evaluating the performance of the municipal judge. This system should consist of regular annual or biennial evaluations based upon established criteria that include input from all constituencies of the court including the prosecutor and staff, the public defender and other defense counsel, the police, the general public, court employees and other judges familiar with the municipal judge's work. A judicial performance review system would avoid the appearance of ad hoc attacks on the independence of the court by particular constituencies and allow the city or town council to carry out its responsibility of appointing and reappointing the municipal judge based upon a thorough assessment of the performance of the judge using accepted criteria for assessing judicial performance.

11. Q: *What are the requirements for appointing a part-time municipal judge?*

A. There is no statutory authority for appointment of a pro tem judge in a municipal court as there is in justice court. Therefore, only a city whose charter authorizes pro tems may appoint them. Additionally, the recently adopted constitutional change that permits non-lawyer pro tems in justice courts does not cover municipal courts. A pro tem municipal court judge would need to be an attorney.

A municipality needing the services of a part-time judge may want to consider appointment of an "associate" or "special" magistrate. Under Winter v. Coor a magistrate must have at least a two year term. Therefore, an associate or special magistrate must be appointed for a two year term, rather than at the pleasure of the council or the judge, but could serve part time or "on call" as would a pro tem. The local ordinance would need to establish the qualifications and how the appointment is made. If it provides for the municipal court judge to make or recommend the appointment, § 1-305 of the Arizona Code of Judicial Administration would apply.

An elected JP whose precinct is located in a city or town is authorized by A.R.S. § 22-403(B) to serve as a municipal court judge for that city or town.

12. Q: *What are the procedures for appointing "special judicial officers"?*

A: A municipality has the initial responsibility to establish methods of selection of judges. If the municipality gives the presiding judge responsibility to appoint or recommend appointment of special judicial officers, then the requirements of ACJA § 1-305 of the Arizona Code of Judicial Administration must be followed by the presiding judge in carrying out this responsibility. The presiding judge must establish a selection process consistent with § 1-305 and with municipal charter and ordinance provisions. If the city or town council selects special judicial officers without the presiding judge's official involvement, ACJA § 1-305 does not apply.

D. Facilities

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1. Q: *What is the city or town's responsibility for providing facilities, staff and other resources to ensure the effective operation of the court?*

A: In Mann v. County of Maricopa 104 Ariz. 561, 456 P.2d (1969), the Arizona Supreme Court held that courts of general jurisdiction have the right to quarters appropriate to the office and personnel adequate to perform their functions. The same court in Maricopa County v. Dann 758 P.2d 1298 (Ariz. 1988), held that courts have a right to necessary personnel to carry out the court's constitutional and statutory duties, and that legislative bodies have the duty of approving personnel requests unless there is a clear showing that the judges acted unreasonably, arbitrarily, or capriciously in making the request. Although the case law does not specifically relate to municipal courts, the case law is clear that municipal courts are part of the state's integrated judiciary, and therefore the same, or at least similar, standards would apply to municipal courts as to other courts.

The municipal court can only engender proper respect for the law and provide justice in the individual case if the court is provided with sufficient judges, supporting staff and physical facilities to assure prompt, fair and dignified administration of justice. The municipal court judge responsible for the administration of the municipal court should be mindful of the needs of the court, and seek the cooperation of the funding authority to provide the funds required to meet those needs. If the court follows the funding authority's policies and is still denied adequate staff or facilities, then the court may, through its inherent powers, order the funding authority to provide for adequate staff or facilities.

2. Q: *Can the court deny use of the courtroom for non-judicial use by the city or town?*

A: No. While the courtroom must be available as needed for court business and should not be used in a manner which conflicts or has the appearance of conflicting with the judicial function of the court, it is both a court and local facility. When there is no conflict with court operations, there is no reason why these facilities cannot be made available for other governmental purposes. The court should ensure that any court records maintained in the area are secure.

E. Records

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1. Q: *Is the local government or the court responsible for maintaining municipal court records?*

A. The court. A.R.S. § 39-121.01(B) provides that, "All officers and public bodies shall maintain all records reasonably necessary or appropriate to maintain an accurate knowledge of their official activities which are supported by funds from the state or any political subdivision thereof." As the officer in charge of the court, the presiding judge is charged with the responsibility of maintaining the records of the court. A.R.S. § 39-121.01(C) further provides that the officer responsible for maintaining records is also responsible for the "preservation, maintenance and care of that officer's public records" and must "secure, protect and preserve public records from deterioration, mutilation, loss or destruction..." Therefore, it appears to be clear that the presiding judge of the municipal court is the sole and proper custodian of all records relating to the court and its operations.

2. Q: *Under what circumstances should records of the court be available to the public and city or town officials?*

A: Although access to most public records in Arizona is governed by state statute, the Supreme Court has chosen to exercise its administrative authority over all court records by the adoption of Rule 123, Rules of the Supreme Court. Access to records held by any court, including municipal courts, is governed exclusively by Rule 123.

Rule 123 provides that any member of the public may request to examine any court record during regular office hours. However, the custodian may deny or restrict access when the interests of confidentiality, privacy, or the best interests of the state outweigh the general policy of open access. The public has the right to know who is being charged with a crime and with what they are being charged. Therefore, it is clear that dockets should be made available to the public because they serve as an index of all cases filed in the court. No individual has the right to rummage through case files indiscriminately. Cases should be individually requested and individually reviewed.

The presiding judge of the municipal court has discretion, within limits, to determine what court records are available for inspection by the public, including city or town officials, and should establish procedures for the inspection of records to ensure their preservation. Court files and pleadings should at all times remain in the care and custody of the judge and designated court staff unless a written order from the judge authorizes otherwise. Likewise, all mail addressed to the court should only be opened and read by court staff.

Security measures should be implemented to secure court records in the municipal court during the hours the court is not open or in situations where court staff are out of the office. For example, court files should be locked at night and at any time when the file room is left unattended. The only individuals that should have keys to the court facility are the judge, court personnel so designated by the judge, and individuals responsible for building maintenance and security.