

Municipal Court Governance Roles and Responsibilities

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Introduction

In 1994, the Arizona Administrative Office of the Courts (AOC) developed the predecessor of this document, titled the Municipal Court Q&A, in response to questions posed by the Arizona League of Cities and Towns concerning the relationship between local governing bodies and their municipal courts. Since then, the AOC, Legal Services Office has received and responded to additional questions on this subject and produced additional versions of the Q&A that we provided to the League for comment and distribution to members. Recently, AOC staff worked with a committee of judges and court administrators to address suggested changes, expand, reformat, and reorganize the Q&A to produce the current municipal court document.

This document is provided as guidance to judges, court staff, and city officials to assist in resolving the most common issues involving the relationship between the municipal court and other branches of city or town government. It does not address all the issues that may arise and the answers given may not apply in every situation, but it is designed to provide some clarification about respective roles and responsibilities concerning the operation of the municipal court. General and specific (where available) authority is provided for the content in the footnotes of this document.

This document represents the AOC’s understanding of relevant constitutional provisions, statutes, rules, case law, and court orders.

1. *City or town obligation to maintain a municipal court.*

State law requires municipalities to maintain a court to adjudicate cases involving criminal, civil traffic, and ordinance violations committed within the city or town limits.¹ The municipality may establish its own court or enter an intergovernmental agreement with either a justice court with jurisdiction within the municipality or another municipal court within the same county to handle those cases.

¹ A.R.S. § 22-402.

2. *Coordination in consolidating a municipal court.*

A municipality is authorized to enter into an intergovernmental agreement² for performance of the services of its municipal court by either a justice of the peace court in whose jurisdiction the municipality is located or another municipal court within the same county.³

Notice of opening, closing, consolidating, co-locating, or splitting of courts should be provided to the Administrative Office of the Courts and assistance will be provided upon request. To facilitate creating or changing the administration or operation of courts, Court Services has created a document, Guidelines for Courts: Opening, Closing, Consolidating, Co-locating and Splitting Courts, which provides checklists about governance, external agencies, automation, financial, forms, records management, and staffing.

3. *Legal status of municipal courts.*

In Winter v. Coor, 144 Ariz. 56, 59, 695 P.2d 1094, 1097 (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. Consequently, municipal courts have authority and duties under the state constitution and statutes in addition to their duties as part of municipal government, must be administered as a separate branch of municipal government pursuant to Ariz. Const. Art. III, and are subject to the administrative authority of the Supreme Court pursuant to Ariz. Const. Art. VI § 3.

4. *Relationship between the municipal court and city or town.*

In Winter v. Coor, the Supreme Court held that municipal judges are judicial officers, not officers or agents of the town⁴. 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 municipal 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 distribution of powers provision of the Constitution of the State of Arizona, and the fundamental principles of our constitutional form of government. The municipal court, consistent with relevant constitutional provisions, statutes, and case law, must maintain its impartiality while fostering a cooperative relationship with the executive and legislative departments of municipal government. The court is not part of the city or town

² A.R.S. § 11-952.

³ A.R.S. § 22-402(C).

⁴ 144 Ariz. at 62, 695 P.2d 1049, 1100.

administration subject to the supervision of the manager.⁵ Rather the court is the judicial department of municipal government and part of the judicial branch of state government subject only to the judicial appointments, reasonable policy-making, and appropriations authority of the council.

5. *Authority to administer the municipal court.*

Through Supreme Court [Administrative Order No. 2005-32](#), the chief justice delegated Art. 6, § 3 administrative supervisory authority to the presiding superior court judge of each county and to the presiding judge of each municipal court. “Presiding judges shall be the Chief Judicial Executive Officers of their respective counties and shall exercise administrative supervision over the superior court including all of its divisions and judges thereof in their counties. “Presiding judges shall also exercise administrative supervision over the municipal courts in their counties.” The presiding judge of the county delegates administrative duties to the presiding municipal court judges in the county.

[Administrative Order 2005-32](#) specifically provides that presiding municipal court judges may appoint a court administrator according to local charter or ordinance provisions. The presiding municipal court judge supervises judges, judicial staff, and non-judicial staff while they are performing work for the court. Presiding municipal court judges are also specifically authorized to supervise the internal administrative functions of the court including personnel, training, facilities, procurement, finance, and court security. Presiding municipal court judges oversee court administrative operations including:

- Preparing and submitting an annual budget for the court.
- Establishing and maintaining docketing, calendaring, case management policies and procedures, and court automation systems.
- Setting bond schedules.
- Reporting case activity statistics.
- Jury management.
- Records management.
- Compliance with the Minimum Accounting Standards adopted by the Supreme Court.

6. *Municipal court operational reviews and audits*

Court operations are reviewed periodically by the AOC as part of the Supreme Court’s A.R.S. Const. Art. VI § 3 supervisory duties. Operational review reports may be obtained upon request by city officials.

The city or town may conduct a separate audit of the municipal court in a manner that does not impair the ability of the court to conduct business as required by

⁵It is our conclusion that the magistrate courts are indeed part of the integrated judicial department of this state.” [Winter v. Coor](#), 144 Ariz. 56, 59, 695 P.2d 1094, 1097 (1985).

A.R.S. § 22-402(A) and court rules. Fiscal or management audits or an organizational review of a municipal court may proceed with the agreement of the presiding judge as to the timing, scope, and nature of the audit or review in order to minimize the disruption of judicial proceedings. This agreement should not be unreasonably withheld. Any audit or review must not target a judicial decision of a court.⁶

The presiding municipal judge should be given the results of any such audit or review to determine whether any responsive action is warranted. The court is required to “provide the presiding judge of the county and the AOC Court Services Division a copy of all final reports, findings and evaluations from any audit within seven business days of receipt.” ACJA § 1-401(G)(3).

7. *Authority to set municipal court hours of operation.*

The city or town legislative body may set the days and hours of operation of the municipal court in the same manner as the hours of other municipal offices are established under a charter or ordinance. This could include closing the court some days of the week, requiring furlough days, and holding night sessions, in addition to regular day time hours, if the city or town provides sufficient judicial and support staff for such sessions.⁷ The presiding judge's recommendation regarding the optimal hours of court operation should be sought and given great deference.

Such hours must not conflict with hours of the municipal court set by other authority such as statutes, the Arizona Rules of Court, or the presiding judge of the county. The hours must 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 consistent with the operation of the entire justice system in the county.⁸ This includes effective arrangements for coverage of orders of protection, initial appearances, and any other matters required to be addressed over a weekend.

8. *Authority to require the judge to attend court every business day and use of attendance as a criterion for evaluating the judge's performance.*

Such an ordinance would be unreasonably intrusive upon the administration of the municipal court and is, therefore, inconsistent with distribution 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 weekends and 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. However, a judge is expected to perform the established duties of the office for the established salary without regard for the time required. Leave policies and practices are matters of internal

⁶ Ariz. Const. Art. III.

⁷ A.R.S. § 22-402.

⁸ Ariz. Const. Art. III; A.R.S. § 22-402(A).

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.⁹

Consistent with distribution of powers, an ordinance could require that the municipal court be open and appropriately staffed to conduct court business. This is also consistent with the approach to court hours taken in Art. 6, § 17 that requires the superior court be open except on non-judicial days, and the requirement in A.R.S. § 38-401 that requires all state offices be open at specified times. However, requiring that a judge be present during all hours 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 municipal government.

Winter, 144 Ariz.at 64, 695 P.2d at 1102 and Jett v. City of Tucson, 180 Ariz. 115, 123, 882 P.2d 426, 434 (1994), imply that 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, it would not be reasonable to negatively evaluate a judge for not being present at the municipal court due to absence for legitimate personal reasons or to perform other professional duties as discussed above.

9. *Reporting Judicial Misconduct.*

The Arizona Commission on Judicial Conduct, created by Article VI.I of the Arizona Constitution receives and investigates reports of judicial misconduct. The Commission posts information on its website about the complaints it has received and how they were resolved for complaints dating back to 2006, *see* azcourts.gov/azcjc.

B. Budget and Finances

1. *Responsibility for providing staff and other resources to ensure effective court operations.*

The case law is clear that municipal courts are part of the state's integrated judiciary (Winter v. Coor) and therefore the same, or at least similar, standards

⁹ "Presiding municipal court judges shall supervise the administration of the judicial and internal administrative functions of the municipal court including: a. Determining judicial assignments for each judge and, within guidelines established by city or town council, establishing and maintaining standard working hours and times to effectively discharge those assignments." Administrative Order 2005-32(C)(3). A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them. Rule 81, Supreme Court Rules, Code of Judicial Conduct, Rule 2.12 (B).

apply to municipal courts as to the superior court.¹⁰ In Maricopa County v. Dann), the Supreme Court 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. First, the presiding judge must follow the "procedure to request employment of necessary court personnel."¹¹ The presiding judge should not ignore the funding authority's policies or procedures because the judge merely disagrees with the policies and "an orderly fiscal policy is a governmental necessity and to order expenditures for personnel in excess of budget provisions might be unreasonable, arbitrary and capricious."¹² Additionally, courts should be mindful if a municipality is experiencing a fiscal deficit or shortfall and work cooperatively with the municipality to achieve a mutually agreeable solution. If the court follows the funding authority's policies and is still denied adequate staff or facilities, the court may, through its inherent powers, order the funding authority to provide for adequate staff or facilities.¹³

2. *Preparation of the municipal court budget and requirement to follow city or town budget and finance procedures.*

The presiding judge of the municipal court and the court administrator, if any, must prepare a budget for the municipal court.¹⁴ In doing so they must follow any budgeting and finance procedures established by the city or town.¹⁵ The state judicial department budget is separate from the Governor's budget and is presented directly to the legislature. Likewise, the municipal court's budget may be presented with the manager's budget or directly to the council. The budget process must yield funding necessary for the proper operation of the court. The local government must defer to the judge's determination of the financial needs of

¹⁰ 157 Ariz. 396, 758 P.2d 1298 (1988) (Superior Court). "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, support staff, legal resource materials such as the Arizona Revised Statutes, training opportunities for court personnel and physical facilities to assure prompt, fair and dignified administration of justice. The Presiding 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." Standard 8, Standards for Municipal Courts Revised Administrative Order 83-11 (Jan 17, 1990).

¹¹ Maricopa County v. Dann, 157 Ariz. 396, 398, 758 P.2d 1298, 1300 (1988).

¹² *Id.*

¹³ "Thus, while we recognize the inherent power of a justice court to require the providing of personnel in order to perform its necessary functions, this power should be exercised only when there is no established method for obtaining needed personnel or when a reasonable, good faith, diligent effort to utilize such methods has been attempted and has failed." Reinhold v. Board of Supervisors of Navajo County, 139 Ariz. 227, 232, 677 P.2d 1335, 1340 (Ct.App. Div. 1, 1984).

¹⁴ Administrative Order 2005-32, Presiding Judge – Municipal Court:

¹⁵ Maricopa County v. Tinney, 183 Ariz. 412, 904 P.2d 1236 (1995), Maricopa County v. Dann, 157 Ariz. 396, 758 P.2d 1298 (1988).

the court and the advisability of implementing any recommendations, unless the judge's determination is arbitrary, capricious or unreasonable.¹⁶

The municipal court must follow city or town expenditure procedures unless the Procurement Code for the Judicial Branch (PCJB)¹⁷ has been adopted by the Presiding Judge of the county to apply to the municipal court. Every court is required to follow a procurement procedure substantially equivalent to the PCJB.¹⁸ The authority of the municipal judge to make individual expenditures within the court's budget should be equivalent to the authority of the manager and subordinates to make expenditures within executive agency budgets.

3. *Authority of the municipal judge to move funds between budget line items and to make fiscal-neutral staff reassignments.*

The authority of the presiding municipal judge over the court's budget is provided by the city or town council and [Administrative Order 2005-32](#). In order to avoid distribution 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 flexibility similar to the manager regarding how the monies are allocated. This avoids placing the manager in the role of approving court expenditures in a manner that intrudes upon the authority of the presiding judge to administer the court impartially pursuant to [Administrative Order 2005-32](#) or that interferes with court operations. As noted below, the presiding judge already has independent authority under state statutes to manage and expend monies collected or granted pursuant to statute.

4. *Authority to direct the expenditure of funds appropriated to the court through state statutes or municipal ordinances.*

If the monies at issue are state funds, such as judicial collection enhancement fund 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 must 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 or grant funds to supplant or replace local funds for a particular court program or expenditure.¹⁹ If the monies at issue are generated pursuant to a municipal ordinance, the ordinance should provide how expenditure of the monies is authorized. Such ordinances should respect distribution of

¹⁶ [Reinhold v. Board of Supervisors of Navajo County](#), 139 Ariz. 227, 232 (Ct. of Appeals 1984) recognized the inherent power of a justice court "to require that personnel necessary for its function as a court be supplied by the board of supervisors unless such a request is arbitrary, capricious or unreasonable."

¹⁷ ACJA § 1-402.

¹⁸ ACJA § 1-402(B)(2).

¹⁹ See, e.g., A.R.S. §§ 12-102.02(E)(state aid to the courts fund); 12-113(C) (judicial collection enhancement fund); and 12-135(D)(alternative dispute resolution fund).

powers principles by providing the presiding judge discretion over expenditure of monies dedicated to funding court operations.

5. *Responsibility for collection of court fine, sanction, restitution, and bond payments.*

Under the direction of the presiding judge, the court must 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 A.R.S. § 41-2401. The Supreme Court has adopted detailed minimum accounting standards to govern the handling of court payments by court personnel.²⁰

Arizona Rules of Criminal Procedure Rule 26.12(b), provides that payment of a fine, restitution, or both, must 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 must 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 establish schedules for traffic offenses and violations that do not involve death or a felony and to permit receipt of bail bonds and provided for acceptance of deposits for civil traffic violations on behalf of the court.

Further, A.R.S. § 28-1559(A)(2) requires every judge, magistrate, or hearing officer to, “keep a record of each official action by the court” and the “amount of the civil penalty, fine or forfeiture resulting from each 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. 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.

6. *Court collection of fees in addition to those expressly provided in A.R.S. § 22-404(B).*

A.R.S. § 22-404(E) provides that any city or town may establish and assess fees for court programs and services. Unless specifically prohibited by law, a particular fee is subject to deferral, reduction or waiver by the Judge in a case. Local fines and many local fees are subject to state surcharges.²¹

7. *Authority to resolve fines and civil sanctions that are determined to be uncollectible.*

²⁰ ACJA § 1-401.

²¹ Ariz. Atty. Gen. Op. I00-015 (June 22, 2000).

There is currently no statutory authority that would allow courts to forgive outstanding obligations in total.²² 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 may only be written off by the state or those agencies pursuant to state law.

8. *Disposition of interest earned on funds designated for use by the court.*

Unless otherwise provided, interest earned on an account must be deposited in that account to serve the purpose for which the account was established, [ACJA § 5-107\(C\)\(14\)](#) specifically provides “interest earned remains with the fund and may be used in support of the approved case processing plan.”

C. Personnel

1. *Appointment and reappointment of municipal judges.*

The Winter case requires appointment to at least a two-year term from which a judge may not be removed without cause. Jett v. City of Tucson suggests “Under contemporary standards, a 4-year term seems appropriate.”²³ Additionally, a change in the number of judges may not affect removal of a judge during the judge’s term.²⁴ Both cases imply that at the end of the term the judge may be removed without cause. However, a decision not to reappoint a judge may be held invalid when it is in retaliation for the judge’s refusal to “commit an act or omission that would violate the Constitution of Arizona or the statutes of this state,”²⁵ such as the separation of powers provided in Article III of the Arizona Constitution. Cities and towns have established judicial selection and performance review committees to make recommendations for appointment and reappointment of judges based upon merit. The recommendations of these committees should be given great weight by city and town councils in order to avoid invalid reappointment decisions.

2. *Obligation to pay judicial salaries.*

Municipal judge salaries may not be reduced during the term of office even if they are not set by charter or ordinance, and even in the event of budget reductions.²⁶

3. *Judge’s refusal/waiver of payment of the judge’s salary.*

²² A.R.S. § 13-824 authorizes a court to convert an order to pay fines, fees, assessments, or incarceration costs to community restitution, if the court finds the defendant is unable to pay.

²³ Id. 180 Ariz. 115, 125 n.6, 882 P.2d 426, 436 n.6 (1994).

²⁴ See also Ariz. Const. Art. VI § 33.

²⁵ A.R.S. § 23-1501(3)(c).

²⁶ Ariz. Const. Art. VI § 33.

Since the constitution prohibits reduction of the current salary, however established, during a municipal judge's term, a judge cannot effectively waive part of the judge's salary during the term.²⁷ However, a municipal judge may voluntarily donate back to the city or town any part of the salary the judge has been paid.

4. *Authority of the city or town to conduct performance reviews of the presiding municipal judge.*

Another implication of the Winter and Jett cases is that since councils have discretion regarding renewal of a municipal judge's appointment, they must have the discretion to review the performance of that judge prior to renewal.²⁸ Of course, the review must be performed in a manner that does not interfere with performance of the judge's duties and carefully avoid criteria for non-renewal that conflict with federal or state law, court rules, the impartiality of the court, or any other ethical obligation of the judge. Municipalities may use the results of audits and reviews conducted by the city or town and any review conducted by the judiciary. Any city or town council wishing to establish a system for evaluating the performance of a municipal judge may seek assistance from the Administrative Office of the Courts.

5. *Requirements for appointing a part-time municipal judge.*

There is no statutory authority for appointing a pro tem judge in a municipal court as there is in justice court. However, a city whose charter provides for judges pro tempore may appoint them.²⁹ Additionally, the constitutional provision that permits non-lawyer judges pro tem in justice courts does not cover municipal courts.³⁰ Consequently, it appears that a pro tem municipal court judge would need to be an attorney.³¹

²⁷ Glavey v. United States, 182 U.S. 595, 609 (1901) (holding that a failure to demand a salary guaranteed by statute was not a waiver of the same).

²⁸ "In our opinion, an interpretation of the amendment [to Article VI.I, Section 5 of the Arizona Constitution] that accommodates parallel processes of removal furthers its underlying purpose, i.e., providing citizens with added protection against magistrates who engage in misconduct. By preserving a city's authority to remove its magistrates from office, such an interpretation places magistrates in the same position as all other judges in the state, who are subject to removal by means other than a disciplinary proceeding initiated by the Commission." Jett v. City of Tucson, 180 Ariz. 115, 1240, 882 P.2d 426, 431 (1994).

²⁹ State v. Mercurio 153 Ariz. 336, 339, 736 P.2d 819, 822 (App. 1987).

³⁰ Ariz. Const. Art. VI § 31(A).

³¹ "Qualifications. Persons applying for judicial office shall meet the minimum qualifications required by law and such special qualifications for the position as may be established by the chief justice, the chief judge, the presiding judge or the chief magistrate. Persons applying for judge pro tempore offices, except justice of the peace pro tempore, shall be at least 30 years of age, of good moral character, and admitted to the practice of law in and a resident of the State of Arizona for five years next preceding their taking office as required by article 6, § 31 of the Arizona constitution." ACJA § 1-305(C).

A municipality needing the services of a part-time judge may want to consider appointment of an “associate” or “special” magistrate instead of a pro tem judge. 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.” The municipal ordinance would need to establish the qualifications and the process for the appointment. If it provides for the municipal court judge to make or recommend the appointment, § 1-305 of the Arizona Code of Judicial Administration applies. An elected justice of the peace 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.

6. *Procedures for appointing "special judicial officers" such as associate magistrates.*

A municipality has the initial responsibility to determine who appoints a judge.³² If the municipality gives the presiding judge responsibility to appoint or recommend appointment of other judicial officers, then the presiding judge must follow the requirements of [ACJA § 1-305 of the Arizona Code of Judicial Administration](#) in carrying out that 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 other judicial officers without the presiding judge's official involvement, [ACJA § 1-305](#) does not apply. However, it is recommended the council follow a similar procedure.

7. *Authority to hire, supervise, discipline, and terminate municipal court employees.*

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.³³ 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 must be controlled by the court. Ethical Rule 2.12, require judges to supervise court officials and staff to assure conformance with the codes of conduct applicable to judges and other court employees.³⁴

Therefore, the municipal court judge or appointee has exclusive authority to hire, supervise, discipline, and fire its employees under applicable policies and

³² A.R.S. § 22-403(A).

³³ E.g. Broomfield v. Maricopa County, 112 Ariz. 565, 544 P.2d 1080, 1082 (1975); (referring to “the judiciary’s inherent power of control over personnel directly connected with the operation of the courts . . . includes bailiffs, probation officers, court reporters, court administrators, secretaries, and others working directly in connection with the administration of justice.”), citing Mann v. County of Maricopa, 104 Ariz. 562, 563, 456 P.2d 931, 933 (1969) (superior court bailiff and probation officer).

³⁴A.R.S. Sup.Ct.Rules, Rule 81, Code of Jud.Conduct, Rule 2.12.

procedures, though the judge may consult and receive assistance from another department of the municipal government such as the human resources office. The city or town manager has a limited role or no role in court personnel matters depending upon the duties the council assigns to the manager. In order for the court to function as a co-equal branch of municipal and state government the personnel of the court must be subject to the exclusive control of the presiding judge.³⁵ This includes employee hiring, supervision, dismissal, and compensation consistent with reasonable personnel, job classification, and budget policies.³⁶ The manager has a role in these matters only if the manager also serves as the human resources director. Otherwise, the presiding judge looks to the human resources director for advice concerning court employees, just as the manager looks to the human resources director for advice concerning other municipal employees.

8. *Role of the city or town manager concerning the need for court personnel.*

Distribution of powers principles and the Supreme Court's administrative orders require that the presiding judge have the opportunity to make recommendations to the city or town council concerning the need for court positions.³⁷ 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 with deference to the presiding judge's assessment of funding required to operate the court in the manner required by the constitution, statutes and court rules.

9. *Role of the city or town manager and finance department in approving travel arrangements for judges and court staff to attend compulsory educational conferences and meetings.*

The municipal court is part of the integrated judicial department of the state.³⁸ All Arizona courts and the judges of these courts are subject to the A.R.S. Const. Art. 6 § 3 administrative supervisory authority of the chief justice. Within their first year of taking the bench, all new judges must complete judicial orientation training approved by the Supreme Court's Committee on Judicial Education and Training.³⁹ 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. Similarly, all judicial branch employees are obligated to complete 16 hours of judicial education pertaining to their job duties, including at

³⁵ Administrative Order No. 2005-32(C)(1).

³⁶ Mann v. County of Maricopa, at 566, 456 P.2d 931, 936 (1969) ("The department of government which has the power of control of personnel directly connected with the operation of the Courts is the Judicial Department.").

³⁷ Maricopa v. Dann, 157 Ariz. 396, 401, 758 P.2d 1298, 1303 (1988) ("The presiding judge of the superior court must follow the county procedure to request employment of necessary court personnel.").

³⁸ Ariz. Const. Art. 6 § 1.

³⁹ Arizona Code of Judicial Administration § 1-302(I)(5).

least six hours of live training.⁴⁰ The number of credit hours is pro-rated for part-time employees. The Arizona Code of Judicial Administration also requires every judge to attend the state judicial conference unless a judge is excused in writing by the Chief Justice.⁴¹ 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 by the Arizona Constitution by allowing consistent administrative direction and judicial education of all judges and court personnel. Judicial educational activities sometimes include hotel arrangements that place the judge in close proximity to education programs, meetings, and other judges. Attendance by judges and court staff at these events is a necessary cost of operating the municipal court and should be accommodated in the municipal 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.

10. *Applicability of city or town personnel rules to employees of the municipal court.*

City or town personnel rules apply to municipal court employees unless these rules have been replaced by rules adopted for court personnel or they interfere with the operation of the court. The presiding judge of a county may adopt reasonable judicial personnel rules required for the court to operate effectively.⁴² Separate judicial personnel rules that 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 due to the imposition of additional cost on the city or town. The effect of rules on the ability of the court to operate must be considered. The Supreme Court has adopted administrative orders and administrative code provisions which set reasonable minimum standards for courts addressing sexual harassment allegations and the needs of persons with disabilities, for judges involved in appointing special judicial officers, and a Code of Conduct for Judicial Employees.⁴³

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 municipal personnel rules apply to court personnel, which rules need to be modified to recognize the authority of the presiding judge, and which personnel matters should be governed by separate rules covering court

⁴⁰ "All full-time judges and court personnel governed by these standards shall complete at least sixteen credit hours of judicial education each year, including ethics training." ACJA § 1-302(H)(1).

⁴¹ For example, Arizona Code of Judicial Administration § 1-302(I)(1)(c).

⁴² Administrative Order No. 2005-32.

⁴³ E.g. Administrative Order No. 2010-13; see also ACJA § 1-303: Code of Conduct for Judicial Employees.

employees.⁴⁴ Rules that make the manager or a personnel board the ultimate authority over other municipal employees must 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 will prevail.

11. *Liability for court operations and employees.*

As provided by statute, municipal judges are officials of municipal government just as Supreme Court justices are officials of state government.⁴⁵ Any liability resulting from the official acts of these judges are liabilities of the municipalities and state respectively.⁴⁶ The degree of manager or council control over these acts does not affect this liability.

12. *Authority over employees assigned to the court on a part-time basis.*

A: The presiding municipal judge must have full authority over all court employees during the time they are performing court duties including part-time employees who perform other duties for the city or town.⁴⁷ For the portion of their employment during which part-time employees perform court duties, they must be governed by personnel and operational policies established by the court and supervision 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 distribution of powers and conflict of interest preclude assigning an employee both 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.⁴⁸

D. Facilities

1. *Responsibility for providing facilities, staff, and other resources to ensure the safe and effective operation of the court.*

⁴⁴ Ariz. Const. Art. III.

⁴⁵ A.R.S. § 22-403(A).

⁴⁶ "Given our decision that justices of the peace are local officers, it follows that, pursuant to A.R.S. § 11-532, the county attorney is responsible for providing legal advice and representation to justices of the peace so requesting. Liability coverage for justices of the peace is the county's responsibility, as set forth in A.R.S. §§ 11-261 and -981." *Collins v. Corbin*, 160 Ariz. 165, 167, 771 P.2d 1380, 1382 (1989).

⁴⁷ "The department of government which has the power of control of personnel directly connected with the operation of the Courts is the Judicial Department." *Mann v. County of Maricopa*, 104 Ariz. 561, 566 (1969).

⁴⁸ "A judicial employee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." ACJA § 1-303, Canon 1, Rule 1.2. See also Standard 3, Standards for Municipal Courts Revised Administrative Order No. 83-11 (Jan. 17, 1990). "No judge should be a member of an association, the purpose of which is to advance the interests of law enforcement officers, prosecutors or defense attorneys."

In Mann v. County of Maricopa 104 Ariz. 561, 456 P.2d 931 (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 presiding judge is authorized to provide for court security, including implementation of reasonable security standards. Presiding municipal judges may establish court security policies and procedures to provide a safe work environment for judicial employees, litigants, and users of the court that meet established court security standards and are consistent with any direction provided by the Presiding Judge of the county, who exercises administrative supervision over municipal courts.⁴⁹ Court security may include procedures, technology, security personnel, or architectural features needed to provide a safe work environment. The presiding judge may control access, including prohibiting or regulating the possession of weapons or potential weapons in the area of any building in which the court is located.

2. *Use of the courtroom by the city or town for non-judicial purposes.*

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 municipal facility.⁵⁰ When there is no conflict with court operations, there is no reason why these facilities cannot be made available for other governmental purposes. However, the court must ensure that any court records maintained in the area and the facility are secured from access by other than authorized court personnel.⁵¹

E. Records

1. *Responsibility for maintaining municipal court records.*

The court must maintain court records, A.R.S. § 22-428. 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 is clear the presiding judge of the municipal court is the sole and proper custodian of all records relating to the court and its operations.

2. *Availability of court records to city or town personnel not employed by the court.*

⁴⁹ Admin. Order No. 2005-32.

⁵⁰ A.R.S. § 22-402(A).

⁵¹ Arizona Supreme Court Rule 123.

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 by Rule 123.

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.⁵² Court files and pleadings must 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.⁵³ Likewise, all mail addressed to the court must be opened and read by authorized 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.⁵⁴ For example, court files should be locked at night and at any time when the file room is left unattended. “The only individuals who 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.”⁵⁵ Use of this access must be limited to the authorized purposes.

⁵² Rule 123(c)(2).

⁵³ Rule 123(i)(1).

⁵⁴ *Id.*

⁵⁵ Recommendation 6, Bullhead City Report, Administrative Office of the Courts, October, 1988.