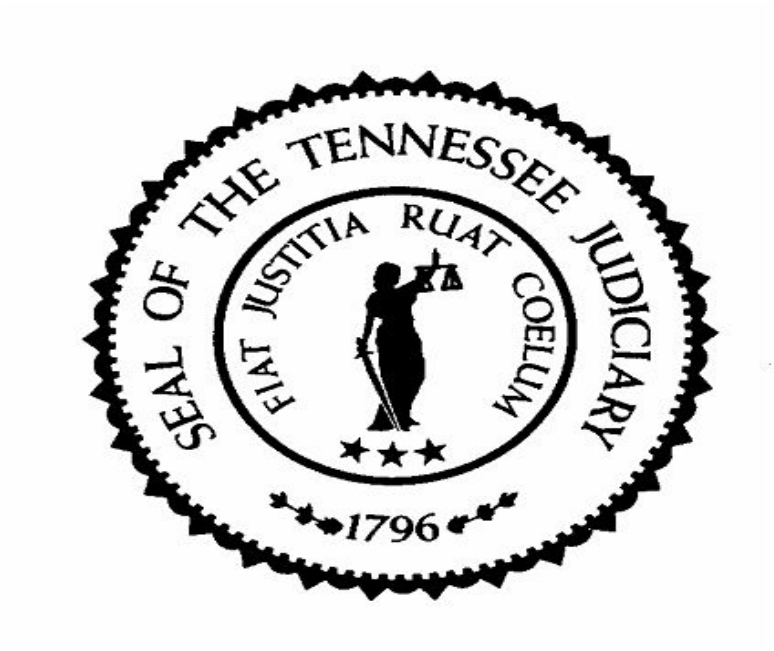
TENNESSEE MUNICIPAL JUDGES

BENCHBOOK



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Dedication[1]

For *El Roi* and Philip T.

Both are watching every move I make.

[1] The author wishes to thank Mrs. Ann Trost for all of her patience with the process of putting this book together; the TMJC and AOC for entrusting the project to me; and to my wife for simply being. The author also wishes to thank Judge R. Price Harris, the TMJC Vice President, for his editing suggestions related to this book.

TENNESSE MUNICIPAL JUDGES BENCHBOOK
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INTRODUCTION

Congratulations on being elected or appointed a Tennessee Municipal Court Judge. It is obvious that Hammurabi and Solomon pale in comparison to your judicial insight. Now, to paraphrase both St. Paul and Shania Twain, "Get over your bad self and stay over yourself." [See, The Holy Bible (NIV), Romans 12:16 (Zondervan, 1978) (hereinafter cited just to Holy Bible, then to book and verse) and S. Twain, "That Don't Impress Me Much" (Mercury Records, 1998)]. You are ***borrowing*** a robe and judicial bench that belong to the people of the city that either elected or appointed you to this trust. ***You*** are not the focus of your court, judge. The ***law*** is the focus and the judge should avoid the limelight. [Guinier, "Supreme Court, 2007 Term," 122 Harv. L. Rev. 4, 25 (Nov. 2008)]. As Justice Oliver Wendell Holmes, Jr. once said, "The secret of my success was that at an early age I discovered that I was not God." [en.wikiquote.org/wiki/Oliver_Wendell_Holmes_Jr.].

"A judge shall comply with the law, including the Code of Judicial Conduct." [Tenn. R. Sup. Ct. 10, Canon 1, Rule 1.1]. The current Code of Judicial Conduct, (a/k/a Code of Judicial Ethics), was promulgated in January, 2012 and took effect on July 1, 2012. [Id]. Each judge brings their unique background and personal philosophy to the bench, but the judge must follow the law even if the judge disagrees with the law in question. [Tenn. R. Sup. Ct. 10, Canon 2, Rule 2.2 at note 2]. In the case of this author, I don't lose my religious or personal commitment to Romans 1:16 when I take the bench. [See e.g., Hopkins, A Time to Kill, The Myth of Christian Pacifism, (Mindbridge Press, 2013). Mr. Hopkins is a former Alabama city court judge]. But I also took an oath to follow the law. My actions, both on the bench and at Wal-Mart; both at the church and at the ball field or at a "business after hours" reflect on me, my family, my church and the judiciary as a whole. And I do not have the right to give any of these groups a "blackeye" for being associated with me. [Tenn. R. Sup. Ct. 10, Preamble at pt. 2 and Holy Bible, 1 Cor. 8:13].

Shortly after I was elected as president of the Tennessee Municipal Judges Association, the predecessor of the Tennessee

Municipal Judges Conference ("TMJC")[2] the late John C. Godbold, the only person ever to serve as chief judge of two (2) different federal courts of appeals (Old 5th and 11th Circuits) called me. Chief Judge Godbold was the federal judiciary's Judge of the Year in 1996 and became the Director of the Federal Judicial Center in Washington, D.C. I knew Judge Godbold because he taught at my law school and through being joint presenters at a couple of CLEs. Judge Godbold said "*Greg, the small claims and traffic court is the only contact most people will ever have with the court system. How you act in public will have a far greater impact on how people perceive the judiciary than how I act. Nobody knows who I am. The entire city you serve knows your name.*" [Accord, Bishop, Municipal Courts, 3d § 2.1 at page 16 (Samford University Press, 1999)]. Judge Wallace J. Smith, a 1950's Circuit Judge from Franklin, Tennessee, agreed saying:

> As to ethics, the judge, as he soon learns, owes a great responsibility to the public. In his locality, he is the embodiment of justice, beyond which the comprehension of its citizens seldom goes. If he proves his worth and the worth of the court over which he presides, there is great pride in the hearts of his friends and neighbors in the thought of justice and the institutions which represent it.

[Smith, "Judicial Ethics and Courtroom Decorum," 27 Tenn. L. Rev. 26, 26 (Fall, 1959)]. I suggest all municipal judges heed Judge Godbold's advice. Judge Godbold also suggested to me that wearing blue jeans to judicial conferences is perfectly acceptable because the casual dress welcomes the new judge who is self-conscious of being "underdressed." Judge Godbold advised that if the organization's first president is in jeans, the new judge will be fine. The judge wearing Armani suits will feel superior irrespective of what you are wearing. A judge is a ***servant***, not a lord. [Hale v. Lefkow, 239 F.2d 842, 844 (C.D. Ill. 2003)]. Focus on the least important person in your court or conference, but be fair to the most important. For this reason, you

[2] Actually, I was the president of TMJC for about four (4) minutes. As I finished my two (2) year stint as president of the TMJA; the last two (2) things I did were: A) preside over the election of this organization to become a conference as mandated by the Municipal Court Reform Act of 2004, Tenn. Code Ann. § 17-3-301, and B) to induct Judge Connie Kittrell as the first official president of TMJC. Judge Kittrell made a fantastic inaugural president of the new judicial conference of TMJC.

will often find me in jeans at TMJC conferences. *It also helps that I am a bit of a redneck and slob*. Simply put, ***be yourself, but get over yourself!***[3] Every judge will do things a little differently, but that is fine so long as the distinctions are done lawfully. [The Cayenne, 5 F. Cas. 322, 323 (D. Del. 1870) and In Re: Garner, 177 P. 162, 165 (Cal. 1918)]. I want to be a judge like John C. Godbold. As for nobody knowing or remembering Judge Godbold, he is listed in the Alabama Academy of Honor and he wrote an insightful law review "*Lawyer" – a Title of Honor*, 29 Cumb. L. Rev. 301 (1999). Judge Godbold also established the procedure of a federal court certifying an issue to be considered and reviewed by a state supreme court in a federal case so the state supreme court can advise the federal court on a point of state law. [See, www.archives.state.al.us/famous/academy /j_Godbold]. As previously stated, I want to be the type of judge John C. Godbold (03/24/1920 – 12/22/2009) was, even if his courtroom is a little more impressive than my courtroom in Pleasant View, Tennessee. [Holy Bible, Phil. 4:12-13 and Jer. 29:11].

I write this text to inform, not impress. The Tennessee Digest 2d only offers a single page to the whole area of municipal courts. [See, 8 Tenn. Digest 2d "Courts" §§ 186-190 at page 395 (West, 1986)]. Pocket parts for the Tennessee Digest add little to this information. Basic guidance is needed for municipal judges. The prose of this text will be plain and the application practical. The focus of this text will be for the ***basic*** municipal court, not the judge who sits on both a municipal court and General Sessions Court. [See e.g., State v. Davis, 2001 Tenn. Crim. App. 882 (Tenn. Crim. App. 9/9/2001) at pages 2-3]. For the judge seeking guidance for General Sessions Court issues, see the Trial and General Sessions Judges Benchbook, which is also published by the AOC. City court is a world of white bread and potato soup…not filet mignon. I will not try to be what I'm not. I am proud to be a part-time municipal judge in a small town in Middle Tennessee. That's blue jeans, not Armani.

I hope you find this bench book useful.

[3] "History proved that judges too were sometimes tyrants." [Poulos v. New Hampshire, 345 U.S. 395, 426 (1953), Douglas & Black dissenting].

AUTHOR'S BIO

Gregory D. Smith, [J.D. – Cumberland 1988, B.S. – MTSU 1985], is the part-time municipal judge for the cities of Pleasant View, Tennessee and Pegram, Tennessee. His law practice is in Clarksville, Tennessee. Judge Smith served a term on the Tennessee Court of the Judiciary and he is the past president of the Tennessee Municipal Judges Association. Judge Smith served a term as the Associate General Counsel for the Tennessee Bar Association and two (2) terms as a hearing officer for the Tennessee Board of Professional Responsibility. In 2001, Judge Smith was the TBA Pro Bono Attorney of the Year and he has been listed in Who's Who in American Law every year since 1994. He has been an adjunct professor at the Cumberland School of Law as well as Austin Peay State University and has presented over 600 appeals, with about 70 of those opinions becoming published opinions. Judge Smith was one of the young lawyers that helped put together the TBA/YLD Ethics Handbook in the 1990's that indexed the ethics opinions of the Tennessee Board of Professional Responsibility. Judge Smith is the editor of the Tennessee Judicial Ethics Opinions Handbook (2012), published by the AOC. Judge Smith has served as the Pleasant View City Court Judge since 1998. He was appointed to the Pegram City Court in 2002. Judge Smith was a part-time Juvenile Court Referee for Montgomery County, Tennessee in the early 1990's and he served as a municipal court magistrate for Birmingham, Alabama in the late 1980's. In 1994, Judge Smith spoke at the United Nations in New York on juvenile law. He has also presented lecture topics at American Bar Association and Tennessee Bar Association annual meetings. In 2013, Gregory D. Smith received the Martindale-Hubbell Client Distinction Award for client satisfaction in his law practice. Only about 1 in every 250,000 attorneys receive this award.

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LEGEND OF ABBREVIATIONS

The following abbreviations will appear throughout this text. Unless stated otherwise, the short-hand citation offered here will be used consistently throughout this book.

TMJC = Tennessee Municipal Judges Conference. By statute, {Tenn. Code Ann. § 17-3-301}, all municipal, town, city, mayor, recorder or similar court judges in Tennessee are part of the TMJC.

AOC = Tennessee Administrative Office of Courts. The AOC handles issues for each of the levels of the Tennessee Judiciary including the Juvenile and Family Court Judges Conference. While the AOC does a fantastic job running the various interests within the Tennessee court system, occasionally those competing interests put the AOC "in the middle" of struggles between independent parts of said court structure. [See e.g., Allen v. McWilliams, 713 S.W.2d 28 (Tenn. 1986)].

BJC = Tennessee Board of Judicial Conduct. The BJC took the place of the Tennessee Court of the Judiciary in 2012. The BJC investigates and tries ethics complaints against judges throughout the Tennessee state judiciary system. [See, Tenn. Code Ann. § 17-5-201].

COJ = Tennessee Court of the Judiciary. The COJ was replaced by the BJC in 2012. [See, Tenn. Code Ann. § 17-5-201].

JEC = Judicial Ethics Advisory Committee. The JEC gives ethical advisory opinions pursuant to Tenn. R. Sup. Ct. 10A.

JEO = Judicial Ethics Opinion. JEO opinions are handed down by the JEC and are designated by the year of the opinion, followed by the number the opinion is from said year. [E.g., JEO 95-4 is the fourth judicial ethics opinion the JEC handed down in 1995]. JEOs began in 1982. The JEOs are compiled in The Tennessee Judicial Ethics

Opinions Handbook which can be obtained from the AOC. JEOs can also be found on the AOC's website but the website does not include an index like the book offers. [www.tsc.state.tn.us]. A JEO gives ethics guidance for judges.

BPR = Tennessee Board of Professional Responsibility. The BPR is the combined BJC and JEC for lawyers. [See, Tenn. R. Sup. Ct. 9].

MCRA = The Municipal Courts Reform Act of 2004. [Tenn. Code Ann. § 16-18-301 et seq.].

MTAS = The Municipal Technical Advisory Service. MTAS gives clerk training, judicial training and provides advice and technical assistance to cities and city officials such as municipal court clerks throughout Tennessee. [See, www.mtas.tennessee.edu].

NJC = National Judicial College. A national judicial training outlet located in Reno, NV. [www.judges.org].

TLAP = Tennessee Lawyers Assistance Program. This organization offers help for Tennessee judges and attorneys who are facing drug/alcohol/stress issues. [www.tlap.org; Ph.: (877) 424-8527].

"Code of Judicial Ethics" or "Code of Judicial Conduct" =
Tennessee Code of Judicial Ethics found at Tenn. R. Sup. Ct. 10.

CHAPTER I – BLACK ROBE FEVER

Judge V. Robert Payant, a former president of the National Judicial College, calls instances of judges acting badly "Black Robe Fever," and Judge Payant acknowledges that this behavior is "undermining the public's already shaky confidence in the legal system." ["A Professionalism Creed for Judges Leading by Example," 52 S.C. L. Rev. 667, 682, (Sp. 2001). Accord, 81 ABAJ. 60 (Dec. 1995)]. Another definition of Black Robe Fever reads as follows:

> "Black Robe Fever" or "Robeitis" – the syndrome by which elevation to a judicial position generates arrogance and disdain for the perspectives of others – is seldom addressed or corrected. In fact, one jurist, …defined "Black Robe Fever" as the process by which donning a judicial robe brings out every latent character defect in an individual.

["Commentary," Judge Steven I. Platt, The Daily Record (Baltimore, MD) (October 19, 2007)]. Generally, Black Robe Fever is a matter of overactive ego. ["Judicial Independence," 19 J. NAALJ 101, 113 (Fall, 1999)].

Tennessee has an interesting historic example of Black Robe Fever. Former circuit court judge, Raulston Schoolfield, was impeached in 1958 for: **A)** using his bench/position to force defendants to pay for his new car as a prerequisite to having a legitimate chance of winning in his court; **B)** using his bench to campaign for political positions for friends; and **C)** for having a foul mouth and ill temper on and off the bench. [Schoolfield v. Tenn. Bar Assn., 353 S.W.2d 401, 402-403 (Tenn. 1962)]. Judge Schoolfield was impeached in 1958 and then permanently disbarred as a lawyer in 1961. [Schoolfield, 353 S.W.2d at 402, 404 and 405 and www.chattanoogan.com/2008/2/13/121722/schoolfields-were-quakers-fiery-attorneys-aspx]. The impeachment of Judge Schoolfield was based on "moral turpitude." [Schoolfield, 353 S.W.2d at 405]. In an interesting twist, Tennessee Supreme Court Chief Justice A.B. Neil

gained praise for the dignity he conveyed in presiding over the Senate impeachment trial of Judge Schoolfield. [See, Tenn. Decision v. 441-444 S.W.2d at page 4 where the Senate passed a resolution declaring Neal, "a great Chief Justice"]. Although Judge Schoolfield never got his law license back, in 1974 Raulston Schoolfield was elected as the General Sessions Court judge for Hamilton County, Tennessee. [Id. at www.chattanoogan.com]. Judge Schoolfield died on October 7, 1982 and his obituary, published in the New York Times, read "Raulston Schoolfield, Impeached Judge, Dies." [www.nytimes.com/1982/10/08/obituaries/raulston-schoolfield-impeached-judge-dies.html].

In 1909, J.P. Webb, another Hamilton County jurist was impeached and removed from office for "official oppression" of office. Eventually that justice of the peace received a Governor's pardon. [State v. Parks, 122 S.W. 977, 978 (Tenn. 1909)]. The Tennessee Supreme Court found that even a Governor's pardon for Judge Webb could not set aside a Senate "Court of Impeachment" judgment. [Parks, 122 S.W. at 978]. Judge Parks did not get his judicial robe returned. [Parks, 122 S.W. at 979].

Arrogance on the bench will bring you trouble, no matter how important you consider yourself to be. Instead of learning this lesson, Judge Schoolfield published a book about his impeachment trial which can still be purchased on the internet. [See, Schoolfield, Proceedings of the High Court of Impeachment in the Case of the People of the State of Tennessee v. Raulston Schoolfield, Judge, Begun and Held at Nashville, Tennessee, Wednesday, May 21, 1958 (1958)]. Other public officials had similar short-sightedness end promising careers. [See e.g., Moyers v. City of Memphis, 185 S.W. 105, 113 (Tenn. 1916) and In Re: Murphy, 726 S.W.2d 509 (Tenn. 1987)].

A judge cannot, should not, and must not attempt to become both the court and Legislature rolled up in one person. [Moore v. Love, 107 S.W.2d 982, 986 (Tenn. 1937)]. Bluntly put, it is "a cardinal principle of constitutional construction that the judiciary must not amend the Constitution by Judicial decision." [Id]. Moore also said "The design of the framers of the constitution was to create three departments, -- executive, legislative and judicial, -- which should be

co-ordinate and wholly independent in the exercise of their appropriate functions." [Moore, 107 S.W.2d at 983]. Be the judge! Don't be the police, prosecution or city council. [See, Osborn v. U.S. Bank, 22 U.S. 738, 866 (1824) for a quote from Chief Justice John Marshall on this point].

Judge Carol A. Catalano, the first female elected to the General Sessions Court bench in Tennessee in 1974, tells the story of how, shortly after her election to the bench, but before being "sworn-in," the senior partner in her firm warned her to avoid Black Robe Fever. The exchange went as follows:

> **Partner:** *{With a large stack of open Tennessee Codes before him}.* "I know it's here somewhere…It ***has*** to be in here…"
>
> **Judge Catalano:** "What are you looking for?"
>
> **Partner:** "The statute…"
>
> **Judge Catalano:** "Which statute?"
>
> **Partner:** "***THE*** statute!"
>
> **Judge Catalano:** *{Frustration growing}* "***What*** statute?"
>
> **Partner:** "The statute that says you must be an *{your guess}* to be General Sessions Court Judge."

Judge Carol Catalano, who served on the sessions/juvenile bench for twenty-five (25) years, followed by about eight (8) years as a chancellor, took this message to heart and gracefully avoided Black Robe Fever. There have been claims that urban judges might be slightly more prone to Black Robe Fever because the urban judge is less likely to be personally known or as approachable by the general public as rural judges. [See, "Soundoff" 45 AZ Attorney 8, 10 (May 2009)].

The issue of Black Robe Fever comes up when a court ignores legislative mandates, the doctrine of stare decisis or when a judge expects others to jump simply because the Court spoke in dicta to a non-party. [See e.g., Paul v. HCI Direct, Inc., 2003 U.S. Dist. Lexis 12170 (C.D. Cal. 7/14/2003) at page 12-13; DHL Corp v. Civil Aero. Bd., 584 F.2d 914, 919 (9th Cir. 1978); and Swan v. Clinton, 100 F.3d 973, 989 (D.C. Cir. 1996), Silberman, concurring]. Simply put, the job of ***GOD*** is filled and you were not selected to fill the position! [See, Ex Parte Owens, 258 P. 758, 807 (Okla. Crim. App. 1927) for a discussion of how a state constitution, and the law of contempt, were partially written to nullify an overly-arrogant State Supreme Court Justice]. The office of municipal judge deserves respect. [People v. Stover, 240 N.Y.S.2d 94, 101 (N.Y. County Crim. App. Div. 1963), Creel dissenting]. It does not justify unfettered arrogance. [See e.g., In Re: Williams, 987 S.W.2d 837, 842-844 (Tenn. 1998)]. "Uncontrolled [judicial] power, it is often a source of intolerable abuses." [State v. Bourne, 131 S.W. 896, 901 (Mo. App. 1910), parenthetical added to show context of quote]. As one federal court opined while discussing a federal judge facing an ethics investigation, ***"The public, the bar, the law schools, the press all comment relentlessly on judicial conduct. As public servants, judges cannot expect to be immune from criticism. That a judge's peers may find his behavior unacceptable is of no particular added consequence."*** [Hastings v. Jud. Conf. of the U.S., 593 F.Supp. 1371, 1381 (D. D.C. 1984)]. "Justice Court Judges, like all judges, are public servants, serving and protecting the people." [Miss. Comm. on Jud. Performance v. Carr, 786 So.2d 1055, 1060 (Miss. 2001), Easley dissenting. Accord, State v. KLB, 2012 Wash. App. Lexis 1796 (Wash. App. 7/30/2012) at page 8].

Admiral Raymond A. Spruance once said ***"A man's judgment is best when he forgets himself and any reputation he may have acquired and can concentrate on making the right decisions."*** [Reader's Digest, "Quotable Quotes" (November, 1992) at page 57]. This is good advice for municipal judges! Leave the ego in chambers before you take the bench! The alternative, bluntly put by the Kentucky Supreme Court, is "If a tyrant should appear in judicial robes, this court has the power to stop him." [Beach v. Lady, 262 S.W.2d 837, 840 (Ky. 1953), Sims dissenting. Accord, Morgan v.

U.S., 32 F. Supp. 546, 561 (W.D. Mo. 1940), Otis dissenting from three judge panel and Schoolfield, 353 S.W.2d 401 (Tenn. 1962)].

Final Thoughts on Black Robe Fever. Don't take this chapter personally. According to the U.S. Supreme Court, the founding Fathers feared a judiciary that was too self important saying:

> We [the current U.S. Supreme Court] have no doubt that courts below were acting in utmost good faith…The Framers [of the Constitution] however, would not have been content to indulge in this assumption. They knew that judges, like other government officers, could not always be trusted to safeguard the rights of the people…

[Crawford v. Washington, 541 U.S. 36, 67 (2004), parentheticals added].

BLACK ROBE FEVER – ***DON'T*** CATCH IT!

CHAPTER II – HISTORY OF MUNICIPAL COURTS

America's and Tennessee's municipal court system have a rich history. The functional equal to Tennessee's municipal courts were the judicial starting point for at least two (2) U.S. Supreme Court Justices – Hugo Black (Birmingham, Alabama's Police Court Judge) and Frank Murphy (Detroit, Michigan's Recorder Court Judge). [www.wikipedia.org/wiki/William_F_Murphy and www.wikipedia.org/wiki/Hugo_Black]. Former Chief Justice of the Tennessee Supreme Court, Aldolpho A. Birch, Jr., served on the Davidson County General Sessions Court, which acts as both a General Sessions Court for Davidson County and the Nashville Municipal Court. [www.wikipedia. org/wiki/Aldopho_Birch]. These two Nashville benches combined into a single court in 1971. [www.gscourt.nashville.gov/portal/page/portal/general/sessions/history]. Oris D. Hyder, a city court judge from Johnson City, Tennessee, went on to serve as a member of the Tennessee Court of Criminal Appeals in 1969-1970. [www.archives. starhq.com/html/obituaries from April 23, 2002]. Judge J. Steven Stafford, who currently sits on the Tennessee Court of Appeals for the Western Section, was the city judge for Dyersburg, Tennessee. [www.tsc.state.tn.us/courts/court-appeals/judges/j-steven-stafford]. Judge Stafford served at various times as a chancellor; presiding Judge of the Tennessee Court of the Judiciary; as Dean of the Tennessee Judicial Academy; and Chair of the Tennessee Bar Foundation. [44 Tenn. B. J. 9 (Sept., 2008), 43 Tenn. B. J. 8 (Oct., 2007), and 40 Tenn. B.J. 10 (Oct., 2004)]. Judge Stafford was named Trial Judge of the Year for 2007 by the Tennessee Chapter of the American Board of Trial Advocates. [43 Tenn. B. J. 8 (Oct. 2007)]. After serving many years as a circuit court judge in Tipton and Lauderdale County, Tennessee, Judge Herman L. Reviere retired and currently serves as the City Judge for the Henning and Ripley Municipal Courts. [www.judgepedia.org/index.php/Herman_L._ Reviere and State v. Smith, 701 S.W.2d 216, 216 (Tenn. 1985)]. Municipal courts date back to 1195 A.D. England and Richard the Lionhearted, when the office was known as "Justice of the Peace." [www.wikipedia.org/wiki/Justice of_Peace]. It would be short-sighted to presume the ranks of municipal judges had no "stars" in their midst.

Art. VI § 1 of the Tennessee Constitution establishes the court system for Tennessee. Said court system shall include "one Supreme Court and such other Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish..." [Art. VI § 1, Tenn. Const.]. This article of the Tennessee Constitution goes on to specifically acknowledge the possible existence of "Corporation Courts." [Id]. "Corporation Courts" are today called municipal courts. [Tenn. Op. Atty. Gen. 85-19, 1985 Tenn. AG Lexis 275 (1/28/1985)]. Further, Article VI § 1 allows "Courts to be holden by Justices of the Peace may also be established" for constitutional purposes. [Moore v. State, 19 S.W.2d 233, 233 (Tenn. 1929), Deming v. Nichols, 186 S.W. 113, 113-114 (Tenn. 1916) and State ex rel. Boone v. Torrence, 470 S.W.2d 356, 364 (Tenn. App. M.S. 1971)]. This does not necessarily make a city court an "Inferior Court" for constitutional judge qualification purposes, but the city judge must still follow constitutional mandates. [State ex rel. Newsom v. Biggers, 991 S.W.2d 715, 717 (Tenn. 1995)].

The judge of a municipal court does not have to be elected, but can instead be appointed by the governing body of the municipality and appointed city judges serve at the pleasure of the said appointing body. [Elizabethton v. Carter County, 321 S.W.2d 822, 828 (Tenn. 1958) and Johnson v. Davis, 322 S.W.2d 214, 215 (Tenn. 1959)]. Clearly the framers of Tennessee's Constitution could not envision all courts that might, over a couple centuries, be needed, so the framers gave the Legislature discretion in this area to oversee the creation or deletion of courts in Tennessee. [Lowry v. Turk, 8 Tenn. 286, 291 (1827) and Moore v. Love, 107 S.W.2d 982, 986 (Tenn. 1937)]. The Legislature sets rules for the number of "Inferior Courts" as well the limits of jurisdiction and qualifications for judges of said courts. [State ex rel. Ward v. Murrell, 90 S.W.2d 945, 946 (Tenn. 1935). Accord, Art. VI § 4, Tenn. Const. But see, State ex rel. Newson v. Biggers, 911 S.W.2d 715, 717 (Tenn. 1995)].

The first "Justice of the Peace" court to appear in Tennessee's appellate decisions actually discusses a "Justice Court" from the "illegitimate State of Franklin." [Ingram's Heirs v. Cocke, 1 Tenn. 22 (1804)]. The first "official" Justice of the Peace Court from ***Tennessee*** appears just a couple pages later in Nelson v. North, 1 Tenn. 33 (1804). Mayor or Recorder Courts first appear in Tennessee

appellate reporters in State v. Mason, 71 Tenn. 649, 650 (1879). Municipal courts are discussed in Ingram's Heirs, discussed above. The first appellate reference to a "city court" in Tennessee appeared in Luehrman v. Taxing Dist. of Shelby County, 70 Tenn. 425, 428 (1879). The original design and intent of municipal courts was "to adjudicate city ordinance violations." [France, "Effective Minor Courts: Key to Court Modernization," 40 Tenn. L. Rev. 29, 43 (Fall, 1972)]. One problem noted with city courts was "the fact that in all but the largest cities the city court judge is a part time position not requiring legal training." [Id. at 44]. An example of an ordinance violation for early city courts was selling milk in the Murfreesboro city limits without a permit. [City of Murfreesboro v. Bowles, 213 S.W.2d 35, 36 (Tenn. 1948)]. As of 1998, there were about seventy-five municipal court judges who did not possess a law license presiding over Tennessee city courts. [City of White House v. Whitley, 979 S.W.2d 262, 268 fn. 10 (Tenn. 1998)]. Even today, the vast bulk of municipal judges serve on a part-time basis. As the prestige of being a municipal judge increases, more attorneys seek municipal judge appointments, so the number of non-lawyer judges presiding over Tennessee's municipal courts has dwindled over the past two (2) decades.

In 2004 a major change occurred in municipal courts in Tennessee with the Municipal Court Reform Act of 2004 ("MCRA"), Tenn. Code Ann. § 16-18-301 et seq. [Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 1]. The MCRA established the Tennessee Municipal Judges Conference ("TMJC"). [Tenn. Code Ann. § 17-3-301]. The MCRA also made uniform fines, litigation fees and court costs for municipal courts throughout Tennessee. [Tenn. Code Ann. §§ 16-17-105 and 16-18-304]. With some slight exceptions, primarily for some "college towns" and for the four (4) major cities, jurisdiction was made uniform throughout Tennessee's municipal courts system by the MCRA. The basic jurisdiction for municipal court punishment powers is Class C misdemeanors and municipal ordinances. [Tenn. Code Ann. § 16-18-302].[4] The MCRA, collectively calling all of the referenced courts "municipal courts,"

[4] A Class C misdemeanor allows for up to a $50.00 fine and up to thirty (30) days in jail. [Tenn. Code Ann. § 40-35-111(e)(3)]. Appointed municipal judges, or any judge elected to less than an eight (8) year term of office, can only give a fine and costs – no jail time. [Town of South Carthage v. Barrett, 840 S.W.2d 895, 899-900 (Tenn. 1992)].

applies to any city court, town court, mayor's court, recorder's court, municipal court or any other similar functioning court. [Tenn. Code Ann. § 16-18-601(b)(2)]. Municipal court judges can sentence with a fine only unless the judge presiding over a case is elected for a term of eight (8) years. [Town of South Carthage v. Barrett, 840 S.W.2d 895, 899-900 (Tenn. 1992)].

There are several key aspects to the MCRA which brought professionalism and a "place at the table" for municipal judges in the Tennessee judicial system. Some of these aspects include the following:

A) Funding for mandatory judicial training for municipal judges and municipal court clerks. [Tenn. Code Ann. § 16-18-304(a)];

B) Mandatory-minimum hours of CLE training of three (3) hours per year of judicial training specifically geared for municipal courts for all municipal judges. [Tenn. Code Ann. § 16-18-309];

C) A seat on the Tennessee Board of Judicial Conduct. [Tenn. Code Ann. § 17-5-201(a)(3)];

D) A seat on the former Tennessee Judicial Counsel. [Tenn. Code Ann. § 16-21-101]; and

E) A seat on the Judicial Ethics Committee. [Tenn. R. Sup. Ct. 10A.1(a)].

Final Thoughts on History of Municipal Courts. In the last decade, TMJC has taken the lead in opening the door for part-time Tennessee judges to act as Rule 31 mediators. [Tenn. R. Sup. Ct. 31(i)(1)]. Also, municipal judges participated in Blue Ribbon panels that the Chief Justice of the Tennessee Supreme Court called when the Tennessee Supreme Court was revising the Code of Judicial Conduct. [See generally, 46 Tenn. B.J. 3 (March, 2010)]. One of the key cases relating to municipal courts originated out of the court of Judge James D. Petersen, who is a former TMJC president. [See, Town of Nolensville v. King, 151 S.W.3d 427 (Tenn. 2004)]. While TMJC is

clearly the "little brother" in the Tennessee Court system; there is no question that TMJC is a full fledged and acknowledged sibling in said system with a rich and respected history that is being enhanced every day because Tennessee municipal court judges are actively trying to earn respect for their benches.

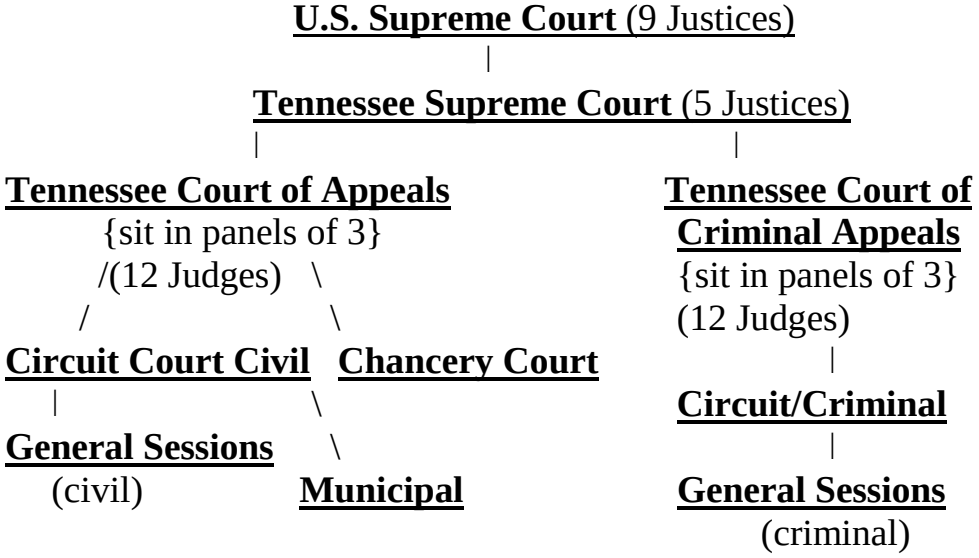
PRESIDENTS OF TMJC

Judge Gregory D. Smith (Pleasant View/Pegram) 2002-2004[5]
Judge Connie W. Kittrell (Gallatin) 2004-2006
Judge Ewing T. Sellers (Murfreesboro) 2006-2008
Judge John T. Gwin (Mt. Juliet) 2008-2010
Judge James D. Petersen (Nolensville) 2010-2012
Judge John H. Lowe (Millersville) 2012-date

[5] President of TMJA (Tennessee Municipal Judges Association), the precursor organization to TMJC, and president of TMJC for about four (4) minutes as the body **A)** elected to become a conference instead of an association and **B)** then to elect Judge Kittrell as the first official president of TMJC.

CHAPTER III – CURRENT MUNICIPAL COURT STRUCTURE

The general hierarchy structure for Tennessee state courts is as follows:



The U.S. Supreme Court is the only federal court the Tennessee Supreme Court is bound to follow. [State v. McKay, 680 S.W.2d 447, 450 (Tenn. 1984)]. While other courts, such as juvenile and administrative, play into this structure, the above represent the basic hierarchy of Tennessee Courts. [See, www.tncourts.gov /courts/circuit-criminal-chancery-courts/about and Tenn. Legal Directory at page 69 (Legal Directories Publishing Co., Inc., 2012)]. There is at least one General Sessions Court in each of Tennessee's ninety-five (95) counties. [See, www.tncourts.gov/courts/general-sessions-courts/about]. Currently, there are thirty-one (31) judicial districts in Tennessee for the Circuit and Chancery level of the court system with many districts covering several counties. [Tennessee Legal Directory at 69-70]. At last count, there are approximately 250 municipal courts in Tennessee.

Tenn. Code Ann. §§ 16-18-101 and 16-18-102 set forth a basic skeleton format for a city to create a municipal court, including the necessary content for an ordinance creating the court. [Summers v. Thompson, 764 S.W.2d 182, 183 fn. 2 (Tenn. 1988)]. A city can

obtain a draft ordinance to establish a municipal court by contacting MTAS at (865) 974-0411 or www.mtas.tennessee.edu.

There are two (2) basic types of municipal courts – A) constitutionally elected to an eight (8) year term[6] courts and B) non-constitutionally elected courts, which can be either appointed or elected to a term of less than eight (8) years. [City of White House v. Whitley, 979 S.W.2d 262, 268 (Tenn. 1998). See also, Tenn. Code Ann. § 16-18-203]. In an interesting note, a constitutionally elected city court judge can remove a popularly elected city court clerk for malfeasance. [Tenn. Code Ann. § 16-18-207(b)].

In 2004, the Tennessee Legislature did the first major revision of the municipal court system in over thirty (30) years with the Municipal Court Reform Act of 2004. [Compare, Tenn. Code Ann. § 16-18-301(a) with Tenn. Code Ann. § 16-18-101, which was passed in 1973 (see complier's notes to statute)]. The term "municipal court" umbrellas any city court, town court, mayor's court, recorder's court, municipal court "or any other similarly functioning court, however designated" into the generic term "municipal court." [Tenn. Code Ann. § 16-18-301(a)(2)]. As noted in various parts of this book, a "standard" municipal court is limited in jurisdiction to $50.00 fines for Class C misdemeanors and municipal ordinances with fines up to $50.00. [Tenn. Code Ann. § 16-18-302(a)(2)]. For a discussion of the various Class C misdemeanors and ordinances that may apply in municipal courts, see Chapter VII of this book. There are some exceptions to the general rules regarding municipal court jurisdiction which primarily focus on the four (4) largest cities in Tennessee and some of the "college towns." [See, Tenn. Code Ann. § 16-18-302(b)]. For a more detailed discussion regarding municipal courts' jurisdictional issues, see Chapter VI of this book.

Tenn. Code Ann. § 16-18-304 declares that the Tennessee Administrative Office of Courts ("AOC") would provide oversight for municipal courts. This statute also provides for funding of municipal judge training. A requirement that sitting municipal court judges receive at least three (3) hours of continuing legal education

[6] Constitutionally elected judges must fill an eight (8) year election cycle pursuant to Tenn. Const. Art. VI § 4. [Accord, Tenn. Code Ann. § 16-18-202].

specifically in the area of municipal court practice, approved by the AOC as specifically designed to train Tennessee municipal judges, is set out in Tenn. Code Ann. § 16-18-309. This statute also provides for the municipal judge to be reimbursed for out of pocket expenses related to attending TMJC training conferences. [Tenn. Code Ann. § 16-18-309(a)(2)].[7]

A municipal court judge cannot hold dual offices in the city where the judge sits unless said arrangement existed for the individual sitting judge prior to March 1, 2005. [Tenn. Code Ann. § 16-18-308]. If the current judge is "grandfathered in," the subsequent judge, once the current judge leaves office, cannot hold dual offices in the city where the judge presides. [Id]. Two (2) examples of dual offices which cannot be held simultaneously are **A)** City Attorney/City Judge of a single city or **B)** City Judge/City Recorder of a single city. [See, Tenn. Op. Atty. Gen. 07-145, 2007 Tenn. AG Lexis 145 (10/12/2007); Tenn. Op. Atty. Gen. 77-280, 1977 Tenn. AG Lexis 187, (8/18/1977); and Tenn. Op. Atty. Gen. 77-149, 1977 Tenn. AG Lexis 332 (5/4/1977)]. Prior to the MCRA, having a single person hold dual offices was fairly common in the municipal court system.

In the event that a municipal court judge cannot sit for a docket, the MCRA allows the presiding municipal court judge to have another municipal judge or a General Sessions judge sit for the docket by interchange. [Tenn. Code Ann. § 16-18-312]. A lingering issue for municipal court judges is whether or not the Equal Protection clause of the U.S. Constitution's XIVth Amendment or Articles I § 8 and XI § 8 of the Tennessee Constitution allow the Legislature to require some municipal judges to be lawyers while other municipal judges do not have to have a law license. [See, City of White House v. Whitley, 1997 Tenn. App. Lexis 428 (Tenn. App. M.S. 6/18/1997) at page 39, Koch, J., dissenting].

In the event that a city wishes to seek "cross-over" General Sessions Court jurisdiction which the municipal court either did not have prior to May 12, 2003, or the municipal court lost after said date, a city must follow the requirements of Tenn. Code Ann. § 16-18-311

[7] These same statutes provide for training and expense reimbursement for city court clerks to attend AOC or MTAS training seminars. [Tenn. Code Ann. §§ 16-18-309(b) and 16-18-304].

to seek permission for a municipal court to acquire General Sessions Court jurisdiction. Basically, the city seeking cross-over or concurrent jurisdiction for a municipal court to act as a General Sessions Court must convince both the county and state that granting the municipal court cross-over jurisdiction is: **A)** needed, **B)** economically justified and **C)** a good idea. Without both the county and state helping, passing legislation to turn a city court into a General Sessions Court is unlikely.

As with other "inferior courts" (courts other than the Tennessee Supreme Court), the Legislature can regulate, or even eliminate, municipal courts. [See, Gregory v. City of Memphis, 6 S.W.2d 332, 332 (Tenn. 1928)]. Appeals of municipal court ruling are de novo to the Circuit Court of the county where the municipal court sits. [Tenn. Code Ann. § 16-18-307. Accord, Wood v. Town of Grand Junction, 52 Tenn. 440, 441-443 (1871) and Pivnick, Tennessee Circuit Court Practice 2d § 3-10 at page 60 (The Harrison Co., 1986)].[8] Any appeal of a municipal court decision must be filed within the (10) days of the judgment, excluding Sundays, and a bond of $250.00 is required before the appeal will be docketed in Circuit Court. [Tenn. Code Ann. § 16-18-307. See generally, Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 3]. Filing both the notice of appeal and the bond within the ten (10) day period is jurisdictional for the appeal to proceed. [City of Jackson v. Bledsoe, 830 S.W.2d 71, 72 (Tenn. App. W.S. 1991) (filing notice) and Jacob v. Partee, 2012 Tenn. App. Lexis 555 (Tenn. App. W.S. 8/10/2012) at page 13 (bond)].

Final Thoughts on Court Structure of Municipal Courts. The Tennessee Municipal Judges Conference ("TMJC") created by Tenn. Code Ann. § 17-3-301, is the governing body of Tennessee Municipal Judges. All Tennessee municipal judges are, by statute, a member of the TMJC. [Tenn. Code Ann. § 17-3-301(a)]. It is a statutory duty for all municipal judges in Tennessee to attend the annual TMJC conference unless physically unable to attend. [Tenn.

[8] Grand Junction still has an active city court nearly 150 years after the Wood decision. The current judge, as of 2012, is Judge R. Blake Sain. [TMJC 2012-2013 Directory at page 26 (2012)]. Judge Sain hears cases in Grand Junction, population 321, every month. Grand Junction is in both Fayette County and Hardeman County in the lower part of West Tennessee. [See, www.wikipedia.org/Grand_Junction_Tennessee and www.grandjunctiontn. com].

Code Ann. § 17-3-301(d)(1)]. TMJC is run by an elected board of directors. [Tenn. Code Ann. § 17-3-301(a)]. Expenses associated with attending the TMJC Annual Conference will be reimbursed or covered by TMJC for all attending Tennessee municipal judges. [Tenn. Code Ann. § 17-3-301(d)(2)].

CHAPTER IV – PRACTICAL CONSERATIONS FOR MUNICIPAL COURT JUDGES

Municipal judges should be courteous, professional and respectful to all coming into the court. [Smith, "Judicial Ethics and Courtroom Decorum," 27 Tenn. L. Rev. 26, 31 (Fall, 1959)]. The question at hand is…how? Some litigants and lawyers just make it hard for a judge to treat them nice. [See e.g., http://news.yahoo.com/blogs/slideshow/giggling-woman-flips-judge-bird-judge-not-amused and People v. Page, 165 N.W. 755, 760 (Mich. 1917)]. This chapter will be a random listing of various "bullet-points" of practical considerations for the municipal judge. These considerations will couple the author's experience on the bench with the author's service as a former member of the Tennessee Court of the Judiciary.[9]

Have Access to the Law Handy. The municipal judge should have a copy of the Tennessee Code Annotated's Class C misdemeanors and relevant city ordinances easily accessible to the judge while hearing cases. There is an old saying "A lawyer without a rule book is like a gunslinger without a gun." Even if the book is seldom opened, the public needs to see a judge that can access the law if questions arise.[10] If the relevant city ordinances are not excessive, laminate two (2) copies of the relevant ordinances, one for the bench and another for public reference. Most cities publish their city ordinances on the city website and this procedure is encouraged. [See e.g., http://library.municode.com/index.aspx?clientId=10557]. A city judge can possibly take judicial notice of the ordinances of the city

[9] The Court of the Judiciary ("COJ") was replaced by the Board of Judicial Conduct ("BJC") in 2012. [Tenn. Code Ann. § 17-5-201]. Both bodies were/are the disciplinary vehicle for judicial misconduct complaints for the Tennessee state judiciary. [Tenn. Code Ann. § 17-5-101]. The COJ and BJC serve the same basic function for judges that the Board of Professional Responsibility's disciplinary arm serves for Tennessee lawyers. [Tenn. Code Ann. § 17-5-302]. Basically, the COJ was the "principal's office" for judges facing discipline issues. Judicial ethics boards and rules serve a different purpose than criminal courts and statutes as the judicial ethics rules are designed not to punish, but to maintain the standards of judicial fitness. [In Re: Hill, 8 S.W.3d 578, 582 (Mo. 2000)].

[10] Don't take this suggestion like the small claims court judge in Missouri who decided his courtroom and library were "a total disgrace to any kind of judicial system." [In Re: Storie, 574 S.W.2d 369, 370 (Mo. 1978)]. The local district attorney suggested and set up a "library fund" which would get "donations" from defendants in the process of obtaining reduced charges. [Storie, 574 S.W.2d at 371)]. The Missouri Supreme Court was unamused and found this library fund "from an objective standpoint, gave the appearance that justice was for sale in his court." [Storie, 571 S.W.2d at 375]. Judge Storie was suspended without pay for sixty (60) days. [Id].

he/she presides over, but if the case is appealed to circuit court – the circuit judge probably cannot ***automatically*** take judicial notice of municipal statutes. [Tenn. R. Evid. 202(b), 411 P'ship v. Knox County, 372 S.W.3d 582, 587-288 (Tenn. App. E.S. 2011); Metro Gov't of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 605 (Tenn. 1977); and Burch, Trial Handbook for Tennessee Lawyers, § 203 at 187 (Law Co-Op. 1980)].

Start on Time. You are being paid to come to court. The litigants are compelled to be there and are often missing work (and pay) to come into your court. It is not unreasonable, according to Sue Bell Cobb, the Chief Justice for the Alabama Supreme Court, for the public to expect court to start on time. [Cobb, "Lawyer and Judges Work to Encourage Professionalism," 69 Ala. Lawyer 172, 173 (May, 2008)]. It does not sit well for the public to learn that court started a half hour late because the judge is sitting in chambers sipping coffee and announcing "They won't do anything until I get there!" [See generally, In Re: Singbush, 93 So.3d 188, 193 (Fla. 2012) and In Re: Kilburn, 599 A.2d 1377, 1379 (Vt. 1991)]. Making the public sit staring at an empty bench does not present a professional air for either the judge or the city that issued the traffic ticket. [See e.g., Leavey v. City of Detroit, 467 Fed. Appx. 420, 421-422 (6th Cir. 2012)].

Kill Them with Kindness. The municipal judge has a duty to be courteous even when litigants and/or attorneys misbehave. [See e.g., People v. Blue, 724 N.E.2d 920, 942 (Ill. 2000) and Wilkinson, "The Role of Reason in the Rule of Law," 56 U. Chi. L. Rev. 779, 785 (Sp. 1989)]. Although Lady Justicia is often shown as blind; it may be best for all concerned if the municipal judge is also slightly deaf to criticism and sarcasm. [In Re: Jimenez, 841 S.W.2d 572, 581 (Texas 1992) and Planned Parenthood v. Casey, 505 U.S. 833, 958-959 (1992), Rehnquist dissenting]. The more offensive a defendant acts, the more gracious the judge should respond. [See, People v. Green, 3 P. 374 (Colo. 1883) for an example of judicial restraint and letting the judicial/attorney ethics rules do the "fighting"]. Make a reviewing court and/or the general public wonder how you held your composure so long before holding a party in contempt! [See, Davis v. Dyer, 1985 Ohio App. Lexis 8793 (Ohio App. (9/27/1985) at 3 and People v.

Howick, 2010 Cal. App. Unpub. Lexis 9665 (Call. App. 12/6/2010) at 2-3, noting fn. 2].[11]

Let Litigants Have Their Say. Don't cut off or interfere with litigants "telling their story" until the testimony appears to be a filibuster or a manifesto pronouncement. [Meter, "An Analysis of the Unified Court System of Michigan," 20 Quinnipiac L. Rev. 697, 705 (Sp. 2001)]. Many defendants simply want to explain why they were speeding. [Cf, People v. Meeker, 407 N.E.2d 1058, 1063 (Ill. App. 1980) and Cummings, "The Politics of Helping," 6 Geo. J. Poverty Law & Pol'y 43, 55 (Winter, 1999)]. The few minutes necessary to hear this information from litigants are excellent for public relations and generally do not bog down a docket. [Brewer v. Brewer, 533 S.E.2d 541, 550 (N.C. App. 2000)]. That being said, "Attorneys should, at all times, maintain a sense of decorum and professionalism. Infantile behavior and foul language are signs of disrespect for the court and the court system." [People v. Blue, 724 N.E.2d 920, 942 (Ill. 2000)]. Another way of saying this is that cursing is a weak mind trying to assert itself forcefully.

Explain What is Expected Before Court. At the beginning of a docket, call the entire docket. Explain where a defendant must come when a case is called and explain the options for pleas because guilty pleas in traffic cases may potentially be used as admissions in civil cases that result as off-shoots from a traffic accident that generated a ticket. [See e.g., Estate of Wallace v. Fisher, 567 So.2d 505, 507-508 (Fla. App. 1990) and Williams v. Brown, 860 S.W.2d 854, 856-857 (Tenn. 1993)].

Look Professional. Even if you do not wear a robe for court, don't come to court wearing sweat-pants and t-shirt. You are a member of the judiciary! Look the part! [Keane, "Legalese in Bankruptcy," 28-10 ABIJ 38, 84 (Jan. 2010)]. "A public servant, whatever his rank, is entitled to reverence, honor, or respect only so long as he renders service to those he is sworn to serve." [People v. Stover, 240 N.Y.S.2d 94, 101 (N.Y. County Crim. App. Div. 1963), Creel dissenting]. If you want respect, give all coming into your court

[11] If excessive profanity offends you, don't read Howick. If, on the other hand, you need to be reassured that there are litigants "out there" more rude than what you have to tolerate, Howick's conviction being affirmed on appeal might be an opinion read which brings you comfort.

respect. If you want to command respect, act in a way that deserves respect. [See generally, Schoolfield v. Tenn. Bar Assn., 353 S.W.2d 401 (Tenn. 1962) and Bishop, Municipal Courts 3d § 2.11 at page 19 (Samford University Press 1999)].

Be "Honorable." You worked hard to get the position of judge. Don't go into court allowing litigants or attorneys to call you by your first name. Actions that imply one side of a case is too familiar with the court presents a concern of judicial bias and/or judicial impotence. [See generally, Mendoza v. Hatch, 620 F.3d 1261, 1264 & 1271-1272 (10th Cir. 2010) and Davis v. State, 468 So.2d 443, 443-444 (Fla. App. 1985)]. The respect of the judicial system as a whole requires respect for the bench, and those sitting on the bench, or the system ceases to function. [Eason, "President's Perspective: Judges, Courts Deserve Respect," 43 Tenn. B.J. 3, 3 (TBA, Aug. 2007)]. The municipal judge must be careful not to take action, personally or publicly, that embarrasses the judiciary. [See e.g., Harris v. Smartt, 57 P.3d 58, 72 (Mont. 2002) (internet porn) and In Re: Dean, 717 A.2d 176, 185 (Conn. 1998) (failure of a part-time judge to pay employee payroll taxes at his law firm)]. Arrogance from the bench may not only get you in trouble with the court system, it may get you physically assaulted by a disgruntled litigant or lawyer. [See e.g., People v. Green, 3 P. 374, 379 (Colo. 1883)].

Don't "Fix" Tickets. Fixing tickets for yourself or friends/family can quickly, and embarrassingly, make a municipal judge a "former municipal judge" as well as bring disciplinary actions and public criticism to the judge. [See, In Re: Wasilenko, 49 Cal. 4th CJP Supp. 26, 36 & 60 (Cal. Comm. Jud. Performance 2005); JEO 95-9 (11/14/1995); In Re: Diener, 304 A.2d 587, 593-594 (Md. 1973); and In Re: Storie, 574 S.W.2d 369, 374 (Mo. 1978)]. "Discretion," as in the discretion to dismiss tickets, means *"discretion guided by law. It must be governed by rule, not by humor; it must not be arbitrary, vague or fanciful, but legal and regular."* [Rawls v. State, 190 P.2d 159, 166 (Okla. Crim. App. 1948)].

A Judge's Comments Endure. J. Harvie Wilkinson, III, a judge of the U.S. Court of Appeals for the Fourth Circuit, once said the following:

> Judicial conduct…may be more a matter of intuition than of codification…judges must maintain a proper judicial demeanor both on and off the bench, they attempt, among other things, to ensure that the daily dealings of their lives remain polite. Judges must also submit to a contraction of personal rights that others may take for granted.

[Wilkinson, "The Role of Reason in the Rule of Law," 56 U. Chi. L. Rev. 779, 785 (Sp. 1989)]. The words of a judge carry great weight. [People v. Peeples, 155 Ill.2d 422, 466 (1993) and Frantz v. Hazey, 533 F.3d 724, 743 (9th Cir. 2008)]. The U.S. Supreme Court once said "The influence of the trial judge…'is necessarily and properly of great weight' and 'his lightest word or intimation is received with deference and may be controlling.'" [Quercia v. U.S., 289 U.S. 466, 470 (1933) as quoted by U.S. v. Onan, 5 M.J. 514, 524 fn. 12 (C.M.A. 1978)]. Harsh comments from judges last longer and hit harder than average citizens. [McBryde v. Committee to Review Judicial Conduct, 264 F.3d 52, 80 (D.C. Cir. 2001), Tatel dissenting]. Even tactless comments by ***lawyers*** arguing a case or an alleged victims' perceived lost rights can offend a litigant. [See e.g., Houston v. Houston, 2002 Tenn. App. Lexis 271 (Tenn. App. M.S. 4/19/2002) at 10 and Bishop, Municipal Courts, 3d § 10.13 at page 314 (Samford University Press, 1999)]. Presume the judge's comments carry more weight to litigants than the words of lawyers. Think before you speak! [See, In Re: Fite, 76 S.E. 397, 406-407 (Ga. App. 1912) for an extreme example of judicial foot-in-mouth syndrome].

Hijacking a Case. Judges are not "wallflowers or potted plants." Municipal judges are allowed to ask questions during a trial, but the judge should not take over the examination or proof of a case. [U.S. v. Vallone, 698 F.3d 416, 468 (7th Cir. 2012)]. Once a judge's questions go beyond merely clarifying, turning an issue clarification into actually presenting the case or helping one side or the other, that action amounts to an unfair trial because the court has abandoned its constitutionally mandated impartiality. [Id. See also, Turner v. Hand, 24 F.Cas. 355, 361-362 (D.N.J. 1885)]. While a judge has a "wide berth which is properly given to trial courts under the label of

discretion,"[12] it does not allow the judge to be prosecutor, judge and jury.

Don't Use Public Sentiment to Decide Cases. If the municipal judge relies too heavily on public opinion, instead of ruling solely on the facts of the case, what happens if the public's opinion is wrong? [State v. Loyal, 753 A.2d 1073, 1097 (N.J. 2000)]. "Judges are supposed to be men of fortitude, able to thrive in a hardy climate." [Craig v. Harney, 331 U.S. 367, 376 (1947)]. Justice William O. Douglas, speaking for the Court in Craig, also opined "A judge…can hardly help but know that his decision is apt to be unpopular." [Id]. Make your ruling without checking the newspapers. [Carbasho, "Three Judges Retire," 12 No. 3 Lawyers J. 1, 10 (1/29/2010)]. Remember, for at least a hundred years, the old tombstone phrase "Here lies a lawyer and an honest man"[13] has been a pun, not an observation. [See, In Re: Smith's Will, 92 A. 223, 225 (Vt. 1914) and Guptill, "Symposium: Hegels' Logic of the Concept: Note: The More Things Change the More They Stay the Same: Mr. Tutt and the Distrust of Lawyers in the Early Twentieth Century," 3 Cardozo Pub. L. Pol'y & Ethics J. 305, 320 (Dec. 2004)]. It is not the municipal judge's role to become a self-appointed legislature, (a/k/a "activist judge"), but instead the judge is required to constitutionally follow the law and apply the law to the facts of the case pending before the court. [Donnelly v. DeChristoforo, 416 U.S. 637, 651 (1974), Douglas dissenting]. Chief Justice John Marshall declared "Judicial power is never exercised for the purpose of giving effect to the judge, always for the purpose of giving effect to the will…of the law." [Riverside Cement Co. v. Mason, 139 P. 723, 726 (Ore. 1914), quoting Chief Justice Marshall from Osborn v. U.S. Bank, 22 U.S. 738, 866 (1824)].

Free CLE. TMJC requires three (3) hours of CLE specifically geared for municipal court judicial training. [Tenn. Code Ann. § 16-18-309(a)(1)]. This CLE training is either presented by, or approved by, the AOC. [Tenn. Code Ann. § 16-18-304(a)]. Often the mandatory CLE, which also applies to attorney CLE requirements, can be obtained at the TMJC Annual Conference. [Tenn. Code Ann.

[12] Quote from Combs v. Peters, 127 N.W.2d 750, 755 (Wis. 1964).

[13] This phrase comes from a 1906 poem by Shearon Bonner entitled "The Lawyer" which lampooned "Big City Shyster Lawyers." [See, Bonner, "The Lawyer," 18 Green Bag 451, 451-452 (1906)].

§ 17-3-301]. This training conference usually offers about ten (10) hours of CLE credits per judge over a weekend. Other regional CLE opportunities are offered by the AOC, as well as internet replays of seminar presentations which qualify for CLE credit. A second type of judicial educational training available to Tennessee municipal judges is to go to National Judicial College ("NJC") training. The NJC offers specific judicial training geared for both lawyer and non-lawyer judges. The AOC will pay for each municipal judge to attend NJC training once every three (3) years. The NJC classes usually run three (3) to ten (10) days each and are held primarily at the University of Nevada at Reno, but NJC classes are also held in places such as Washington, D.C., San Diego, California, and Oxford, Mississippi. The NJC also offers internet classes. If the AOC sends a municipal judge to a NJC class, the AOC covers all travel, lodging, food and training expenses. The NJC also occasionally has their own funding to cover a municipal judge's expenses to attend a NJC conference. A judge can obtain either a Masters Degree or Certificate of Judicial Education through the NJC. For information on training opportunities from the AOC, call (615) 741-2687. For information on NJC classes, see www.judges.org or call (800) 25-JUDGE. The AOC will publish lists of training class choices for municipal judges a couple times per year. The NJC offers scholarships for seminars.

Free Research Tools. The AOC provides municipal judges, free of charge, legal resources. These tools include the AOC's Tennessee Criminal Justice Handbook and Lexis/Nexis' Tennessee Motor Vehicle Laws Annotated. The AOC provides a free copy of each of these texts for each jurisdiction a judge presides over and the books are updated annually. The AOC also provides municipal judges with free access to Westlaw and Lexis computer research. [See, AOC Memo to TMJC members on Westlaw Access from Aaron J. Conklin dated 1/3/2013]. These resources can be used in the part-time judge's practice as an attorney according to the informal opinions of the JEC and the Tennessee Attorney General's Office. To request research tools, contact the AOC at (615) 741-2687.

The Office Call. Defendants will occasionally try to call the municipal judge's law practice office in an attempt to circumvent the court date or to argue their case prior to court giving the opposing party a chance to respond. Nothing fancy here, this is an improper ex

parte communication. [See e.g., Fed. Rural Electric Ins. Exchange v. Hill, 2010 WL 5313731 (Tenn. W.C. Panel 10/7/2010) at 7 fn. 2]. Be polite, ***through your secretary***, but do not take the phone call or see the defendant that simply appears at your office. [See generally, Egelak v. State, 438 P.2d 712, 715 (Alaska 1968)].

Leave Your Robe at Court. Do not attempt to use your position as a municipal judge to strong-arm advantages in private practice cases with either attorneys or police officers which appear in your court. [See, JEO 07-1 and JEO 07-2. Accord, Schoolfield v. Tenn. Bar Assn., 353 S.W.2d 401, 402-403 (Tenn. 1962)]. The part-time municipal judge who represents defendants as an attorney in criminal cases in other courts must be aware of conflict issues relating to both the Board of Judicial Conduct ("BJC") as well as the Board of Professional Responsibility ("BPR"). [JEO 07-2]. As a basic rule, any time your "legal indifference between the parties" is compromised, even in "the slightest pecuniary interest in the result," disqualify yourself from hearing a case. [Ex Parte Owens, 258 P. 758, 801 (Okla. Crim. App. 1927) and Gill v. State, 61 Ala. 169, 172 (1878)].

Talk With Experienced Judges. A new judge should not hesitate to "seek out the sage advice of those seasoned judges…[that] possess a great deal of wisdom and experience collected through many years of service." [Foley, "Senior Status Quo," 20-Oct., Nev. Lawyer 14 at 10 (10/2012)]. With that in mind, Justice Oliver Wendell Holmes, Jr. suggested that judges should state conclusions without dwelling on the reasons behind a conclusion because the "judgment would probably be right and the reasons certainly wrong." [Clark, "An Introduction to Constitutional Interpretation," 34 Suffolk U. L. Rev. 485, 508 fn. 194 (2001), quoting Holmes, "Codes and the Arrangement of the Law," 5 Am. L. Rev. 1 (1870)].

Ethical Dilemmas. If a municipal judge faces an ethical issue, the judge should contact the Judicial Ethics Committee ("JEC"), in writing, for guidance. [See, Tenn. R. Sup. Ct. 10, Rule 10A.5. Accord, In Re: Walker, 736 P.2d 790, 795 (Ariz. 1987)]. Some courts even consider it an aggravating factor at judicial discipline sentencing not to seek advice for obvious ethical problem scenarios. [See, In Re:

Fleischman, 933 P.2d 563, 569 (Ariz. 1987)]. Contact information for the JEC is currently:

> Tennessee Judicial Ethics Committee
> c/o Honorable Alan E. Glenn, Chair
> Tennessee Court of Criminal Appeals
> 550 Poplar Avenue, Suite 1414
> Memphis, TN 38157-1414
> Ph.: (901) 537-2980
> Fax: (901) 537-2998
> Email: judge.alan.glenn@tncourts.gov

But I'm a *JUDGE*! One of the most tempting things a judge confronts is to pull out the AOC Judge's I.D. to convince a police officer not to give the judge a speeding ticket. This "misuse of authority" is improper and must not be done! [Tenn. R. Sup. Ct. 10, Canon 1, Rule 1.3 and Lubet, 35 Court Review 6, 6-7 (Sp. 1998)]. More often, this scenario comes from court staff and/or friends/family of the judge, but still cannot be tolerated. [See generally, In Re: Wilkins, 649 A.2d 557, 562 (D.C. App. 1994)]. If you want a blue print of how to present a judicial career of dignity and distinction, read about former Chief Justice Frank F. Drowota, III who was a judge for thirty-five (35) years and a member of the Tennessee Supreme Court for twenty-five (25) years. [See generally, Drowota, "Historic Perspective: Recent Tennessee Supreme Courts have had distinct qualities," 42 Tenn. B.J. 22 (Feb., 2006)]. The irony of this article is that it talks about why so many of Tennessee's Supreme Court members are "great" except one…Frank F. Drowota, III. Chief Justice Drowota was humble, approachable, modest and brilliant. Not a bad blueprint to follow for any judge.

Reference Letters. Because of your position, some people will request reference letters. A judge may write a reference letter for a person based upon the judge's personal knowledge of the person being discussed in the reference letter, but the letter should be written on personal stationary and not on court stationary. [JEO 98-1].

Testifying as a Character Witness. A judge shall not testify at any trial as a character witness for a party except when the judge is subpoenaed. [Tenn. R. Sup. Ct. 10, Canon 3, Rule 3.3].

Responding to BJC Disciplinary Complaint. A judge shall respond candidly and honestly with judicial disciplinary complaint inquiries. [Tenn. R. Sup. Ct. 10, Rule 2, Canon 2.16]. The judge must not retaliate, either directly or indirectly, with a party because said party filed a disciplinary complaint against a judge. [Id]. Simply because a BJC complaint is filed does not mandate a judge's recusal from a pending trial. [State v. Parton, 817 S.W.2d 28, 29-30 (Tenn. Crim. App. 1991) and JEO 94-4]. A judge has thirty (30) days from receiving written notice of a BJC complaint to answer the complaint. [Tenn. Code Ann. § 17-5-301(c)]. The failure to timely answer a BJC complaint by an accused judge is deemed an admission to the charged misconduct. [Tenn. Code Ann. § 17-5-307(e)].

Traffic School. Many municipal courts offer traffic school for defendants that have not had a traffic citation within a certain period of time – commonly two (2) or three (3) years. The theory is that if a person has not had a traffic citation ***of any type***, ***anywhere***, within the period of time designated; then the defendant can **A)** pay court costs, **B)** successfully complete a traffic school which is approved for at least four (4) hours by the Tennessee Department of Safety, **C)** provide proof of the completion of the school to the court and **D)** the traffic ticket will be dismissed. [See, Tenn. Code Ann. § 55-10-301 and 4-3-2009. See also, Tenn. Dept. of Safety Reg. 1340-03-07-.01 to 1340-03-07-.08]. The traffic school option does not apply to drivers holding a "CDL," (Commercial Driver's License). [Tenn. Code Ann. § 55-10-301(c) and 49 C.F.R. § 384.226]. Traffic school for CDL holders is a form of "masking" a ticket which violates federal law. [Trafficschool.com v. Edriver, Inc., 633 F.Supp.2d 1063, 1080 (C.D. Cal. 2008) and 49 C.F.R. § 384.226]. Municipal courts should make uniform standards across the State of Tennessee of who qualifies for traffic school; which cases qualify; and how long a defendant must wait between tickets before the defendant is eligible for traffic school as an option. For more information on traffic schools, see Chapter XIV of this book.

CDL Holders. As previously noted in the "Traffic School" section above, drivers holding a "CDL" (Commercial Driver's license) cannot mask traffic citations. [Tenn. Code Ann. § 55-10-301(c) and 49 C.F.R. § 384.226]. Likewise, municipal judges are not allowed to dismiss, retire or divert traffic tickets given to CDL

holders. [49 C.F.R. § 384.226]. The process of hiding a traffic citation or reducing the citation to a "non-moving violation" is commonly called "masking." [49 USC § 31309, 49 C.F.R. §§ 384.225 and 384.226]. The federal rules regarding CDL's were made applicable to states via the 1986 Federal Commercial Motor Vehicle Safety Act, 49 U.S.C. § 31311. [49 C.F.R. § 384.401, 49 U.S.C. § 31314 and Hamilton v. Gourley, 103 Cal. App. 4th 351, 358 fn. 1 (Cal. App. 2002)]. If a court is caught "masking" CDL tickets, that offense can cause the entire state of Tennessee to lose federal highway funding. [49 U.S.C. §§ 31313 and 31314. See also, Childress v. Cal. Dept. of Motor Vehicles, 2005 Cal. Dept. of Motor Vehicles, 2005 Cal. App. Lexis 1870 (Cal. App. 3/3/2005) at 8].

Professional drivers are held to a higher standard of safety than non-professional drivers. [Rowan v. Sauls, 260 S.W.2d 880, 882 (Tenn. 1953) and State v. Snyder, 835 S.W.2d 30, 32 (Tenn. Crim. App. 1992)]. The CDL holder cannot take traffic school or mask a citation even though the defendant was driving their personal vehicle on non-company time. [See, Metro Gov't of Nashville and Davidson County v. Stark, 2008 Tenn. App. Lexis 58 (Tenn. App. E.S. 1/31/2008) at 6]. A municipal judge who "masks" a CDL holder's ticket not only puts federal highway funds in jeopardy for the entire state, he/she violates Tenn. R. Sup. Ct. 10, Canon 2, Rule 2.2, which says "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." If following the law won't encourage a strict compliance with CDL mandates, the municipal judge may wish to watch "Something for Jamie," which is put out by the Federal Highway Administration Office of Motor Carriers. [www.cdlresources.org/jamievideo.html]. For further information on CDLs, see Chapter XIV of this book.

Part-Time Judges Practicing Law/Acting as Mediator. A part-time municipal judge can practice law so long as clients do not appear before the judge on municipal court matters. [See generally, JEO 07-1, which discusses multiple JEOs related to part-time judges practicing law]. Likewise, a part-time municipal judge can act as a mediator, and be certified as a Tenn. R. Sup. Ct. 31 mediator, as long as the judge does not mediate cases or parties that the judge presided over in municipal court. [Tenn. R. Sup. Ct. 31 § 17(i)(1) and (5) and Team Design v. Gottlieb, 104 S.W.3d 512, 524 (Tenn. App. M.S.

2002)]. Until recently, part-time judges were not allowed to be certified as Tenn. R. Sup. Ct. 31 mediators. This change in the rules of mediation, which allows part-time judges to act as mediators, was spearheaded by TMJC.

Speak English. Most newspapers, since the 1940's write their stories on a 6th to 9th grade reading level. [www.impact-information.com/impactinfo/newsletter/plwork15.htm (Plan Language at Work Newsletter No. 15) (5/15/2005)]. Written English, no matter how plainly written, needs some figuring out. [Burress v. Sanders, 31 S.W.3d 259, 256 (Tenn. App. M.S. 2000)]. That being the case, a judge should not talk to litigants using Latin or words found only on the game-show "Jeopardy," (e.g., say "hospital" not "xenodochium"), because litigants must be able to understand what is going on in court for the proceedings to be valid. [English v. State, 2004 Tenn. Crim. App. Lexis 20, 32-34 (Tenn. Crim. App. 1/13/2004)]. "Legalese" is not the preferred language to use with the public. [Sunbeam-Oster Co. Group Benefit Plan v. Whithurst, 102 F.3d 1368, 1370 (5th Cir. 1996), cited with approval in Bd. of Trustees of Sumner County Employees v. Graves, 1999 Tenn. App. Lexis 802 (Tenn. App. M.S. 12/3/1999) at 11]. By way of example, compare the following two quotes and see which one you understand:

> ***Example A*** **{Tillinghast v.Champlin, 4 R.I. 173 (1856), by Ames, Chief Justice}.** "The question which then arises is, whether, dropping this charge, which veins and intermingles with the whole frame and texture of the bill, and rejecting it as surplusage, we shall be justified, by the rules of the jurisprudence which we here administer, if, on the allegations of the bill we can find some inferior ground of relief than the actual fraud charged, of giving relief on that ground under this bill?"
>
> ***or***
>
> ***Example B*** **{State v. Van Laarhoven, 279 N.W.2d 448, 490 (Wis. App. 1979), Foley,**

> **Judge}.** "Van Laarhoven received a second sentence for contempt after he twice called the judge an 'asshole'. To borrow from first amendment terminology, he addressed the judge with 'fighting words.'"

If you have something to say as a judge, be brave enough to do so in plain English. Don't talk down to litigants, but talk straight with, (and to), litigants.

Be Yourself. Every judge will handle their court a little differently. [The Cayene, 5 F.Cas. 322, 323 (D. Del. 1870)]. No judge is perfect, so don't try to become perfect, but give your best efforts. [In Re: Garner, 177 P. 162, 165 (Cal. 1918)]. You will find generally that courts are not de void of humor, but should not be run by humor. [Rawls v. State, 190 P.2d 159, 166 (Okla. Crim. App. 1948)]. Show no favoritism, to yourself or others, and sit to judge your cases fairly. [Ex Parte Chase, 43 Ala. 303, 310 (1869); Chicago B&O R. Co. v. Gildersleeve, 118 S.W. 86, 92 (Mo. 1909); and Riverside Cement Co. v. Masson, 139 P. 723, 726 (Ore. 1914)]. If a litigation party does not like your decision, let them appeal the case because ***those*** judges need something to do, too. [McCarty v. St. Louis Transit Co., 91 S.W. 132, 134 (Mo. 1905)]. Between your efforts, and those of the appeals judges, the right answer will eventually be found. [Id]. Don't worry about a pending or possible appeal – show class. [Texas v. McCullough, 475 U.S. 134, 151 (1986), Marshall, dissenting]. You can only control how ***you*** address situations. [In Re: Goulding, 79 B.R. 874, 875 (Bky. W.D. Mo. 1987)]. Have honor – give honor – ***get*** honor. [People v. Stover, 240 N.Y.S.2d 94, 101 (N.Y. County Crim. App. Div. 1963), Creel, dissenting].

Final thoughts on Practical Considerations for Municipal Judges. The most "practical considerations for municipal court judges" boil down to the simple theory that a judge should not become so arrogant after taking the bench that common sense and common courtesy are abandoned. [See, Grievance Adm'r. v. Fieger, 719 N.W.2d 123 (Mich. 2006) where internal battles within the Michigan Supreme Court were made ***very*** public by the Court's various and multiple snippy opinions in this case]. Two extreme examples of

what some might assert was abandoned common sense arise from cases involving two judges from Tennessee.[14] The first judge faced a judicial removal hearing in 1978 because, among other reasons, he sent a fan letter to Larry Flynt on judicial stationary praising Hustler magazine. [www.tn.gov/tsla/history/state/recordsgroups/findingaids/ag187.pdf]. Mr. Flynt in turn promptly published the judge's letter in Hustler and the Judicial Standards Commission, the predecessor of the Court of the Judiciary, began the process of a senate impeachment preceding that eventually led to the judge's resignation from the bench. [www.tncourts.gov/sites/default/filed/docs/oversight_of_judicial_conduct_in_tennessee-sept_2011. pdf]. As for the other judge, he was convicted of using his judicial chambers to lure women who either had cases pending or who worked in the courthouse into sexual assault situations which violated 18 U.S.C. § 242, {Willful Deprivation of Civil Rights of Another Under Color of State Law}. [U.S. v. Lanier, 520 U.S. 259, 261-263 (1997); U.S. v. Lanier, 123 F.3d 945, 945 (6th Cir. 1997); and U.S. v. Lanier, 201 F.3d 842, 844 (6th Cir. 2000)]. When told to surrender to authorities, this judge instead fled to Tijuana, Mexico which eventually led to the judge also getting a Failure to Appear conviction under 18 U.S.C. § 3146. [U.S. v. Lanier, 201 F.3d 842, 844-845 (6th Cir. 2000)]. The point to be made here follows Mark Twain's observation that "Man is the only animal that blushes…or needs to." [www.twainquotes.com/Blush.html]. If your actions would cause blushing if your mother knew what you were doing – ***DON'T DO IT!*** The most dangerous, and abusable, matters that come before any court are the ones allowing the judge unfettered and unreviewable discretion. [State v. Cummins, 36 Mo. 263, 278-279 (1865); Rose v. Arnold, 82 P.2d 293, 301 (Okla. 1938), Riley concurring; and Reese v. Bacon, 176 S.W.2d 971, 973 (Tex. App. 1943)]. Simply put, "Judges are but human." [In Re: Garner, 177 P. 162, 165 (Cal. 1918)]. Control that selfish human side we all have and you will be a great judge! [See, City of Detroit v. Detroit City Ry. Co., 54 Fed. 1, 18-19 (6th Cir. 1893) Wm. H. Taft, J.]. "Common sense" and "common courtesy" aren't as common as one might think! [See e.g., Grievance Adm'r v. Fieger, 719 N.W.2d 123 (Mich. 2006)]. That is as practical as advice comes. It is also advice that covers most any situation a judge encounters.

[14] The author is not passing judgment on either of these two (2) cases, or the parties involved. The author is simply reporting findings made in public and published records from both cases.

CHAPTER V – WHERE TO TURN FOR HELP

There are multiple places for a municipal judge to turn when they have questions or need advice. Here is a non-exclusive list of places for a municipal judge to seek help with issues before your court:

Other Judges: Pursuant to Tenn. R. Sup. Ct. 10, Canon 2, Rule 2.9(a)(3), it is not unethical or improper for a judge to discuss a pending matter with another judge, ***that will not hear said matter, nor preside over any appeal of the case***. The advice offered and received should be technical or explaining law, and not the judges jointly ruling on the facts of a case. The insight of other TMJC[15] members is a great source of insight.

AOC: The AOC[16] has a large bank of resources, such as the Tennessee Judicial Ethics Opinions Handbook, which can provide guidance to TMJC members. Also, the staff at the AOC have insight into legislative trends, new statutes and the training of judges throughout Tennessee. The competing interest of the various spokes of the judiciary wheel, where the AOC acts as its hub, sometimes puts the AOC "in the middle" of the differing spokes struggling to enhance their own position. [See, Allen v. McWilliams, 715 S.W.2d 28 (Tenn. 1986)]. The AOC deserves both deference and praise when municipal judges reach for their able hand for "help!" The Executive Director of the AOC is currently the Honorable Elizabeth A. ("Libby") Sykes. Prior Executive Directors of the AOC include the Honorable Cornelia A. Clark, who went on to serve as Chief Justice of the Tennessee Supreme Court. The AOC's contact information is as follows:

Tennessee Administrative Office of Courts
511 Union Street, Suite 600
Nashville, TN 37219
Ph.: (615) 741-2687 or (800) 448-7970
Fax: (615) 741-6285
Web: www.tsc.state.tn.us

[15] Tennessee Municipal Judges Conference.
[16] Tennessee Administrative Office of Courts.

JEC: The JEC[17] is a board of seven (7) judges from each of the levels of the Tennessee judiciary. [Tenn. R. Sup. Ct. 10A.1]. The JEC can be contacted by judges facing ethical dilemmas so that a JEO[18], {ethics advisory opinion}, addressing the dilemma can be rendered. [Tenn. R. Sup. Ct. 10A.4]. Any JEO requested must be sought prior to a BJC complaint being filed against a judge. If a timely JEO is sought, it provides guidance to a judge that can be cited in mitigation if the judge faces a judicial ethics complaint with the BJC. [Tenn. R. Sup. Ct. 10A.5]. While the JEO does not bind the BJC[19] on any ruling, following the advice of the JEC is considered in mitigation and/or adjudication on any BJC ethics complaint. [Tenn. R. Sup. Ct. 10A.6]. To seek a JEO, one can contact the AOC for the name of the current JEC Chair. At the time this text is being written, the Chair of the JEC is the Honorable Alan E. Glenn. Judge Glenn's contact information is as follows:

Tennessee Judicial Ethics Committee
c/o Honorable Alan E. Glenn, Chair
Tennessee Court of Criminal Appeals
550 Poplar Avenue, Suite 1414
Memphis, TN 38157-1414
Ph.: (901) 537-2980
Fax: (901) 537-2998
Email: judge.alan.glenn@tncourts.gov

At the time of this text being written, the TMJC representative on the JEC is the Honorable Paul B. Plant, P.O. Box 399, Lawrenceburg, TN 38464. [Ph.: (931) 762-7528]. JEO requests must be directed to the JEC in writing with a short brief setting out the facts at issue and the Code of Judicial Conduct Canons at issue. [Tenn. R. Sup. Ct. 10A.5]. A judge cannot seek a JEO on a case pending before the BJC. [Tenn. R. Sup. Ct. 10 A.4]. JEO opinions represent the majority opinion of the JEC. [Tenn. R. Sup. Ct. 10A.4]. These opinions can be used as a body of guidance for judges to rely upon. [Tenn. R. Sup. Ct. 10A.5]. Prior JEOs, back to 1982, can be found on the AOC website or in the Tennessee Judicial Ethics Opinions Handbook which is put out by the AOC. The text compilation of the

[17] Tennessee Judicial Ethics Committee.
[18] Judicial Ethics Opinion.
[19] Tennessee Board of Judicial Conduct.

JEOs has an index for searching topics/issues. The website version of JEOs does not offer an index, so you must know which specific JEO you are looking for if you use the web version of JEOs. The Tennessee Judicial Ethics Opinions Handbook can be obtained from the AOC.

NJC: The National Judicial College ("NJC") is part of the University of Nevada at Reno and offers judicial training and a possible masters degree or certificate in judicial studies for judges throughout the United States. The NJC will offer judicial training throughout the country. The AOC will pay to send each municipal judge to a NJC training seminar once every three (3) years, but for the part-time municipal judge, it is difficult to take a whole week off to go to a NJC conference. Scholarship money is available, but anticipate you may have to present a CLE speech at a future TMJC conference if the AOC or NJC pays for your trip. For more information on the NJC, contact:

National Judicial College
c/o University of Nevada at Reno
Judicial College Building/MS 358
Reno, NV 89557
Ph.: (800) 25-Judge
Fax: (775) 784-1253
Web: www.judges.org

MTAS: The Municipal Technical Advisory Service ("MTAS") is a part of the University of Tennessee's Institute of Public Service and provides help to cities and city government officials throughout Tennessee. MTAS began in 1949. While this reference may be better directed to your court clerk; MTAS is a valuable resource regarding court costs and advice on court security. MTAS can also help setting up municipal ordinances of municipal courts. MTAS may be contacted as follows:

Municipal Technical Advisory Service
c/o University of Tennessee Institute of Public Service
660 Henley Street, Suite 120
Knoxville, TN 37996-4105
Ph.: (865) 974-0411

Fax: (865) 874-0423
Web: www.mtas.tennessee.edu

MTAS presents the Basic Municipal Court Clerk's training class and continuing education for municipal court clerks. [See, Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at Intro].

TLAP: The Tennessee Lawyers Assistance Program ("TLAP") exists pursuant to Tenn. R. Sup. Ct. 33. This program addresses stress, burnout, anger management, depression, drug, alcohol and other problems facing both lawyers and judges. Tenn. Code Ann. § 23-4-101 et seq. protects the confidentiality of people who report a suspected abuse/stress problem with a lawyer or judge. To contact TLAP, one can use the following information:

Tennessee Lawyers Assistance Program
200 Fourth Avenue, North, Suite 810
Nashville, TN 37219
Ph.: (615) 741-3238 or (877) 424-8527
Fax: (615) 741-3508
Web: www.tlap.org

The TLAP website offers forms, resources and personal contacts for the judge or lawyer in crisis. At the time this text is written, the executive Director for TLAP is Laura McClendon. The judicial contacts currently for TLAP are all on the Tennessee Court of Criminal Appeals. Those judges are Judge D. Kelly Thomas, Jr. (East TN); Judge John Everett Williams (West TN): and Judge Thomas T. Woodall (Middle TN).

Studies show that lawyers, as a profession, have the highest depression level of any professional group in the country. [TLAP Brochure copyrighted 2008]. Alcoholism is around eighteen percent (18%) for the legal profession and over one-third of lawyers/judges suffer from depression. [Id]. TLAP has an after-hours crisis line at Ph. (877) 424-8527 option "2." [Id]. TLAP is designed for lawyers, judges and bar applicants, even if facing disciplinary action by the BJC or BPR. [Tenn. R. Sup. Ct. 33.07(d)].

National Judges' Assistance Helpline: The National Judges' Assistance Helpline, ph. (800) 219-6474, is an ABA initiated version of TLAP on the national level. This resource focuses exclusively on judges and leans toward alcohol/drug addiction recovery.

Tennessee Trial and General Sessions Judges Benchbook: This book, which is put out by the AOC, is similar to this text but focuses on issues more related to the dual General Sessions/Municipal Court Judge. The General Sessions issues municipal judges with concurrent General Sessions Court jurisdiction face are beyond the scope of this text. Contact AOC at Ph. (615) 741-2687 if you want or need a General Sessions benchbook. The Trial and General Sessions Court Benchbook is combined into a single text.

Interpreters: Contact the AOC at Ph. (615) 741-2687 if you have issues regarding the need for interpreters. For further information on interpreters, see Chapter XVI of this book.

Governor's Highway Safety Office. The GHSO is a federally funded state office which advocates highway safety in Tennessee. [www.tdot.state.tn.us/ghso/]. The GHSO is 100% federally funded to help law enforcement, judges and communities reduce traffic crashes on Tennessee's highways through grants, programs and promotions. [Id]. Probably the best known GHSO promotion is the "Click It or Ticket" program promoting seatbelt usage. Other GHSO initiatives include "Booze It and Lose It" and "Cops Grants." [State v. Aloyo, 2010 Tenn. Crim. App. Lexis 160 (Tenn. Crim. App. 2/9/2010) at 4]. As a matter of fact, GHSO programs and money originally initiated the DUI breath tests in Tennessee which determine blood alcohol content (."bac") levels in DUI cases. [See, State v. Sensing, 843 S.W.2d 412, 414 (Tenn. 1992)].

Final Thoughts on Where to Turn for Help. Nobody has all of the answers. Don't be shy about seeking answers from other people in "The System," because "It is not good to have zeal without knowledge." [People v. Page, 165 N.W. 755, 760 (Mich. 1917) and Holy Bible, Prov. 19:2]. Zeal ***with*** knowledge is commendable. [Mickleson v. Gypsy Oil Co., 238 P. 194, 195 (Okla. 1925)].

CHAPTER VI – JURISDICTIONAL ISSUES

The Tennessee Constitution lists two (2) basic types of "constitutional courts:" A) constitutionally mandated courts, {Supreme Court, Chancery and Circuit Courts} and B) "inferior courts." [Tenn. Const. VI § 1 and Moore v. Love, 107 S.W.2d 982, 992 (Tenn. 1937)]. The Tennessee Supreme Court has found that before a court can impose prison time and assess fines exceeding $50.00, the judge imposing punishment must be elected to an eight (8) year term as a constitutional inferior court under Tenn. Const. Art. VI § 4. [Town of South Carthage v. Barrett, 840 S.W.2d 895, 899 (Tenn. 1992); State v. Roberts, 881 S.W.2d 678, 680-681 (Tenn. Crim. App. 1993); and Town of Nolensville v. King, 151 S.W.3d 427, 431 (Tenn. 2004)]. A city court with concurrent General Sessions Court jurisdiction, that has an elected judge serving an eight (8) year term, would qualify as an "inferior constitutional court" for Art. VI § 8 purposes when the judge is handling issues above C misdemeanors, ordinances and $50.00 fines. [City of White House v. Whitley, 979 S.W.2d 262, 266 (Tenn. 1998); State v. Sloan, 1997 Tenn. Crim. App. Lexis 669 (Tenn. Crim. App. 7/18/1997)) at 7-8 and 7 fn. 1; and Tenn. R. Crim. P. 1 at Advisory Comments].[20] A judge of a municipal court exercising concurrent General Sessions jurisdiction ***must*** be elected to an eight (8) year term of office. [Town of South Carthage v. Barrett, 840 S.W.2d at 899 and State v. Biggers, 1994 Tenn. Crim. App. Lexis 333 (Tenn. Crim. App. 5/25/1994) at 10, citing Tenn. Const. Art. VI § 4]. Municipal courts, when exercising General Sessions constitutional inferior court jurisdiction, are subject to the Tennessee Rules of Criminal Procedure. [State v. Brackett, 869 S.W.2d 936, 937 (Tenn. Crim. App. 1993), citing Tenn. R. Crim. P. 1].

A municipal court exercising "standard" municipal court jurisdiction has that jurisdiction set, and defined, by Tenn. Code Ann. § 16-18-302; which basically means the court can hear ordinances, C misdemeanors and traffic jurisdiction. [City of Knoxville v. Brown, 284 S.W.3d 330, 333 (Tenn. App. E.S. 2008). See also, Summers v. Thompson, 764 S.W.2d 182, 184 (Tenn. 1988) citing State v. Superintendent of Davidson County Workhouse, 259 S.W.2d 159, 161

[20] Accord, State v. McNerney, 1994 Tenn. Crim. App. Lexis 683 (Tenn. Crim. App. 10/17/1994) at 5 and Etowah v. Carruth, 1993 Tenn. App. Lexis 255 (Tenn. App. E.S. 3/31/1993) at 2-3.

(Tenn. 1953)]. Municipal courts have been unflatteringly termed as "essentially administrative judges." [Summers v. Thompson, 764 S.W.2d 182, 184 (Tenn. 1988) and LeClercq, "The Law of the Land: Tennessee Constitutional Law," 61 Tenn. L. Rev. 573, 605 (Winter, 1994)]. The "standard" municipal court has jurisdictional fine limits of $50.00 and cannot order a defendant to jail. [LeClercq, supra at 605]. Interestingly, in light of the dicta from Summers v. Thompson that municipal judges are "essentially administrative judges," the $50.00 fine limit applies ***only*** to the judiciary, but not the Executive branches' Boards/Commissions which often hear cases through administrative judges. [See, Barrett v. Tenn. OSHRC, 284 S.W.3d 784, 788 (Tenn. 2009)]. It is clear that municipal court punitive fines are limited to $50.00, making it clear that city courts are part of the Judicial Branch, and not administrative judges under the Executive Branch of Tennessee's government. [See, Town of Nolensville v. King, 151 S.W.3d 427, 428 (Tenn. 2004) and City of Millersville v. Falk, 2007 Tenn. App. Lexis 624 (Tenn. App. M.S. 9/28/2007) at 6-7].

There is no question that the Tennessee Legislature can expand, reduce or even eliminate municipal courts and/or their jurisdictional powers. [Art. I § 8, Tenn. Const., State v. Godsey, 165 S.W.3d 667, 671 (Tenn. Crim. App. 2004) and City of Knoxville v. Dossett, 672 S.W.2d 193, 196 (Tenn. 1984)]. As a matter of fact, a judgeship can be totally eliminated in mid-term by legislative action. [See e.g., State v. Gaines, 70 Tenn. 316 (1879)]. Although municipal courts usually address municipal ordinances, the Legislature can expand that jurisdiction to include state criminal laws. [Hill v. State, 392 S.W.2d 950, 952 (Tenn. 1965) and Moore v. State, 19 S.W.2d 233, 233 (Tenn. 1929). See also, Hodge v. State, 188 S.W. 203, 205-206 (Tenn. 1916)]. An example of state laws the Legislature allows municipal courts to consider is Tenn. Code Ann. § 55-10-308, where the Legislature permitted municipalities to adopt traffic statutes by reference. [City of Chattanooga v. Davis, 54 S.W.3d 248, 277 and 277 fn. 25 (Tenn. 2001). See also, Hill v. State, 392 S.W.2d at 952].[21] The *caveat* of Tenn. Code Ann. § 55-10-308 requires "full compliance

[21] For historical support of this claim, see Georgia Ind. Realty Co. v. Chattanooga, 43 S.W.2d 490, 492 (Tenn. 1931). Other states, such as Alabama, also allow a municipality to adopt state criminal statutes by reference via municipal ordinance. [See e.g., Bishop, Municipal Courts 3d § 9-1 at pages 239-240 (Samford University Press, 1999)].

with the rules promulgated by the commissioner of safety" if a municipal court is going to seek subject matter jurisdiction over the traffic "Rules of the Road."

When one looks at jurisdiction, one must distinguish between subject matter jurisdiction and personal jurisdiction. The Tennessee Constitution and Tennessee Legislature set subject matter jurisdiction for Tennessee's court system. [Kane v. Kane, 547 S.W.2d 559, 560 (Tenn. 1977)]. Subject matter jurisdiction is a court's power to address or act on a ***type*** of case, (e.g., Probate Courts address will contests, but generally not criminal or appellate cases). [Gutzke v. Gutzke, 908 S.W.2d 198, 201 (Tenn. App. W.S. 1995), citing Cooper v. Reynolds, 77 U.S. 308, 316-317 (1870) and Turpin v. Conner Bros. Excavating Co., Inc., 761 S.W.2d 296, 297 (Tenn. 1988)]. Personal jurisdiction is a court's power to adjudicate a claim relating to a specific person. [Gutzke, 908 S.W.2d at 201]. By way of example, the Pleasant View City Court can handle speeding tickets, so the court has subject matter jurisdiction over this type of traffic cases. That being said, the Pleasant View City Court would not be able to decide a case where a police officer gave a driver a speeding ticket in Paris, France, even though the Pleasant View City Court handles traffic tickets. The Pleasant View City Court only has subject matter jurisdiction over speeding tickets originating in the City of Pleasant View, Tennessee – not speeding tickets given in Kingsport, Tennessee. [See generally, Cumberland Bank v. Smith, 43 S.W.3d 908, 910-911 (Tenn. App. M.S. 2000)]. A defendant or litigant cannot waive subject matter jurisdiction. [County of Shelby v. City of Memphis, 365 S.W.2d 291, 292 (Tenn. 1963)]. Simply put, subject matter jurisdiction is the court's authority, or lack of authority, to hear a case. [Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 89 (1998)].

On the other hand, a court must also have personal jurisdiction over a defendant to decide a case. [Gutzke, 908 S.W.2d at 201]. Presume that the Paris, France example cited above had the speeding ticket given in Pleasant View, Tennessee instead of Paris, France and the French national defendant was in Pleasant View, Tennessee on vacation when stopped for speeding. The Pleasant View City Court could hear the case because the court hears speeding tickets and the events occurred in said jurisdictional limits and the defendant was

physically in Pleasant View when the ticket was given. Availing oneself to the forum, (e.g., driving in Pleasant View), subjects the resident of Paris, France to the laws/ordinances of Pleasant View, Tennessee. [Guteke, 908 S.W.2d at 201, citing World-Wide Volkswagen Crop. v. Woodson, 444 U.S. 286, 292-293 (1980) and Nicholstone Book Bindery v. Chelsea House Publishers, 621 S.W.2d 560, 566 (Tenn. 1981)]. This same fact scenario would apply whether the defendant lives in Paris, France; Paris, Texas; or Paris, Tennessee. A court must have both subject matter jurisdiction, as well as personal jurisdiction, before the court can adjudicate a case. [Landers v. Jones, 872 S.W.2d 674, 675 (Tenn. 1994)]. Personal jurisdiction can potentially be waived, but subject matter jurisdiction cannot be waived. [Landers, 872 S.W.2d at 675, citing Davis v. Mitchell, 178 S.W.2d 889, 900 (Tenn. App. W.S. 1944); and Gutzke, 908 S.W.2d at 201]. A judgment based on a case lacking subject matter jurisdiction is void, while a judgment based on flawed personal jurisdiction is voidable. [Dishmon v. Shelby State Community College, 15 S.W.3d 477, 480 (Tenn. App. M.S. 1999); Cumberland Bank v. Smith, 43 S.W.3d at 910-911 and Landers, 872 S.W.2d at 676].

Personal jurisdiction has two (2) options. In personam personal jurisdiction is a defendant physically standing before the court. [Pitts v. Villas of Frangista Owner's Ass'n, 2011 Tenn. App. Lexis 512 (Tenn. App. M.S. 9/20/2011) at 13-14]. In rem personal jurisdiction is based on the fact that the court has property (real or personal) in the court's jurisdiction subject to forfeiture, or the court has "constructive custody of the property" subject to forfeiture. [Stuart v. State Dept. of Safety, 963 S.W.2d 28, 32-33 (Tenn. 1998) and Pitts, 2011 Tenn. App. Lexis 512 at 13-14, citing Shaffer v. Heitner, 433 U.S. 186, 209 fn. 31 (1977)]. An example of actual in rem personal jurisdiction would be a property clean-up ordinance violation for property inside a court's city limits. [See e.g., City of Jackson v. Shehata, 2006 Tenn. App. Lexis 509 (Tenn. App. W.S. 7/31/2006) at 8-10 and Georgia Ind. Realty Co. v. Chattanooga, 43 S.W.2d 490, 492 (Tenn. 1931)]. An example of a constructive in rem personal jurisdiction matter is the municipal court's ability to suspend a defendant's driving privileges for the failure to appear in court or the failure to timely pay a traffic ticket judgment. [See, Tenn. Code Ann. §§ 55-50-502(a)(1)(I) and 55-50-502(a)(1)(H)]. The "property" within the Court's reach (jurisdiction) is the driver's license.

Professor Frederic S. LeClercq, of the University of Tennessee College of Law, described the "standard" municipal court's[22] jurisdiction as "The jurisdiction of the [standard] city courts is wholly limited to traffic violations or city ordinances, as the judges of these courts have no authority to impose fines exceeding $50.00 or to impose extensive terms of imprisonment…" [LeClercq, "The Law of the Land: Tennessee Constitutional Law," 61 Tenn. L. Rev. 573, 605 (Winter, 1994), quoting Summers v. Thompson, 764 S.W.2d 182, 184 (Tenn. 1988), parenthetical added. See also, City of Knoxville v. Brown, 284 S.W.3d 330, 333 (Tenn. App. E.S. 2008)].

One unusual aspect of municipal court subject matter jurisdiction is the $50.00 fine. The Tennessee Constitution's Art. VI § 14 has been criticized by the Tennessee Supreme Court for placing a $50.00 fine cap on decisions rendered without the prospect of a jury. [Town of Nolensville v. King, 151 S.W.3d 427, 433 (Tenn. 2004)]. The Tennessee Supreme Court has noted that Tennessee's Constitution is the only state constitution in the United States to place a fines cap on non-jury trials and the Tennessee Constitutional Convention delegates in 1796 were unwise to set this fines cap because "It is common knowledge that the real value of currency fluctuates over time." [King, 151 S.W.3d at 433 and City of Chattanooga v. Davis, 54 S.W.3d 248, 257-258 (Tenn. 2001)]. The Tennessee Supreme Court went on to opine, "A fifty dollar fine in contempory value lacks the weighty and serious quality a fifty dollar fine would have had two hundred years ago." [King, 151 S.W.3d at 433]. By way of example, look at two "real value" dollars calculators that will compare values of $50.00 in 2011 and 1796/1800. See the following:

$50.00 in 1800 = $651.00 in 2011;
$50.00 in 2011 = $3.95 in 1796.

[www.westegg.com/inflation/inf.cgi].

and

$50.00 in 1796 = $878.00 in 2011;

[22] Municipal courts that do not have concurrent "cross-over" jurisdiction with General Sessions Courts are "standard municipal courts."

$50.00 in 2011 = $2.96 in 1796.
[www.measuringworth.com/uscompared/relativevalue.php].

It is clear, using either money conversion calculator, that the threat of a $50.00 fine today has less personal deterrence impact than in 1796, but the modification of this constitutional amendment, (Tenn. Const. Art. VI § 14), must come by constitutional amendment. [King, 151 S.W.3d at 434]. As previously noted, the $50.00 fine cap only applies to the judiciary, not administrative hearings. [Barrett v. Tenn. OSHR, 284 S.W.2d 784, 788 (Tenn. 2009)]. Although the Tennessee Supreme Court does not see the prospect happening, they note that a litigant can voluntarily waive the constitutional right to a $50.00 fine cap in a municipal court if the waiver of Art. VI § 14 is done knowingly and voluntarily.[23] [King, 151 S.W.3d at 432-433. See also, City of Johnson City v. Paduch, 224 S.W.3d 686, 694 (Tenn. App. E.S. 2006) and Tenn. Op. Atty. Gen. 10-53, 2010 Tenn. AG Lexis 53 (4/19/2010)].

There is an interesting "twist" to the $50.00 constitutional fine cap – it only applies to ***punishment***, not remedial orders of a municipal court. [King, 151 S.W.3d at 433]. An example of a remedial cost associated with municipal court proceedings is where an ordinance is violated at a city hall, e.g. a noise violation, and windows of the city hall are broken because of the noise generated by the defendant's action. A municipal judge could order both a $50.00 fine for the noise, as well as the expense to clean-up and repair/replace the broken windows without violating Art. VI § 14. [King, 151 S.W.3d at 433 and City of Knoxville v. Brown, 284 S.W.3d 330, 338 (Tenn. App. E.S. 2008)]. "Remedial costs" include **A)** cost of clean-up; **B)** reimbursement of administrative costs, or **C)** reimbursement of the cost of actual loss. Remedial costs may be assessed in amounts in excess of $50.00. [Id]. Again, remember that the $50.00 fine cap does not apply to a municipal court exercising cross-over (concurrent) General Sessions Court jurisdiction. [Town of South Carthage v. Barrett, 840 S.W.2d 895, 899 (Tenn. 1992) and City of White House v. Whitley, 979 S.W.2d 262, 266 (Tenn. 1998). See also, Summers v. Thompson, 764 S.W.2d 182, 184 (Tenn. 1988)]. Municipal judges

[23] For a discussion on "knowing and voluntary waivers of a constitutional right," see Momon v. State, 18 S.W.3d 152, 161-166 (Tenn. 1999).

who are acting as General Sessions Courts must be elected to eight (8) year terms of office pursuant to Art. VI § 4 and Art. I § 8 of the Tennessee Constitution. [Id. and Tenn. Code Ann. § 6-21-501(b)].

A municipal court exercising a municipal codes ordinance jurisdiction may order dilapidated property be cleaned up at the owner's expense if the ordinance allows for reimbursement of clean-up funds expended by the City. [City of Jackson v. Shehata, 2006 Tenn. App. Lexis 509 (Tenn. App. W.S. 7/31/2006) at pages 8-9, noting page 9 fn. 3]. Further, if the ordinance allows, every separate day the property remains an eyesore can amount to be a separate violation of the ordinance. [City of Johnson City v. Paduch, 224 S.W.3d 686, 695 (Tenn. App. E.S. 2006) and Town of Nolensville v. King, 151 S.W.3d 427, 434 (Tenn. 2004)]. The fines a "standard" municipal judge may impose shall not exceed punitive amounts of $50.00 {per fine even if the ordinance provides greater punitive fines}. [City of Clarksville v. Dixon, 2005 Tenn. App. Lexis 803 (Tenn. App. W.S. 12/20/2005) at 13-14].

There are a couple unique sub-jurisdiction issues that should be discussed in this chapter and they will be addressed as bullet points:

Interstates Running Through Municipality. For cities that have an Interstate running through its jurisdiction, (e.g., I-40 touches Pegram, Tennessee), there may be restrictions on city police issuing tickets on any part of the Eisenhower Interstate Highway System, (a/k/a "National System of Interstate and Defense Highways"), pursuant to Tenn. Code Ann. § 55-10-308 and Tenn. Dept. of Safety Rule 1340-3-4-.05(1)(c). The cited Tennessee Department of Safety Rule requires cities of 10,000 residents or less, which touch an Interstate in any manner, to annually seek written permission from the Tennessee Department of Safety to issue traffic citations on the Interstate and if permission is granted; the city must re-apply and re-register each year with the State before the city can begin issuing tickets on "the Interstate." The Interstate or "highway" is the actual road ***or*** any bridge, right-of-way, railroad crossing, touching the Interstate. [23 U.S.C. § 101(a)(11) & (13)]. Basically, Interstate off-ramps to a town are part of the Interstate. The requirement of following standards set by the Tennessee Department of Safety as a condition precedent to a small city issuing speeding tickets on the

Interstate flows from Tenn. Code Ann. § 4-3-2009 and 4-7-112(a), but the chief mandate is constitutionally sound pursuant to Tenn. Code Ann. § 55-10-308. [Tenn. Op. Atty. Gen. 05-107, 2005 Tenn. AG Lexis 109 (7/8/2005)]. The Constitution and Legislature set subject matter jurisdiction for Tennessee courts. [Kane v. Kane, 547 S.W.2d 559, 560 (Tenn. 1977)]. Before a city of less than 10,000 residents can issue traffic tickets on the Interstate, the city must be in "full compliance" with both Tenn. Code Ann. § 55-10-308 and Tenn. Dept. of Safety Rule 1340-3-4-.05(1) to obtain subject matter jurisdiction of Interstate tickets coming before a municipal court. [See generally, Stambaugh v. Price, 532 S.W.2d 929, 932 (Tenn. 1976) and Brandy Hills Estates, LLC v. Reeves, 237 S.W.3d 307, 315 (Tenn. App. M.S. 2006)]. If your city wishes to issue traffic tickets on the Interstate, the city should contact the Tennessee Department Safety and Homeland Security's Nashville office at Ph. (615) 251-5166. Remember, if a court lacks subject matter jurisdiction, any judgment given would be void. [U.S. v. Cotton, 535 U.S. 625, 630 (2002) and Hickman v. State, 153 S.W.3d 16, 24 (Tenn. 2004)]. Likewise, a small town issuing a lot of tickets on the Interstate can cause very bad publicity for a city – even if permission to issue said tickets is granted by the Tennessee Department of Safety. [See e.g., www.wsmv.com/video /18182708/ index. html (12/1/2008)].

Red Light Cameras. Several cities throughout Tennessee have implemented "Red Light Cameras." Red light cameras are a mechanical camera stationed at a city traffic light to automatically film people that enter an intersection after a traffic light turns yellow or red. [See generally, Tenn. Code Ann. §§ 55-8-110 and 55-8-198 and Tenn. Op. Atty. Gen. 10-17, 2010 Tenn. AG Lexis 27 (2/19/2010)]. A photo is automatically taken of any vehicle running a red light at a traffic intersection in Tennessee, electronically transmitted to a separate location, (e.g., Redflex photos are transmitted to Arizona) and some photographs of potential tickets are determined to be violations, and then re-sent to the city of origin to issue a traffic ticket. This odd procedure has been determined to be constitutionally acceptable in Tennessee. [City of Knoxville v. Brown, 284 S.W.3d 330, 338-339 (Tenn. App. E.S. 2008) and City of Knoxville v. Kimsey, 2009 Tenn. App. Lexis 209 (Tenn. App. E.S. 3/13/2009) at 5-6]. Citations given solely based upon Red Light Cameras are a statutorily mandated non-moving traffic violation.

[Tenn. Code Ann. § 55-8-198(a)]. If the fine on the Red Light Camera ticket is paid by a defendant before court, there are no court costs – just the fine. [Tenn. Code Ann. § 55-8-198(b)]. If the Red Light Camera ticket is not paid before court, or is contested at a trial on the merits, court costs may be assessed by the city. [Id]. The ***owner of a vehicle***, not the driver of the vehicle, is the person likely responsible for the ticket. [Brown, 284 S.W.3d at 339]. You need to be aware that Red Light Cameras are very unpopular with both voters, residents ***and*** defendants, prompting one unhappy defendant to take a rifle and shoot out Red Light Cameras in Knoxville. [State v. Clark, 2011 Tenn. Crim. App. 808 (Tenn. Crim. App. 10/24/2011)]. Problems with Red Light Cameras, and the uproar they prompt, convinced one Tennessee municipal court to void $8,000.00 worth of Red Light Camera ticket fines a few years back. [www.thenewspaper.com/22/2269.asp]. If a Red Light Camera case must be tried on the merits, the Confrontation Clause, Tenn. Const. Art. I § 9 and VIth Amendment, U.S. Constitution cause concern. Admissibility issues regarding Red Light Camera evidence are both expensive and problematic for a city prosecuting Red Light Camera tickets. [See, Tenn. Op. Atty. Gen. 10-116, 2010 Tenn. AG Lexis 122 (12/21/2010) at 4-6 and Tenn. Op. Atty. Gen. 08-179, 2008 Tenn. AG Lexis 219 (11/26/2008)]. If a defendant challenges the "chain of custody for evidence" on a Red Light Camera case, it could cost a city a case, or thousands of dollars to bring in witnesses from far-away states to connect the chain of evidence. [See generally, State v. Cannon, 254 S.W.3d 287, 295 (Tenn. 2008)]. Due to the expense, unpopularity and general aggravation of Red Light Cameras, many Tennessee cities are abandoning this procedure/experiment. [See e.g., www.johnsoncitypress.com/Opinion/article.php?id=104078(1/7/2013) and www.fox17.com/newsroom/top_stories/videos/wztv-mt-juliet-shu ts-off-red-light-cameras-erika-lathon-15757.shtml (1/7/2013)]. Even Tennessee Legislators are looking with distain at Red Light Cameras and their application. [See e.g., www.wbir.com/news/local/story.as px?storyid=117372]. Even if cities do not decide how to address Red Light Cameras, the companies that provide the cameras will pull out of their contract with cities if revenues generated by the unpopular Red Light Cameras are not sufficiently high. [Id]. Be ready for some unhappy litigants if you hear Red Light Camera cases.

Media Issues. Tenn. R. Sup. Ct. 30 sets rules for media coverage. At first blush, one might wonder why the media would ever want to set up television cameras, radio or photographic newspaper coverage in a municipal court? Well, sports figures get traffic speeding tickets. [See e.g., www.newschannel5.com/story/12862154/titans-officer-admits-ticket-fixing-before-policy-changes (7/23/2010)]. Politicians get traffic tickets. [See e.g., www.newschannel5.com/story/5418717/titans-find-source-to-intercept-speeding-tickets (2/28/2006)]. Even people who do movies get tickets the public might be interested in following. [www.knoxnews.com/news/2007/may/20/trooper-in-trouble-over-sex-allegation (5/20/2007)].[24] An example of this was when Heisman Trophy winner Johnny Manziel picked up a traffic ticket in a municipal court in Ennis, Texas, a small city about thirty-five (35) miles south of Dallas. [http://sportsillustrated.cnn.com/college-football/news/20130118/johnny-manziel-speeding-ticket/#].

If the media wishes to cover court, a two (2) day notice of said intent is to be given by written request to the trial judge. [Tenn. R. Sup. Ct. 30(A)(2)]. The attorneys in the case are to be notified. [Tenn. R. Sup. Ct. 30(A)(3)]. It is within the trial judge's jurisdictional discretion to maintain control over the hearing, even if that means expelling or denying media access. [Tenn. R. Sup. Ct. 30(D)(1)]. The presumption is in favor of allowing media access to court proceedings, so long as the media does not create a "media circus" by its court coverage. [Tenn. R. Sup. Ct. 30(A)(1); State v. Pike, 978 S.W.2d 904, 916-917 (Tenn. 1998) and King v. Jowers, 12 S.W.3d 410, 411 (Tenn. 1999). See also, State v. James, 902 S.W.2d 911, 914 (Tenn. 1995) for closure rules]. Tenn. R. Sup. Ct. 30 does not apply to "print media" newspapers that do not seek to broadcast or photograph a proceeding. [King v. Jowers, 12 S.W.3d 410, 411 (Tenn. 1999)].

Civil Case Jurisdiction Issues. Tenn. Code Ann. § 16-18-302(d) states:

[24] Public interest gets even greater when a Knoxville police officer allegedly has an on-the-spot, "out of court settlement" of a traffic ticket with a 21-year-old porn star.

> Notwithstanding any law to the contrary, a municipal court may exercise no jurisdiction other than the jurisdiction authorized by this section; provided however, that this section shall not be construed to impair or in any way restrict the authority of a juvenile judge to waive jurisdiction over any cases or class of cases of alleged traffic violations, as authorized pursuant to § 37-1-146…

Basically, this means that unless a state statute, specifically passed by the General Assembly, specifically grants subject matter jurisdiction, (e.g., a statute allowing cross-over General Sessions jurisdiction), a municipal court cannot hear civil cases such as torts, contracts or general collection matters even if a city ordinance specifically allows said authority. [See generally, Memphis Power & Light Co. v. Memphis, 112 S.W.2d 817, 824 (Tenn. 1936) and Ballentine v. Pulaski, 83 Tenn. 633, 645 (1885)]. The General Assembly, not the city, extends jurisdiction for city courts. [See, Kane v. Kane, 547 S.W.2d 559, 560 (Tenn. 1977) and State v. Godsey, 165 S.W.3d 667, 671 (Tenn. Crim. App. 2004)].

Weddings Jurisdiction. A Tennessee Municipal Court Judge may officiate over a wedding in any county in Tennessee. [Tenn. Code Ann. § 36-3-301(k)]. Do not accept pay or a gratuity for this service. [Tenn. Code Ann. § 8-21-101and Tenn. Op. Atty. Gen. 84-286, 1984 Tenn. AG Lexis 57 (10/25/1984)].

Final Thoughts on Jurisdictional Issues. Municipal judges have a very specific, and limited, jurisdiction. Stay within the jurisdictional limits you are assigned. Cities and municipal courts tried prior to the Municipal Court Reform Act to take jurisdiction beyond that legislatively assigned and it hurt the reputation of all municipal courts. Stay within your jurisdictional limits. "A greedy man stirs up dissention." [Holy Bible, Prov. 28:25].

CHAPTER VII – CLASS C MISDEMEANORS & MUNICIPAL ORDINANCES

Standard municipal courts, with a few exceptions mainly geared toward the "Big Four" cities and some "college towns," have a maximum jurisdictional punishment limit of a Class C misdemeanor and $50.00 fine. [Tenn. Code Ann. § 16-18-302(a)(2)]. Unless the municipal judge is popularly elected to an eight (8) year term, the municipal judge cannot impose a term of jail incarceration upon a defendant. [Town of South Carthage v. Barrett, 840 S.W.2d 895, 899 (Tenn. 1992)]. The most common exception to this rule is a city court where the judge is elected to an eight (8) year term and the court has dual jurisdiction of both General Sessions Court and municipal court jurisdiction. [Id. at 899]. An example of this scenario is the Dickson City Court. In Dickson County, Tennessee, the General Sessions Court is in Charlotte, Tennessee, but the biggest city in Dickson County, Tennessee is the City of Dickson, which, by private act, established the Dickson City Court with both General Sessions and municipal jurisdiction. [See, State v. Robinson, 2012 Tenn. Crim. App. Lexis 461 (Tenn. Crim. App. 6/29/2012)]. This text focuses on the traditional municipal judge who generally can fine up to $50.00 plus court costs. [See, City of Chattanooga v. Davis, 54 S.W.3d 248, 259 (Tenn. 2001) and Tenn. Code Ann. § 16-18-302(a)(2)]. The unusual municipal courts that have jurisdiction for some A or B misdemeanors, (e.g., the Knoxville City Court) or hears alcohol issues above C misdemeanors, (e.g., the Martin City Court), or the dual jurisdiction General Sessions/municipal court, (e.g., Davidson County General Sessions), should refer to the Trial and General Sessions Judges Benchbook and/or the AOC for insight into non-Class C misdemeanors. [See generally, Tenn. Code Ann. § 16-18-302(b)].

A municipal court has jurisdiction to enforce laws that "mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, if and only if the state criminal statute…is a Class C misdemeanor…" [Tenn. Code Ann. § 16-18-302(a)(2). See also, Barton & Ashburn, Municipal Courts Manuel (MTAS, 2007) at 12-13]. This chapter will set out a non-exhaustive list of Class C misdemeanors in the order they appear in the

Tennessee Code Annotated along with their basic elements and potential punishments. Following the misdemeanors, some of the more common ordinances will be discussed. This chapter will discuss these statutes in the following order: **A)** Criminal Code C Misdemeanors; **B)** Traffic Code C Misdemeanors and **C)** Common Ordinances. Remember, simply because a statute allows potential jail time does not mean the municipal court judge has the jurisdictional authority to incarcerate. Municipal judges have contempt powers to fine up to $50.00 fines. [Tenn. Code Ann. § 16-18-306].

A) CRIMINAL CODE C MISDEMEANORS

23-3-107: Attorney Improperly Testifies Against Client. It is a Class C misdemeanor for an attorney offering to testify for the State against a client by revealing client confidential communications in criminal proceedings. [$50.00 fine, 30 days in jail].

Elements: A) Attorney has a client or former client in a pending criminal case and the attorney approaches the state to testify against the client; and

B) The information offered would be confidential client communications, such as a confession.

Upon conviction, the attorney is immediately disbarred.

The Trial Court is not to accept testimony from the attorney in this type of circumstance.

36-2-316: Discrimination Against Children Born Out of Wedlock. It is a Class C misdemeanor to withhold any civil benefit from a child simply because that child's parents were not married at the time of the child's birth. [$50.00 fine, 30 days in jail].

Elements: A) Child was born out of wedlock; and

B) A civil benefit is denied the child because the child was born out of wedlock which benefit is afforded children who were born to married parents, (e.g., TennCare Benefits); and

C) The Defendant controls the civil benefit being denied. [25]

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[25] **Be careful how you talk to people, judge. Someday you might want to ask that person for a job! Consider the following Zig Ziglar story:**

"Do You Know Who His Daddy Is?"

Zig Ziglar, tells the story, found in Brian Harbour's book Rising Above the Crowd, of Ben Hooper, Tennessee's 31st Governor (1911-1915). When Ben was born in the foothills of East Tennessee, little girls and boys like Ben, who were born to unwed mothers, were ostracized and treated terribly. Parents of other children would make remarks just loud enough for both mother and child to hear. Comments like, "Did you ever figure out who his daddy is?" What a tough, tough childhood.

But when Ben was twelve years old, a new preacher came to pastor the little church in Ben's town. Almost immediately, Ben started hearing exciting things about him - about how loving and nonjudgmental he was. How he accepted people just as they are. One Sunday, though he had never been to church in his life, little Ben Hooper decided he was going to go and hear the preacher. He got there late and left early so as not to attract any attention, but he liked what he heard. For the first time in his young life, he caught just a glimmer of hope.

Ben was back in church the next Sunday -- and the next and the next. He always got there late and left early, but his hope was building. On about the sixth or seventh Sunday, the message was so moving and exciting that Ben became absolutely enthralled. It was almost as if there were a sign behind the preacher's head that read, "For you, little Ben Hooper, of unknown parentage, there is hope!" He got so wrapped up in the message that he forgot about the time and didn't notice that a number of people had come in after he had taken his seat.

Suddenly, the service was over and Ben quickly stood up to leave, but the aisles were clogged with people and he couldn't run out. As he was working his way through the crowd, he felt a hand on his shoulder. He turned around and looked up, right into the eyes of the young preacher, who asked him the question that had been on the mind of every person there for the last twelve years: "Whose boy are you?"

Instantly, the church grew deathly quiet. Slowly, a smile started to spread across the face of the young preacher until it broke into a huge grin, and he exclaimed, "Oh, I know whose boy you are! Why, the family **resemblance is unmistakable.** You are a child of God!" And with that, the young preacher swatted him across the rear and said, "That's quite an inheritance you've got there, boy! Now go and see that you live up to it."

Many, many years later, Ben Hooper said that was the day he was elected and later re-elected governor of the State of Tennessee. He had gone from being the child of an unknown father to being the **child of the King**. As governor, Ben Hooper was often seen walking the streets of the cities he visited, speaking with and encouraging homeless little boys and girls. Little Ben's life changed because the way he looked at himself changed -- all because a young preacher took the time to tell him who he really was. [See, Ziglar, Over The Top, (Thomas Nelson Pub., Inc., 1997) and http://castroller.com/podcasts/lnspiringWordsOf/2824670].

36-3-112: Signing/Using False Documents. It is a Class C misdemeanor to use fictitious names when applying for a marriage license. It is also a Class C misdemeanor to present a fake parental consent form for a minor applying for a driver's license or learner's permit. [$50.00 fine, 30 days in jail].

Elements (Marriage): A) Defendant knowingly uses a false name when applying for a marriage license pursuant to Tenn. Code Ann. § 36-4-104(a).

Elements (Parental Consent): A) Defendant knowingly applies for a minor to obtain a driver's license or learner's permit by presenting a false parental consent form pursuant to Tenn. Code Ann. § 36-3-106.

36-3-303: Filing Marriage Licenses with Clerk. If an official presides over a wedding, the preacher, judge, county commissioner or whomever united the marrying couple must return the proof of marriage form back to the county clerk's office within three (3) days of performing the marriage. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is an official allowed to perform marriage pursuant to Tenn. Code Ann. § 36-3-301; and

B) Defendant performed a wedding; and

C) Defendant knowingly failed to return the certificate of marriage to the county clerk within three (3) days of the wedding.

Placing the certificate in the U.S. Mail, postage prepaid, addressed to the county court clerk is usually considered a valid return.

38-3-106: Failure to Obey Command to Aid Police. It is a Class C misdemeanor to refuse to aid a police

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Governor Hooper's grandson, Ben W. Hooper, II, is the current Circuit Judge for Cocke County, Tennessee. While "The Little Ben Hooper Story" has been embellished by Ziglar and others over the years, it does give food for thought.

officer calling for aid without good cause. [$50.00 fine, 30 days in jail].

Elements: A) A police officer calls to the Defendant to aid police in attempting to stop a crime; and

B) Defendant knew the person seeking aid was a police officer but the Defendant refused to offer the requested aid; and

C) Defendant did not have good cause to ignore the request for aid.

City police are "officers" for the purposes of this statute. [Cornett v. City of Chattanooga, 56 S.W.2d 742, 743 (Tenn. 1933)].

38-3-107: Neglect of Duty by Police. It is a Class C misdemeanor for a police officer to neglect or refuse to do their duty in preventing crimes. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is a police officer; and

B) Defendant knows, or has notice, of illegal activity within the officer's jurisdiction; and

C) The police officer fails to try to stop the crime.

See generally, State ex rel. Thompson v. Reichman, 188 S.W. 225, 231 (Tenn. 1916).

38-9-105: Ignoring Posted Civil Emergency Regulations. It is a Class C misdemeanor for a person to ignore published regulations implemented by ordinance in times of civil emergency proclaimed by the city mayor or city manager. [$50.00 fine, no jail].

Elements: A) A proclaimed civil emergency exists; and

B) The mayor puts out an ordinance restricting a certain type of action (e.g., entering a tornado hit area prior to firemen/police declaring the area safe); and

C) Defendant knowingly ignores the safety ordinance.

39-13-606: Unlawful Electronic Tracking of a Motor Vehicle. This is an invasion of privacy statute that restricts anyone other than the manufacturer of a vehicle to covertly place a tracking device on another person's motor vehicle in an effort to monitor that third person's movements. [$50.00 fine, 30 days in jail].

Elements: A) Knowingly placing a tracker on a third person's motor vehicle; and

B) Intent to covertly monitor the movements of the driver or occupant of a motor vehicle; and

C) Without the consent of all owners of the vehicle.

39-14-129: Failure to Properly Identify Grower/Packer of Produce. Any person selling fruit, berries or produce must mark on the container the name and address of the grower or packer of said produce. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is selling produce; and

B) Containers holding the produce being sold do not identify the grower or seller; and

C) Crime does not require intent to conceal identity of grower/seller.

39-14-203(d)(2): Spectator at Cock Fight or Animal Fighting (other than dogs). [$50.00 fine, 30 days in jail].

Elements: A) Knowingly attending a cock or animal fight for amusement where the design is for the winning animal to kill or injure another animal; and

B) Animal fight does not include a dog fight, {which is a B misdemeanor}.

39-14-204: Dyed Baby Fowl or Rabbits. It is unlawful to sell or transport dyed fowl, (e.g., chicks, ducks, etc.), of any age or dyed rabbits under the age two (2) months as pets. [$50.00 fine, 30 days in jail].

Elements: A) A fowl or rabbit has been dyed to a color other than their natural color, (e.g., blue or pink); and

B) The fowl or rabbit is being sold or transported as a pet, toy or novelty item; and

C) If the dyed animal is a rabbit, said rabbit under two (2) months old.

39-14-206: Taking Fish Caught by Another. It is illegal to steal the fish caught by another. This includes trout-lines. [$50.00 fine, 30 days in jail].

Elements: A) Knowingly stealing fish caught by another person.

39-14-209: Failure to Disqualify Sored Horses During Horse Show.[26] The ringmaster (a/k/a judge) at a horseshow shall disqualify any horse that has sores, burns or lacerations from apparent abuse of animals. Said ringmaster must turn in the name of the horse's owner to the local District Attorney. [$50.00 fine, 30 days in jail].

Elements: A) Defendant must be ringmaster at a horseshow, or competition; and

B) Horse appears abused from an objective standard; and

[26] I realize that few, if any, municipal judges will ever see this scenario. It is included solely for the consideration of Judge Ewing Sellers of the Murfreesboro City Court. Judge Sellers, the second TMJC president, is a former animal abuse prosecutor for the National Horse Show Commission, Inc. under the federal Horse Protection Act, 15 U.S.C. § 1821 *et seq*.

C) Defendant neglected to take action to disqualify the horse from the show or competition and/or report the apparent abuse.

39-14-210: Interference with Society for the Prevention of Cruelty to Animals. It is a crime to interfere with a known agent of the Society for the Prevention of Cruelty of Animals if said abuse occurs in the presence of the agent from the Society of the Prevention of Cruelty to Animals. [$50.00 fine, 30 days in jail].

Elements:

A) Animal abuse occurs *in the presence* of a known agent of the Society for the Prevention of Cruelty to Animals; and

B) The agent from the Society for the Prevention of Cruelty to Animals attempts to end the *currently existing* animal abuse; and

C) The defendant interfered with the agent of the Society for the Prevention of Cruelty to Animal's attempt to end the animal abuse.

39-14-216(d): Interfering with Service Animals Performing the Animal's Duty. Petting or feeding or playing with a working service animal is a C misdemeanor if it distracts the service animal from doing its job. [$50.00 fine, 30 days in jail].

Elements:

A) Defendant interferes with a known service animal that is performing the animals' duties; and

B) The interference must be actual, but it does not have to be malicious.

39-14-306: Setting Fire Without a Permit. It is illegal to start an open-air fire within 500 feet of a forest, grassland or woodland area without a Tennessee forester's permit between October 15 and May 15 of each year. [$50.00 fine, 30 days in jail].

Elements:

A) Defendant burned an open-air fire within 500 feet of a forest between October 15 and May 15; and

B) The Defendant did not obtain a permit from a Tennessee forester or forestry agent.

39-14-405: Criminal Trespass. A person commits Criminal Trespass if a person enters or remains on property without the consent of the owner knowing they are not allowed on said property. [$50.00 fine, 30 days].

Elements: A) Defendant is on real property that the Defendant knew or reasonably should have known that the Defendant was not welcome to be on.

Statutory Defense *Reasonable belief by the Defendant of consent from the owner to be on the property.*

39-14-407: Trespass with a Motor Vehicle on Commercial Property. This is the classic example of an R.V. parking at the Wal-Mart parking lot and remaining after the driver was told to leave. [$50.00 fine, no jail allowed].

Elements: A) Defendant drives a motorized vehicle onto a commercial parking area or roadway privately owned; and

B) The Defendant is notified to "move on"; and

C) The vehicle driver refuses to leave after notice to leave.

39-14-503. Mitigated Criminal Littering. Mitigated Criminal Littering is littering less than five (5) pounds or 7.5 cubic feet of litter. [$50.00 fine and public service work **Court costs can be waived if the fine is paid before court**].

Elements: A) Intentional dumping of litter on public or private property and defendant does not timely remove the litter; and

B) The litter is under five (5) pounds and/or 7.5 cubic feet.

39-14-602(b)(1): Computer Hacking. It is a Class C misdemeanor to access a third party's computer without permission. [$50.00 fine, 30 days in jail].

Elements: A) Intentionally accessing a third party's computer without permission of the computer's owner.

39-15-408: Dissemination of Smoking Paraphernalia to Minors. It is illegal for stores to sell smoking paraphernalia to a minor or to encourage a minor's smoking by obtaining smoking paraphernalia for a minor. [$50.00 fine, 30 days in jail].

Elements: A) Defendant either gives smoking paraphernalia to a minor or helps the minor obtain smoking paraphernalia; and

B) The Defendant knows, or reasonably should know, the person seeking smoking paraphernalia is a minor.

39-15-410: Dissemination of Smoking Paraphernalia Without Requiring Proof of Age. Any store owner or shopkeeper who sales or disseminates smoking paraphernalia must demand proof of age if the buyer appears to be a minor. [$50.00 fine, 30 days in jail].

Elements: A) Defendant disseminates smoking paraphernalia, (e.g., convenience store); and

B) The purchaser appears to be a minor; and

C) The Defendant did not obtain proof of the purchaser's age.

A minor giving a fake I.D. is subject to juvenile proceedings. [Tenn. Code Ann. § 39-15-410(b)].

39-15-411: Warning Signs Regarding Selling Tobacco to Minors. Store owners must display a sign indicating that the store will not sell tobacco to minors and the store will require proof of age identification. [$50.00 fine, 30 days in jail].

Elements: A) The store sells smoking paraphernalia; and

B) There is not a sign discussing smoking paraphernalia displayed in the store.

39-16-303: Using False Identification. It is a C misdemeanor to use a false I.D. to obtain goods, services or privileges one is not entitled to receive. [$50.00 fine, 30 days in jail].

Elements: A) Defendant used a false I.D.; and

B) To obtain goods, services or privileges; and

C) Defendant was not otherwise entitled to said goods, services or privileges.

39-16-405: Public Official Buying at Court Sale. Judges, sheriffs and court personnel may not bid on items being sold at court sales through the court they serve. [$50.00 fine, no jail].

Elements: A) Judge, sheriff or court personnel of a court bids on items being sold at court sale; and

B) The purchaser serves the court in which the sale is taking place in some official capacity.

39-16-407: Misrepresenting Information to a State Auditor. It is a C misdemeanor for a public servant to lie to a state auditor on a material fact in a state audit. [$50.00 fine, 30 days in jail].

Elements: A) Public official is being audited by a state auditor; and

B) Public official deliberately lied to the state auditor on a material fact relating to the audit.

39-16-610: Radar Jamming Devices. It is a C misdemeanor to knowingly have a radar jamming device operating with the intent to block or interfere with radar speed guns. It is also

illegal to sell or possess radar jamming devices. [$50.00 fine, 30 days in jail].

Elements (Using):

A) Knowingly using a radar jamming device while operating a motor vehicle; and

B) With the intent to scramble or jam or block radar speed guns.

Elements (Sell/Posses):

A) Defendant is possessing or selling a radar jamming device; and

B) Defendant knows the item is a radar jamming device.

39-17-101: Snake Handling.[27] It is a C misdemeanor to handle a poisonous or dangerous snake or reptile in a manner which endangers people. [$50.00 fine, 30 days in jail].

Elements:

A) Knowingly handling a dangerous or poisonous snake or reptile; and

B) People are endangered by the handling.

39-17-102: Dumping Raw Sewage. It is illegal to dump raw sewage on either public or private property. Each new day of dumping is a new violation. [$50.00 fine, 30 day in jail ***per day***].

Elements:

A) Defendant knowingly dumps raw sewage on public or private property.

39-17-105: Public Fees for Public Toilets. No pay toilets allowed in public facilitates. Each separate pay toilet stall in a public business is a separate offense. [$50.00 fine, 30 days in jail].

Elements:

A) Public facility with toilets open to public; and

[27] See, http://www.tennessean.com/viewart/20130213/NEWS01/130213006/ for a recent story of a Kentucky preacher who was transporting venomous snakes from Alabama to Kentucky.

B) Fees to use the public toilets are charged.

39-17-110. Signs attached to Interstate Fences or Boarders. It is a C misdemeanor to attach a sign to a fence or boarder built or owned by a governmental entity which sits next to an interstate highway, (e.g. guardrails). [$50.00 fine, 30 days in jail].

Elements: A) Fence or guardrail bordering on an interstate highway; and

B) Built or owned by a governmental entity; and

C) Defendant attached a sign of any sort to the fence or guardrail.

39-17-112(b): Person Using False Academic Degree. Knowingly using a fake degree or claiming to have an academic degree one does not possess to get employment, promotion in employment or to get into college is a C misdemeanor. [$50.00 fine, 30 days in jail].

Elements: A) Defendant knew his academic degree was false; and

B) Defendant using said fake degree to obtain employment, promotion or to get into college ***or***

C) Defendant claiming to have a degree for the purposes set out in "B" above.

39-17-305: Disorderly Conduct. It is a C misdemeanor for a person in a public place, with the intent to cause public annoyance or alarm to fight, disobey an order from police to disperse at a time of emergency, or make unreasonable noise. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is in a public place; and

B) Knowingly causes public annoyance or alarm; and

C) Either fights, refuses to disperse during emergency or makes unreasonable noise.

39-17-307: Obstructing Highway or Street or Other Passageway. It is a C misdemeanor to make a public road or passageway impassable or to fail to yield to an emergency vehicle when directed to yield. [$50.00 fine, 30 days in jail].

Elements: A) Blocking a public road, thoroughfare or other public passageway or

B) Failing to yield to an emergency vehicle when on notice of an emergency.

39-17-310: Public Intoxication. It is a C misdemeanor for a person to be in a public place under the influence of alcohol or a controlled substance and said intoxication is either a danger to the person intoxicated, a danger to third parties or the defendant is unreasonably annoying to others in the vicinity. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is in a public place either drunk or high; and

B) The Defendant is a danger to himself or others or is unreasonably annoying to those in his vicinity.

39-17-421: Pharmacists Substituting Prescriptions. Pharmacists are not allowed to deviate from prescriptions or substitute generic drugs for an ordered prescription without the doctor's permission. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is a pharmacist or pharmacy tech; and

B) Substitutes the prescription drug for another drug without permission from the doctor who wrote the prescription.

39-17-437: Sale of Synthetic Urine. It is illegal to sell synthetic urine as a means of beating a drug urine screen. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is selling synthetic urine, and

B) Urine is not being used for scientific, academic or medical use.

39-17-502: Gambling. It is illegal to gamble. [$50.00 fine, 30 days in jail].

Elements: A) Defendant knowingly engaged in gambling (e.g., casinos).

It is a defense for the Defendant to reasonably believe the gambling is part of a lawful charity event.

The Tennessee State Lottery is not gambling. [Tenn. Code Ann. § 39-17-501(1)(C)].

39-17-506(c)(1): Lotteries, Chain Letters & Pyramid Clubs. It is illegal to participate in a lottery, chain letter or pyramid club. If the aggregate amount of money involved is $50.00 or less, it is a C misdemeanor. [$50.00 fine, no jail].

Elements: A) Knowing participation or creation of a lottery, chain letter or pyramid club; and

B) Total amount of money involved does not exceed $50.00.

The Tennessee State Lottery is not an illegal lottery. [Tenn. Code Ann. § 39-17-506(a)].

39-17-507: Customer Credit Sellers' Referral Kick-Backs. Consumer sellers or consumer credits sellers cannot give a kick-back for prospective customers if the rebate is contingent upon the new customers buying the seller's product or service. [$50.00 fine, 30 days in jail].

Elements: A) Consumer seller, consumer credit seller, or consumer lessor offering rebates if new customers are provided, and

B) Rebate is contingent on new customer actually purchasing the product or service.

39-17-605: Displaying Lottery Certificate. Retailers selling state lottery tickets must display proof that the

retailer is a certified lottery ticket distributer. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is a retailer selling Tennessee State Lottery tickets; and

B) Defendant failed to display a certificate of authorization to sell lottery tickets.

39-17-606: Displaying Sign for "No Minors" on Lottery Ticket Sales. It is a C misdemeanor for Lottery Ticket retailers not to prominently display a 17" by 22" sign denying lottery ticket sales to minors.

Elements: A) Defendant is a retail distributor of lottery tickets; and

B) Defendant does not have a 17" by 22" sign declaring no lottery tickets to be sold to minors.

39-17-651: Selling Annual Charity Raffle Tickets Beyond 28 Days Prior to Event. It is a C misdemeanor to sell annual charity raffle tickets for more than 28 days prior to event as discussed in Tenn. Code Ann. § 3-17-103(d)(1)(A). [$1,000.00 fine, 30 days in jail].

Elements: A) There is an allowed 501(c)(3) charity raffle event scheduled; and

B) The date of the event is scheduled for a date certain; and

C) Ticket sales for the event begin 29 days or earlier from the date the event is scheduled.

The statutory fine is up to $1,000.00 and each day beyond 28 days for ticket sales is a separate offense.

39-17-653: Conducting Charity Event in Unauthorized Location from Stated Location. It is a C misdemeanor for a 501(c)(3) charity event to be conducted at a place other than the location listed in the 501(c)(3)'s annual event

application under Tenn. Code Ann. § 3-17-104(a)(16). [$10,000.00 fine, 30 days in jail].

Elements: A) There is an allowed 501(c)(3) event scheduled for a specific location; and

B) The event is held at an unauthorized location instead of the location listed on the Tenn. Code Ann. § 3-17-104(a)(16) application.

39-17-655(a)(2): Untimely Raffle Accounting Filing. The failure to file an accounting of proceeds from a 501(c)(3) charity fundraiser annual event within 90 days of the event completing. [$50.00 fine, 30 days in jail].

Elements: A) Approved 501(c)(3) annual fundraiser event completes; and

B) An accounting of proceeds from the annual event isn't filed with the Tennessee Secretary of State within 90 days of the event's completion.

39-17-715: Alcohol on a School Ground. It is a Class C misdemeanor to have alcohol on a school property if the school has any grades from K-12. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is on any part of a K-12 school property; and

B) Defendant consumes or possesses alcohol designed for consumption.

39-17-914: Publicly Displaying Pornographic Materials for Sale or Rent in Store without Protection from the View of Minors. Any retailer or lessor who has videos, magazines or other items of pornographic material must take steps to protect these items from being viewed, unobstructed, by minors. [$50.00 fine, 30 days in jail].

Elements: A) Retailer or Renter sales or rents pornographic material, (e.g., Playboy Magazine or pornographic videotapes); and

B) The retailer or lessor did not take steps to obscure the view and access of said materials from minors.

This is one of the most complicated C misdemeanors in the Tennessee Code Annotated. If you have a case on this point, study the statute carefully for technical details and the State's burden of proof.

39-17-1102: Unregulated Prize Fighting. It is a Class C misdemeanor to conduct a boxing prize fight which is not regulated by the Tennessee Athletic Commission pursuant to Tenn. Code Ann. § 68-115-201 et seq. [$50.00 fine, 30 days in jail].

Elements: A) Professional prize fighting or boxing, kickboxing or "Tough Man" type fight; and

B) The bout is not sanctioned by the Tennessee Athletic Commission pursuant to Tenn. Code Ann. § 68-15-201 et seq.; and

C) The defendant is the promoter of the bout.

39-17-1307(a)(1): Unlawful Carrying of Deadly Weapon. It is a Class C misdemeanor for a person to carry a gun, club or knife with a 4" or greater blade with the intent to go armed. This crime is often called "UCDW." **[$500.00** fine, 30 days in jail].

Elements: A) Person carries a gun, club or knife over 4 inches long with the intent to be armed with a weapon.

39-17-1350(f)(6)(B): Surrendering Ex-Correction Officer's Gun Permit. If an ex-TDOC Correction Officer is told to turn in their gun carry identification permit issued to corrections officers, said permit must be returned within ten (10) days or it is a Class C misdemeanor. [$50.00 fine, no jail].

Elements: A) Defendant is an ex-TDOC Corrections *Officer;* and

B) TDOC notifies the Defendant to return their TDOC gun carry permit within ten (10) days; and

C) The permit is not timely returned.

This only applies to TDOC gun permits, not to regularly obtained gun permits which may be held by ex-TDOC Corrections Officers.

39-17-1510: Violation of Prevention of Youth Access to Tobacco Act. Providing Minors with tobacco products is a Class C misdemeanor. [$50.00 fine, 30 days in jail].

Elements: A) Retailer or individual knowingly provides tobacco product to minors.

39-17-1702(c): Parental Liability for Curfew Violating Minor. It is a Class C misdemeanor for a parent to knowingly or negligently allow a minor to violate curfew. [$50.00 fine, no jail].

Elements: A) Parent of a minor who is violating curfew as set out in Tenn. Code Ann. § 39-17-1702(a) or (b); and

B) The parent knew or should have known of the curfew violation by the child.

See the statute to see what constitutes a curfew violation. The definition will vary by age of the minor and day of the week.

44-17-103: Sale of Dogs/Cats to Scientific Research Facility. It is a Class C misdemeanor for any person, other than a licensed dealer of research animals, to sell or attempt to sell, or transport dogs or cats to any research facility. [$50.00 fine, 30 days in jail].

Elements: A) Defendant sold, or attempted to sell, or transported dogs and/or cats to a research facility; and

B) Defendant does not have valid dealer's license from the Tennessee Department of Agriculture to sell/transport dogs and/or cats to research facilities.

57-3-304: Possession of Untaxed Alcoholic Beverage. It is a Class C misdemeanor to have in one's possession untaxed drinking alcohol (a/k/a Bootlegged Liquor). [$50.00 fine, 30 days in jail].

Elements: A) Defendant is in possession of drinking alcohol which does not have proof of state/federal taxes being paid.

A presumption exists that if a person has over five (5) gallons of alcohol, that person must prove the alcohol was properly taxed.

57-5-301(b)(1): Selling Alcoholic Beverages During Restricted Hours. This statute restricts the hours a store or bar may sell alcoholic beverages. [$50.00 fine, 30 days in jail].

See the statute for the hours and days of restriction, which vary.

69-1-107: Improper Obstructing of River. It is a Class C misdemeanor for a person to intentionally obstruct a river or stream unless specifically authorized by law to make said obstruction. [$50.00 fine, 30 days in jail, plus a possible civil penalty of **$250.00**].

Elements: A) Defendant obstructs a river or stream; and

B) Defendant does not have authorization to obstruct the river or stream.

69-9-225: Life Jackets for Children. It is a Class C misdemeanor to have a child aged twelve (12) years old or younger, in an open boat on the water without the child ***wearing*** a life jacket. [$50.00 fine, no jail].

Elements: A) Defendant was operating an open private boat on a lake, river or stream in Tennessee; and

B) The boat had a child aged twelve (12) years old or less in the boat not wearing a life jacket.

The life jacket must be worn by the child, not simply available in the boat.

69-9-226: Boater Safety Class Requirement. Any person born after January 1, 1989 must have proof that they have completed a boater's safety course approved by the Tennessee Wildlife Resources Agency ("TWRA") to operate a boat on Tennessee's lakes, rivers and streams. [$50.00 fine, no jail. Court can make violator retake boater safety class].

Elements: A) Defendant is operating a boat on Tennessee waterways; and

B) Defendant was born after January 1, 1989; and

C) Defendant does not have proof of completing a boater's safety class.

70-2-102: Hunting/Fishing License Required. It is a Class C misdemeanor to hunt or fish in Tennessee without a valid and current hunting/fishing license. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was hunting or fishing in Tennessee; and

B) Defendant does not have a current and valid Tennessee hunting/fishing license.

70-4-108: Hunting Across the Road or Near Houses. It is a Class C misdemeanor to shoot a rifle while hunting across a public road or near a residential house without the home owner's permission to hunt near the home. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was hunting wild game and shot across a public road or near a residential home.

70-4-109: Hunting from Vehicles. It is a Class C misdemeanor to hunt wild game from aircrafts, helicopters, watercrafts or motor vehicles. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was hunting wild game from an aircraft, watercraft or motor vehicle.

This statute does not apply to people confined to motorized wheelchairs.

70-4-116: Possessing Untagged Wild Game. It is Class C misdemeanor for any person to be in possession of wild game that has not been tagged after a hunter killed the animal in Tennessee. [$50.00 fine, 30 days in jail].

Elements: A) Defendant has freshly killed wild game that has not been tagged by the Tennessee Wildlife Resource Agency; and

B) The prosecution proves the game was killed in Tennessee.

70-4-123: Hunting with a Bow While Possessing a Firearm. It is a Class C misdemeanor for a person who is bow-hunting during the "archery only" deer season to have a firearm (most likely a rifle) on their person. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is bow-hunting during the "archery only" deer season; and

B) Defendant has a firearm on his/her person or a firearm is being carried by someone accompanying Defendant.

A hunter who has a handgun carry permit may have a pistol on their person while bow-hunting and not violate this statute.

70-4-124: Hunter Must Wear Orange. All hunters, except those hunting turkey, shall wear fluorescent orange on the upper portion of the body during the daytime. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is hunting anything except turkey; and

B) It is during the day; and

C) Defendant was not wearing fluorescent orange on the upper portion of the hunter's body.

70-4-208: Unlawful Importation of Skunks.[28] It is unlawful to import live skunks for sell except for parties authorized to import skunks for zoological parks and research institutions. A violation of this statute is a Class C misdemeanor. [$50.00 fine, 30 days in jail].

Elements: A) Defendant imports skunks for sale (e.g., the Looney Tunes character Pepe LePew from France); and

B) Defendant is not acting on behalf of a zoo or a research institution while importing skunks.

70-4-302: Preventing Another from Hunting. It is a Class C misdemeanor to deliberately interfere with a person who is lawfully hunting with the intent to prevent an animal from being killed. [$50.00 fine, 30 days in jail].

Elements: A) Defendant intentionally attempts to circumvent a hunter from lawfully hunting in an effort to prevent an animal being killed.

This "Harassment of Hunters" statute appears designed for curbing militant animal rights activist groups.

71-1-118: Using Welfare Lists. It is a Class C misdemeanor to use welfare lists for commercial or political purposes. [$50.00 fine, 30 days in jail].

Elements: A) Defendant used a welfare list for political or commercial gain.

71-2-213: Charging Applications for Financial Assistance. It is a Class C misdemeanor to charge elderly people over age sixty-five (65) for seeking state financial assistance under welfare rules. [$50.00 fine, 30 days in jail].

[28] While importing skunks does not appear to be a major municipal court issue, some statutes are just too much fun to skip.

71-2-307: Charging Applicants for Medical Assistance. It is a Class C misdemeanor to charge a person for making application for medical assistance under welfare rules. [$50.00 fine, 30 days in jail].

71-3-118: Charging Applicants for Financial Assistance for Dependent Children. It is a Class C misdemeanor to charge a person for making application for financial assistance for dependent children under welfare rules. [$50.00 fine, 30 days in jail].

71-4-114: Charging Applicants for Financial Assistance to the Needy Blind. It is a Class C misdemeanor to charge a person for making application for financial assistance for the needy blind under welfare rules. [$50.00 fine, 30 days in jail].

71-4-1114: Charging Applicants for Welfare Relief Applications. It is a Class C misdemeanor to charge a person for making application for any welfare relief under welfare rules. [$50.00 fine, 30 days in jail].

B) TRAFFIC CODE C MISDEMEANORS

37-1-146(c): Juvenile Traffic Offenders. This statute allows a municipal court to hear juvenile traffic tickets for drivers from ages 16-18 on the terms and conditions set out by the Juvenile Court of the local county if the Juvenile Court waives jurisdiction in favor of the municipal court hearing these cases.

54-3-108(b): Failing to Pay Toll. The failure of a driver to pay a toll at a toll-booth is a Class C misdemeanor. [$50.00 fine, no jail].

Elements: A) Defendant drives on a tollway; and

B) Defendant ignores a toll-booth payment station.

55-3-102: Driving Unregistered Vehicle. It is a Class C misdemeanor to drive an unregistered vehicle. [$50.00 fine, 30 days in jail].

Elements: A) Defendant driving vehicle on any Tennessee highway; and

B) Vehicle is not registered.

55-3-127: Various Vehicle Title Class C Misdemeanors. This statute lists various Class C misdemeanors involving auto title transfers. [$50.00 fine, 30 days in jail]. *****See the statute for details.***** It is important to note that for definition purposes, a "highway" usually means improved roads designed to allow motorized vehicles to drive upon it. [See, Tenn. Code Ann. § 55-8-101(24) and (54)].

55-4-131: Change of Address Violation. If a person changes address from what is listed on a vehicle registration, the vehicle owner has ten (10) days to notify the Department of Safety of the change of address. [$50.00 fine, 30 days in jail].

Elements: A) Defendant has a registered vehicle; and

B) Defendant changes address; and

C) Defendant fails to notify the Department of Safety of the address change within ten (10) days of moving.

55-5-102: Notifying State of Car Theft. It is a Class C misdemeanor for the owner or lienholder of a stolen motorized vehicle not to notify the Tennessee Highway Patrol of the vehicle's theft within ten (10) days of said theft. [$50.00 fine, 30 days in jail].

Elements: A) Defendant owns a motor vehicle or has a lien on a motor vehicle that is stolen; and

B) Defendant does not notify the Tennessee Highway Patrol of the vehicle's theft within ten (10) days of said theft.

55-5-105: Chauffeur Using Vehicle Without Owner's Consent. It is a Class C misdemeanor for a chauffeur to use the owner's vehicle for non-work purposes without the owner's permission. [$50.00 fine, 30 days in jail].

Elements:

A) Defendant works as a chauffeur, (or hired driver of a work vehicle), and drives a vehicle owned by a third party; and

B) Defendant uses the work vehicle for non-work purposes without the owner's consent.

"Chauffeur" was the pre-CDL term for commercial driver.

55-5-108: Records on Pulled Vehicle Parts. It is a Class C misdemeanor for any business buying or selling used vehicle parts, commonly referred to as "pulled parts", to not keep records of where the part came from and the name/address of the person from whom the pulled part was obtained for a period of three (3) years for police inspection. [$50.00 fine, 30 days in jail].

Elements:

A) Defendant buys or sells pulled parts from motor vehicles; and

B) Defendant willfully does not keep records of where the pulled parts were obtained and the name/address of the party from whom the pulled part was obtained; and

C) The pulled part is being investigated by law enforcement officials within three (3) years of the pulled part being obtained.

55-5-109: Selling Vehicles or Pulled Parts without VIN Numbers. It is a Class C misdemeanor for any party selling used motor vehicles or used parts commonly known as "pulled parts" (vehicle engines or transmissions), that do not include vehicle identification numbers, (commonly called "Vin Numbers"). [$50.00 fine, 30 days in jail].

Elements:

A) Defendant sells used motor vehicles or pulled parts vehicle engines or transmissions; and

B) The used motor vehicle or pulled parts engine or transmission does not have a readable VIN number.

55-5-113: Making False Statement on Vehicle Registration. It is a Class C misdemeanor to register a motor vehicle using false information, (e.g., registering the vehicle under a false name). [$50.00 fine, 30 days in jail].

Elements: A) Defendant knowingly used false information or a fictitious name while registering a motor vehicle.

55-5-115: Incorrect Registration or Plates. It is a C misdemeanor to knowingly use or display vehicle registrations or license plates issued to another vehicle. [$50.00 fine, 30 days in jail].

Elements: A) Defendant knowingly uses license plates or registration issued to another vehicle.

55-5-122/55-5-123: Moving a vehicle on Private Property. It is a Class C misdemeanor to move a motor vehicle from private property if the owner of the vehicle has a interest in the private property without either a court order {including a municipal court} or the consent of the vehicles' owner. [$50.00 fine, 30 days in jail].

Elements: A) Vehicle is on private property that is owned or leased by the vehicle's owner; and

B) Defendant moves, or causes to have the vehicle moved, without a court order or the vehicle owner's consent.

55-5-126: Using Stolen Vehicle Plates. It is a Class C misdemeanor to knowingly attach stolen vehicle license plates to a motor vehicle. [$50.00 fine, 30 days in jail].

Elements: A) Defendant knowingly uses or displays stolen license plates on a motor vehicle.

55-7-107/55-7-108: Log Truck Timber Hauling. It is a Class C misdemeanor for an owner or operator of a log truck hauling logs not to follow the mandates of Tenn. Code Ann. § 55-7-107 when securing logs for transport. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is the owner or supervisor of a log truck; and

B) Logs on the log truck were not secured as mandated in Tenn. Code Ann. § 55-7-107.

See 55-7-107 for requirements. There are differing requirements depending upon the size of the logs being hauled.

55-7-109: Loose Materials in Truck Bed. It is a Class C misdemeanor to have loose materials in the open bed of a truck. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is driving an open-bed truck on a Tennessee public road; and

B) Items are being hauled in the bed of the truck unsecured.

55-7-206: Commercial Truck or Vehicle Weight/ Size Violations. Tenn. Code Ann. § 55-7-206 sets out various "fine only" C misdemeanors for differing technical violations on commercial vehicle sizes and weights. ***Cavert: Some fines are mandated above $50.00. [See e.g., Tenn. Code Ann. § 55-7-206(e)].***

55-8-103: Obey Traffic Laws Catch-All Penalty. It is a Class C misdemeanor to fail to obey traffic laws if driving in Tennessee. Unless otherwise designated, a violation of the "Rules of the Road" {Tenn. Code Ann. Title 55, Chapter 8 and Tenn. Code Ann. Title 55, Chapter 10} is a Class C misdemeanor. [$50.00 fine, 30 days in jail]. Since most of the Rules of the Road are straight forward, this chapter will focus on statutes which specify Class C misdemeanors. The "default to a C misdemeanor" Rules of the Road will not be set out.

55-8-104: Failing to Obey Traffic Police. No person shall willfully refuse to obey a police officer who is directing traffic. [$50.00 fine, 30 days in jail].

Elements: A) Police officer is directing traffic; and

B) Defendant refuses to obey officer's traffic directions.

55-8-109: Failure to Obey Traffic Control Devise. It is a C misdemeanor to ignore a traffic control devise unless specifically directed to do so by a law enforcement officer directing traffic. [$50.00 fine, 30 days in jail].

Elements: A) Traffic control devise present giving traffic instruction; and

B) Defendant disregards traffic control devise; and

C) A law enforcement officer was not directing traffic and instructed the Defendant to disregard the traffic control devise.

55-8-113: Displaying Bogus Traffic Control Devise. It is a Class C misdemeanor for a person to place an unauthorized traffic control device on a Tennessee highway. [$50.00 fine, 30 days in jail].

Elements: A) Defendant placed a traffic control devise on a Tennessee highway without authorization to place said traffic control devise on a highway.

55-8-114: Interference with Official Traffic Control Devise. It is a Class C misdemeanor for a person, who without authorization, alters, defaces, knocks down or removes a traffic control devise. [$50.00 fine, 30 days in jail].

Elements: A) Defendant altered, defaced or removed a traffic control devise; and

B) Defendant was not authorized to alter, remove or deface said traffic control devise.

55-8-124: Following Too Closely. No motor vehicle should follow another vehicle so closely that it makes the road unsafe for others. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was "tailgating" another car in an unsafe manner.

55-8-126: Restricted Access. It is a Class C misdemeanor to enter a controlled access road without permission or in a manner violating rules set forth by a public traffic authority. [$50.00 fine, 30 days in jail].

Elements: A) Defendant entered a controlled access road without authorization or at an unauthorized place in the road.

55-8-136: Due Care. Every driver must exercise due care when driving and to do otherwise is a class C misdemeanor. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was driving in a reckless or unsafe manner.

55-8-138: Pedestrians on Roadways. It is a class C misdemeanor to walk on a road when a sidewalk is available. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is walking on a road when a sidewalk is available.

55-8-139: Hitch-hiking. It is a Class C misdemeanor to stand next to a road soliciting a ride from passing motorists. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was hitchhiking.

55-8-141: U-Turns on Curves or Hillcrests. It is a Class C misdemeanor to do a u-turn on a blind curve or blind hillcrest. [$50.00 fine, 30 days in jail].

Elements: A) Defendant did a u-turn on a hill or curve which cannot be seen for 500 feet to on-coming traffic.

55-8-145: Railroad Crossing Signs/Barriers. It is a Class C misdemeanor for a person to ignore flashing railroad crossing signs and/or barriers. [$50.00 fine, 30 days in jail].

Elements: A) Defendant does not stop when a railroad crossing sign is flashing or a crossing barrier is down or coming down.

55-8-146: Stop Signs at Railroad Crossings. It is a Class C misdemeanor for a driver to ignore stop signs at railroad crossings. [$50.00 fine, 30 days in jail].

Elements: A) Defendant comes to a railroad crossing that has a stop sign and does not stop.

55-8-149: Stop Signs. It is a Class C misdemeanor not to stop at a stop sign. [$50.00 fine, 30 days in jail].

Elements: A) Defendant fails to come to a complete stop at a stop sign.

55-8-151: School Buses/Youth Buses. It is a Class C misdemeanor not to stop when a school or youth bus is taking on or letting off passengers. [$50.00 fine, 3 days in jail].

Elements: A) Defendant fails to stop when a school or youth bus is taking on or letting off children.

55-8-152: Speeding. It is a Class C misdemeanor to drive over the posted speed limit. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is driving above a posted speed.

55-8-154: Minimum Speeds. It is a Class C misdemeanor to drive so slowly as to impede the normal flow of traffic. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is driving so slow that it impedes and/or endangers traffic.

55-8-155: Speed Limits on Motor Driven Cycles. It is a Class C misdemeanor to drive a motor driven cycle (a/k/a scooter) over 35 miles per hour if the motor driven cycle does not have a headlight. [$50.00 fine, 30 days in jail].

Elements: A) The motor driven cycle does not have a headlight which allows others to be seen at 300 feet or greater; and

B) The motor driven cycle is proceeding at over 35 miles per hour.

55-8-164: Various Motorcycle Safety Rules. Tenn. Code Ann. § 55-8-164 sets out various Class C misdemeanors relating to motorcycle safety, passengers and carrying items on motorcycles. It does not address helmets. [$50.00 fine, 30 days in jail].

See statute for details.

55-8-165: Overloaded Front Seat. It is a Class C misdemeanor to have so many people or items in the front seat of a motor vehicle that the driver's field of vision is impaired or it interferes with the driver's control over the vehicle. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is driving a motor vehicle; and

B) The front seat is loaded with people or items to the point that the driver's field of vision to the front and/or sides is impaired or the driver cannot properly control the vehicle.

*** There is a statutory presumption that having five (5) or more people in the front seat violates this statute.***

55-8-167: Coasting. It is a Class C misdemeanor to put a motor vehicle in neutral to allow coasting down large hills. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was coasting with the vehicle in neutral down a large hill.

55-8-168: Following Fire Trucks. It is a Class C misdemeanor to follow fire trucks responding to a fire or other emergency within 500 feet of the fire truck or to park within a block of a fire truck responding to a fire. [$50.00 fine, 30 days in jail].

Elements: A) Fire truck is on an official call responding to a fire or other emergency with emergency lights and siren engaged; and

B) Defendant is following the fire truck to the fire, or following too closely (within 500 feet) or parking within one city block of the fire truck responding to an emergency or fire.

55-8-169: Driving Over Fire Hose. It is a Class C misdemeanor to drive a motor vehicle over an unprotected fire hose being used to respond to a fire without permission of the fire department. [$50.00 fine, 30 days in jail].

Elements: A) A fire hose is on the ground responding to a fire; and

B) Defendant drives over the fire hose without permission from the fire department.

55-8-170: Putting Glass, Nails, etc. on any Highway. It is a Class C misdemeanor for any person to put glass, nails or other sharp objects on a highway which could injure motorists or animals. [$50.00 fine, 30 days in jail].

Elements: A) Defendant knowingly threw or deposited sharp objects on a Tennessee highway; and

B) The objects put on the highway are ***likely*** to injure motorists or animals, if left on the highway.

*****The burden of proof includes an element that the contraband would likely cause harm.*****

55-8-171: Parents Controlling Children Riding Bicycles. It is a Class C misdemeanor for a parent to knowingly allow their child to ride a bicycle recklessly. [$50.00 fine, 30 days in jail]. *****Statute lists various bicycle violations.*****

55-8-172: Rules of the Road Apply to Bicyclists. It is a Class C misdemeanor for a bicyclist to violate any part of Title 55, chapters 8 or 10. {E.g., a bicyclist can be guilty of speeding}. [$50.00 fine, 30 days in jail].

55-8-173: Riding Bicycles Safely. It is a Class C misdemeanor to ride a bicycle in an unsafe manner. [$50.00 fine, 30 days in jail]. *****Statute lists violations.*****

55-8-174: Clinging to Vehicles. It is a Class C misdemeanor for a person to cling to a motorized vehicle in a manner to be towed by the vehicle (E.g., Michael J. Fox clinging to cars to tow him on a skateboard in the movie "Back to the Future"). [$50.00 fine, 30 days in jail].

Elements:

A) Defendant is on a bicycle, skateboard, roller skates, etc; and

B) Defendant is attached to a motorized vehicle in a manner where the vehicle tows the Defendant like a boat tows a water skier.

In an interesting note, this statute does not provide any possible penalty for the driver of the vehicle if the driver intentionally towed the Defendant.

55-8-175: Bicycles on Roadways. It is a Class C misdemeanor for bicyclists not to stay as far to the right side of the road as possible and bicyclists must ride no more than two (2) people abreast. [$50.00 fine, 30 days in jail].

Elements:

A) Defendant was riding a bicycle on a public road; and

B) Defendant was either not riding on the far right hand side of the road with the flow of traffic or was riding three (3) or more people abreast; and

C) If the bicyclists are on a laned road, the bicyclist was not in a single file line.

55-8-176: Carrying Articles on Bicycle. It is a Class C misdemeanor to carry an item on a bicycle which does not allow the bicyclist to keep at least one (1) hand on the handle bars. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was riding a bicycle carrying an object; and

B) Defendant could not keep at least one hand on the bicycle's handle bars.

The Defendant must have the ability to put a hand on the handle bars. Simply electing not to hold the handle bar is not a violation of this statute.

55-8-177: Bicycle Lights and Brakes. It is a Class C misdemeanor to ride a bicycle at night if the bicycle does not have a white beamed headlight on it and reflectors or a red light on the back. It is also a violation of this statute to ride a bicycle at any time without the bicycle having brakes. [$50.00 fine, 30 days in jail].

Elements (light): A) Defendant was riding a bicycle at night and the bicycle did not have lights and/or rear reflectors; and

Elements (brakes): A) Defendant was riding a bicycle the Defendant knew did not have brakes.

55-8-178: Passing Horse & Buggy. It is a Class C misdemeanor to try and "spook" an animal pulling a non-motorized vehicle on the road when passing said non-motorized vehicle. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is in a motorized vehicle passing a non-motorized vehicle pulled by horses/mules on a public road; and

B) The Defendant intentionally or carelessly did an act to "spook" the animal pulling the non-motorized vehicle while passing said vehicle.

55-8-179: Pretending to be Blind or Deaf. It is a Class C misdemeanor to be on a public street with a white or red

tipped "blind person's walking stick" or with a dog leashed to a blaze orange leash unless the person with the walking stick or blaze orange leash is either partially or totally blind or deaf. [$50.00 fine, 30 days in jail].

Elements:

A) Defendant has a "blind person's walking stick" or is using a blaze orange leash to walk a dog on a public road; and

B) Defendant is not partially or totally blind or deaf.

55-8-180: Blind/Deaf Right of Way. Motorists shall come to a complete stop and give the right of way to a blind or deaf person with either a guide dog or "blind person's walking stick" who is crossing a public road. [$50.00 fine, 30 days in jail].

Elements:

A) Defendant is a motorist who knew, or should have known, that a blind or deaf person was attempting to cross a public road using either a "blind person's walking stick" or a guide dog; and

B) Defendant failed to come to a complete stop and/or failed to give the blind or deaf person the right of way to complete crossing the public street.

55-8-183: Funerals. It is a Class C misdemeanor to knowingly fail to yield the right of way to a properly identified funeral procession. [$50.00 fine, no jail].

Elements:

A) Defendant knew or should have known that a properly identified funeral procession was driving on a public road; and

B) Defendant did not stop and yield to let the funeral procession pass.

It is a defense to this statute if a law enforcement officer directed the motorist to proceed. [Tenn. Code Ann. § 55-8-183(c)(1)]. It is also a defense to this statute if the funeral procession is not "properly identified." [Tenn. Code Ann. § 55-8-183(c)(3)].

55-8-184: Stealing Traffic Signs. It is a Class C misdemeanor for a private individual to possess a traffic sign marked as belonging to a state or local government. [$50.00 fine, 30 days in jail].

Elements: A) Defendant possesses a traffic sign; and

B) The ***prosecution must prove the sign the Defendant possesses belongs to the entity the prosecution represents*** and the Defendant does not have permission or authority to possess the traffic sign.

55-8-185: Use of Off-Road Vehicles on Highway. Unless an area is specifically listed as allowing off-road vehicles to travel on public roads, it is a Class C misdemeanor to drive an off-road vehicle on a public road. [$50.00 fine, no jail].

Elements: A) Defendant was driving an off-road vehicle on a public road; and

B) The ***prosecution*** proves the Defendant did not fall into an exception of when/how/where an off-road vehicle can be on a public road.

*****The statute sets out a list of various exceptions, but does not designate them as defenses to prosecution, so proving an exception does not exist is part of the prosecution's burden of proof.** [See, Raybin, 10 Tenn. Practice (Crim.) § 26.43 at page 289 (West, 1985)].*****

55-8-188: HOV Lanes. It is a Class C misdemeanor to drive in a HOV {High Occupancy Vehicle} lane with less than the locally dictated number of passengers when the HOV lane is operating. [$50.00 fine, 30 days in jail, court costs limited to $10.00].

Elements: A) Defendant driving in a designated HOV lane during designated HOV operation hours; and

B) Defendant does not have the minimum number of passengers in the motor vehicle to allow travel in the HOV lane.

Court costs cap at $10.00. No litigation tax or other normal clerk fees allowed. [Tenn. Code Ann. § 55-8-188(d)].

55-8-189: Transporting Child in Pick-up Truck Bed. It is a Class C misdemeanor for a child, age 6 (six) years to 12 (twelve) years old, to be transported in the bed of a pick-up truck on a public road. [$50.00 fine, 30 days in jail].

Elements: A) Defendant drives a pick-up on a public road with a child in the bed of the pick-up; and

B) The child is between the ages of six (6) and twelve (12) years old.

This statute does not apply to parades or children helping with agricultural activities.

55-8-192: Cell Phone Use by School Bus Drivers. It is a Class C misdemeanor for any person driving a school bus to use any hand-held cell phone while the bus is in motion except for discussions between the bus and central dispatch. [$50.00 fine, no jail].

Elements: A) Person is a professional school bus driver; and

B) The bus, ***with or without passengers***, is moving; and

C) The driver is using any sort of cell phone to talk with anyone other than central dispatch.

55-8-193: Excessive Noise from Motor Vehicles. No ***occupant*** of a motor vehicle on a public road shall operate, ***or allow others to operate***, their audio system in an excessively loud fashion. [$50.00 fine, no jail].

Elements: A) The vehicle's radio or CD system is excessively loud (hearable at 50 feet), {includes base}; and

B) The vehicle is on a public road.

All occupants of the vehicle can be charged and found liable for this noise violation.

55-8-195: Rules Directing Semi-Trucks to Specific Lanes. It is a Class C misdemeanor for a semi-truck or tractor-trailer driving on a Tennessee interstate, or a divided highway with at least three (3) lanes going in each direction, to not travel in a designated "truck lane." [$50.00 fine, no jail].

Elements: A) A semi-truck or tractor trailer is on either an interstate or a divided highway with at least three (3) lanes going in each direction; and

B) The road discussed in point "A" has designated an area of road a "truck lane" requiring semi-trucks and tractor-trailers to proceed only in said designated lane; and

C) Defendant is not driving a semi-truck or tractor-trailer in the designated "truck lane."

55-8-198: Unmanned Traffic Camera Light Violations. It is a Class C misdemeanor to run a red light, but if the only evidence of a violation is the unmanned traffic camera, there is a fine only and the violation shall not be reported to any consumer reporting agency. [Tenn. Code Ann. § 55-8-198(b)(3) and (m)]. [$50.00 fine, no jail].

*****These cameras are extremely unpopular and cause major proof problems if challenged in court.*****

55-8-199: Texting While Driving. It is a Class C misdemeanor to text while driving or to read a received text while driving. [$50.00 fine, no jail. Court costs limited to $10.00].

Elements: A) Texting *or reading texts* while driving on a public road and the vehicle is in motion.

***No litigation taxes and court costs are capped at $10.00. The vehicle must be moving for this statute to apply. {Tenn. Code Ann. § 55-8-*

*199(c)}. If texting is the only offense charged, the violation is a "non-moving violation." {Tenn. Code Ann. § 55-8-199(f)}.***

55-9-105: Televisions in Motor Vehicles. It is a Class C misdemeanor for a motor vehicle to have a television in it that can be seen by the driver when the driver is sitting in the normal driving position and the vehicle is in motion. [$50.00 fine, 30 days in jail].

Elements: A) Defendant has a television in the motorized vehicle; and

B) Defendant, when sitting in a normal driving position, can see the television; and

C) The vehicle is in motion.

55-9-107: Window Tinting. It is a Class C misdemeanor to have window tinting that is statutorily "too dark." It is also a Class C misdemeanor to refuse to allow law enforcement officers to field test window tint to see if the tint is too dark. [$50.00 fine, 30 days in jail].

*****See statute for details of "too dark." This statute may cause "proof problems" because of the unclear details required to prove a violation.*****

55-9-201: Horns. It is a Class C misdemeanor for a person to knowingly drive a motor vehicle on a public road which does not have a working horn. [$50.00 fine, 30 days in jail].

Elements: A) Defendant knowingly drove a motor vehicle on a public road which does not have a working horn.

55-1-202: Mufflers. It is a Class C misdemeanor to knowingly drive a motor vehicle on a public road if the vehicle does not have a muffler in good, working order. [$50.00 fine, 30 days in jail].

Elements: A) Defendant knowingly drives a motor vehicle on a public road and the vehicle does not have a working muffler.

55-9-203: No Windshield Wipers. It is a Class C misdemeanor to knowingly possess a motor vehicle that has a windshield but no windshield wipers. [$50.00 fine, 30 days in jail].

Elements: A) Defendant owns a motor vehicle which has a windshield; and

B) There are no windshield wipers on the vehicle.

The statute calls for wipers to be on the vehicle, but it does not require the wipers to be in working condition. While this may sound "nitpicky"; since the statute for horns, mufflers and brakes specifically required those instruments to work, and that condition was left off this statute, "working condition" does not appear to be a required element of this statute.

55-9-204 & 55-9-205: Non-Working Brakes. It is a Class C misdemeanor to knowingly drive a motor vehicle on a public road without working brakes. [$50.00 fine, 30 days in jail].

Elements: A) Defendant drove a motor vehicle on a public road knowing the vehicle's brakes were not in good working order. [Accord, Tenn. Code Ann. § 55-9-213 regarding brake fluid].

55-9-206 & 55-9-207: Rearview Mirrors. All trucks that drive on public roads must have working rearview mirrors. [$50.00 fine, 30 days in jail].

Elements: A) Defendant drove a truck on a public road knowing the truck did not have rearview mirrors.

55-9-212: Mudguards/Fenders. All motor vehicles must have mudguards and/or fenders so that objects are deflected from being thrown behind the vehicle. [$50.00 fine, 30 days in jail].

Elements: A) Defendant drove a motor vehicle on a public road knowing the vehicle did not have working or adequate fenders or mudguards on the vehicle.

55-9-216: Tiny Steering Wheels. It is a Class C misdemeanor to install or maintain a steering wheel on a motor vehicle which is less than twelve inches (12") in diameter. [$25.00 to $50.00 fine per violation, no jail].

Elements: A) Defendant owns or operates a motor vehicle with a tiny steering wheel.

Statute does not apply to specially equipped handicap vehicles.

55-9-306: Motorcycle Equipment Violations. This statute lists required items for riding motorcycles on public roads, (e.g., helmets, foot pegs, etc.). [$50.00 fine, 30 days in jail].

55-9-307: Parental Liability for Motorcycle Equipment Violations. Any parent or guardian who knowingly allows their minor child to violate the motorcycle equipment requirements of Tenn. Code Ann. §§ 55-9-302 to 55-9-305 is guilty of a Class C misdemeanor. [$50.00 fine, 30 days in jail].

Elements: A) Minor child violates the motorcycle equipment requirements of Tenn. Code Ann. § 55-9-305; and

B) The minor's parent or guardian knew the minor was riding a motorcycle in violation of said equipment mandates.

55-9-402: Headlights/Brake Lights. All motor vehicles must have both working headlights and taillights. [$50.00 fine, 30 days in jail].

55-9-403: Motorcycle Headlamp. All motorcycles must have a headlamp. [$50.00 fine, 30 days in jail].

Statute does not require headlamp to be in working order nor does this statute exempt "moto-cross" motorcycles or require the motorcycle to be driven on a public road.

55-9-406: Required Times for Headlights. It is a Class C misdemeanor if a person does not turn on their headlights on a motor vehicle from dusk to dawn or in inclimate weather. ***[$50.00 fine, 30 days in jail, no court costs for no headlights during inclimate weather***].

Elements: A) Defendant did not turn on headlights on a motor vehicle either at night or in inclimate weather.

This statute gives two (2) different punishments for no headlights. See the statute.

55-9-414: Improper Blue Lights. No vehicle, except authorized emergency vehicles, shall have or display flashing blue emergency lights. [$50.00 fine, 30 days in jail].

Elements: A) A "civilian" motor vehicle has flashing blue lights; and

B) Defendant knew that the vehicle being driven had flashing blue lights available and said vehicle was not an emergency vehicle and/or the driver was not authorized to activate flashing blue lights.

55-9-601: Seatbelts. It is a Class C misdemeanor to buy, sell, lease, trade or transfer a motor vehicle made after 1963 that is not equipped with seatbelts. [$50.00 fine, 30 days in jail. No court costs].

Elements: A) Vehicle is a 1964 model motor vehicle or newer; and

B) Person buying or selling or conveying the motor vehicle should have known the motor vehicle lacked seatbelts.

Both the buyer and seller in a single transaction can violate this statute. No court costs. {Tenn. Code Ann. § 55-9-601(e)}

55-9-602: Child Restraint Seats. It is a Class C misdemeanor not to have a child under eight (8) years old, or under 4'9" tall, in a child safety restraint seat if being transported in a motor vehicle. [$50.00 fine, 30 days in jail, possible safety education class].

Elements: A) Child traveling in a motor vehicle and child is under eight (8) years old and/or 4'9" tall and not in a child restraint safety seat; and

B) Driver knew or should have known said child should be in a child restraint safety seat due to child's age or height.

There are medical exceptions to this statute. {See, Tenn. Code Ann. § 55-9-602(a)(4)}. A first offender can be ordered to a state approved safety class which explains why children should be in child safety restraint seats. {Tenn. Code Ann. § 55-9-602(c)(2)}.*

55-9-603: Seatbelt Violations. It is a C misdemeanor for the ***driver or any adult passenger*** to allow any person past their fourth (4th) birthday to ride in a moving motor vehicle ***in the front seat***, without wearing a seatbelt. [$10.00 fine (1st offense), no jail, no court costs. $20.00 fine (subsequent offenses), no jail, no court costs].

Elements: A) Defendant operates a motor vehicle on a public road or Defendant is a passenger in the vehicle; and

B) Defendant and/or passengers, over age four (4), in the front seat, are not wearing seatbelts.

All proceeds go to vocational rehabilitation for people with disabilities. Both a driver and passenger could be charged for a single event.*

Caveat: See, Tenn. Code Ann. § 55-9-606, which indicates no driver liability for a passenger over age 16 who is not wearing a seatbelt.

55-10-102: Leaving Scene of Accident (Property Damage Only). It is a Class C misdemeanor to be involved in a motor vehicle wreck which causes damage only and to have the driver in the accident leave the scene without providing personal contact and insurance information, if the damage is below $400.00. [$50.00 fine, 30 days in jail].

Elements: A) Defendant knowingly has a "fender bender" accident of below $400.00 damage and no personal injury; and

B) Defendant leaves the accident scene without providing personal contact information or insurance information.

55-10-110: False Reports. It is a Class C misdemeanor to knowingly give false information regarding an automobile accident to law enforcement officials. [$50.00 fine, 30 days in jail].

Elements: A) Participant or witness to an automobile accident knowingly gives false information to investigating law enforcement officials.

55-10-111 & 55-10-112: Failure to Report Accident. It is a Class C misdemeanor not to report an automobile accident to authorities. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was involved in a motor vehicle accident and did not report the accident to police or the Tennessee Department of Safety.

The Tennessee Department of Safety can suspend a driver's license for up to thirty (30) days for a failure to report an accident. {Tenn. Code Ann. §§ 55-10-110(c) and 55-10-111(c)}.

55-10-202: Directing Others to Violate Law. It is a Class C misdemeanor for owner of a motor vehicle, or employer of a driver, to direct the third party driver to ignore traffic laws. {E.g., telling a cab driver to exceed the speed limit}. [$50.00 fine, 30 days in jail].

Elements: A) Owner of a motor vehicle, or employer of a motor vehicle driver, instructs the third-party driver of a motor vehicle to ignore traffic laws while driving the vehicle on a public road.

55-10-204: "Fixing" Tickets. It is a Class C misdemeanor to cancel a ticket (commonly referred to as "fixing a ticket") for any reason other than allowed by statute. Likewise, it is a Class C misdemeanor to request a person in authority to "fix a ticket." [$50.00 fine, 30 days in jail].

Elements (Fixer): A) Defendant receives a traffic ticket; and

B) Defendant contacts a "good buddy" law enforcement official or public official to "fix the ticket"; and

C) The "good buddy" attempts to fix the ticket.

The "good buddy" is guilty of a Class C misdemeanor as well as malfeasance in official duty.

Elements (Requester): A) Defendant receives a traffic ticket; and

B) Defendant attempts to have a "good buddy" fix the ticket.

The person requesting the ticket to be "fixed" is guilty of a Class C misdemeanor.

Caveat: Before being tempted by this request, especially to "fix" your own tickets, the judge should read J.E.O. 95-9. This very issue got a sitting judge elected "lawyer" when it became public knowledge via an investigative story on local television news.

55-10-416: Open Container Law. It is a Class C misdemeanor for the operator of a motor vehicle with its engine running to drink any alcohol whatsoever or to have a container which has alcohol in it open in the vehicle and available for immediate consumption. [$50.00 fine, no jail].

Elements: A) The driver of a motor vehicle who has at least turned on the vehicle's engine; and

B) The driver either drank alcohol, (any amount), while the engine of the vehicle was running or has an open container containing alcohol in the motor vehicle while the engine is running.

There is a statutory presumption that if no passenger claims ownership of the alcohol, then the alcohol belongs to the vehicle's driver.

55-14-101 & 55-14-103: Second Hand Tires. It is a Class C misdemeanor for any person in the business of purchasing used motor vehicle tires to not keep record of who the tires were purchased from, with contact information of the tires' seller, and report all purchases to police on a daily basis. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is a "Dealer" in used motor vehicle tires; and

B) Defendant does not keep records of purchases made and the contact information of all persons selling the Dealer used tires, and/or the Dealer fails to report purchases of used tires to police on a daily basis.

55-14-104 to 55-14-107: Purchasers of Used Automobile Parts. Any Dealer in the business of purchasing used or second-hand or "junked" motor vehicle parts must keep records of purchases for at least two (2) years for law enforcement inspection. These records must include the contact information of the seller of parts to include the tag number of the vehicle they used to transport the used parts. The failure to keep these records is a C misdemeanor. [$50.00 fine, 30 days in jail].

Elements: A) Defendant is a dealer of used or second-hand motor vehicle parts; and

B) Defendant did not keep records of who sold parts to Defendant to include contact information of the seller of the used motor vehicle parts.

55-52-201 & 55-52-202: Parental Liability for Minors Not Wearing Helmet with Off-Road Vehicles. It is a Class C misdemeanor for the parent or guardian of a minor not to insist that the minor wear a helmet when riding an off-road vehicle. [$50.00 fine, no jail, $10.00 cap on court costs].

Elements: A) Defendant is the parent or guardian of a minor who was riding an off-road vehicle; and

B) Defendant knowingly allowed the minor to ride the off-road vehicle without wearing a helmet.

It is a defense to subsequent offenses for the parent or guardian to purchase the minor a helmet and legitimately try to make the minor wear the helmet.

C) COMMON MUNICIPAL ORDINANCES

The Tennessee Supreme Court has declared that violations of municipal ordinances may look and feel like "partly criminal" proceedings, but ordinance violations heard in municipal courts are civil in nature. [City of Chattanooga v. Davis, 54 S.W.3d 248, 259 (Tenn. 2001) and City of Chattanooga v. Myers, 787 S.W.2d 921, 922-923 (Tenn. 1990)].

Noise – Many cities have noise violation ordinances.

Basic Elements:

A) Defendant is within the city limits, and

B) Defendant, after being told to reduce the volume of annoying music or noise, continues with the excessive volume.

Trash on Property – Many cities have ordinances limiting the amount of trash a property owner can allow to accumulate on their property.

Basic Elements:

A) Defendant owns property within the city limits and after being told to clean up the yard, Defendant fails to clean up the property.

Many cities state each day a person is in violation of a trash clean-up ordinance is a separate potential offense. Also, many ordinances allow the city to be reimbursed for any expense spent by the city to clean up the property because the property owner would not clean the property.

Grass Mowing – Many cities have ordinances relating to keeping property mowed.

Basic Elements: A) Defendant owns property within the city limits; and

B) After being notified to cut the grass on the property, Defendant fails to cut the grass.

Each day can be a potential new violation. The ordinance can order the city to be reimbursed if the city has to cut the grass because the owner would not cut the grass.

Animals – Many cities have ordinances regulating the type or number of animals a property owner may have within the city limits.

Basic Elements: A) Defendant owns property within the city limits; and

B) After being told to remove unauthorized animals, keeps the animals in question on the property.

Loitering – Many cities have loitering ordinances.

Basic Elements: A) People are congregated on public property within the city limits; and

B) After being told by law enforcement to disperse, the Defendant remains on the property.

Vagrants – Many cities have ordinances against vagrancy.

Basic Elements: A) The Defendant is in the city limits and meets the ordinance's definition of a "vagrant."

Burning – Many cities have ordinances against outdoor burning.

Basic Elements: A) The Defendant is burning items outdoors in a time or manner that violates the ordinance's definition.

Municipal ordinances can create some odd, if not amusing, case scenarios. By way of example, we will look at three (3) "problem" ordinances from the Code of Clarksville as published on the City of Clarksville's website, www.cityofclarksville.com {at City Hall pull-

down at City Code, which takes the reader to a municipal code online and then simply go to the cited ordinance reference}. The ordinances cited were looked up by this author on January 23, 2013.

A) Code of Clarksville § 10-235 – Spitting. This is the proverbial "spitting on the side statute." It would be interesting to see which police officer would be bored enough to actually cite a person with this ordinance.

B) Code of Clarksville § 10-210 – Disorderly House. This ordinance reads "It shall be unlawful for any person to keep a disorderly house or to permit anyone to be disorderly in his house or in any premises in his possession or under his control." Clarksville is the home of Austin Peay State University. Hopefully, police do not stop by APSU's frat houses the day after a Super Bowl party or the Clarksville City Court could be flooded with violations of this ordinance.

C) Code of Clarksville § 10-228 – Public Drunkenness. A verbatim quote of this ordinance reads "See Tennessee Code Annotated, sections 39-6-925 et seq.; See also title 33, chapter 8." Even if the average citizen could follow this gobbledygook, there are two (2) blatant problems with this ordinance. First, Tenn. Code Ann. § 39-6-925 et seq. was repealed by the Tennessee Legislature in 1989 and the Tennessee Code Annotated doesn't even list the verbiage from this former statute because the repeal is so old. [See, Vol. 7, Tenn. Code Ann., 2010 Replacement Volume at page 125-126 of main text]. The second problem with this ordinance is title 33, chapter 8 of the Tennessee Code Annotated discusses children's mental health, not disorderly conduct. When an ordinance simply references a specific statute for adoption by reference, it is important to make sure the reference is valid, and remains valid.

Final Thoughts on Ordinances and Class C Misdemeanors. Always read the statute. Even when we, as municipal judges, are confident that we know the "recipe" of a statute {the elements of a crime} it is always wise to check the requirements of the statute.

CHAPTER VIII – JUDICIAL ETHICS AND DISCIPLINE

How would you like lawyers and judges throughout the United States and several other countries to recognize **YOU?!? GLORIOUS *Y-O-U*!!!** It is possible judge! The National Law Journal has a special column for bringing a spotlight on "special" judges called "Stupid Judges Tricks." [See, Underwood, "What Gets Judges In Trouble," 23 J. NAALJ 101, 103 (Sp. 2003). See also, Ex Parte Owens, 258 P. 758, 807 (Okla. Crim. App. 1927) discussing a demigod Justice of the Oklahoma Supreme Court]. In this column, National Law Journal writer Gail Diane Cox and Professor Steven Lubet focus on ethical violations by judges that are outrageous, bordering on stupid. [Id]. Later in this chapter we will look at a couple of those examples (*such as the judge who bought beer for the jury deliberating on a DUI case*). First, we will look at what judges are supposed to be doing.

BACKGROUND. Effective July 1, 2012, the Tennessee Supreme Court implemented a new Code of Judicial Conduct, Tenn. R. Sup. Ct. 10. [Tenn. R. Sup. Ct. 10, Canon 1, at Compiler's Notes]. This code applies to both full-time and part-time municipal court judges, but some aspects of the new Code of Judicial Conduct may not apply to part-time judges such as the mandate that a judge shall not practice law. [See Tenn. R. Sup. Ct. 10 at Application I & III and Tenn. R. Sup. Ct. 10, Canon 3, Rule 3.10. See also, State v. Lipford, 67 S.W.3d 79, 83-84 (Tenn. Crim. App. 2001)]. Municipal judges must carefully follow the dictates of the Code of Judicial Conduct because a lack of professionalism over the years has tarnished the reputation of Tennessee's municipal court judges and there have even been calls to simply eliminate all of Tennessee's 300 +/- municipal courts. [See, http://web.utk.edu/~scheb/tncourts.htm]. Judicial ethics rules are designed to preserve and enhance public confidence in the honor and integrity of the judiciary, not punish judges. [In Re: Gorby, 339 S.E.2d 702, 703 (W.Va. 1985)].

Commentators have said "We need, in Tennessee, to enhance the independence and status of municipal judges who most often represent the judiciary to the public." [LeClercq, "The Law of the Land: Tennessee Constitutional Law," 61 Tenn. L. Rev. 573, 606 (Winter, 1994)]. Professor LeClercq supports his position by stating:

> For citizens generally, the most frequent contact with the courts is at the lowest levels, often in municipal courts. People's impressions of the judicial system are formed, justifiably, by their perceptions of the fairness, independence, and integrity of the courts before which they and their peers are summoned to appear. These perceptions are strongly shaped by the quality of justice administered in the municipal courts, despite their limited jurisdiction.

[LeClercq, "The Law of the Land: Tennessee Constitutional Law," at page 606]. Municipal judges have been accused, by the popular and proverbial "unnamed source," of having "Certainly a disproportionate number of complaints filed with the Administrative Office of the Courts related to municipal courts." [http://web.utk.edu/~scheb/tncourts.htm]. From this author's experience as a member of the Tennessee Court of the Judiciary from 2005-2009,[29] this accusation is simply not valid. Actually, the number of complaints against municipal judges was fairly small. [See, www.tsc.state.tn.us/Boards-Commissions/court-judiciary/disciplinary-actions/public-disciplinary-actions]. Perhaps the claim of a large amount of disciplinary complaints being filed against municipal judges by the internet "unnamed source" is based on perception instead of reality. [Holy Bible, Prov. 6:6]. While a municipal judgeship is not a common "jump-off point" for higher judicial office, the position can teach a wise municipal judge how to "Get over Black Robe Fever before I can really hurt anybody with it." As Lord Acton said, "Power tends to corrupt and absolute power corrupts absolutely." [In Re: Goulding, 79 B.R. 874, 875 (Bky. W.D. Mo. 1987)]. An excellent example of how to overcome Black Robe Fever is Judge J. Steven Stafford of the Tennessee Court of Appeals for the Western Section. Judge Stafford was the Presiding Judge of the Tennessee Court of the Judiciary when

[29] See e.g., www.tsc.state.tn.us/sites/default/files/docs/Rich_pubrep.pdf at Letterhead List of Judges. The Court of the Judiciary was created by the Tennessee Legislature in 1979. It did not limit the Legislature's ability to impeach under Art. VI, § 6 of the Tennessee Constitution, but instead gave the judiciary an avenue to "police its own house." [Pivnick, Tennessee Circuit Court Practice, 2d § 2-2 at page 41 (The Harrison Co., 1986)]. The Court of the Judiciary was replaced by the Board of Judicial Conduct on July 1, 2012. [See, Tenn. Code Ann. § 17-5-201].

I was on that court. He is one of the nicest people you can find. He is also the former "Dean" of the AOC's Tennessee Judicial Academy and a former Chancellor from Dyer County, Tennessee. Judge Stafford began his judicial career as the part-time municipal judge for the Dyersburg City Court from 1988-1993. [See, "News" 40 Tenn. B.J. 8, 10 (October, 2004)]. There have been calls for municipal judges to be "learned in the law" (have law degrees)[30] but municipal judges are expected to know and apply the law whether they possess a law degree or not. [In Re: Williams, 987 S.W.2d 837, 843-844 (Tenn. 1998)].

TENNESSEE CODE OF JUDICIAL CONDUCT. The Tennessee Code of Judicial Conduct ("CJC") Tenn. R. Sup. Ct. 10, can be found at two (2) places – Volume 2 of the Tennessee Court Rules and the AOC website, www.tncourts.gov/rules/supreme-court/10. Although judicial ethics rules changed as of July 1, 2012, the basic concepts remain the same. The judicial ethics code is designed to maintain high judicial standards – not punish the judge. [In Re: Young, 522 N.E.2d 386, 388 (Ind. 1988) and In Re: Seraphim, 294 N.W.2d 485, 490-491 (Wis. 1980)]. Therefore, cases or Judicial Ethics Opinions ("JEO's") that were decided prior to the implementation of the new CJC are both relevant and instructive for judges today. The CJC consists of "Canons" and "Rules." [Tenn. R. Sup. 10 at Scope [2]]. Canons are general principles that set ethics standards for all judges. [Id]. Rules are dictates that can lead to a judge being disciplined for not following. [Id]. The constitutionality of setting a Code of Judicial Conduct with high standards is not questionable. [See e.g., In Re: Gillard, 271 N.W.2d 785, 809 fn. 7 (Minn. 1978)]. This section of this chapter will break down aspects of the CJC which apply to municipal judges.

The CJC applies to "full-time judges." [Tenn. R. Sup. Ct. 10, Application (I)(A)]. The CJC also applies to "part-time judges," but some parts of the CJC only apply to a part-time judge while he/she is acting in his/her judicial capacity. Other parts of the CJC apply to the

[30] See, LeClercq, "The Constitutional Policy That Judges Should Be Learned In the Law," 47 Tenn. L. Rev. 689, 725-727, and 740 (Summer, 1980) and LeClercq, "The Law of the Land: Tennessee Constitutional Law," 61 Tenn. L. Rev. 573, 606 fn. 153 (Winter, 1994). This view was shared by President John Adams who said "The Judges, therefore, should be men of learning and experience in the law, of exemplary morals, great patience, calmness, coolness, and attention." [www.oregonrepublicanparty.org/AllQuotes/].

part-time judge at all times. [Id]. The CJC is not designed to be used as a "bright-line" basis for determining civil or criminal liability of a judge. [Tenn. R. Sup. Ct. 10, Scope [7]. Cf., Barrett v. Harrington, 130 F.3d 246 (6th Cir. 1997)]. The current version of the CJC applies only to potential disciplinary infractions by a judge which occurred after July 1, 2012. [Tenn. R. Sup. Ct. 10, Application (VI) at Compiler's Notes]. The entire CJC applies to full-time judges, but a "continuing part-time judge," like most municipal judges, can be appointed to governmental positions, act as fiduciaries, mediators, practice law or have outside business interests so long as the act does not conflict with judicial cases or workloads. [Tenn. R. Sup. Ct. 10, Application (III)(A) & (B)]. CJC rules breakdown into "must," "shall" or "may." The "must" and "shall" are mandatory terms and ***require*** the judge comply with the rule. [See, Kaplan v. Bugalla, 188 S.W.3d 632, 635 (Tenn. 2006) and Home Telegraph Co. v. Mayor & City Council of Nashville, 101 S.W. 770, 773 (Tenn. 1907)]. "May" is discretionary. [See, State v. Carriger, 2000 Tenn. Crim. App. Lexis 966 (Tenn. Crim. App. 12/20/2000) at 27]. After each rule, the rule will be marked as (***shall***), (***must***) or (***may***) to designate how this rule is to be followed by the municipal judge. Due to the newness of these rules, courts with identical or similar rules of judicial conduct shall be cited as reference points. Tennessee follows the Model Rules of Judicial Conduct, as do multiple other jurisdictions, so opinions using a similar rule format offers guidance for Tennessee judges.

Canon 1 – Uphold Integrity/Avoid Appearance of Impropriety

Rule 1.1 – Follow the law, including the CJC (***shall***), [In Re: Hughes, 947 N.E.2d 418, 419 (Ind. 2011)].

Rule 1.2 – Promote Confidence in Judiciary (***shall***), [In Re: Hughes, 947 N.E.2d 418, 419 (Ind. 2011)].

Rule 1.3 – Don't Abuse Prestige of Judgeship (***shall***), [In Re: Hill, 8 S.W.3d 578, 582 (Mo. 2000)].

Canon 2 – Perform Duties Impartially/Competently/Diligently

Rule 2.1 – Judicial duties take precedence over personal or extrajudicial activities (***shall***), [In Re: Karasov, 805 N.W.2d 255, 259 (Minn. 2011)].

Rule 2.2 – Judge shall follow law and act fairly/impartially (***shall***), [In Re: Aziza S.B., 53 A.3d 1001, 1009 (Conn. App. 2012)].

Rule 2.3 – No bias/prejudice/harassment by the judge (***shall***), [In Re: Messiah S., 53 A.2d 224, 237 (Conn. App. 2012)].

Rule 2.4 – No extra judicial influences on judicial decisions {e.g., public/media/family} (***shall***), [In Re: Jacobs, 802 N.W.2d 748, 754 (Minn. 2011)].

Rule 2.5 – Judge shall act with competence/diligence/cooperation {do your job and don't be a jerk} (***shall***). {Arthur J. Hanes, Jr., a brilliant circuit court judge from Alabama used to tell me, "The job doesn't pay enough to be a jerk," referring to his judgeship}. [Schoknecht v. Dunlap, 2012 Ind. App. Unpub. Lexis 1091 (Ind. App. 8/29/2012) at 7-10. Accord, Bishop, Municipal Courts, 3d § 2.10 at page 18 (Samford University Press, 1999)].

Rule 2.6 – Encourage settlement of cases, but let the parties try their case if litigation is necessary (***shall***), [In Re: Brianna L, 55 A.3d 572, 580 (Conn. App. 2012)].

Rule 2.7 – Judge has a responsibility to decide cases assigned to the court unless disqualified from case (***shall***), [State v. Desmond, 2011 Del. Super. Lexis 6 (Del. Super. 1/6/2011) at 40-41].

Rule 2.8 – Judges must ***graciously*** control their courtroom (***shall***), [In Re: Galler, 805 N.W.2d 240, 246 (Minn. 2011)].

Rule 2.9 – A judge cannot allow any ex parte communications on facts of the case (***shall***), [Long v. Olen, 276 P.3d 527, 532 (Ariz. App. 2012)].

Rule 2.10 – No public statements by judge on pending or appealed litigation (***shall***), [Berlin, "Clearing the High Hurdle of Judicial Recusal," 204 Mil. L. Rev. 223, 246 (Summer, 2010)].

Rule 2.11 – Judge shall disqualify himself if the judge's impartiality can be reasonably questioned (***shall***), [Wersal v. Sexton, 674 F.3d 1010, 1045 & 1051 (8th Cir. 2012)].

Rule 2.12 – Judge shall properly supervise staff and the court (***shall***), [Majors v. State, 252 P.3d 435, 439 (Wyo. 2011)].

Rule 2.13 – Judge shall handle administrative responsibilities without showing favoritism and impartiality (***shall***), [In Re: Moreland, 924 N.E.2d 107, 107-108 (Ind. 2010)].

Rule 2.14 – Report lawyers/judges confidentially if a lawyer or judge appears in any manner to be impaired by drugs/alcohol or by mental/emotional/physical disabilities (***shall***), [In Re: JLAP, 2010 Ark. 161 (Ark. 2010) and Greenbaum, "Judicial Reporting of Lawyer Misconduct," 77 UMKC L. Rev. 537, 568 (Spring, 2009)].

Rule 2.15 – Report lawyers/judges that legitimately appear to be in violation of the CJC or the Rules of Professional Conduct (***shall***), [Miller v. U.S., 14 A.3d 1094, 1134 (D.C. App. 2011)].

Rule 2.16 – Cooperate honestly/candidly with CJC/BJC Disciplinary Counsel inquiries. {No retaliation against any party or attorney that filed a BJC complaint against you} (***shall***), [In Re: Karasov, 805 NE.2d 255, 258 (Minn. 2011)].

Canon 3 – Extra Judicial Activities Must Not Cause Judicial Conflicts {The judge shall try to minimize outside activities which create conflicts} (*shall*).

Rule 3.1 – Extra judicial activities in general shall not compromise, embarrass or undermine the judiciary (***shall***), [Judicial Stds. Comm'n v. Not Afraid, 245 P.2d 1116, 1118-1119 (Mont. 2010)].

Rule 3.2 – A judge must not appear before government bodies except on judicial issues without subpoena. {***Does not apply to part-time judge acting as lawyer***} (***shall***), [Madsen, "Racial Bias in the Criminal Justice System," 47 Gonz. L. Rev. 243, 249-250 (2011/2012)].

Rule 3.3 – A judge must not testify as a character witness without subpoena (***shall***), [People v. Casias, 279 P.3d 667, 678 fn. 36 (Colo. Discipl. 2011)].

Rule 3.4 – A judge shall not accept appointment to government positions. {A full-time judge shall not be appointed to governmental boards or committees. ***This does not apply to part-time judges***} (***shall***), [McElroy & Dorf, "Coming Off the Bench," 61 Duke L.J. 81, 114-117 (October, 2011)].

Rule 3.5 – Non-disclosure of non-public information. {Judge shall not use private information or gossip about what was confidential information learned because of judicial capacity for the judge's personal benefit} (***shall***), [Jones, "Judges, Friends and Facebook," 24 Geo. J. Legal Ethics 281, 299 (Spring, 2011)].

Rule 3.6 – A judge shall have no affiliation with discriminatory organizations. {Judge shall not benefit from bigots on race, sex, gender, religion, national origin, ethnicity, or sexual orientation} (***shall***) {Judges shall not hold membership in discriminatory organizations} (***shall***), [See generally, Grindlay, "May a Judge Be a Scoutmaster?" 5 Ave Maria L. Rev. 555 (2007)].

Rule 3.7 – Judge may be in organizations, (e.g., Rotary Club), and participate on limited terms in functions that do not undermine the judiciary, but the judge shall not lend the honor of the judiciary to justify or fund an event or organization (***shall***), [Lane v. Facebook, Inc., 695 F.3d 811, 834 (9th Cir. 2012), Kleinfield, dissenting]. {See, Tenn. R. Sup. Ct. Canon 3, Rule 3.7 for a list of the "Dos and Don'ts" in this area}.

Rule 3.8 – Full-time judges shall not act as fiduciary except for family or church matters which do not interfere with judicial duties (***shall***), [In Re: Hammond Estate, 547 N.W.2d 36, 39 (Mich. App. 1996)]. {***The first subsection of this rule does not apply to part-time judges. See Tenn. R. Sup. Ct. 10, Application (III)(A)***}.

Rule 3.9 – Full-time judges shall not act as mediators or arbitrators (***shall***), [State v. Pratt, 813 N.W.2d 868, 878 (Minn. 2012)]. {***This***

rule does not apply to part-time judges. See, Tenn. R. Sup. Ct. 10, Application (III)(A) and Tenn. R. Sup. Ct. 31 § 17(i)(1)}.

Rule 3.10 – Full-time judges cannot practice law (***shall***), [In Re: Blakely, 772 N.W.2d 516, 528 (Minn. 2009)]. {***This rule does not apply to part-time judges. See, Tenn. R. Sup. Ct. 10, Application (III)(A)***}.

Rules 3.11 – A judge's business/financial matters shall not interfere with judicial duties and the full-time judge shall not be an officer in an non-family business. A full-time judge can manage his/her own family's finances. {***The bar to being a corporate officer or business partner does not apply to part-time judges. See, Tenn. R. Sup. Ct. 10, Application (III)(A)***} (***may***), [Clark, "Caperton's New Right to Independence in Judges," 58 Drake L. Rev. 661, 691-692 (Spring, 2010)].

Rule 3.12 – A judge can be paid for outside business activities (e.g., teaching at a local college) so long as those activities and payments do not relate to pending cases or would appear to compromise a judge's impartiality or integrity (***shall***), [See, Davies, "From the Bag: The Judiciary Fund," 11 Green Bag 2d 357, 369-372 (Spring, 2008) for a tongue-in-cheek discussion of eliminating judicial budget short-fall issues].

Rule 3.13 – Gifts/loans/bequests/other. A judge shall not accept a gift that undermines the integrity or independence of the judge. Ordinary token hospitality or gifts do not apply. (***may***), [Thornburg, "The Curious Appellate Judge," 28 Rev. Litig. 131, 144 (Fall, 2008)]. ** See Tenn. R. Sup. Ct. Canon 3, Rule 3.13 for a list of "Dos and Don'ts" in this area.**

Rule 3.14 – A judge can seek reimbursement of expenses/waiver of fees for judicial activities. {A judge can have expenses reimbursed or fees/tuition to programs waived so long as it does not undermine the judge's integrity or independence or the CJC does not prohibit it} (***may***), [Remus, "Just Conduct: Regulating Bench-Bar Relationships," 30 Yale L. & Pol'y Rev. 123, 141-142 (Fall, 2011)]. The bigger the waiver, the less likely it is acceptable. (e.g., CLE in Hawaii).

Rule 3.15 – Judges shall report compensation and gifts publicly each year (***shall***). There is a reporting form for reporting compensation on the AOC website. [www.tncourts.gov/sites/default/files/docs/public_report_of_compensation_received_by_judge_form.pdf].

Canon 4 – Judicial Elections Rules for Judges and Judicial Candidates Boil Down to Not Compromising a Judge's or Candidate's Integrity or Independence to Get Elected

Rule 4.1 – Political/campaign activities. {The judge or judicial candidate shall not act as a leader or primary spokesman of a political party} (***shall***), [Bauer v. Shepherd, 620 F.3d 704, 709-711 (7th Cir. 2010]. {A judge may participate in political events, just not be the centerpiece of the event if the event does not directly apply to the judge's or candidate's election (with some enumerated exceptions) (***may***)}, [See generally, Ferrell v. Cox, 617 A.2d 1003, 1007 (Maine 1992)]. The rule lists the "Dos and Don'ts" of judicial campaigning and/or political activity generally. [See also, Republican Party of Minn. v. White, 536 U.S. 765 (2002)].

Rule 4.2 – Activity of judge or judicial candidate in contested political elections. {The window of campaigning is 180 days before an election and the candidates shall act with dignity} (***shall*** and ***may***). [See also, Republican Party of Minn. v. White, 536 U.S. 765 (2002)].

Rule 4.3 – Activities of candidates for judicial appointed offices. {The appointment-seeking candidate can seek to obtain endorsements supporting the appointment and the candidate may contact the appointing agency} (***may***), [See generally, Rabkin, "Canon Corner," 9 Nevada Lawyer 20, 20-21 (July, 2001)].

Rule 4.4 – A judge or judicial candidate in a public election may form a campaign committee that works 180 days before election and for 90 days after an election (***may***), [Gillispie, "Buying a Judicial Seat for Appeal," 30 J. Nat. Ass'n L. Jud. 309, 320-321 (Spring, 2010)].

Rule 4.5 – Judges seeking non-judicial office. {A judge must resign to run for a non-judicial office, but the judge is not required to resign if seeking an appointed non-judicial office}. (***shall*** and ***may***), [See,

Ross, "Presidential Ambition of U.S. Supreme Court Justices," 38 N. Ky. L. Rev. 115, 116 (2011)].

JUDICIAL ETHICS OPINIONS

Judicial Ethics Opinions ("JEOs") are governed by Tenn. R. Sup. Ct. 10A and are ethical advisory opinions from the Judicial Ethics Committee ("JEC") a seven judge panel consisting of:

1 member of the Intermediate Appeals Courts;
1 trial judge from each Grand Division;
1 General Sessions Court judge that has a law license;
1 Juvenile judge that has a law license; and
1 Municipal court judge that has a law license.

[Tenn. R. Sup. Ct. 10A.1(a)]. This committee gives advisory opinions which "shall constitute a body of principles and objectives upon which judges can rely for guidance." [Tenn. R. Sup. Ct. 10A.6].

The following JEO's are just a couple examples of areas that apply directly to municipal judges:

Part-time Judges (Generally). A part-time judge may act as a mediator so long as it does not interfere with the judge's judicial activities. [JEO 99-6]. A part-time judge must be extremely reluctant to take or mediate cases related to litigants that have appeared in his/her court and the part-time judge shall disqualify himself/herself from cases involving present or former clients. [JEO 00-3]. A part-time municipal judge may practice law in the circuit court in the county which he/she acts as a municipal judge if the judgeship is purely municipal and does not have cross-over General Sessions jurisdiction. [JEO 07-1].

Business Activities (Landlord). A part-time judge should not hear cases involving tenants of the judge. [JEO 91-7].

Running for Non-Judicial Office. A part-time city judge must resign from his/her judgeship to run for a non-judicial office such as District Attorney. [JEO 90-5].

Facebook Activities. Social media issues should be conditionally avoided or carefully handled by all judges. [JEO 12-1].

Family Members Appearing in Court. A judge shall not preside over a case involving a family member as attorney or litigant. [JEO 85-2 and 89-12].

Friends/Acquaintances As Litigants. This ethics scenario is a disqualification issue on a case-by-case basis. If a third party could legitimately question the judge's impartiality, disqualification/recusal is required. [JEO 91-5].

Reference Letters. A municipal judge may write personal reference letters ***based on personal knowledge*** of the person the reference is about, but the judge should use his/her personal stationary to write the reference letter instead of on court stationary. [JEO 94-5].

Bar Association Offices. A municipal judge may serve as an officer in a bar association, but the judge should not solicit funds for the organization. [JEO 87-2].

Speaking/Writing on Legal Topics. A municipal judge may speak and write on legal topics so long as the outside activity does not interfere with the judge's judicial duties. [JEO 10-1].

Municipal Judge as Campaign Manager for Another Person's Election. A part-time municipal judge may not act as a campaign manager for a third party running for elected office. [JEO 99-2].

Judge as Character Witness. A judge should not act as a character witness for a party unless the judge is subpoenaed. [JEO 92-10].

Judges Must Follow the Law. A judge must follow the law even if the judge does not like the law. [JEO 95-10].

Pressuring Decisions. A judge must not try to pressure another judge's decisions, nor shall a judge allow another judge to pressure their decisions. [JEO 92-9].

Leadership Programs. A judge may participate in "Leadership Programs" such as Leadership Knoxville. [JEO 89-6].

"Fixing" Parking Tickets. A municipal judge shall not "fix" parking tickets – either their own or for friends/family members. [JEO 95-9].

For other JEOs, see The Judicial Ethics Opinions Handbook, (AOC, 2012) or go to the AOC website. The book is indexed for research of JEOs. The website is not indexed.

To seek a Judicial Ethics Opinion, contact the following:

> Tennessee Judicial Ethics Committee
> c/o Honorable Alan E. Glenn, Chair
> Tennessee Court of Criminal Appeals
> 550 Poplar Avenue, Suite 1414
> Memphis, TN 38157-1414
> Ph. (901) 537-2980
> Fax (901) 537-2998
> Email: judge.alan.glenn@tncourts.gov[31]

The request for a JEO is to be in writing setting out the basic facts and/or Judicial Code rule/canon at issue. [Tenn. R. Sup. Ct. 10A.5]. The JEOs can be found at the AOC website,[32] or in the AOC publication Tennessee Judicial Ethics Opinions Handbook, (AOC, 2012), which can be obtained by contacting the AOC at Ph. (615) 741-2687. JEOs go back to 1982.

Recusal Rule. Tenn. R. Sup. Ct. 10B governs recusal and disqualification issues coming before courts of record after July 1, 2012. [Tenn. R. Sup. Ct. 10B at Compiler's Notes]. This rule covers procedures for motions to recuse or disqualify a judge. [Tenn. R. Sup. Ct. 10B §1]. It also provides for motions to disqualify counsel or court personnel. [Tenn. R. Sup. Ct. 10B § 4]. The rule also allows for expedited appeals on recusal issues. [Tenn. R. Sup. Ct. 10B § 2].

[31] The municipal judge on the JEC is the Honorable Paul B. Plant, Ph. (931) 762-7528.
[32] www.tncourts.gov/administration/judicial-resources/ethics-opinoins.

Tenn. R. Sup. Ct. 10B § 5 allows the party to still file a disciplinary complaint against a judge irrespective of how a court rules on recusal/disqualification.

RELEVANT CASES

There are several cases that impact on a municipal judge's ethical considerations. This section will set out some of those cases.

Ignorance of the Law. A judge cannot hide behind "ignorance of the law" as a justification for judicial ethics violations. [In Re: Williams, 987 S.W.2d 837, 843 (Tenn. 1998)]. It is irrelevant that the judge may not have a law license because ***all*** judges are expected to know and follow the law or they have no justification for being a judge. [Williams, 987 S.W.2d at 843-834]. A non-lawyer judge is held to the same ethical standard as a judge who graduated from a law school and passed the bar exam. [Williams, 987 S.W.2d at 844].

Recusal. If a disinterested third person would view the situation and reasonably determine that the judge's impartiality or objectivity is questionable, the judge should recuse himself/herself from a pending case. [Davis v. Liberty Mut. Ins. Co., 38 S.W.3d 560, 565 (Tenn. 2001)]. This is an objective standard. [Hooker v. Haslam, 2012 Tenn. Lexis 719 (Tenn. 7/29/2012) at 39-40 and State v. Cannon, 254 S.W.3d 287, 307 (Tenn. 2008)]. It is irrelevant that the judge personally believes he/she can be objective if a disinterested third party disagrees that no bias potentially exists. [Liteky v. U.S., 510 U.S. 540, 553 fn. 2 (1993) and Smith v. State, 357 S.W.3d 322, 340-341 (Tenn. 2011)]. When in doubt, the prudent path for the judge is to recuse himself/herself, but a court is not required to cave in to litigant or attorney manipulation. [See, State v. Cobbins, 2012 Tenn. Crim. App. Lexis 869 (Tenn. Crim. App. 10/25/2012) and Galbreath v. Bd. of Prof. Responsibility, 121 S.W.3d 660 (Tenn. 2003), paying special attention to pages 662 fn. 1 and 667 fn. 17 (no motion for recusal appears to have been requested in the Galbreath case). See also, Hooker v. Haslam, 2012 Tenn. Lexis 719 (Tenn. 7/29/2012) at 39-40 (where recusal was requested, granted, but probably not mandated {even if prudent})].

BJC Issues. The Board of Judicial Conduct ("BJC") formerly known as the Court of the Judiciary, has not had many cases make it to the Tennessee Supreme Court. [In Re: Bell, 344 S.W.3d 304, 319 fn. 17 (Tenn. 2011)]. If a judge has a BJC complaint filed against him/her, it is a disciplinary issue justifying a public sanction to simply ignore the complaint – even if the underlying complaint lacks merit. [In Re: Brown, 879 S.W.2d 801, 806-807 (Tenn. 1994)]. The judge has a constitutional right to notice and a chance to respond regarding the facts set out in a BJC compliant. [Council on Probate Jud. Conduct Re: Kensella, 476 A.2d 1041, 1051 (Conn. 1984) and Jud. Inquiry and Review Comm. v. Taylor, 685 S.E.2d 51, 64 (Va. 2009)]. The Tennessee Supreme Court reviews appealed decisions of the BJC directly on a de novo basis with no presumption of correctness, but accepting the BJC's findings of witness credibility. [In Re: Williams, 987 S.W.2d 837, 841 (Tenn. 1998)]. Tenn. Code Ann. § 17-5-310, sets out a thirty (30) day time period for a disciplined judge to file a notice of appeal and the appeal is then heard on an expedited basis. The BJC is a creature of statute,[33] but it is the Tennessee Supreme Court that sets ethical standards and disciplines the Tennessee state judiciary. [In Re: Bell, 344 S.W.3d 304, 313 (Tenn. 2011)]. It is important to note that a judge can possibly violate ***both*** the Code of Judicial Conduct ("CJC") and the lawyer's Board of Professional Conduct standards. [In Re: Murphy, 726 S.W.2d 509, 515 (Tenn. 1987)]. Once a CJC violation is found, the Tennessee Supreme Court conveys the case to the Tennessee Legislature if the finding of the Tennessee Supreme Court recommends impeachment of a judge. [In Re: Murphy, 726 S.W.2d 509, 515 (Tenn. 1987) and Tenn. Code Ann. § 17-5-311]. The basic theory behind the BJC and its enforcement powers follow that declared in Kentucky Supreme Court:

> If a tyrant should appear in judicial robes,
> this court has the power to stop him.

[Beach v. Lady, 262 S.W.2d 837, 840 (Ky. 1953), Sims, dissenting. Accord, Morgan v. U.S., 32 F. Supp. 546, 561 (W.D. Mo. 1940), Otis, dissenting from 3 judge panel]. Unfortunately, "history proved that

[33] Tenn. Code Ann. § 17-5-201. The BJC consists of three (3) trial judges (1 per Grand Division); 3 General Sessions (1 per Grand Division); 1 municipal judge, 1 juvenile judge, 3 lawyers and 3 non-judge/non-lawyers, and 2 appellate judges. [Tenn. Code Ann. § 17-5-201(a)]. The municipal judge on the BJC is Judge Joseph F. Fowlkes [Ph. (931) 363-6116].

judges too were sometimes tyrants." [Poulos v. New Hampshire, 345 U.S. 395, 426 (1953), Douglas & Black dissenting; Donnelly v. DeChristoforo, 416 U.S. 637, 651 (1974), Douglas, dissenting; and U.S. v. Onan, 5 M.J. 514, 524 fn. 12 (CMA 1978)]. The CJC is designed to maintain high judicial standards, not punish judges. [In Re: Storie, 574 S.W.2d 369, 373 (Mo. 1978) and Matter of Riley, 691 P.2d 695, 705 (Ariz. 1984)].

A list of "Judicial Offenses" are set out in Tenn. Code Ann. § 17-5-302, but the gist of the complaints boil down to judges not giving the judiciary the proverbial "black eye." [Tenn. Code Ann. § 17-5-302 (8). See also, Schoolfield v. Tenn. Bar Assn., 353 S.W.2d 401 (Tenn. 1962)]. Judicial disability is also a basis for BJC actions. [Tenn. Code Ann. § 17-5-303(a)]. Judicial discipline that made it to published opinions from the Tennessee Supreme Court include:

A) Criminal convictions/illegal activity [In Re: Murphy, 726 S.W.2d 509 (Tenn. 1987)];

B) Abuse of authority of office, misdemeanor convictions and false statements. [In Re: Williams, 987 S.W.2d 837 (Tenn. 1998)];

C) Nepotism and Judicial Temperament. [In Re: Bell, 344 S.W.3d 304 (Tenn. 2011)]; and

D) Neglect in a Judge Answering Judicial Disciplinary Complaint. [In Re: Brown, 879 S.W.2d 801 (Tenn. 1994)].

Actually, disbarred judges are held to a higher standard for law license reinstatement than non-judicial lawyers because of their status as former judicial officers. [See, Murphy v. Bd. of Prof. Resp., 924 S.W.2d 643, 647 (Tenn. 1996), same "Murphy" as In Re: Murphy, supra and Schoolfield v. Tenn. Bar Assn., 353 S.W.2d 401 (Tenn. 1962)]. In an ironic twist, an attorney who tried to threaten and bully

the Tennessee Supreme Court to be appointed as a substitute judge avoided judicial disciplinary problems (but not BPR discipline) primarily because his request to be a judge was not granted by the Tennessee Supreme Court. [See, Galbreath v. Bd. of Prof. Resp., 121 S.W.2d 660, 666-667, 662 fn. 1 and 667 fn. 17 (Tenn. 2003), Tenn. R. Sup. Ct. 10 Application (V), and Tenn. R. Sup. Ct. 10, Application (I) at comment [1]].[34] In an interesting aside, the "Galbreath" in this case is the same Galbreath who was facing an impeachment before the Tennessee Legislature which was a major factor to the creation of the Tennessee Court of the Judiciary in 1979. [http://10ec.com/politics/timeline.html and www.tncourts.gov/sites/default/files/docs/oversight_of_judicial_conduct_in_tennessee_-_sept._2011.pdf at 4-8].

Political Contributions. A judge is not required to automatically disqualify himself/herself from hearing cases related to a law firm that contributed to the judge's election campaign fund. [Todd v. Jackson, 213 S.W.3d 277, 282 (Tenn. 2006)]. Contributors to a political campaign who give a candidate more than $100.00 are publicly reported as well as the amount of money a donor contributed to the judge's campaign. [Tenn. Code Ann. § 2-10-105].

The public can view pleadings in formal public BJC disciplinary cases at www.tsc.state.tn.us/boards-commisions/court-judiciary/disciplinary-actions/pleadings-public-cases. Further, public BJC disciplinary actions from 2008 to 2012, (public reprimands or public censures), can be viewed at www.tsc.state,tn.us/boards-commissions/court-judiciary/disciplinary-actions/pleadings-public-cases. The basic difference between the public reprimand of a judge and a public censure is a reprimand is a public "Thou shall NOT….again." A public censure is the last step before filing a formal proceeding to impeach the judge. There were twenty-seven (27) public judicial disciplines handed out by the BJC or its predecessor, the Tennessee Court of Judiciary, between 2008 to 2012. There are five (5) cases that became "public cases" from the BJC between 2009-2012. Therefore, there have been thirty-two (32) public discipline actions from the BJC between 2008 to 2012. These numbers are slightly inflated because five of the judges disciplined were

[34] It is also strongly suggested that part-time municipal judges, when acting as lawyers, not refer to female judges you find attractive as "honey" in open court. [Galbreath, 121 S.W.3d at 664 and 666].

disciplined twice each. Of the four (4) judges who had public BJC cases, (one judge had two public cases before the judge resigned), 2 judges resigned, 1 got a 90 day suspension, and 1 got a public reprimand. Again, the CJC is not designed to punish judges, but instead is designed to enhance the "public confidence in the honor, dignity, integrity, and efficiency of the members of the judiciary and the system of justice." [In Re: Gorby, 339 S.E.2d 702, 703 (W. Va. 1985), with string citation].

The twenty-seven (27) public BJC disciplinary actions that were not public cases (settlements usually) break down as follows:

A) Censures = 3

B) Reprimands = 21

C) Other = 3

Who got disciplined calculates as follows:

1) Appellate Judges = 0

2) Trial Level Judges = 5 (4 reprimands/1 interim suspension);

3) General Sessions Judges = 17 (13 reprimands/2 censures/1 interim suspension/ 2 resignations);[35]

4) Juvenile Judges = 5 (4 reprimands/1 censure); *** Each of the five (5) juvenile judges listed had two (2) disciplinary actions each, but one of those juvenile judges got one of the judicial disciplinary judge's complaints in his capacity as a General Sessions Court judge.***

[35] Three sessions judges had two complaints, but one of those judges was disciplined as a juvenile court judge for one of his two disciplines. Two General Sessions judges also sit as municipal court judges, but the CJC discipline resulted from actions taken by those judges in their General Sessions Court judicial capacity.

5) **Municipal Judges** = *(2 judges – both disciplined in their capacity as General Sessions Court judges)*;

6) **Other** = (1 – "cease and desist" order related to a county judicial magistrate).

While many other judicial disciplinary complaints may have dismissed as without merit, other issues impact on a municipal judge's ethical considerations. Examples of this include not allowing a municipal judge to hold dual offices in a city (e.g., city judge/city attorney not allowed). [Tenn. Op. Atty. Gen. 07-145, 2007 Tenn. AG Lexis 145 (10/12/2007) and Tenn. Op. Atty. Gen. 98-123, 1998 Tenn. AG Lexis 123 (7/7/1998)].

Now, as previously promised, let's look at some extreme examples of judicial misconduct.

Stupid Judges Tricks. As mentioned earlier in this chapter, Professor Richard Underwood, of the University of Kentucky College of Law, has taken several of the examples from Gail Cox and Steven Lubet's National Law Journal's "Stupid Judges Tricks" column and applied them to judicial ethics rules and prepared a law review article entitled "What Gets Judges in Trouble," 23 J. NAALJ 101 (Sp. 2003), (hereinafter "Underwood" and a page number citation). The examples that follow may appear a farce, but come from actual judicial disciplinary cases that went to at ***least*** a public reprimand. Do not presume that the subjects of these examples are "bad judges." Everybody loses their composure at some point or does "dumb stuff." The point of looking at another's mistakes is to avoid making similar flubs because it only takes a second of arrogance or anger to become the centerpiece of tomorrow's newspaper.

What Was My Jury Drinking? While a jury was deliberating a DUI case, the Washington State judge that presided over the case went out and bought a 12-pack of beer for the jurors and said "I know this is uncommon, and kind of funny following a DUI case. I'll deny it if any of you repeat it." The judge was publicly censured and resigned his judgeship. [Underwood at 129-130, citing In Re:

Baldwin, No. 98-2695-F-69 (Washington Comm. on Judicial Conduct 1998)]. ***Contra, Tenn. R. Sup. Ct. 10, Rules 1.2 and 3.1****

A Closed Mouth Gathers No Foot. During a domestic battery case, a New York judge looked over to his court clerk and quipped "every woman needs a good pounding now and then." [Underwood at 130, citing In Re: Roberts, 689 N.E.2d 911 (N.Y. 1997)]. ***The vast majority of jurisdictions agree that the nature of the office of judge allows for a restriction on the judge's First Amendment Right of Free Speech. [See e.g., Suster v. Marshall, 951 F.Supp. 693, 698 (N.D. Ohio 1996); ACLU v. The Florida Bar, 999 F.2d 1486, 1494 (11th Cir. 1993); McDonald v. Ethics Comm. of the State Judiciary, 3 S.W.3d 740, 742 (Ky. 1999); In Re: Code of Jud. Conduct, 603 So.2d 494, 496-498 (Fla. 1992) and In Re: Hill, 437 S.E.2d 738, 741-742 (W.Va. 1993)].**** ***Contra, Tenn. R. Sup. Ct. 10, Rules 1.2, 2.3, 2.5, 2.8 and 2.13.***

Do As I Say. An Illinois judge that presided over a Drug Court was stopped on a vacation to Belize carrying marijuana on his person which led to an interim suspension of the judge. [Underwood at 104]. ***Contra, Tenn. R. Sup. Ct. 10, Rules 1.1, 1.2, 2.2 and 3.1.***

A Career Up In Smoke. A Delaware Judicial Commissioner was caught switching price tags on cigars he was buying from expensive cigars to cheap ones, with the "expensive" cigar only costing $7.50. [Underwood at 105]. ***Contra, Tenn. R. Sup. Ct. 10, Rules 1.1, 1.2, 2.2 and 3.1.***

Taking a "Bite Out of Crime." A West Virginia judge got upset with a criminal defendant. Upon the judge denying bail, the defendant cursed the judge. The judge came off the bench, gave the defendant a "piece of his mind," then bit a hunk out of the defendant's nose! [Underwood at 108]. That judge had to resign and participate in anger management. [Id]. ***Contra, Tenn. R. Sup. Ct. 10, Rules 1.1, 1.2, 2.2 and 2.3.***

Call of the Wild. A Texas Justice of the Peace would sentence young females to probation and then later the justice (Texas' version of a General Sessions Court Judge) would make kinky "dirty talk" phone calls to those defendants. The judge was suspended for abuse

of office. [Underwood at 133]. ***Contra, Tenn. R. Sup. Ct. 10, Rules 1.2 and 1.3****

Promoting Good Family Relations. A Kentucky municipal judge presided over a DUI case involving his own sister and the judge was caught setting aside previously imposed fines and warrants of a nephew. The judge was forced to resign. [Underwood at 112]. ***Contra, Tenn. R. Sup. Ct. 10, Rules 1.2, 1.3, 2.11 and 2.13.***

But I'm a Judge!! Have you ever wanted to flash your neat-o-keen judge's badge to get out of a speeding ticket because you are so important that you are exempt from the law? That is exactly what a Chief Justice of the Illinois Supreme Court did to get into judicial ethical "hot water." According to Professor Underwood, the Chief Justice even screamed the cliché "Do you know who I am?" at police. [Underwood at 128]. That comment apparently got the C.J. ***lots*** of attention. Don't try this at home! Keeping quiet and doing the "right thing" is the prudent path for any judge. [Holy Bible, Prov. 6:6]. ***Contra, Tenn. R. Sup. Ct. 10, Rules 1.2 and 1.3.***

These cases are just a "tip of the iceberg" of blatant judicial ethical blunders which mere common sense would avoid. [See e.g., Caperton v. A.T. Masey Coal Co., Inc., 556 U.S. 868 (2009); U.S. Boylan, 5 Supp. 2d 274, 279 (D. N.J. 1998); and Nichols v. Alley, 71 F.3d 347 (10th Cir. 1995)]. Respectfully, most judicial ethics issues aren't "rocket science." Don't do things as a judge that would embarrass you off the bench. [Grievance Adm'r v. Fieger, 719 N.W.2d 123 (Mich. 2006)]. As a former member of the COJ, the best advice I can offer if you face a BJC judicial disciplinary complaint is "Tell the truth – even if you think it will hurt your case – tell the truth!" There is always a member of the press who will fill in unflattering purported blanks in your disciplinary scenario if you have a bad memory. [See e.g., Eisenstein v. WTVF-TV, 2012 Tenn. App. Lexis 515 (Tenn. App. M.S. 7/30/2012)]. When in doubt, ask for a Judicial Ethics Opinion. [State v. Lipman, 67 S.W.3d 79, 84 fn. 4 (Tenn. Crim. App. 2001)].

Judicial Resources. A judge would be wise to get a copy of the Tennessee Judicial Ethics Opinions Handbook (AOC, 2012) and read Judge Joe Riley's "Ethical Obligations for Judges," 23 Mem. St.

U.L. Rev. 507 (1993). The Tennessee Judicial Ethics Opinions Handbook sets out all Judicial Ethics Opinions ("JEOs") from 1982 to date covering various ethical issues. The JEOs are indexed for research advice to judges facing ethical issues. Excellent advice comes from the Judicial Ethics Committee or former members of the Court of the Judiciary, such as Judge Joe Riley, (former Presiding Judge of the COJ and later Disciplinary Council for the COJ). Further, the "old theories" of how a judge should carry oneself still apply today. [See e.g., Smith, "Judicial Ethics and Courtroom Decorum," 27 Tenn. L. Rev. 26 (Fall, 1959)]. Also, national publications on judicial ethics, such as the American Judicature Society's publication "An Ethics Guide for Part-Time Lawyer Judges" (AJS, 1999), can be very useful for Tennessee municipal judges.

Final Thoughts on Judicial Ethics. Keep yourself in check. As noted by famed British jurist Lord Camden (Chief Justice of Britain's Court of Common Pleas) 250 years ago, "The discretion of a judge is the law of tyrants." [State v. Yeates, 11 N.C. 187, 191 (1825) and Imwinkelried, "The Meaning of Probative Value and Prejudice in Federal Rule of Evidence 403," 41 Vand. L. Rev. 879, 879 and 879 fn. 1 (Oct. 1988)]. The judicial ethics rules for Tennessee are designed to eliminate judicial misconduct by rule, education and, as a last resort, discipline.

CHAPTER IX – CONTEMPT/FTA/ COURTROOM CONTROL

A municipal judge needs to hold the attention and respect of all who enter the court. [People v. Blue, 724 N.E.2d 920, 942 (Ill. 2000)]. Unfortunately, this need sometimes requires a bit of "leverage" to accomplish this goal. This chapter will discuss contempt, failure to appear and how the municipal judge can control the courtroom. While a judge must not be a dictator from the bench, likewise the judge cannot be the proverbial doormat and continue to command and deserve respect. [Anderson v. Dunn, 19 U.S. 204, 227, 230-231 (1821) and State v. Cummings, 36 Mo. 263, 278-279 (1865)].

CONTEMPT: Judges confronted with disruptive or defiant litigants must have discretion when addressing the unique circumstances of each case. [Illinois v. Allen, 397 U.S. 337, 343-344 (1970) and Tenn. Op. Atty. Gen. 89-03, 1989 Tenn. AG Lexis 144 (1/2/1989) at 1]. The power to find a person in contempt is an awesome, and abusable power. [Gompers v. Buck Stove & Range Co., 221 U.S. 418, 451 (1911). See also, Ex Parte Owens, 258 P. 758, 807 (Okla. Crim. App. 1927)]. History has shown some judges are tyrants from the bench. [Poulos v. New Hampshire, 345 U.S. 395, 426 (1953), Douglas & Black dissenting]. Contempt should be used sparingly. [Winfree v. State, 135 S.W.2d 454, 455 (Tenn. 1940) and Harris v. U.S., 382, U.S. 162, 164 (1965)]. Absent an excessive abuse of discretion, a finding of contempt is virtually de facto absolute and unreviewable. [Walker v. City of Birmingham, 388 U.S. 307, 313-314 (1967); State v. Sammons, 656 S.W.2d 862, 869 (Tenn. Crim. App. 1982); and Nuclear Fuel Svcs. Inc. v. Local Union 3-677, 719 S.W.2d 550, 552 (Tenn. Crim. App. 1986). But see, State v. Green, 783 S.W.2d 548, 550 (Tenn. 1990) which also considers on appeal the judge's role in an attorney/judge verbal exchange which leads to a contempt finding against the attorney]. That is why contempt discretion must be so carefully handled by a municipal judge. [Reese v. Bacon, 176 S.W. 971, 973 (Tex. App. 1943)]. There needs to be a rule which guides this use of wide discretion. [The Cayenne, 5 F. Cas. 322, 323 (D. Del. 1870)]. Pursuant to Tenn. Code Ann. § 16-18-306, a municipal judge can punish a person guilty of contempt with a fine up to $50.00, but the municipal judge cannot sentence a

defendant to jail under § 16-18-306. [Tenn. Op. Atty. Gen. 11-17, 2011 Tenn. AG Lexis 19 (2/15/2011). See also, Tenn. Code Ann. § 16-1-103]. The municipal judge who also presides as a General Sessions Court pursuant to "cross-over jurisdiction" does have contempt power which includes the power to sentence a party to jail for up to ten (10) days and a fine up to $50.00 when the court is exercising its General Sessions duties. [Tenn. Code Ann. § 29-9-103 and Poole v. City of Chattanooga, 2000 Tenn. App. Lexis 181 (Tenn. App. E.S. 3/27/2000) at page 2].

Contempt power in Tennessee is statutory. [In Re: Hickey, 258 S.W. 417, 425 (Tenn. 1923) and Scott v. State, 71 S.W.2d 873, 877 (Tenn. App. M.S. 1949]. Contempt is to be used only when necessary to prevent a total undermining of the administration of justice. [Robinson v. Air Draulics Eng. Co., 377 S.W.2d 909, 911-912 (Tenn. 1964)]. Contempt power for city court judges has a long history. [See, State ex rel. May v. Krichbaum, 278 S.W. 54, 54 (Tenn. 1925)]. There are two (2) generic types of contempt – civil and criminal. [State v. Turner, 914 S.W.2d 951, 954-955 (Tenn. Crim. App. 1995)]. Civil contempt is designed to coerce a contemnor to comply with a court order. [Flautt & Mann v. Council of Memphis, 285 S.W.3d 856, 875 (Tenn. App. W.S. 2008)]. Criminal contempt is designed to punish and vindicate a slight to the authority of the court. [State ex rel. Anderson v. Daughtery, 191 S.W.2d 974, 974 (Tenn. 1917). See also, Tenn. R. Crim. P. 42(a) and Tenn. Op. Atty. Gen. 07-147, 2007 Tenn. AG Lexis 147 (10/19/2007)]. For a discussion generally on contempt, see Hicks v. Feiock, 485 U.S. 624, 631-632 (1988) and State v. Turner, 914 S.W.2d at 954-955]. Simply put, a civil contempt can be purged by doing what a court orders while criminal contempt requires punishment even if the offense is corrected or purged. [Garrett v. Forest Lawn Mem. Gardens, 588 S.W.2d 309, 315 (Tenn. App. M.S. 1979); Shiflet v. State, 400 S.W.2d 542, 543 (Tenn. 1966); and Crabtree v. Crabtree, 716 S.W.2d 923, 925 (Tenn. App. M.S. 1986)].

Once a determination is made that a contempt is civil or criminal, then the court must determine if a contempt is direct or indirect. [O'Brien v. State ex rel. Bibb, 170 S.W.2d 931, 932 (Tenn. App. E.S. 1942)]. Direct contempts happen in the judge's physical presence and may be addressed by the Court immediately and

summarily while indirect contempts happen outside the judge's presence and require a hearing before a contempt can be imposed. [State v. Maddox, 571 S.W.2d 819, 821 (Tenn. 1978); Konvalinka v. Chattanooga-Hamilton County Hosp. Auth., 249 S.W.3d 346, 357 (Tenn. 2008); and Tenn. R. Crim. P. 42(a), (b)]. An example of a direct contempt is cursing in a court of record while the judge is on the bench. [See, Tenn. Code Ann. § 29-9-107]. An example of an indirect contempt is the failure to appear for a municipal court citation. [Tenn. Code Ann. § 29-9-108].[36] The burden of proof for criminal contempts is proof beyond a reasonable doubt. [Thigpen v. Thigpen, 874 S.W.2d 51, 53 (Tenn. App. M.S. 1993)]. The burden of proof for civil contempt is clear and convincing evidence. [Oriel v. Russell, 278 U.S. 358, 364 (1929)]. There is no right to a jury in contempt cases. [Ahern v. Ahern, 15 S.W.3d 73, 82-83 (Tenn. 2000)].

Municipal courts can hold a party in contempt for willfully ignoring a court order to appear in court. [Tenn. Op. Atty. Gen. 11-17, 2011 Tenn. AG Lexis 19 (2/15/2011)]. Further, a municipal judge can hold an attorney in contempt for habitually failing to appear for court or coming to court late. [Tenn. Op. Atty. Gen. 84-296, 1984 Tenn. AG Lexis 49 (11/6/1984)]. Deliberately ignoring a municipal court's orders or judgments can be a basis for contempt. [Tenn. Op. Atty. Gen. 89-03, 1989 Tenn. AG Lexis 3 (1/12/1989)].

Most contempts in municipal court will either be failures to appear or direct contempts which occur in open court. A couple of examples of open-court direct contempts are as follows:

A) Attorneys having a fist fight in court. [U.S. v. Patterson, 26 F. 509, 510-512 (W.D. Tenn. 1886)];

B) Attorney refusing to take an appointment on an indigent criminal case. [State v. Jones, 726 S.W.2d 515, 520 (Tenn. 1987)];

[36] Tenn. Code Ann. 29-9-108 allows a $10.00 fine and up to five (5) days in jail for each violation except for parking violations. Caveat, non-constitutionally elected municipal judges cannot put a person in jail. [Town of South Carthage v. Barrett, 840 S.W.2d 895, 899-900 (Tenn. 1992)].

C) Attorney interrupting judge. [State v. Swisher, 676 S.W.2d 576, 577-578 (Tenn. Crim. App. 1984)];

D) Litigant calling court a "kangaroo court," claiming in court to have a "crooked judge" and declaring the court is running a "star chamber" in open court can be contempt. [McGraw v. Adcox, 399 S.W.2d 753, 753-754 (Tenn. 1966)]; and

E) General disrespect to a municipal court judge can be contempt. [See, State v. Gibson, 1988 Tenn. Crim. App. Lexis 503 (Tenn. Crim. App. 8/2/1988) at pages 6-7]. A bad attitude towards the court can also be considered in sentencing a defendant or whether or not a circuit court will grant pretrial diversion to a defendant. [Id].

A couple areas of "interest," but not directly applicable to municipal courts, include a judge holding an entire jury in contempt for the jury announcing it was a "hung jury" when the court ordered the jury to find a directed verdict. [Moore v. Standard Life & Accident, 504 S.W.2d 373, 374-375 (Tenn. App. W.S. 1972)]. Another "interesting" case involving contempt issues is a man who appeared at court dressed in a "chicken suit," or other strange attire. [State v. Hodges, 695 S.W.2d 171, 171 (Tenn. 1985)]. The Tennessee Supreme Court found the defendant wearing odd clothing, annoying and obnoxious, but not contemptuous. [Hodges, 695 S.W.2d at 173-174].

The municipal judge should remember that the normal limit of punishment for contempt in a municipal court is a $50.00 fine. [Tenn. Code Ann. § 16-18-306]. Jail time does not usually apply as a punishment option for non-constitutionally elected municipal judges. [Lecroy-Schemel v. Cupp, 2000 Tenn. App. Lexis 525 (Tenn. App. M.S. 8/10/2000)]. Expanded contempt powers are afforded to municipal courts exercising General Sessions jurisdiction. [State v. Davis, 2001 Tenn. Crim. App. Lexis 882 (Tenn. Crim. App. 9/9/2001) at 2]. However a judge possesses contempt, and no matter the limits of said power, -- HANDLE WITH CARE and don't let the matter get personal. [See generally, Offutt v. U.S., 348 U.S. 11, 16-18 (1954) and State v. Green, 783 S.W.2d 548, 553 (Tenn. 1990)].

FAILURE TO APPEAR: Failure to appear, commonly referred to as "FTA," technically qualifies as an indirect criminal contempt. [Tenn. R. Crim. P. 42(b) and Tenn. Code Ann. § 29-9-108]. Therefore, before a municipal judge makes a finding, the defendant deserves notice of the basis for possible contempt and an opportunity to defend oneself is required. [Tenn. R. Crim. P. 42(b) and State v. Maddux, 571 S.W.2d 819, 821 (Tenn. 1978)]. Simply because a FTA can qualify as a contempt under either Tenn. Code Ann. § 16-18-306 or Tenn. Code Ann. § 29-9-108 does not mean contempt is the only…or even preferred, manner of addressing a FTA situation. For a general discussion on Failures to Appear, see Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 6-7.

A second way to address a defendant electing not to come to court, or who will not pay an assessed traffic fine, is Tenn. Code Ann. § 55-50-502(a)(1)(H) and (I). Both of these statutes allow a citizen's ***privilege*** to drive on Tennessee roads to be summarily suspended if **A)** the person charged fails to appear in court[37] or **B)** fails to timely pay a traffic fine after court.[38] The Tennessee Department of Safety suspends the violator's driving privileges for either violation, but the Failure to Appear suspension must be turned into the State within 180 days or the suspension is invalid. [Tenn. Code Ann. § 55-50-502(a)(1)(I)]. Once a license is suspended, it stays suspended until the driver takes the steps required by the State of Tennessee for the license to be reinstated, such as paying the traffic fine and paying a reinstatement fee. [See generally, State v. Thompson, 88 S.W.3d 611, 615-616 (Tenn. Crim. App. 2000)]. A driver is not absolutely required to be immediately notified with formal notice of a temporary suspension of driving privileges, but public policy leans towards notification of the suspension as soon as possible. [See, Ratliff v. State, 184 S.W.2d 572, 572-573 (Tenn. 1944) and Storey v. Storey, 835 S.W.2d 593, 599-600 (Tenn. App. W.S. 1992)].

The party facing contempt in municipal court is not entitled to a jury. [Weinstein v. Heinberg, 490 S.W.2d 692, 696 (Tenn. App. M.S. 1992) and Robinson v. Gaines, 725 S.W.2d 692, 694-695 (Tenn. Crim. App. 1986)]. While the defendant has a right to an unbiased

[37] Tenn. Code Ann. § 55-50-502(a)(1)(I).
[38] Tenn. Code Ann. § 55-50-502 (a)(1)(H).

judge, as long as the contemptor's objectionable actions were not directed at the judge, the judge does not have to recuse himself/herself. [State v. Swisher, 676 S.W.2d 576, 578-579 (Tenn. Crim. App. 1984)]. On the other hand, if the issue of contempt relates to a personal attack on the judge, a recusal is justified. [State v. Green, 708 S.W.2d 424, 426-427 (Tenn. Crim. App. 1986)].

This author has a policy in his court that addresses FTAs. The first call of a case is a trial date. If a defendant fails to appear, the case is reset for one month and a non-resident notice ("NRN") is sent to the address on the ticket with information that if the defendant fails to appear at the second calling of the case, or doesn't pay the fine before court, the defendant's driver's license would be suspended pursuant to Tenn. Code Ann. § 55-50-502(a)(1)(I). If the defendant does not address the ticket, the defendant's license is suspended until the matter is addressed and corrected. If a judgment was entered by default, that means paying the ticket and court costs. If the ticket was retired until the defendant appears, that means the defendant appearing in court to request that the traffic ticket be addressed. Upon correcting the default or purging the offense to the court, the court should reinstate the license by notifying the Tennessee Department of Safety that the ticket has been satisfied. Also, inability to perform an act is a defense to contempt so long as the defendant did not intentionally sabotage the following of a court order. In that case the defendant may not be in contempt. [Mayer v. Mayer, 532 S.W.2d 54, 59 (Tenn. App. W.S. 1975)].

COURTROOM CONTROL: The U.S. Supreme Court, in Offutt v. U.S., 348 U.S. 11 (1954), described a judge who lost control of his courtroom saying:

> The record discloses not a rare flare up, not a show of evanescent irritation – a modicum of quick tempers that must be allowed even judges. The record is persuasive that instead of representing the impersonal authority of law, the judge failed to impose his moral authority upon the proceedings.

[Offutt, as quoted in State v. Green, 783 S.W.2d 548, 550 (Tenn. 1990)]. The U.S. Supreme Court went on to say "…judges also are

human, and may, in a human way, quite unwittingly identify offense to self with obstruction to law." [Id. See also, Ex Parte Chase, 43 Ala. 303, 310 (1869)].

All judges must maintain and enforce a high degree of integrity. [In Re: Williams, 987 S.W.2d 837, 840 (Tenn. 1998)]. A lack of formality and professionalism by part-time traffic judges can undermine the authority and esteem of the entire judiciary. [Comment, 17 Fla. St. U. L. Rev. 675, 679-680 (Sp. 1990)]. A trial judge has an affirmative duty to control the courtroom and keep it free of improper influences. [Carey v. Musladin, 549 U.S. 70, 82 (2006)]. The municipal judge cannot let either prosecutor nor defendant ride wild over a court. [U.S. v. Young, 470 U.S. 1, 8 (1985) and U.S. v. Lattner, 385 F.3d 947, 960 (6th Cir. 2004)]. Simply put "One cannot create a court without giving judges the power to control the courtroom." [U.S. v. Aleo, 681 F.3d 290, 306 (6th Cir. 2012)]. There is no constitutional right for litigants or attorneys to attempt a revolution to grab control of a courtroom. [U.S. v. Moncier, 571 F.3d 593, 599 (6th Cir. 2009)]. The judge is allowed to control all who enter a courtroom or deny entry if the party entering won't behave. [Cameron v. Seitz, 38 F.3d 264, 271 (6th Cir. 1994), citing Sheppard v. Maxwell, 384 U.S. 333, 358 (1966)]. Even when a judge acts excessively or high-handedly to keep control of a courtroom, the judge's actions will generally enjoy deference. [Mireles v. Waco, 502 U.S. 9, 12 (1991). But see, Schoolfield v. Tenn. Bar Ass'n., 353 S.W.2d 401 (Tenn. 1962)]. The trial judge is the individual "ultimately responsible for every aspect of the orchestration of a trial." [State v. McCray, 614 S.W.2d 90, 93 (Tenn. Crim. App. 1981) and Phillips v. Tollett, 330 F. Supp. 776, 780 (E.D. Tenn. 1971)]. Controlling the courtroom is the job of the judge alone and "cannot be delegated, abrogated or negated. The buck truly stops with the trial judge." [State v. Haskins, 1988 Tenn. Crim. App. 196 (Tenn. Crim. App. 4/7/1988) at 38-39 and Phillips v. Tollett, 330 F.Supp. at 780].

The following suggestions will give the municipal judge some options, short of contempt findings, which help the judge maintain control of the courtroom, as well as a little "jump-off research" if the municipal judge needs to support or further consider the suggested action:

A) **Robe Up or Suit Up.** If you don't believe your court is worthy of dignity and a little "Pomp & Circumstance," it will be hard to convince litigants to respect the position. "From the nun's habit to the judge's robes, clothing may often tell something about the person so garbed." [Zalewska v. County of Sullivan, 316 F.3d 314, 319 (2nd Cir. 2003)]. Most people acknowledge that a black judicial robe is associated with the law and its traditions.[39] You can get a basic black robe at Lifeway Bookstores for around $100.00 to $150.00. As noted in the footnote to this suggestion, Thomas Jefferson preferred judges wear suits instead of robes when hearing cases, but the U.S. Supreme Court preferred robes. You can convey an air of dignity with either option. [See, Bishop, Municipal Courts, 3d § 2.11 at page 19 (Samford University Press, 1999)].

B) **"All Rise."** Yes, this is an ego stroke that may seem trite, especially if there are only a couple of people on your docket, but it is necessary. Having everybody stand as you take the bench immediately shows which person in the courtroom is in charge. The boost to one's ego is simply a satisfying collateral effect of controlling the courtroom. While a bit of a stretch, the failure to rise when the judge enters the courtroom can be considered a contempt issue. [See, Ex parte Krupps, 712 S.W.2d 144, 149-151 (Tex. Crim. App. 1986), with string citation and U.S. v. Dunlap, 2006 U.S. Dist. Lexis 43832 (E.D. Pa. 6/27/2006) at 4-5].

C) **Calling the Docket.** If you call the docket, you can observe the defendants and their demeanor. [Harges, "Law Professor's Sabbatical in District Attorney's Office," 17 Touro L. Rev. 383, 393 (Winter, 2001)]. If a litigant appears to be ripe for causing a scene, simply slip that case to the bottom of the stack for the second call of the docket

[39] Judicial robes are traditionally black because judges, according to the National Center for State Courts, were mourning the death of England's Queen Mary II in 1694 and judges simply kept wearing black after the period of mourning ended. [www.ncsonline.org/WC/Publications/PubInfCtTrivia.htm]. The tradition carried over to the United States when John Jay, the first Chief Justice of the US. Supreme Court, elected to have the Court wear black robes instead of business suits in court (as Thomas Jefferson suggested) when the Supreme Court heard cases. [www.pbs.org/wnet/supreme court/democracy/authority4.html].

and by the time the litigant that may act out gets called for their hearing, that litigant may "lose a little steam" or no longer has an audience to "see the show." Courts have wide discretion in determining the order in which the court hears cases on the docket. [Torkelsen v. Maggio, 72 F.3d 1171, 1177 (3rd Cir. 1996) and Sloan, "A Government of Laws and Not Men," 79 Ind. L.J. 711, 763 (Summer, 2004)].

D) **Don't be a Buddy.** If the judge appears to be too "chummy" with police or a party litigant or a lawyer, this appearance of favoritism can cause dissent for the people watching the exchange and thinking they are "not on a level playing field" with the other litigant because of someone being a friend of the court. [Ex Parte Owens, 258 P. 758, 801 (Okla. Crim. App. 1927)].

E) **Don't be a Comedian.** Even Bob Hope would have trouble getting a good review for humor while issuing fines for criminal acts. It is more important that the municipal judge be ***respected*** on the bench than ***liked*** on the bench. That being said, courtesy is mandatory! [Rawls v. State, 190 P.2d 159, 166 (Okla. Crim. App. 1948)]. "Humor, like beauty, is in the eyes of the beholder." [Nike, Inc. v. "Just Did It" Enterprises, 6 F.3d 1225, 1226 (7th Cir. 1993)]. If you use humor to "lighten" the courtroom, be careful not to use it in a manner that belittles people or implies bias against a party before the court. [People v. Abel, 271 P.3d 1040, 1060-1061 (Cal. 2012)].

F) **Have Visible Court Officers.** Let the police that act as bailiff be seen. A cop toting a pistol has an amazing ability to "calm" a would-be disorderly conduct instigator. [People v. Cardoza, 2012 Cal. App. Unpub. Lexis 316 (Cal. App. 1/17/2012) at 46-47].

G) **Handling the Twit.** If a litigant is acting up in court, simply announce that the matter may take a little more time than expected and move the case to the end of your docket. [See generally, Brown v. Brown, 801 So.2d 1116, 1119-1120 (La. App. 2001)]. A subtle judicial "time-out" may

work to calm the litigant's mood, or at least not subject the rest of the docket to the Twit's rantings. Follow the lead of the U.S. Senate – the more aggravating the party, the more polite you should respond. [E.g., "My very learned colleague" in Senate-speak means "You pompous, moronic windbag that needs to be slapped"]. You have wide discretion in running your court. [Combs v. Peters, 127 N.W.2d 750, 755 (Wis. 1964)].

H) **Take a Recess.** Taking a few minutes of "me time" allows both the upset litigant and the municipal judge a chance to collect their thoughts. It also allows a litigant's attorney or on-lookers to tell a person "cool it!" [Sacher v. U.S., 343 U.S. 1, 36 (1952), Frankfurther, dissenting and Jones v. Murphy, 694 F.3d 225, 232 (2nd Cir. 2012), {3 hour recess ordered to calm down a disruptive defendant during a jury trial}].

I) **Pesky Forms.** If a litigant is trying to bully the court, taking a few minutes to fill out those "pesky forms" before addressing the litigant can sometimes convey the hint to "cool it." Standing at a podium while the court fills out paperwork reminds a litigant that the Court can occupy its time with other matters if the litigant will not behave. [See e.g., State v. Williams, 11 P.3d 1187, 1188-1189 (Kan. App. 2000)].

J) **The Look.** A well-timed glance over the glasses can quickly convey a "Do you really want to pick a fight with me" hint which often works without any words being exchanged. [State v. Higa, 269 P.3d 782, 795 (Hawaii App. 2012) with multiple citations on point. See also, Anno., "Gestures, Facial Expressions, or Other Nonverbal Communication of Trial Judge," 45 A.L.R. 5th 531 (1997)].

K) **The Interrupter.** If a litigant is interrupting the court or a witness, politely remind the Interrupter that everybody will get to talk, but only one can be heard at a time so let's take turns. [See e.g., Brown v. Astue, 2013 U.S. Dist. Lexis

3544 (C.D. Cal. 1/9/2013) at 41-42]. If this does not work, see suggestion "G" above.

L) **"We're All Friends Here."** This little phrase politely tells litigants or lawyers to stand down as a verbal exchange is escalating. [People v. Tate, 739 N.E.2d 617, 621 (Ill. App. 2000)].

M) **Formal Admonition.** The municipal judge specifically tells a litigant or lawyer "That's enough!" Be polite, yet firm. Set out exactly what the person is doing that is offensive. [See, Zip Dee, Inc. v. Dometic Corp., 949 F. Supp. 653, 654-655 (N.D. Ill. 1996) for a poetic discussion of this concept referencing Shakespeare's "MacBeth"]. If this does not work, a reset or contempt is probably in order.

N) **The Reset.** "***The reset***" is a judicial form of "Don't go away mad, just go away." If a litigant or attorney will not calm down, reset the case for a month down the road to "continue the hearing until we are all in a better frame of mind." [See e.g., State v. Sampson, 24 A.3d 1131, 1156 (R.I. 2011), Goldberg, dissenting]. Remember, you are being paid to be at that next docket while the offender must take another day off of work because the offender insisted on losing his composure. If a reset will not work, consider contempt.

O) **The "Nice Day for a Walk" Speech.** Occasionally, a litigant will come to court alone for a traffic violation and their driver's license is suspended. If the person is acting up, and it is clear they are alone, suggest to the litigant ***"Since you just testified you do not have a driver's license, I'm not going to ask you how you got to court today; but since there are about a dozen police officers that just heard that you do not have a driver's license; if you drove here today it might be a good day for a walk as you leave."*** This query has amazing results on both the offending litigant and others in the courtroom. If the person who had a revoked license is arrogant enough to ***drive*** to their traffic court date, there is no need to feel sorry if they have to catch a cab or

walk home and get their car later. [But see, Hazelton v. Amestoy, 2003 U.S. Dist. Lexis 20558 (D. Vt. 11/4/2003) and Mink v. Arizona, 2010 U.S. Dist. Lexis 67245 (D. Ariz. 7/6/2010)].

P) **"Don't Trade Up for Perjury" Speech.** Before each docket (usually right at the part of the introductory remarks where I tell litigants about the possibility of traffic school) I tell about a woman who traded a $50.00 traffic ticket for two (2) to four (4) years incarceration for Aggravated Perjury, Tenn. Code Ann. § 39-16-703. I tell litigants "This is not a good trade. Please don't lie to the Court when I ask if you have had traffic school anywhere within the last two (2) years because the police are going to check your driving record." This speech works like a charm. The fact scenario of the Aggravated Perjury was a woman giving the name, social security information, date of birth and driver's license of her sister in an attempt to avoid a speeding ticket. I usually don't tell all the detail of how the issue came up, simply that it is possible and the woman did about three (3) years in the county jail for perjury instead of simply paying her traffic ticket. [See generally, Gutenkauf v. City of Tempe, 2011 U.S. Dist. Lexis 51748 (D. Ariz. 5/4/2011) at 17-18 and 20-21].

Q) **Clearing the Courtroom.** If spectators become overly disruptive, a municipal judge can clear a courtroom or exclude the offending parties. [Richmond Newspapers Inc., v. Virginia, 448 U.S. 555, 579-581 (1980)]. As a general rule, do not clear the courtroom until the spectators become overly disruptive. [See, Art. I § 17, Tenn. Const. and In Re: Oliver, 333 U.S. 257, 266-267 (1948)].

Final Thoughts on Courtroom Control. There are various options for keeping control over your court. Contempt should be a last resort. "Do not pay attention to every word people say, or you may hear your servant cursing you – for you know in your heart that you yourself have cursed others." [Holy Bible, Ecc. 7:21].

CHAPTER X – COURTROOM SECURITY AND DECORUM

Many municipal judges in Tennessee are sometimes lax on courtroom security and courtroom decorum because of a perception that since a municipal court is often "just hearing speeding tickets," informality in all aspects of how the court runs is justified. This is not correct. Courtroom safety, control and decorum is necessary for any court to operate effectively. [Deck v. Missouri, 544 U.S. 622, 656 (2005), Thomas dissenting]. Judges have wide discretion when it comes to courtroom security. [Hof v. State, 629 A.2d 1251, 1279 (Md. Sp. App. 1993)]. This chapter will first discuss courtroom security and then courtroom decorum.

Courtroom Security: The Honorable Theodore R. Boehm, a Justice of the Indiana Supreme Court, once mused "The days of security-free…courtrooms are gone…" [Boehm, "Rededication of the Federal Courthouse in Indianapolis," 37 Ind. L. Rev. 605, 606 (2004)]. In 1978, a New Jersey municipal judge was killed pursuant to a "mob hit" because the judge ruled adversely to a litigant with Mafia ties. [See, U.S. v. Pungitore, 910 F.2d 1084, 1100 (3rd Cir. 1990)]. While New Jersey municipal court judges have greater jurisdiction than a "standard" Tennessee municipal court judge,[40] angry litigants raise safety concerns for all municipal judges. [See e.g., El v. Gloucester Township, 116 Fed. Appx. 386, 387 (3rd Cir. 2004), defendant threatening to shoot a municipal judge]. Lax courtroom security has led to courtroom deaths for attorneys,[41] judges,[42] litigants,[43] and court staff.[44]

The Tennessee Municipal Judges Conference ("TMJC") has never adopted minimum security procedures, but the Tennessee Judicial Conference and the Tennessee General Sessions Judges Conference have set security standards for those courts. [See Chapter

[40] Municipal court jurisdiction in New Jersey appears comparable to Tennessee's General Sessions Courts. [See, N.J. Stat. § 2B:12-18 and N.J. Stat. § 2B: 12-17].

[41] People v. Ruef, 114 P. 54, 66 (Cal. App. 1910), district attorney killed in court.

[42] Dowdell v. Wilhelm, 699 S.E.2d 30, 31-32 (Ga. App. 2010), judge killed in court during an inmate escape attempt; Freeman v. Barnes, 640 S.E.2d 611, 612 (Ga. App. 2006), judge killed in court; and Commonwealth v. Moon, 132 A.2d 224, 225 (Pa. 1957), judge killed in court.

[43] State v. Baumruk, 280 S.W.3d 600, 605 & 620-621 (Mo. 2009), en banc, wife killed during divorce hearing.

[44] Dowdell v. Wilhelm, 699 S.E.2d 30, 31-32 (Ga. App. 2010), deputy and court reporter killed during an inmate escape attempt.

2 of the Trial and General Sessions Judges Benchbook put out by the AOC and Bane v. Nesbitt, 2006 Tenn. App. Lexis 791 (Tenn. App. W.S. 12/14/2006) at 10]. The Tennessee Legislature has addressed both courtroom security and funding of courtroom security for the trial level and General Sessions level of the Tennessee judiciary. [Tenn. Code Ann. § 16-2-505(d) and Tenn. Code Ann. § 8-21-401(i)(3)(B)]. The following are some of the minimum security standards suggested by the Trial and General Sessions Conferences' standards (some paraphrased and some with general case references):

Minimum Courtroom Security Standards:

1) Silent "panic button" for the judge's bench which contacts police for both the bench and Judge's chambers. [State v. Mullens, 893 N.E.2d 870, 877-878 (Ohio App. 2008) and Dorris v. County of Washoe, 885 F. Supp. 1383, 1385 fn. 2 (D. Nev. 1995). See also, U.S. v. Quiles-Olivo, 684 F.2d 177, 180 (1st Cir. 2012)];

2) A bullet-proof bench. [See generally, "The Rise of Appellate Litigators," 29 Rev. Litig. 545, 592 (2010)];

3) Armed/uniformed court officers in the courtroom during court. [U.S. v. Chavez-Flores, 404 Fed. Appx. 312, 314 (10th Cir. 2010)];

4) Court security training for court officers, [Blackburn v. Shelby County, 770 F. Supp. 2d 896, 926 (W.D. Tenn. 2011). Cf., Tenn. Code Ann. § 5-7-108(a)(2)]; and

5) Metal detectors, (minimum of 2 wands) or a magnetomer, per courtroom. [See e.g., Noel v. State, 2011 Tenn. Crim. App. Lexis 146 (Tenn. Crim. App. 3/3/2011) at 11-12].

Minimum Court Security Procedures:

1) Contact AOC Security Advisor, Tim Townsend, (615) 741-2687 to have your court evaluated for safety concerns;

2) Conduct periodic security evaluations of the courtroom; and

3) Emergency and safety training education for courtroom and court staff.

The standards adopted by the Trial and General Sessions Conferences include some other aspects that generally do not apply to municipal court such as transporting jail inmates. The TMJC would be served well to establish uniform courtroom security measures of their own. State and county courts are authorized to collect litigation fees for implementing courthouse security, but currently this option is not available to fund security measures for municipal courts in Tennessee. [Tenn. Code Ann. § 67-4-601(b)(6)].

Judges are justified in increasing security when a court situation appears volatile.[45] In this vein, Tenn. Code Ann. § 39-17-1306(c)(3) allows judges, including municipal court judges, to carry a gun on the bench for personal protection if the judge has completed a firearms and court security class. [See, Tennessee Law Enforcement Training Academy memo to TMJC members from Brian Grisham on Firearms Requalification dated 11/30/2012]. For information on taking this gun safety class, contact AOC at (615) 741-2687 and/or the Tennessee Law Enforcement Training Academy at (615) 741-4448. Tenn. Code Ann. § 39-17-1306(c)(3) took effect on June 10, 2011 and requires the following if a judge wishes to take a gun to the bench:

(c)(3): Be a judge exercising judicial duties;

A) Have a Tenn. Code Ann. § 39-17-1351 gun carry permit;

B) Complete sixteen (16) hours of court security firearms training;

C) Complete eight (8) hours of updated training annually; and

D) Qualify as a judge under Tenn. Code Ann. § 16-1-101.

[45] See e.g., State v. Harris, 2012 Tenn. Crim. App. Lexis 6 (Tenn. Crim. App. 1/5/2012) at pages 21-27; Mobley v. State, 2011 Tenn. Crim. App. Lexis 637 (Tenn. Crim. App. 8/18/2011) at 15; State v. Hurt, 2007 Tenn. Crim. App. Lexis 959 (Tenn. Crim. App. 12/27/2007) at 9-10; and State v. Rimmer, 2001 Tenn. Crim. App. Lexis 339 (Tenn. Crim. App. 5/25/2001).

[Tenn. Code Ann. § 39-17-1306(c)(3)].

A judge must be on guard because of their position at all times. On March 26, 1879, John M. Elliott, a Justice on the Supreme Court of Kentucky, was shot just outside of the Kentucky State Capital as Justice Elliott and another justice were making their way to go have lunch. Justice Elliott was shot at close range by Colonel Thomas Buford, who used a 12 gauge shotgun. Col. Buford was upset at Justice Elliott for an adverse ruling from several years before. [See, www.jeanhounshellpeppers.com/Assassination_of_Judge_John_Elliott.htm]. The murder of Justice Elliott was so notorious that juries and appellate courts in Tennessee knew the facts of the case by mere passing reference. [See, Northington v. State, 82 Tenn. 424, 428 (1884)]. Other judges have been approached on the street by irate litigants or lawyers looking for a fist fight. [See e.g., People v. Green, 3 P. 374, 379 (Colo. 1883)]. The following are a couple of suggestions to help current judges avoid the vulnerability that led to Justice Elliott's death:

A) Designate a parking slot for the judge that gives secured or easy/quick access to the court. If this parking slot is not secured from public access, park a police car next to the judge's car. Do not put a sign on the parking slot "Reserved for the Judge." A simple orange cone can hold the slot if necessary;

B) Have a police officer watch the parking lot as the judge leaves the court. Preferable, the litigants will have left the court prior to the judge leaving court;

C) Do not hold court excessively late and have police officers present when court is in session;

D) Have a single entrance in/out of the court for litigants which is manned by police with inexpensive hand-held "wand" type metal detectors. Persons coming into court should show court officers purses and backpacks and each person entering the courtroom should be "wanded" with the metal detector;

E) Have an emergency alternative exit for the judge to be able to leave the bench quickly if necessary;

F) If a litigant is acting out, have two (2) police officers escort the person misbehaving to pay fines and leave the court;

G) If a litigant is upset with another litigant, have the aggressor remain in the courtroom, near an on-looking police officer, until the non-offensive litigant has plenty of time to exit the building and leave the area before the upset litigant is allowed to leave the court;

H) One way to keep security in a courtroom is to have the municipal judge take a contested issue "under advisement" and issue a written decision at a later time…after everybody has left the courtroom. This option forces the litigants to behave because the ruling has not been rendered, so litigants do not wish to act out and hurt their chance of winning the case. This option is better designed for cases such as nuisance clean-up than traffic citations; and

I) Robe/Gavel/Formal Opening of Court are signs and acknowledgments of the Court's authority. Subtle reminders that the business of a court is grave, important and deserves dignity and respect. As former Tennessee Supreme Court Special Justice Erby L. Jenkins once said, "justice is not a small thing" because "there is no small lawsuit." [Jenkins & Neil, "Presentation of Lawyers Before Supreme Court," 27 Tenn. L. Rev. 33, 33 (Fall, 1959)].[46]

However it is done, a municipal judge can avoid potential danger with a little planning prior to convening court. Remember, emotions run high during court. [See e.g., People v. Blue, 724 N.E.2d 920, 942 (Ill. 2000)].

[46] The "Neil" in this law review article is the Honorable A.B. Neil, Chief Justice of the Tennessee Supreme Court. Mr. Jenkins was a former Tennessee Bar Association President. [See citied law review article in main text at page 26].

Courtroom Decorum: *"The judge sets the standard of his court – he must require the lawyers who practice before him to conform to a high standard lest those with no sense, or with a lack of the ideals which the profession of law demands, pull down the best to their own level in order to compete on equal terms."* [Smith, "Judicial Ethics and Courtroom Decorum," 27 Tenn. L. Rev. 26, 26 (Fall, 1959)]. A judge can balance being courteous and kind while still holding a firm and stern hand on the reins of court. [Id. at 31]. Although many small claims courts, such as Tennessee municipal courts, relax technical rules such as evidentiary rules, "…a certain degree of formality is recommended to lend legitimacy to the proceedings as well as to engender respect for the judge, the…process, and judgment." ["The Iowa Small Claims Court," 75 Iowa L. Rev. 433, 496 (Jan., 1990)].

Attorneys and judges should strictly adhere to the rules of decorum to manifest an attitude of professionalism and respect for the judicial process. [State v. Benson, 645 S.W.2d 423, 425 (Tenn. Crim. App. 1983) and State v. McGinnis, 1986 Tenn. Crim. App. Lexis 2701 (Tenn. Crim. App. 6/6/1986) at page 25 both, citing ABA Standards]. It is the ***judge's*** obligation to make sure that order and decorum is maintained in court and that all litigants and attorneys act respectful to all concerned in the process even when tempers flare. [Nat. Surety Co. v. Jarvis, 278 U.S. 610, 610 (1928); Watkins v. State, 203 S.W. 344, 346 (Tenn. 1917); and Nashville R&L Co. v. Owen, 11 Tenn. App. 19, 31-32 (M.S. 1929)].

Part of courtroom decorum is to set standards of dress and behavior. [Coker v. State, 911 S.W.2d 357, 368 (Tenn. Crim. App. 1995) and State v. Ring, 56 S.W.3d 577, 584 (Tenn. Crim. App. 2001)]. The rules of decorum address media coverage. [State v. Morrow, 1996 Tenn. Crim. App. Lexis 222 (Tenn. Crim. App. 4/12/1996) at 7-8 and State v. James, 902 S.W.2d 911, 913-914 (Tenn. 1995). Accord, Tenn. R. Sup. Ct. 30A]. The rules of decorum can admonish disruptive attorneys and litigants. [See e.g., State v. Hicks, 618 S.W.2d 510, 519 (Tenn. Crim. App. 1981)]. Decorum requires the judge to demand respect from all connected with the court – especially when that authority comes under direct attack. [See e.g., In Re: Lineweaver, 343 S.W.3d 401, 415-416 (Tenn. App. W.S. 2010)].

When a municipal judge decides to set rules for how parties present themselves in court, the judge must set clear rules and standards for courtroom decorum. [State v. Owens, 2009 Tenn. Crim. App. Lexis 1042 (Tenn. Crim. App. 12/22/2009) at 88]. This may be done in court by announcement from the judge or via written/posted rules. [Id]. When making rules, the judge must be specific on what is not allowed in court in areas such as personal appearance or physical attire. [State v. Hodges, 1984 Tenn. Crim. App. Lexis 2791 (Tenn. Crim. App. 3/22/1984)]. Vague rules that parties must be "appropriate" and wear "proper clothes" is useless because the inexact rule is no rule at all. [Id]. Decorum rules must be specific, not vague! A few rules are so clear that a posted rule is not needed, such as the rule against bringing guns to court. [Tenn. Op. Atty. Gen. 07-148, 2007 Tenn. AG Lexis 148 (10/22/2007) at 5].

Final Thoughts on Courtroom Security and Decorum. A municipal judge keeps control of the court by clear, direct and unbiased rules and rule applications. As Justice Felix Frankfurter said, "…judges are not referees at prize-fights but functionaries of justice." [Johnson v. U.S., 333 U.S. 46, 54 (1948), Frankfurter, dissenting. See also, Herron v. So. Pacific Co., 283 U.S. 91, 95 (1931)]. "It is not only within the province of the trial judge, it is his duty to maintain decorum during trial." [Walker v. U.S., 285 F.2d 52, 62 (Old 5th Cir. 1960)].

CHAPTER XI – CONSTITUTIONAL RIGHTS ISSUES

Defining municipal court jurisdiction is, to say the least, confusing. The Tennessee Supreme Court has called municipal courts jurisdiction: **A)** civil, **B)** criminal, **C)** quasi-criminal, and **D)** de facto administrative, even hinting (via the Tennessee Court of Criminal Appeals) that a traditional/standard municipal court (one without General Sessions Court jurisdiction), may even hear non-jury criminal cases if a waiver is provided. [Chattanooga v. Myers, 787 S.W.2d 921, 924-926 (Tenn. 1990); O'Dell v. Knoxville, 379 S.W.2d 756, 758 (Tenn. 1964); O'Haver v. Montgomery, 111 S.W. 449, 452 (1908); State v. Davis, 322 S.W.2d 214, 216 (Tenn. 1959); Summers v. Thompson, 764 S.W.2d 182, 183 (Tenn. 1988); and Metro Gov't of Nashville and Davidson County v. Miles, 524 S.W.2d 656, 660 (Tenn. 1975). See also, State v. Huskey, 2002 Tenn. Crim. App. Lexis 550 (Tenn. Crim. App. 6/28/2002) at 31, citing State v. Biggers, 911 S.W.2d 715, 718-719 (Tenn. 1995) and State v. Tomberlind, 1989 Tenn. Crim. App. Lexis 240 (Tenn. Crim. App. 3/28/1989) at 5]. The prevailing view is that municipal court[47] judgments are civil in nature even though some criminal procedure constitutional rights apply to "standard municipal courts." [See generally, State v. Davis, 322 S.W.2d 214, 216 (Tenn. 1959) and Thornburgh v. Thornburgh, 937 S.W.2d 925, 926 (Tenn. App. E.S. 1996). Accord, U.S. v. Cropper, 1 Morris 190, 194 (Iowa 1843)]. In 2004, via the Municipal Court Reform Act, the Tennessee Legislature ended this debate by finding and declaring that a standard municipal court's punitive judgments are civil in nature. [Tenn. Code Ann. § 16-18-302(a)(2). Accord, City of Chattanooga v. Davis, 54 S.W.3d 248, 259 (Tenn. 2001) and Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 2]. The Tennessee Legislature is fully authorized to set subject matter jurisdiction for municipal courts. [Summers v. Thompson, 764 S.W.2d 182, 183 (Tenn. 1988); State v. Superintendent, Davidson County Workhouse, 259 S.W.2d 159, 161 (Tenn. 1953); and Duncan v. Rhea County, 287 S.W. 26, 30 (Tenn. 1955)]. Jurisdiction for municipal courts that have General Sessions Court jurisdiction is controlled under the Tennessee Rules of Criminal Procedure. [See,

[47] A "standard" or traditional municipal court does not have concurrent jurisdiction with General Sessions Courts and a standard municipal court's jurisdiction is generally limited to traffic violations, violation of city ordinances, and C misdemeanors with a $50.00 civil fine limit. [Tenn. Code Ann. § 16-18-302(a) and Summers v. Thompson, 764 S.W.2d 182, 182 (Tenn. 1988)].

Tenn. R. Crim. P. 1 at advisory comments and City of White House v. Whitley, 979 S.W.2d 262, 266 (Tenn. 1998)]. For more information on how jurisdiction relates to municipal courts in Tennessee, see Chapter VI of this book.

The various distinctions of what one calls "standard" municipal court jurisdiction is not that important because "Fundamental Fairness" and "Due Process" of the XIVth Amendment of the U.S. Constitution and/or Art. I § 8 of the Tennessee Constitution clearly apply to Tennessee municipal courts. [Town of Nolensville v. King, 151 S.W.3d 427, 431 (Tenn. 2004) and City of White House v. Whitley, 979 S.W.2d 262, 264 (Tenn. 1998)]. Municipal court fines which are punitive in nature trigger constitutional protections for a defendant. [City of Knoxville v. Brown, 284 S.W.3d 330, 337 (Tenn. App. E.S. 2008) and City of Oak Ridge v. Brown, 2009 App. Lexis 188 (Tenn. App. E.S. 5/9/2009) at 10]. This would explain why municipal court judgments have sometimes been called "quasi-criminal." [See e.g., Robinson v. City of Memphis, 277 S.W.2d 341, 342 (Tenn. 1955), citing Deming v. Nichols, 186 S.W. 113, 114 (Tenn. 1916)].

Since municipal courts are civil in nature, civil rules of procedure generally apply. [O'Dell v. City of Knoxville, 379 S.W.2d 756, 758 (Tenn. 1964) rev'd on other grounds]. That being said, the formal Tennessee Rules of Civil Procedure do not normally apply in Tennessee municipal courts. [Tenn. R. Civ. P. 1]. This chapter shall generally follow the constitutional rules of a Tenn. R. Crim. P. 11 guilty plea, commonly called a Mackey plea,[48] to determine which points apply to pleas and constitutional rights of defendants in municipal courts. After Tenn. R. Crim. P. 11 is discussed in bullet-points, several other constitutional rights issues will be discussed. There is a general presumption against a defendant implicitly waiving a personal/fundamental constitutional right or that the waiver was done by "proxy" (e.g., the defendant's attorney). [Momon v. State, 18 S.W.3d 152, 161-162 (Tenn. 1999)]. Fundamental constitutional rights must be personally waived by a defendant or said waiver is invalid. [Momon, 18 S.W.3d at 162]. We will now see which parts of Tenn. R. Crim. P. 11 apply to municipal courts.

[48] State v. Mackey, 553 S.W.2d 337 (Tenn. 1977).

A) Knowing and Voluntary Plea. Guilty pleas and/or relinquishment of personal rights must be made knowing and voluntary by the defendant. [Tenn. R. Crim. P. 11(b)(1) and (2)]. The determination of whether or not a guilty plea is voluntary and knowingly made is a totality of the circumstances inquiry. [State v. Williams, 2012 Tenn. Crim. App. Lexis 742 (Tenn. Crim. App. 6/8/2012) at 20-25]. This personal knowing/voluntary guilty plea requirement applies to municipal cases and requires a judge to make sure the defendant knows what is being pled to and the consequences of a guilty plea ***and*** that the defendant is not required to plead guilty in ***any*** case, but the defendant can instead have a trial on the merits. [Farmer v. State, 570 S.W.2d 359, 361 (Tenn. Crim. App. 1978)[49] and Parham v. State, 885 S.W.2d 375, 380-381 (Tenn. Crim. App. 1994)]. Advising defendants of their applicable constitutional rights is part of the municipal judges required duties in municipal court proceedings. [Freeman v. State, 2001 Tenn. Crim. App. 123 (Tenn. Crim. App. 2/21/2001) at 5-7 and Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 2]. The "knowing and voluntary" aspect of a guilty plea cannot be inadvertently waived by a defendant. [Ward v. State, 315 S.W.3d 461, 465-466 (Tenn. 2010) and Momon v. State, 18 S.W.3d 152, 161-163 (Tenn. 1999)]. Knowing and voluntary waivers of constitutional rights apply to nolo contendre (a/k/a no contest) pleas. [Tenn. R. Crim. P. 11(b)(1)]. It is clear that the "knowing and voluntary plea" rule applies to municipal courts. [See e.g., Freeman v. State, 2001 Tenn. Crim. App. Lexis 123 (Tenn. Crim. App. 2/21/2000) at 1, defendant collaterally attacking the voluntariness of a guilty plea made in municipal court on involuntary plea claims. See also, Judge Riley's dissent in Freeman at pages 10-12]. Tenn. R. Crim. P. 11 and/or Mackey plea mandates apply to ***any*** court taking a guilty plea. [State v. McClintock, 732 S.W.2d 268, 273 (Tenn. 1987) and Baker v. Baker, 2012 Tenn. App. Lexis 161 (Tenn. App. M.S. 3/9/2012) at 27].

B) Confrontation of Accuser. According to the VIth Amendment of the U.S. Constitution and Art. I § 9 of the Tennessee Constitution, a defendant has the right to confront his accuser "face to face" so that a defendant can see, and cross-examine, prosecution

[49] Tennessee's constitutional minimum standards for guilty pleas are stricter than its federal counterpart. [Farmer, 570 S.W.2d at 361, declaration by Judge Lloyd Tatum].

witnesses. [State v. Lewis, 235 S.W.3d 136, 141-142 (Tenn. 2007) and State v. Armes, 607 S.W.2d 234, 236-237 (Tenn. 1980)]. While the Right of Confrontation is slightly different in civil and criminal cases, the Right to Confrontation applies to both. [Goodwin v. Metro Bd. of Health, 656 S.W.2d 383, 387-388 (Tenn. App. W.S. 1983) and Louisville & Nashville R.R. v. Voss, 72 S.W. 983, 984 (Tenn. 1903)].

The U.S. Supreme Court has emphasized that testimonial statements used as evidence in a prosecution requires confrontation, not hearsay. [Crawford v. Washington, 54 U.S. 36, 68-69 (2004)]. Confrontation includes open-court testimony, cross-examination, and a public viewing of prosecution witness demeanor and credibility. [California v. Green, 399 U.S. 149, 157-158 (1970) and Lilly v. Virginia, 527 U.S. 116, 123-124 (1999)]. A municipal judge must make his/her findings in a punitive setting case on ***each essential element of a crime*** based solely on admissible evidence which is subject to open-court cross-examination. [State v. Wade, 863 S.W.2d 406, 407 (Tenn. 1993) and Goodman v. State, 19 Tenn. 195, 197-198 (1838)].[50] The gist of a Confrontation Clause issue is that the municipal judge should decide cases solely on evidence produced in open court instead of trial by hearsay or trial by proxy.[51] [Parker v. Gladden, 385 U.S. 363, 364-365 (1966)].

Finally, the Confrontation Clause allows, requires and mandates a defendant to be physically present in court at every critical stage of trial. [Illinois v. Allen, 397 U.S. 337, 338 (1970)]. This right can be forfeited by neglect or misconduct by a defendant (e.g., Failure to Appear, Tenn. Code Ann. § 55-50-502(a)(1)(H) & (I)]. While the Confrontation Clause, as it applies to Tennessee municipal courts, has not been specifically addressed by the Tennessee Supreme Court, dicta from that court strongly implies that the Confrontation Clause

[50] For an interesting twist to confrontational/hearsay, see State v. Blair, 2011 Tenn. Crim. App. Lexis 142 (Tenn. Crim. App. 3/3/2011), which discusses how a police officer may be cross-examined in open court regarding his knowledge of the National Highway Traffic Safety Administration's reference manual. [Blair, at pages 20-23].

[51] The Confrontation Clause bars the admission of evidence which a court may find allowable if viewed simply as a hearsay exception. [Lilly v. Virginia, 527 U.S. 116, 123-124 (1999)]. An example of a "trial by proxy" is a city police officer in a small town trying to stand in for another off-duty officer when the proxy had nothing to do with the traffic stop or citation. In this scenario, once "jeopardy attaches" (the trial begins) unless the defendant admits the ticket, the city should lose the case because it cannot present proof.

protections would apply to municipal court cases. [See, Chattanooga v. Myers, 787 S.W.2d 921, 927 (Tenn. 1990)].

C) Trial by Jury. Article I § 9 of the Tennessee Constitution and the VIth Amendment of the U.S. Constitution allow for jury trials in criminal cases. The VIIth Amendment of the U.S. Constitution, a seldom mentioned constitutional amendment, guarantees the right to jury trials in civil cases where the amount in controversy is over $20.00, but that constitutional right only applies to federal cases. [Edwards v. Elliott, 88 U.S. 532, 557 (1874) and St. Louis & Kansas City Land Co. v. Kansas City, 241 U.S. 419, 431 (1916). See also, Metaljan v. Memphis-Shelby County Airport Auth., 752 F.Supp. 834, 837-838 (W.D. Tenn. 1990)]. While Art. I § 6 of the Tennessee Constitution, at first blush, seems to allow jury trials in ***all*** cases, saying "That the right of trial by jury shall remain inviolate…," that is not the case. [See generally, Bristol v. Burrow, 73 Tenn. 128, 129 (1880)]. There are many cases in Tennessee which are mandated non-jury trials and this fact does not violate either Art. I § 6 or Art. I § 8 (Law of the Land Clause) of the Tennessee Constitution. [Goddard v. State, 10 Tenn. 96, 99-100 (1825). See e.g., Tenn. Code Ann. § 29-20-307, Tennessee's Governmental Tort Liability Act which decides cases "without the intervention of a jury"].[52] The Tennessee Constitution and the Tennessee Legislature set jurisdiction for Tennessee's courts. [Kane v. Kane, 547 S.W.2d 559, 560 (Tenn. 1977)]. The Legislature can dictate the terms upon which a Tennessee court hears cases and under what conditions for hearing said cases. [State v. Godsey, 165 S.W.3d 667, 671 (Tenn. Crim. App. 2004) and City of Knoxville v. Dossett, 672 S.W.2d 193, 196 (Tenn. 1984)].

Not all cases enjoy the right to a trial by jury in Tennessee. [See e.g., Helms v. Tenn. Dept. of Safety, 987 S.W.2d 545, 547 (Tenn. 1999). Cf, Deitch v. City of Chattanooga, 258 S.W.2d 776, 778 (Tenn. 1953)]. A "standard" municipal court does not offer jury trials. [City of Chattanooga v. Davis, 54 S.W.3d 248, 267 (Tenn. 2001); Chattanooga v. Myers, 787 S.W.2d 921, 927 (Tenn. 1990); and State v. Huskey, 2002 Tenn. Crim. App. Lexis 550 (Tenn. Crim. App.

[52] The Goddard court noted that Art. I § 6 of the Tennessee Constitution parrots England's Magna Charta, which clearly allows for non-jury cases. [Goddard 10 Tenn. at 99].

6/28/2002)]. Even if a litigant demands a jury trial in a municipal court case, the municipal judge is still obligated to adjudicate the case before it in a bench trial. [Town of Nolensville v. King, 151 S.W.3d 427, 432 (Tenn. 2004)]. On de novo appeal to circuit court from a municipal court decision, a defendant can request a jury trial. [See e.g., King, 151 S.W.3d at 433. See also, Franks v. State, 1984 Tenn. Crim. App. Lexis 2798 (Tenn. Crim. App. 3/29/1984) at 4 and Tenn. Code Ann. § 16-18-307].[53] Don't take an appeal of your decision personally because an appeal is simply designed to make sure "…wrongs may be ultimately righted, so far as may be, in the affairs of men." [McCarty v. St. Louis Transit Co., 91 S.W. 132, 134 (Mo. 1905)]. One interesting point to remember is that a defendant that tries a case in municipal court, who loses and appeals the conviction to circuit court, is ineligible for pretrial diversion. [State v. Keenan, 737 S.W.2d 309, 310 (Tenn. Crim. App. 1987)].

D) Double Jeopardy. The Vth Amendment of the U.S. Constitution and Art. I § 10 of the Tennessee Constitution are the relevant Double Jeopardy Clauses which apply to Tennessee courts. Both of these clauses apply to municipal courts. [City of Chattanooga v. Myers, 787 S.W.2d 921, 928-929 (Tenn. 1990) and State v. Pickett, 1993 Tenn. Crim. App. Lexis 811 (Tenn. Crim. App. 12/2/1993) at 2]. Even though municipal fines are civil in nature, the Double Jeopardy Clause (as other constitutional protections) may be applied to municipal cases because of the punitive nature of municipal fines. [City of Oak Ridge v. Brown, 2009 Tenn. App. Lexis 188 (Tenn. App. E.S. 5/8/2009) at 10, citing City of Knoxville v. Brown, 284 S.W.3d 330, 338 (Tenn. App. E.S. 2008)]. Actually, the Tennessee Supreme Court has applied the basic concepts of Double Jeopardy to Tennessee's civil cases under common law principles for almost 200 years. [See, State v. Reynolds, 5 Tenn. 110, 110-111 (1817)].

The Double Jeopardy Clause of the U.S. Constitution does not necessarily bar a county's circuit court indictment for a fact situation that may have been addressed on a separate legal theory in municipal court via the theory of dual sovereignties. [See e.g., State v.

[53] The de novo appeal from municipal court to circuit court requires a $250.00 appeal bond and the notice of appeal must be filed within ten (10) days of the municipal court judgment. [Tenn. Code Ann. § 16-18-307]. Compare the unique rules of appeal in Tennessee cases with national municipal court appeals by viewing King, 151 S.W.3d 431- 432 and 431 fn. 5.

Tomberlind, 1989 Tenn. Crim. App. Lexis 240 (Tenn. Crim. App. 3/28/1989) at 5, citing Bray v. State, 506 S.W.2d 772, 773-774 (Tenn. 1974). See also, State v. Davis, 741 S.W.2d 120, 124 (Tenn. Crim. App. 1987) and Bartkus v. Illinois, 359 U.S. 121, 128-129 (1959). But see, Waller v. Florida, 397 U.S. 387, 395 (1970) and Metro Gov't of Nashville and Davidson County v. Miles, 524 S.W.2d 656, 660 (Tenn. 1975), which bars (as a practical matter) a city and county from prosecuting a defendant on identical, or de facto identical, charges]. That being said, Art. I § 10 of the Tennessee Constitution not only bars multiple convictions, it also prevents multiple harassing prosecutions of a defendant for a single offense. [King v. State, 391 S.W.2d 637, 640 (Tenn. 1965)]. Be careful about allowing multiple cases on a single episode because the Double Jeopardy Clauses of the Tennessee and U.S. Constitutions protect citizens from the ***fear*** of multiple trials.[54] "Jeopardy" is the ***risk*** of being convicted via trial, not necessarily a conviction from said trials. [Breed v. Jones, 421 U.S. 519, 528 (1975)]. This risk attaches in a municipal case (non-jury case) when the court begins to hear evidence. [See, Serfass v. U.S., 420 U.S. 377, 388 (1975)]. The Double Jeopardy Clause applies to felonies, misdemeanors ***and*** petty offenses (such as traffic citations). [Metro Gov't of Nashville & Davidson County v. Miles, 524 S.W.2d 656, 659-660 (Tenn. 1975)]. In an interesting side note, the Double Jeopardy Clause does not apply to Habitual Motor Vehicle Offender cases because the prior convictions of traffic offenses are elements of a HMVO conviction. [State v. Sneed, 8 S.W.3d 299, 301 (Tenn. Crim. App. 1999)].[55]

E) Right to Counsel. As with any lawsuit, a party in a municipal case can bring in a retained attorney. Since municipal cases are civil in nature, but have punitive fines, some constitutional rights are guaranteed for "standard" municipal court proceedings that do not have concurrent General Session Court jurisdiction. [See e.g., State v. Mitchell, 593 S.W.2d 280, 282-283 (Tenn. 1980) and Everhart v. State, 563 S.W.2d 795, 798 (Tenn. Crim. App. 1978)]. There is no absolute right to appointed counsel in a civil trial. [Lyon v. Lyon, 765 S.W.2d 759, 763 (Tenn. App. W.S. 1988); In Re: Rockwell, 673

[54] Double Jeopardy of the Vth Amendment applies to states through the XIVth Amendment of the U.S. Constitution. [Benton v. Maryland, 395 U.S. 784, 794 (1969)].
[55] For more information on Habitual Motor Vehicle Offenders, see Chapter XV of this book.

S.W.2d 512, 515 (Tenn. App. W.S. 1983) and Bell v. Todd, 206 S.W.3d 86, 92 (Tenn. App. M.S. 2005)].[56]

A municipal court that does not possess concurrent General Sessions Court jurisdiction cannot seek Tenn. R. Sup. Ct. 13 funding for attorneys appointed to represent indigents because appointed funds under Tenn. R. Sup. Ct. 13 are limited to criminal cases that have a potential of incarceration if the defendant is convicted. [Tenn. R. Sup. Ct. 13 § 1(d)(1)(B)]. The case that initiated the implementation of Tenn. R. Sup. Ct. 13 was a municipal court case originating out of the City Court for Oak Ridge. [See, Allen v. McWilliams, 715 S.W.2d 28, 28 and 32 (Tenn. 1986)]. The Court of Appeals version of Allen v. McWilliams, found at 1985 Tenn. App. Lexis 3062 (Tenn. App. M.S. 8/1/1985), noted that a municipal court could possibly use its discretion to order the city where the court sits to pay for an indigent's attorney out of city treasury funds. [Allen, 1985 Tenn. App. Lexis 3062 at 1-2 and 6]. Be careful before you start ordering your city treasurer to fund indigent traffic tickets that "cap out" at $50.00 plus court costs. Tenn. R. Sup. Ct. 13 § 2(c)(1) provides for payment of $50.00 per hour for in-court work and $40.00 per hour for out-of-court work for appointed attorneys. If these fund amounts are used by a municipal court to pay for appointed attorneys, the cost of counsel will quickly eclipse the fines used to fund said appointed counsel. It is possible to assess the cost of appointed counsel as a court cost, but mounting costs of indigents' traffic tickets are likewise illogical.

F) Effective Assistance of Counsel. The VIth Amendment of the U.S. Constitution and Art. I § 9 of the Tennessee Constitution guarantee the effective assistance of counsel in ***criminal*** cases. [Poindexter v. State, 191 S.W.2d 445, 445 (Tenn. 1946); State v. Holmes, 302 S.W.3d 831, 838 (Tenn. 2010); and State v. Covington, 845 S.W.2d 784, 786 (Tenn. Crim. App. 1992)]. That same luxury does not exist in civil cases, such as standard municipal court cases. [Welch v. Bd. Of Professional Responsibility, 193 S.W.3d 457, 465 (Tenn. 2006) and City of Oak Ridge v. Brown, 2009 Tenn. App. Lexis

[56] Following this logic, since there is no constitutional right to counsel in civil cases, there can be no VIth Amendment violation for ineffective assistance of counsel in a civil municipal court case by a "standard" municipal court not holding concurrent General Sessions Court jurisdiction. [City of Oak Ridge v. Brown, 2009 Tenn. App. Lexis 188 (Tenn. App. E.S. 5/8/2009) at 10-11, citing Welch v. Bd. of Professional Responsibility, 193 S.W.3d 457, 465 (Tenn. 2006) and Thornburgh v. Thornburgh, 937 S.W.2d 925, 926 (Tenn. App. E.S. 1996)].

188 (Tenn. App. E.S. 5/8/2009) at 10]. This Tenn. R. Crim. P. 11 right does not generally apply to municipal courts.

G) Self-Incrimination. Court mandated self-incrimination is barred by the Vth Amendment of the U.S. Constitution and Art. I § 9 of the Tennessee Constitution. These two (2) constitutional clauses are identical for application purposes. [Delk v. State, 590 S.W.2d 435, 440 (Tenn. 1979)]. Over two hundred (200) years ago, the Tennessee Supreme Court said a person cannot be forced to testify against themselves if the testimony could ***lead*** to ***criminal*** prosecution for the person testifying but it does not generally protect a witness against civil liability. [Cook v. Corn, 1 Tenn. 340, 341 (1808). Accord, Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 2]. Two hundred years later, the Tennessee Court of Appeals declined to specifically state if self-incrimination directly applied to municipal court traffic tickets (which are civil in nature, but said tickets have a main purpose to punish and deter improper driving). [City of Knoxville v. Brown, 284 S.W.3d 330, 339 fn. 4 (Tenn. App. E.S. 2008)].[57] A year later, the Tennessee Court of Appeals specifically noted that the option of self-incrimination ***does*** apply in municipal court cases. [City of Knoxville v. Kimsey, 2009 Tenn. App. Lexis 209 (Tenn. App. E.S. 5/13/2009) at 4]. Actually, the privilege against self-incrimination can be asserted in ***any*** case - - civil or criminal, but the protection only applies to criminal punishment. [Kastigar v. U.S., 406 U.S. 441, 444-445 (1972); Mallory v. Hogan, 378 U.S. 1, 11-12 (1964); State v. Leech, 612 S.W.2d 454, 459 (Tenn. 1981); and Bledsoe v. State, 387 S.W.2d 811, 815 (Tenn. 1965)].[58] For Tennessee constitutional purposes, the $50.00 fine potential found in Art. VI § 14 of the Tennessee Constitution amounts to a punitive fine, so the right against compulsory self-incrimination applies. [Town of Nolensville v. King, 151 S.W.3d 427, 431-433 (Tenn. 2004)]. No presumptions of criminal guilt attach to a defendant who properly invokes the Right Against Self-Incrimination. [Griffin v. California, 380 U.S. 609, 614-

[57] Brown addressed a unique situation regarding Red Light Camera Ticket cases where the registered owner of a vehicle, not the vehicle driver, is cited for a Red Light Camera violation. The ordinance in question stated that if the vehicle owner in question contests the Red Light Camera ticket, the burden is on the ***vehicle owner*** to prove he was not the vehicles' driver at the time of receiving the Red Light Camera Ticket. [Brown, 284 S.W.3d at 339 and 339 fn. 5].

[58] If a person gives up their right to remain silent, the testimony offered is expected to be true. [U.S. v. Knox, 396 U.S. 77, 79-80 (1969)].

615 (1965)]. Unless it is clear that the witness could ***never*** face prosecution for offered testimony (e.g. full immunity for testifying) the Court ***must*** honor the potential witness's proper invocation of self-incrimination. [See, Marchetti v. U.S., 390 U.S. 39, 53-54 (1968); Hoffman v. U.S., 341 U.S. 479, 485-486 (1951); and State v. Patton, 2011 Tenn. Crim. App. Lexis 50 (Tenn. Crim. App. 1/24/2011) at 10, citing Culley v. State, 169 S.W.2d 848, 849-850 (Tenn. 1943)]. The privilege against self-incrimination only applies to testimony, not observational tests such as field sobriety tests. [See e.g., Trail v. State, 526 S.W.2d 127, 129 (Tenn. Crim. App. 1974) and State v. Barger, 612 S.W.2d 485, 491 (Tenn. Crim. App. 1980)]. When the right to subpoena a witness conflicts with that witness's legitimate right to remain silent, the Right Against Self-Incrimination prevails. [Frazier v. State, 566 S.W.2d 545, 551 (Tenn. Crim. App. 1977) and State v. Rollins, 188 S.W.3d 553, 568 (Tenn. 2006)].

H) Compulsory Process (Subpoena Power). A defendant has the right to subpoena witnesses for trial. [VIth Amendment, U.S. Constitution and Art. I § 9, Tennessee Constitution. See also, State v. Womack, 591 S.W.2d 437, 443 (Tenn. App. M.S. 1979)]. Unless the subpoenaed witness has a valid self-incrimination claim, the witness's can be required to attend trial and testify if subpoenaed and properly served. [Frazier v. State, 566 S.W.2d 545, 551 (Tenn. Crim. App. 1977); Nelson v. Ewell, 32 Tenn. 271, 272 (1852) and State v. Rollins, 188 S.W.3d 553, 568 (Tenn. 2006)]. The witness's constitutional Right Against Self-Incrimination prevails over the right a defendant has to compulsory subpoena process. [Frazier, 566 S.W.2d at 551]. That being said, a judge must determine if a witness is trying to present a bogus self-incrimination claim simply to avoid testifying. [Richardson v. Bd. of Dentistry, 913 S.W.2d 446, 461-462 (Tenn. 1995)]. Likewise, a hearsay affidavit from an available witness will not be substituted for open-court testimony. [State v. Baker, 81 Tenn. 326, 331 (Tenn. 1884) and Louisville and Nashville R.R. v. Voss, 72 S.W. 983, 984 (Tenn. 1902)]. As long as a witness is a material fact witness for a trial, the judge is required to issue the timely requested subpoena. [State v. Morgan, 825 S.W.2d 113, 117 (Tenn. Crim. App. 1991) and Bacon v. State, 385 S.W.2d 107, 109 (Tenn. 1964)]. City courts clearly have the power to issue subpoenas for witness attendance for court. [See e.g., Johnson v. State, 29 S.W. 963, 964 (Tenn. 1984)].

I) Equal Protection. While seldom a major issue in a municipal court, the Equal Protection Clause of the U.S. Constitution, Amendment XIV § 1, applies to municipal courts. [See, City of Knoxville v. Brown, 284 S.W.2d 330, 339 (Tenn. App. E.S. 2008)]. The reason that Equal Protection does not show as a stand-alone issue often is because most constitutional issues in municipal courts are couched in Due Process terms, which is Equal Protection's de facto twin. [See e.g., Tenn. Op. Atty. Gen. 87-171, 1987 Tenn. AG Lexis 28 (11/5/1987) at 6; Barrett v. Town of Nolensville, 2011 Tenn. App. Lexis 119 (Tenn. App. M.S. 3/10/2011) at 9-10; City of White House v. Whitley, 979 S.W.2d 262, 264 (Tenn. 1998); and Town of Nolensville v. King, 151 S.W.3d 427, 431 (Tenn. 2004)].

J) Nature of Charge. The Tennessee Uniform Traffic Citation generally meets the base constitutional criteria for notice to a defendant in municipal courts of pending charges against a defendant under the XIVth Amendment § 1 of the U.S. Constitution; the Vth Amendment of the U.S. Constitution; and Art. I § 9 of the Tennessee Constitution. [See generally, Bosley v. State, 401 S.W.2d 770, 772 (Tenn. 1966)]. Basically, a defendant has the right to know the charge against him so that the defendant can prepare a defense. [State v. Brown, 823 S.W.2d 576, 580 (Tenn. Crim. App. 1991)]. All law enforcement officers in Tennessee use the "Uniform Traffic Citation Form" for traffic citations, so charging instruments include a "check the box" citation style with code reference to the Tennessee Code Annotated on the form. [See Tenn. Code Ann. § 55-10-208 and Tenn. Op. Atty. Gen. 93-51, 1993 Tenn. AG Lexis 51 (7/29/1993)]. While the uniform citation is not "directly on point" as to providing the nature of charges to a defendant in the same manner as a formal indictment offers, the municipal judge should remember a defendant has a constitutional right to know the charges against him before trial or plea, irregardless of the type of charging instrument. [State v. Crowe, 168 S.W.3d 731, 748 (Tenn. 2005)]. Therefore, the municipal judge must go over the charges with a defendant before determining if a case will be tried or pled out. [Blankenship v. State, 858 S.W.2d 897, 904 (Tenn. 1993)].

K) Speedy/Public Trial. The "Speedy" aspect of a speedy trial[59] in a public forum is usually not a problem in municipal courts. A municipal court docket usually runs fairly fast. Public trials are also promised in the VIth Amendment of the U.S. Constitution, Art. I § 9 of the Tennessee Constitution and Art. I § 17 of the Tennessee Constitution. A "public trial" included a circuit court jury trial of a whiskey bootlegger in the Madison County Circuit Court where the visitors' gallery only offered nineteen (19) seats for the public to watch the trial. [Sesson v. State, 563 S.W.2d 799, 801 (Tenn. Crim. App. 1978)]. As long as the public has ***access*** to a trial, (e.g., date/time/location) the trial is "public." [Id]. A more pressing issue for municipal courts is when a public trial becomes "too public." As noted in Chapter VI of this book, Tenn. R. Sup. Ct. 30 sets out guidelines for how the television, radio, and photographic media may cover an ongoing trial. Traffic citations for public figures might bring the attention of the public media to your court. [See e.g., www.todaysthv.com/news/article/49390/70/country-singer-Mindy-McCready-arrested]. Tennessee's "Open Courts" and "Public Trials" allow the masses the opportunity to watch as you conduct the hearing of a case if the public so chooses. [Art. I § 17, Tenn. Constitution]. For a more detailed discussion on Tenn. R. Sup. Ct. 30, see Chapter VI of this book.

L) $50.00 Fee Cap. Art. VI § 14 puts a $50.00 dollar fee cap on fines in non-jury cases. [Town of Nolensville, 151 S.W.3d 427, 431 (Tenn. 2004)]. This point is discussed in detail in Chapter VI of this book. Refer to that chapter for a detailed discussion of this point.

M) Right to Judge Trained in the Law. "Standard" municipal judges are not required to be lawyers, but any municipal judge acting with concurrent General Sessions Court jurisdiction must be "trained in the law" (a lawyer). [Town of South Carthage v. Barrett, 840 S.W.2d 895, 899 (Tenn. 1992) and Summers v. Thompson, 764 S.W.2d 182, 184 (Tenn. 1988)]. For more information on this point, see Chapter VI of this book.

[59] See, Art. I § 9, Tennessee Constitution and VIth Amendment, U.S. Constitution.

N) Due Process. The elusive "Due Process Clause" is found at four (4) different places – two (2) in the U.S. Constitution and two (2) in the Tennessee Constitution. [See Vth Amendment and XIV § 1 of the U.S. Constitution and Art. I § 8 and Art. I §17 of the Tennessee Constitution]. The most common Tennessee Constitution version of Due Process is the "Law of the Land" Clause of Art. I § 8. This Clause is identical in intent with federal Due Process. [State v. James, 315 S.W.3d 440, 448 fn. 4 (Tenn. 2010) and State v. Hale, 840 S.W.2d 307, 312 (Tenn. 1992)]. The lesser known Tennessee version of Due Process, which generally focuses on civil cases, is found in Art. I § 17 of the Tennessee Constitution, which says:

> That all courts shall be open; and that every man…shall have remedy by due course of law, and right and justice administered without sale, denial, or delay…

This constitutional clause is de facto synomous with the federal phrase "Due Process of Law." [See e.g., Doughty v. Hammond, 341 S.W.2d 713, 715 (Tenn. 1960); Williams v. Mabry, 141 S.W.2d 481, 484 (Tenn. 1940); Roberts v. Hickson, 343 S.W.2d 108, 112 and 124 (Tenn. App. W.S. 1960); Ford Motor Co. v. Moulton, 511 S.W.2d 690, 697 (Tenn. 1974), Fones, dissenting; Owens v. State, 1994 Tenn. Crim. App. Lexis 175 (Tenn. Crim. App. 3/25/1994) at 36-37; and Polk County v. State Bd. of Equalization, 484 S.W.2d 49, 55-56 (Tenn. App. M.S. 1972)].

However you come about the elusive definition of "Due Process," its general definition promises: **A)** legal proceedings enforced by public authority; **B)** in furtherance of the public good; and **C)** that preserves life, liberty and property will not be taken by the government arbitrarily. [Hurtado v. California, 110 U.S. 516, 537 (1884) and Reetz v. Michigan, 188 U.S. 505, 508 (1903)]. "The gist of the 'Due Process Clause', as understood at the founding and since, was to force the Government to follow those common-law procedures traditionally deemed necessary before depriving a person of life, liberty or property." [Hamdi v. Rumsfeld, 542 U.S. 507, 556 (2004), Scalia, dissenting].

While a detailed definition or discussion of "Due Process" or "Fundamental Fairness" is ***way*** beyond the scope of this text, a thumbnail of Due Process can be summed up as follows:

> ***The Government wins its point when justice is done in its courts.***

[Brady v. Maryland, 373 U.S. 83, 87-88 and 88 fn. 2 (1963)]. Treat all coming into court fairly and Due Process normally will take care of itself. [See, State ex rel. Anglin v. Mitchell, 596 S.W.2d 779, 786-787 (Tenn. 1980) and City of White House v. Whitley, 1997 Tenn. App. Lexis 428 (Tenn. App. M.S. 6/18/1997) at 13, a municipal case]. Due Process clearly applies to municipal courts. [City of White House v. Whitley, 979 S.W.2d 262, 264 (Tenn. 1998) and Town of Nolensville v. King, 151 S.W.3d 427, 431 (Tenn. 2004)].

Final Thoughts on Constitutional Rights Issues. One time, Timothy J. Campbell, a Washington lobbyist, was trying to convince President Grover Cleveland to sign a bill that Cleveland believed unconstitutional. Campbell said to the President, "What's the Constitution between friends?" [Bartlett, Familiar Quotations 50th ed., "Timothy J. Campbell," 639:18 (Little, Brown & Co., 1982)]. The bill failed to obtain Cleveland's signature. Remember, anybody that wants you to "set aside that pesky constitution" is acting with ***their*** best interest at heart, not yours…or your court's best interest.

CHAPTER XII – EVIDENCE AND BURDENS OF PROOF

Municipal courts face an unusual situation under Evidence and Burdens of Proof. Tenn. Code Ann. § 16-18-302(a) places jurisdiction of municipal ordinances and Class C misdemeanors that a city adopts by reference as a municipal ordinance in municipal court. The odd situation is that municipal cases are civil in nature – even if considered "quasi-criminal." [City of Murfreesboro v. Norton, 2010 Tenn. App. Lexis 322 (Tenn. App. W.S. 5/6/2010) at 10-11]. Therefore, the burden of proof for municipal cases is "preponderance of evidence." [See, City of Chattanooga v. Myers, 787 S.W.2d 921, 924 (Tenn. 1990); City of Sparta v. Lewis, 23 S.W. 182, 184 (Tenn. 1891); and City of Knoxville v. Harshaw, 2003 Tenn. App. Lexis 352 (Tenn. App. E.S. 5/14/2003) at 4-5]. Just like criminal cases, matters before a municipal court must meet every element of the punitive ordinance and said elements are proven by the prosecution before a finding of guilt can be found. [Harshaw, 2003 Tenn. App. Lexis 352 at 4-5]. Ordinance violations retain their civil nature even if the ordinance refers to the violation as "misdemeanors" or "criminal." [Norton, 2010 Tenn. App. Lexis 322 (Tenn. App. W.S. 5/6/2010) at 10 fn. 4].

The Tennessee Supreme Court, in Chattanooga v. Myers, 787 S.W.2d 921 (Tenn. 1990), said "Language directly pertinent to the issue in the present case is found in Sparta v. Lewis, 91 Tenn. 370, 23 S.W. 182 (1892), in which the defendant was found guilty on a warrant for assault and battery in violation of a city ordinance and fined $10.00 by the city recorder." [Myers, 787 S.W.2d at 924]. The Myers' court noted "that due allowance must be given in defendant's favor of the legal presumption of innocence of crime and proof of good character, when proven." [Myers, 787 S.W.2d at 924]. The portion from Lewis, quoted by the Myers, court is as follows:

> The action is not a criminal prosecution. It is not a trial between the state and defendant, nor on presentment or indictment by and before a jury…But this is in the nature of a suit for debt. It is not a prosecution, but a suing in court to recover a penalty for the violation of a city ordinance. The case was triable before a recorder [a predecessor to today's municipal judge]. *On appeal it*

> *was in fact tried by a jury, it is true, but only as all civil cases are or may be*, but not on presentment or indictment…Cases merely involving civil redress for criminal offenses need only be made out by a preponderance of evidence. (Emphasis supplied).

[Myers, 787 S.W.2d at 924, citing and quoting City of Sparta v. Lewis, 22 S.W. 182, 184 (Tenn. 1891). The quote, except for the first parenthetical, is verbatim from Myers. The first parenthetical is added.].[60]

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[60] The cases cited pre-date the Municipal Court Reform Act of 2004. In light of Tenn. Code Ann. § 16-18-302(a)(2) making violations of "standard" municipal court case judgments civil in nature, the preponderance of evidence burden of proof continues. A "standard" municipal court is a court that does not have concurrent General Sessions Court jurisdiction. While there appears to be a probable XIVth Amendment Equal Protection issue here, said issue is to be resolved by the Tennessee Supreme Court, not Tennessee municipal courts. Over the years, the Tennessee Supreme Court has expanded constitutional rights in municipal courts. [See e.g., City of Murfreesboro v. Norton, 2010 Tenn. App. Lexis 322 (Tenn. App. W.S. 5/6/2010) at 10, citing Myers, 787 S.W.2d at 928 opining that Double Jeopardy applies to municipal courts]. If a constitutional attack comes on the civil nature of C misdemeanors in municipal courts, it will probably come from a defendant found guilty on the criminal side of this equation out of General Sessions or Circuit Court. It would be illogical for a city court defendant to argue for a potentially harsher sentence than a municipal court can offer. The small fines and short duration of C misdemeanor convictions make multiple attacks on this issue neither time nor cost effective, but similar Equal Protection arguments have been successfully made. [See e.g., Craig v. Boren, 429 U.S. 190, 2010 (1976), disparity in drinking age between males and females violates Equal Protection. See also, Colton v. Kentucky, 407 U.S. 104, 105 (1972), a disorderly conduct arrest arising out of a co-defendant's traffic ticket stop eventually was heard by the U.S. Supreme Court]. By way of example as to the potential Equal Protection problem presented by Tenn. Code Ann. § 16-18-302(a)(2) compare Tenn. Code Ann. § 39-17-305 versus Code of Clarksville § 10-101 and 10-209. These statutes describe "Disorderly Conduct." The state statute defines Disorderly Conduct as:

> A person commits an offense who, in a public place and with intent to cause public annoyance or alarm: Engages in fighting or in violent or threatening behavior.

[Tenn. Code Ann. § 39-17-305(a)(1)]. A violation of this statute is a Class C misdemeanor. [Tenn. Code Ann. § 39-17-305(c)]. Code of Clarksville § 10-101 says all Class C misdemeanors are adopted as municipal code violations. Code of Clarksville § 10-209 says:

> Any person who engages in violent behavior which breaches the peace or who engages in any fight, quarrel, or other disturbance in which he indicates through actions or words or both an immediate threat of violence which will breach the peace shall be guilty of disorderly conduct.

If two drunks get into a fight in the street in front of a bar in Clarksville, a Clarksville City Police Officer could send one to the Clarksville City Court, which is civil, and the other to the Montgomery County General Sessions Court to face a criminal charge. One drunk has a $50.00 fine cap and no criminal conviction. The other could face a $50.00 fine, 30 days in jail ***and*** a criminal record – for the ***exact*** same fight! The police officer charging the defendant becomes a

Having set forth the general premises of the burden of proof being a "preponderance of evidence." This burden of proof, and the other burdens of proof relevant to municipal courts, will be discussed in bullet-point style, followed by some relevant issues regarding evidence.[61]

The Overall Burden of Proof. In a municipal court prosecution, "the City at all times must establish the necessary elements of its case by the requisite burden of proof." [City of Knoxville v. Brown, 284 S.W.3d 330, 338-339 (Tenn. App. E.S. 2008). See also, Inman, Gibson's Suits In Chancery, 6th § 192 (Michie, 1982) at page 189]. Municipal judges must be careful not to compromise the requirement that ***each*** element of a case be proven by adequate, not "light" proof. [Turner v. Hand, 24 F. Cas. 355, 361-362 (D. N.J. 1885)]. The party carrying the burden of proof keeps that obligation throughout the entire trial. [Stone v. City of McMinnville, 896 S.W.2d 548, 550 (Tenn. 1995) and Winford v. Hawissee Apartment Complex, 812 S.W.2d 293, 295 (Tenn. App. W.S. 1991)]. If the City does not prove each element, the City loses. [Stockburger v. Ray, 488 S.W.2d 378, 382 (Tenn. App. M.S. 1972); and Reserve Life Ins. v. Whittemore, 442 S.W.2d 266, 275 (Tenn. App. M.S. 1969. See also, Barnard and Burk v. City of Pulaski, 213 F. Supp. 805, 806 (M.D. Tenn. 1963), rev'd on other grounds]. This rule is in accordance with its criminal court counterpart, which leaves the ultimate burden of proving guilt on the prosecution. [See, Tenn. Code Ann. § 39-11-201]. Professor Lawrence A. Pivnick, of the University of Memphis Law School, explained the overall burden of proof as follows:

> The term "burden of proof" has two distinct meanings. First, it refers to the ultimate burden of persuasion or risk of non-persuasion on a party seeking relief…A

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de facto biased magistrate simply by electing which court to put each citation for a drunk defendant in. The gist of the Equal Protection Clause of the XIVth Amendment of the U.S. Constitution is to treat like defendants similarly. [In Re: Converse, 137 U.S. 624, 631-632 (1891)]. If this issue "comes up," there is a ***potential*** problem with Tenn. Code Ann. § 16-18-302(a)(2) meeting Equal Protection muster.

[61] There have been findings that hold "clear and convincing evidence" is the relevant burden of proof for some municipal court issues. [See generally, City of Chattanooga v. Davis, 54 S.W.3d 248, 255 (Tenn. 2001).

> party usually meets his burden of proof in cases by showing that the existence of the required elements for the claim or defense is the more probable hypothesis.

[Pivnick, Tennessee Circuit Court Practice 2d § 24-8 at 269 (The Harrison Co., 1986), citing Arnett v. Fuston, 378 S.W.2d 425, 428 (Tenn. App. M.S. 1963); Pullins v. Fentress County Gen. Hosp. and All-Am. Exterminating Co., 594 S.W.2d 663, 670 (Tenn. 1979); and Motley v. Fluid Power of Memphis, Inc., 640 S.W.2d 222, 225 (Tenn. App. W.S. 1982). Accord, Inman, Gibson's Suits in Chancery, 6th § 190 (Michie, 1982) at pages 186-187]. Professor Pivnick went on to say:

> Second, the term "burden of proof" refers to the burden of coming forward to offer evidence. Generally, the person asserting the claim or defense has the initial burden of coming forward with evidence to prove or support his contention.

[Pivnick, § 24-8 at page 270]. "Ordinarily, the party having the burden of proof…presents his evidence first, called his 'case' or 'case in chief.'" [Pivnick, § 24-9 at page 272, citing Woodward v. Iowa Life Ins., Co., 56 S.W. 1020, 1021 (Tenn. 1900) and Coates v. Thompson, 666 S.W.2d 69, 76 (Tenn. App. M.S. 1983)].

Venue. Venue "is the term used for the geographical place where an action may be filed and determined." [Pivnick, Tennessee Circuit Court Practice, 2d § 6-1 (The Harrison Co., 1986) at page 119, citing Metro Dev. and Housing v. Brown Stove Works, 637 S.W.2d 876, 880 (Tenn. App. M.S. 1982)]. The city must prove the traffic citation or ordinance violation being tried occurred inside the city limits. [Burch, Trial Handbook for Tennessee Lawyers, § 207 (Law Co-op. 1980)].

Stated another way, "Venue is a matter of local jurisdiction over the offense. In other words, the crime is triable only in the county [or jurisdictional limits] where the crime took place." [Raybin, 10 Tenn. Practice (Crim.) § 26.44 at page 289 (West, 1985),

parenthetical added]. Mr. Raybin goes on to say "Article I, § 9 of the Tennessee Constitution requires that the defendant be tried in the county [or jurisdictional limits] where the crime was committed." [Raybin, 9 Tenn. Practice (Crim.) § 16.54 at page 428 (West, 1984)]. This burden of proving venue applies to the jurisdictional basis of all cases involving punitive matters. A municipal court can take Tenn. R. Evid. 202(b) discretionary judicial notice of the general city limits. [Burch, Trial Handbook for Tennessee Lawyers § 205 at page 188, (Law Co-op. 1980), citing Wilson v. Calhoun, 11 S.W.2d 906, 908 (Tenn. 1925)]. That being said, a municipal judge ***cannot*** take judicial notice of the exact boundaries and streets within a city's limits, so proof that a street and/or traffic ticket was issued within the city's jurisdiction requires proof at trial as a necessary element of proof for conviction. [Burch, Id., citing Bristol Tel. Co. v. Weaver, 243 S.W. 299, 304 (Tenn. 1922). See also, Burch, § 207 at page 190]. The U.S. Supreme Court noted, almost one hundred (100) years ago, the transitory nature of motor vehicles and that a traffic infraction occurs where the ticket is ***issued***, not where the driver resides. [See, Hendrick v. Maryland, 235 U.S. 610 (1915), driver charged with "no drivers license" and "no tags," fine of $10.00 upheld even though driver resided in the District of Columbia and the tickets were issued in Maryland].

Basically, a preponderance of evidence is proof that a fact is "more probable than not" and said burden applies to venue. [Inman, Gibson's Suits in Chancery, 6th § 190 (Michie, 1982) at pages 186-187]. The burden of proving venue is specific, unambiguous and will not be construed liberally, but instead strictly construed by courts. [Olberding v. Ill. Cent. R. Co., 346 U.S. 338, 340 (1953)]. Venue is based on deep public policy issues. [U.S. v. Cores, 356 U.S. 405, 407 (1958)) and Travis v. U.S., 364 U.S. 631, 634 (1961)]. Venue is a personal privilege which may be waived. [Freeman v. Bee Machine Co., 319 U.S. 448, 453 (1943)].

Definition of Proof by a Preponderance of Evidence. Preponderance of evidence is described as evidence "which is of greater weight or more convincing than evidence that is offered in opposition to it." [See generally, Tenn. Pattern Jury Instructions 3d (Civil) 2.40 (West, 2004)]. Basically, a preponderance of evidence is evidence that convinces the "finder of fact," [the municipal judge],

that the proposed point is probably true, or on a balanced scale, fifty-one percent (51%). [See, Tuggle v. Raymond Corp., 868 S.W.2d 621, 626 (Tenn. App. W.S. 1992)]. Another definition of preponderance of evidence is "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it." [Morris v. Morris, 1985 Tenn. App. Lexis 3287 (Tenn. App. W.S. 12/17/1985) at 8, citing Braud v. Kinchen, 310 So.2d 657, 659 (La. App. 1975)].

Attacking the Validity of an Ordinance. If a party claims a municipal ordinance is unreasonable, that party must carry the burden of proof when attacking the ordinance. [Union Transfer Co. v. Finch, 64 S.W.2d 222, 226 (Tenn. App. M.S. 1932)]. There is a presumption in favor of the validity of municipal ordinances. [City of Bartlett v. Jeckels, 1984 Tenn. App. Lexis 2908 (Tenn. App. W.S. 6/6/1984) at 4-5, citing State ex rel. Balsinger v. Town of Madisonville, 435 S.W.2d 803, 805 (Tenn. 1968)].

Judicial Notice of Municipal Ordinances. A municipal judge may take judicial notice of the municipal ordinances of the city that he/she presides over. [Burch, Trial Handbook for Tennessee Lawyers § 203 at page 187 (Law Co-op. 1980) and Tenn. R. Evid. 202(b)]. Prior to the enactment of the Tennessee Rules of Evidence in 1990, judicial noticing of municipal ordinances was debatable, but the point is clear today. Under Tenn. R. Evid. 202(b), a municipal judge can take judicial notice of municipal ordinances by discretion and the Tennessee Code Annotated is judicially noticed under mandatory rules. [411 P'ship v. Knox County, 372 S.W.3d 582, 587 (Tenn. App. E.S. 2011), citing Tenn. R. Evid. 202(a) and (b)].

Authentication/Judicial Notice of City Records. A municipal court can take judicial notice of its own records. [Harris v. State, 301 S.W.3d 141, 147 (Tenn. 2010), citing State v. Lawson, 291 S.W.3d 864, 869-870 (Tenn. 2009)]. As noted above, pursuant to Tenn. R. Evid. 202(b), a municipal court can take judicial notice of the ordinances of the city that is presided over by the judge. State statutes are a mandatory judicial notice. [Tenn. R. Evid. 202(a)]. If the city record to be presented in court is neither a statute, ordinance or record of the city court, then the procedure to have city records introduced is via certified copy, attested to by the city recorder or city clerk via affidavit under Tenn. R. Evid. 803(8) as a public record or by having

the clerk testify to authenticate the records through live testimony. [See, State v. Baker, 842 S.W.2d 261, 264 (Tenn. Crim. App. 1992), State v. Rea, 865 S.W.2d 923, 923-924 (Tenn. Crim. App. 1992) and Burch, Trial Handbook for Tennessee Lawyers, § 254 at page 236 (Law. Co-op. 1980)].

Red Light Camera Driver. One unique burden of proof involves Red Light Cameras. A Red Light Camera is an unmanned stationary camera located at busy intersections to film automobiles that run red lights. [See generally, Tenn. Code Ann. § 55-8-198]. The traffic ticket for Red Light Camera violations is issued to the ***owner of the vehicle*** filmed running the stop light, not the driver of said vehicle. [City of Knoxville v. Brown, 284 S.W.3d 330, 338 (Tenn. App. E.S. 2008)]. The unusual burden of proof in Red Light Camera cases is the ***vehicle's owner***, if asserting that he did not drive the vehicle in question, carries the burden of proving who ***did*** drive said vehicle. [Brown, 284 S.W.3d at 338-339]. A common example of this issue is a parent who owns a car driven by a child "off at college" in a different city or state from the vehicle owner.[62] In most cases, the vehicle owner simply pays the child's ticket in Red Light Camera cases. [See previous footnote]. While the burden of overall proof of guilt remains with the City prosecuting a Red Light Camera case, the "I wasn't driving" argument acts as an affirmative defense which the vehicle owner must prove, along with "the actual driver was…" [Brown, 284 S.W.3d at 339. See also, Tenn. R. Civ. P. 8.03, Affirmative Defenses]. For further discussions on Red Light Cameras, see Chapter VI of this book.

Having discussed some of the Burdens of Proof that apply to municipal courts, we now will look at some of the relevant rules of evidence.

[62] The author wishes to thank his beloved daughter, Leora, for giving him ***personal*** insight into this issue. Leora goes to college about 150 miles away from the author's home in Clarksville, TN. It is amazing, and a little embarrassing, to get traffic tickets from actual friends who are also TMJC members. This author has suggested to these friends that simply towing the author's car is an easy way to end the author's traffic crime spree. Just for fun, the author pointed out to Leora that both judges from whom she was getting parking tickets go to the church where Leora is a part-time assistant youth minister. The tickets stopped. Leora is a ***great*** kid and I adore her!

TENNESSEE RULES OF EVIDENCE

Overview: The Tennessee Rules of Evidence apply to "all trial courts of Tennessee except as otherwise provided by statute or rules of the Supreme Court of Tennessee." [Tenn. R. Evid. 101]. The Advisory Comments to this rule specifically state that the Tennessee Rules of Evidence apply to General Sessions and Juvenile Courts. [Tenn. R. Evid. 101 at Advisory Commission Comments]. These rules should apply in municipal court cases, even if the term "trial courts" is a bit ambiguous. [Cohen, "A Meta-Analysis of the Tennessee Rules of Evidence," 57 Tenn. L. Rev. 1, 20 (Fall, 1989) and Barton and Ashburn, Municipal Courts Manual (MTAS, 2007) at 2, discussing Tenn. R. Evid. 615's application to municipal courts]. A trial court's discretionary ruling regarding the admission of evidence will be respected so long as the decision was based on sound legal principles. [State v. Lewis, 236 S.W.3d 136, 141 (Tenn. 2007)]. While municipal courts are often less formal than some other courts that hear cases in Tennessee, professionalism is still required and evidence must be presented in a logical, orderly and structured proceeding. [See generally, Baron and Ashburn, Municipal Courts Manual (MTAS, 2007) at 2-3].[63] It is important to remember, as one looks at evidence, that jurisdiction is a key part of ***why*** a trial occurs. Subject matter jurisdiction is the power of a court ***to hear a type of case***. [See generally, Pivnick, Tennessee Circuit Practice 2d § 3-1 at pages 49-50 (The Harrison Co., 1986]. Personal and/or in-rem jurisdiction is the court's jurisdiction ***over the person*** or party or event within the jurisdictional limits of the court – the City's geographic boundary (city limits). [See generally, Pivnick, Tennessee Circuit Practice 2d § 4-1 and § 4-5 (The Harrison Co., 1986)]. We will now look at some of the Rules of Evidence ("T.R.E.") that would come up in municipal court proceedings. [See generally, Paine, "Comparing the Tennessee and Federal Rules of Evidence," 26 Tenn. B.J. 37 No. 1

[63] The order of evidence being presented to the municipal judge would be **1)** City's case in chief via direct evidence; **2)** Cross-examination of City witnesses; **3)** Defense case-in chief (if any); and **4)** Rebuttal proof (if any). Oftentimes, the police officer acts as the prosecutor in municipal courts because most cites do not have a formal city court prosecuting attorney. [See Barton and Ashburn, Municipal Courts Manual (MTAS, 2007) at 2-3]. Generally, a civil case, such as a municipal ordinance violation, is not as strict with proof presentation mandates as a criminal proceeding. [US v. Cropper, 1 Morris 190, 194 (Iowa 1843)]. The municipal judge controls the presentation of evidence and conduct of parties in court. [Pivnick, Tennessee Circuit Practice §§ 24-22 and 24-27 (The Harrison Co., 1986)].

(January, 1990)]. While this list is not all inclusive, the cited rules cover most situations which come up in municipal courts.

Tenn. R. Evid. 101: ***{Scope of Rule}.*** The T.R.E. applies to "all trial courts of Tennessee…" That being said, the rules must be flexible. [State v. Gilliland, 22 S.W.3d 266, 271 (Tenn. 2000)].

Tenn. R. Evid. 102: ***{Purpose of Rule}.*** The T.R.E. is designed "to secure the just, speedy and inexpensive determination of proceedings." [State v. Gilliland, 22 S.W.3d 266, 271 (Tenn. 2000)].

Tenn. R. Evid. 104: ***{Admissibility}.*** The question of whether or not evidence comes into a hearing is based initially on relevance of the evidentiary fact, not weight/credibility of said fact. [Tenn. R. Evid. 104(b) and (e) and Shipley v. Williams, 350 S.W.3d 527, 551 (Tenn. 2011)].

Tenn. R. Evid. 201: ***{Judicial Notice of Fact}.*** This rule applies to taking judicial notice of adjudicative fact. The facts must be: **1)** generally known within the territorial jurisdiction of the trial court or **2)** capable of accurate and ready determination. [Tenn. R. Evid. 201(b)]. Simply because a judge ***personally*** knows a fact does not make that fact worthy of judicial notice unless the fact is generally known within the community (such as Nashville is the capitol of Tennessee vs. the judge's mother's maiden name). [See, State v. Nunley, 22 S.W.3d 282, 288 (Tenn. Crim. App. 1999) and Luttrell v. Hidden Valley Resorts, Inc., 2009 Tenn. App. Lexis 889 (Tenn. Crim. App. 12/31/2009) at 10].

Tenn. R. Evid. 202: ***{Judicial Notice of Law}.*** A municipal judge ***shall*** take judicial notice of the statutes of the U.S. and each state. [Tenn. R. Evid. 202(a) and 411 P'ship v. Knox County, 372 S.W.3d 582, 588 (Tenn. App. E.S. 2011]. Both the court and opposing parties deserve notice if a party intends on asking the Court to request discretionary judicial notice of a point. [State v. McClure, 74 S.W.3d 362, 367 (Tenn. Crim. App. 2001)]. A municipal court ***may*** take judicial notice of the city's ordinances. [Tenn. R. Evid. 202(b)].

Tenn. R. Evid. 401: ***{Definition – Relevant Evidence}.*** "Relevant Evidence" is evidence that makes the existence of any fact more probable or less probable than it would be without the evidence. [State v. Samuel, 243 S.W.3d 592, 599 (Tenn. Crim. App. 2007)]. Relevant evidence does not need to completely satisfy a party's whole burden of proof, but instead the proof is relevant if it makes a small, but needed, contribution to the ultimate burden of proof. [State v. Coulter, 67 S.W.3d 3, 47 (Tenn. Crim. App. 2001)].

Tenn. R. Evid. 402: ***{Admissibility of Relevant Evidence}.*** Relevant evidence is generally admissible, but irrelevant evidence must be excluded from trial. [State v. Sexton, 368 S.W.3d 371, 413 (Tenn. 2012)].

Tenn. R. Evid. 403: ***{Exclusion of Relevant Evidence}.*** Evidence that is relevant may be excluded from trial on the basis of unfair prejudice, waste of time or cumulative evidence. The party seeking to exclude evidence carries a heavy burden to justify excluding evidence. [Roy v. Diamond, 16 S.W.3d 783, 791 (Tenn. App. W.S. 1999) and White v. Vanderbilt Univ., 21 S.W.3d 215, 227 (Tenn. App. M.S. 1999)]. The trial court balances the probative value of evidence against unfair prejudice if the evidence is admitted when ruling on admissibility of evidence. [State v. Taylor, 240 S.W.3d 789, 795 (Tenn. 2007)].

Tenn. R. Evid. 404: ***{Character Evidence}.*** Character evidence is generally excluded from trial. [For a basic discussion on when/how character evidence can be admitted in to a trial, see, State v. Dutton, 896 S.W.2d 114, 117-118 (Tenn. 1995) and Tenn. R. Evid. 405].

Tenn. R. Evid. 408 and 410: ***{Settlement Negotiations}.*** Discussion of pleas, plea discussions and settlement negotiations are not to be admitted at trial. [Newman v. City of Knoxville, 2009 Tenn. Lexis 325 (Tenn. W.C. Panel 5/12/2009) at 17-18 fn. 3 and State v. Crowe, 168 S.W.3d 731, 748 (Tenn. 2005)].

Tenn. R. Evid. 501: ***{Privileges}.*** Unless an exception is shown, all witnesses must testify if subpoenaed and they must testify truthfully. The most common exception to this rule is Self-

Incrimination. [See generally, State v. Zirkle, 910 S.W.2d 874, 890 (Tenn. Crim. App. 1995)]. For a listing of privileges, such as the attorney/client privilege, see the rule. For a more detailed discussion of Self-Incrimination, see Chapter XI of this book.

Tenn. R. Evid. 601: ***{Competency to Testify}.*** All persons are presumed competent to be a witness. The municipal judge determines if a witness is competent to testify in a trial. [Arterburn v. State, 391 S.W.2d 648, 654 (Tenn. 1965) and State v. Braggs, 604 S.W.2d 883, 885-886 (Tenn. Crim. App. 1980)].

Tenn. R. Evid. 602: ***{Lack of Personal Knowledge}.*** A witness, except experts, must testify on personal knowledge. The municipal judge determines if a witness is competent to testify in municipal court. [State v. Land, 34 S.W.3d 516, 529 (Tenn. Crim. App. 2000)].

Tenn. R. Evid. 603: ***{Oath/Affirmation}.*** Witnesses must swear or affirm to tell the truth before testifying. [State v. Jackson, 52 S.W.3d 661, 667 (Tenn. Crim. App. 2001)].

Tenn. R. Evid. 604: ***{Interpreters}.*** Interpreters must swear or affirm to translate accurately and the interpreter must be an expert in the language being translated. If a party challenges the accuracy of the court translator's translation, the party challenging the translation must prove prejudice from the inaccurate translation. [See, State v. Millsaps, 30 S.W.3d 364, 370 (Tenn. Crim. App. 2000)]. For a more detailed discussion on interpreters in municipal court, see Chapter XVI of this book.

Tenn. R. Evid. 605: ***{Judge as Witness}.*** A judge shall not be a trial witness. [State v. Nash, 294 S.W.3d 541, 548 (Tenn. 2009)].

Tenn. R. Evid. 607: ***{Who May Impeach}.*** Any party can impeach any witness. The impeachment of a witness can't be used as a pretext for introducing improper evidence, such as hearsay, into a trial. [State v. Jones, 15 S.W.3d 880, 891 (Tenn. Crim. App. 1999)].

Tenn. R. Evid. 608: ***{Character Evidence Regarding Witnesses}.*** This particular issue will not come up often in municipal

court, but for a general discussion on witness character evidence, see Ford v. Ford, 26 Tenn. 92, 100-102 (Tenn. 1846).

Tenn. R. Evid. 614: ***{Judge Calling Witnesses}.*** A judge should not call witnesses except in extreme circumstances. Basically, the judge must not "pick sides" or "show bias" during the evidence of a trial. [State v. Williams, 828 S.W.2d 397, 403 (Tenn. App. M.S. 1991)].

Tenn. R. Evid. 615: ***{Sequestration/The Rule}.*** Commonly called "The Rule," which is sequestration of witnesses. The various witnesses are kept apart so they cannot hear the other witnesses testify and adjust their testimony to match other witness testimony. [State v. Wingard, 891 S.W.2d 628, 635 (Tenn. Crim. App. 1994)]. For a historic view of "The Rule," see The Apocrypha, Book of ***Susanna***.

Tenn. R. Evid. 616: ***{Impeachement on Bias}.*** Any witness can be cross-examined or impeached on bias. [See, Creeping Bear v. State, 87 S.W. 653, 654 (Tenn. 1905)].

Tenn. R. Evid. 701: ***{Lay Witness Opinions}.*** Lay witness opinion must be rationally based on the personal perception of the witness and based upon common knowledge, not scientific expertise. [State v. Wingard, 891 S.W.2d 628, 631 (Tenn. Crim. App. 1994)].

Tenn. R. Evid. 702: ***{Expert Testimony}.*** Expert testimony can be based on the expert opinion of a witness that did not personally observe the matter of proof, if said testimony is within the witness's expertise. [Otis v. Cambridge Mut. Fire Ins. Co., 850 S.W.2d 439, 443 (Tenn. 1992)]. The determination of whether or not expert testimony will be considered is a question left to the judge's discretion. [State v. Brooks, 249 S.W.3d 323, 328 (Tenn. 2008) and State v. Ferrell, 277 S.W.3d 372, 378 (Tenn. 2009)]. For a discussion on the considerations of whether purported expert testimony should be admitted, see McDaniel v. CSX Transp., 955 S.W.2d 257, 262-265 (Tenn. 1997).

Tenn. R. Evid. 703 and 705: ***{Expert Opinions}.*** Experts must explain how/why they came to their expert opinion. [Omni Aviation v. Perry, 807 S.W.2d 276, 281 (Tenn. App. M.S. 1990)].

The resolution of conflicting expert testimony is a matter to be determined by the trier of fact. [Martin v. Norfolk S. Ry. Co., 271 S.W.3d 76, 85-86 (Tenn. 2008)]. Basically, trial courts act as gatekeepers for the admission of expert testimony. [State v. Scott, 275 S.W.3d 395, 401 (Tenn. 2009)]. The expert testimony offered at trial must be both reliable and relevant before it is admitted into evidence. [Brown v. Crown Equip. Corp., 181 S.W.3d 268, 274 (Tenn. 2005)].

Tenn. R. Evid. 802: ***{Hearsay}.*** Hearsay is generally inadmissible in court. Hearsay is an out-of-court statement, being presented in court, to prove the truth of the matter asserted. [Tenn. R. Evid. 801(c) and State v. Caughron, 855 S.W.2d 526, 537 (Tenn. 1993)]. A party admission is not hearsay. [State v. Brown, 375 S.W.3d 565, 572 (Tenn. 2011)]. The Confrontation Clause impacts hearsay issues. [State v. Ivy, 188 S.W.3d 132, 148 (Tenn. 2006)]. For a more detailed discussion on the Confrontation Clauses of the Tennessee and U.S. Constitutions, see Chapter XI of this book.

Tenn. R. Evid. 803 and 804: ***{Hearsay Exceptions}.*** These Tenn. R. Evid. rules are the exceptions to the hearsay rule. It sets out multiple exceptions to hearsay which every law student is familiar with, so a detailed discussion of the hearsay exceptions are beyond the scope of this book. [See generally, State v. Bilbrey, 912 S.W.2d 187, 188 (Tenn. Crim. App. 1995) and Arizona v. ASARCO, LLC, 844 F. Supp.2d 957, 965-966 (D. Ariz. 2011)]. Determining what "is" and "isn't" hearsay isn't always a clear-cut issue. [Pylant v. State, 263 S.W.3d 854, 870 (Tenn. 2008)].

Tenn. R. Evid. 1005: ***{Public Records}.*** Public records can be presented as a self-authenticated document under Tenn. R. Evid. 902. [In Re: Thompson, 1998 Tenn. App. Lexis 639 (Tenn. App. M.S. 9/23/1998) at 10 and State v. Gilboy, 857 S.W.2d 884, 890 fn. 6 (Tenn. Crim. App. 1993)].

Tenn. R. Evid. 1008: ***{Ruling of Case}.*** After hearing all evidence, the municipal judge must rule based on the evidence presented. [See generally, U.S. v. Jeffers, 532 F.2d 1101, 1112 (7th Cir. 1976)].

Final Thoughts on Evidence and Burdens of Proof. The municipal judge must never be afraid of dismissing a case where the City did not present sufficient evidence to meet their burden of proving the defendant guilty by a preponderance of the evidence. ***The resulting ruling in this situation says less about the character of the evidence than the character of the judge ruling on that evidence.*** [Temus, "Great Women, Great Chiefs," 74 Alb. L. Rev. 1569, 1574 (2010/2011)].

CHAPTER XIII –
SUBSTITUTIONS/DISQUALFICIATIONS/RECUSALS

During a 1973 Colorado House Judiciary Committee meeting, Colorado Supreme Court Justice Otto Moore was testifying about a bill to modify sex crimes when he had the following exchange with State Representative Jerry Kopel:

> **Kopel:** "Justice Moore can you tell our committee the difference between adultery and fornication?"
>
> **Moore:** "Well, I have tried both and I was unable to tell any difference."

[Kopel and Burrus, "Law in an Age of Austerity," 35 Harv. J. L. & Pub. Pol'y 543, 568 fn. 15 (Spring, 2012)]. The distinction between ***Disqualification*** and ***Recusal*** can leave the reader confused as to the difference between the two in a fashion similar to Justice Moore's confusion about the difference between adultery and fornication discussed above. Even if recusal and disqualification differ, it is hard to tell the difference between the two (2) options. [See, In Re: School Asbestos Litigation, 977 F.2d 746, 770 fn. 1 (3rd Cir. 1992), which cites Webster's Dictionary as using the term "disqualify" to define "recuse"]. This chapter will discuss those differences and how a municipal judge can address the issue by substitution.

Substitution. Municipal courts are allowed to sit by interchange with any other municipal judge in Tennessee so a municipal judge can have another Tennessee municipal court judge, or any General Sessions Court judge, sit for him/her by interchange pursuant to Tenn. Code Ann. § 16-18-312. Municipal judges may simply contact another judge to sit for them, draft an order of interchange and the second municipal or General Sessions judge may sit for the judge that is either absent from court or disqualified from hearing a case. Trial courts must generally go through the AOC to obtain substitute judges. [See, Tenn. R. Sup. Ct. 11§ VII].

A substitution of a judge can be necessary for disqualification, illness, or the municipal judge is unavailable on the date court is being

held.[64] An example of this would be a part-time municipal judge having a jury trial in his/her law practice set on a date court usually meets. The conflicted municipal judge could: **A)** have another municipal judge sit by interchange under Tenn. Code Ann. § 16-18-312; **B)** have a General Sessions Court judge sit by interchange pursuant to Tenn. Code Ann. § 16-18-312; **C)** hold court on a different day;[65] or **D)** cancel court for the conflicting day.

Another way to address the issue of the unavailable municipal judge is for the city to pass an ordinance designating a permanent substitute judge if the primary judge is unavailable. [See, Tenn. Code Ann. §§ 16-18-102 and 16-18-102(8)]. If this occurs, and the substitute judge is not already a municipal judge in another town, or the substitute judge is not a General Sessions Court judge, then the substitute judge must meet the qualification mandate of the Municipal Court Reform Act of three (3) hours CLE training on municipal courts per year. [See, Tenn. Code Ann. § 16-18-309]. The plus side of being a permanent substitute municipal judge is that the substitute judge gets the benefits associated with being a part of the TMJC such as free CLE and free Lexis/Westlaw. [Tenn. Code Ann. § 16-18-304(a) and AOC Memo to TMJC Members on Westlaw Access from Aaron Conklin dated 01/03/2013].

Judicial Incompetency Defined. "Judicial incompetency" is generally defined as a judge's lack of ability, legal qualification or fitness to discharge the duties of judge for a case, class of cases or date of court. [Black's Law Dictionary 5th, "Incompetency" at 688 (West, 1979)]. The constitutional and statutory provisions related to disqualifications are designed to insure a judge's impartiality. [State v. Blackmon, 984 S.W.2d 589, 591 (Tenn. 1998)]. Tenn. Code Ann. § 17-2-101 sets out grounds of automatic incompetency for a judge to

[64] For a discussion of the difference between Special Masters and Substitute Judges in Tennessee, see Kinard, "Special Masters and Substitute Judges: What is the Difference and When are They Proper?," 6 Tenn. J. Prac. & Proc. 7 (Fall, 2003)].

[65] To move a court date, the municipal judge simply orders their clerk to have police officers set the court date on the modified day when issuing tickets. Most major issues in an attorney's calendar, such as vacations and jury trials, are known months in advance, so "juggling the schedule" isn't too difficult.

rule unless all parties agree to waive the judicial incompetency[66] in the following situations:

1) The judge has an interest in the case. [A basic, general interest in a case, (e.g., professional interest), does not automatically cause disqualification. State v. Humphreys, 40 S.W.2d 405, 406 (Tenn. 1931)];

2) The judge is a relative of one of the parties "within the sixth degree" of affinity or consanguinity (2nd cousin or closer relative by blood or marriage). [See generally, Kyle v. Moore, 35 Tenn. 183, 184-185 (1855)];

3) The judge was previously an attorney in the case. [Mathis v. State, 50 Tenn. 127, 128 (1871)];

4) The judge previously presided over part of the trial as an inferior court. [U.S. v. Franks, 511 F.2d 25, 37 (6th Cir. 1975)]; or

5) The case is a felony and the judge is related to a victim in the case as a 2nd cousin or closer by blood or marriage.

[See also, Art. VI § 11 of the Tennessee Constitution and Tenn. Code Ann. § 20-4-208 which addresses how courts of record can address incompetency of a trial judge]. When a judge is found incompetent to sit on a case, his later decrees from said trial are void. [Bolling v. Anderson, 63 Tenn. 550, 551-552 (1874)]. For a general discussion on disqualifications, see Raybin, 10 Tenn. Practice (Crim.) § 24.11 (West, 1985) and Pivnick, Tennessee Circuit Court Practice 2d § 2-5 at 42-44 (The Harrison Co., 1986).

Tennessee's current constitution was written in 1870. [Preamble, Tennessee Constitution]. Before that, previous Tennessee Constitutions were penned in 1796 and 1834. [See Tenn. Code Ann.

[66] See, State ex rel. Roberts v. Henderson, 442 S.W.2d 629, 631 (Tenn. 1969) and Winters v. Allen, 62 S.W.2d 51, 51 (Tenn. 1933).

Vol. 1A at 849 and 863 (Lexis/Nexis 2007 Replacement Volume)]. This causes problems because the definition of terms that our forefathers used are not in common use today, so we must translate terms to determine what the drafters of those constitutions, and later drafters of statutes, meant by terms used. Art. VI § 11 of the Tennessee Constitution of 1870 says, in relevant part:

> No judge…shall preside on the trial of any cause…of which he is interested, or where either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been of counsel, or in which he may have presided in any inferior court, except by consent of all the parties…

You will note that this constitutional language was parroted by Tenn. Code Ann. § 17-2-101, except the statute sets out that family relations to the judge shall not be within the sixth degree of affinity or consanguinity. Now, if we only knew what-the-heck the "sixth degree of affinity or consanguinity" meant, we could determine if we are in violation of the rule!

"Consanguinity" is a blood relative, (e.g., mother/father to a child). [Burgher v. Commonwealth, 2009 Ky. Unpub. Lexis 112 (Ky. 8/27/2009) at 7 fn. 2]. "Affinity" is a relation by marriage, (e.g., brother-in-law). [Id]. The "sixth degree of affinity or consanguinity" is basically a second cousin by blood or marriage. [See, State v. Merchant, 819 A.2d 1005, 1010 (Maine 2003); Brady v. Richardson, 18 Ind. 1, 3 (1862); and Burgher v. Commonwealth, 2009 Ky. Unpub. Lexis 112 (Ky. 8/27/2009) at 7, fn. 2]. For a discussion of how to navigate the consanguinity/affinity maze, see Owen v. State, 58 So.2d 606, 607 (Ala. 1952). The gist of judicial incompetency is that an actual conflict of interest means another judge should be hearing the case at hand. [Chumbley v. People's Bank & Trust Co., 57 S.W.2d 787, 788 (Tenn. 1933)]. Any doubt as to whether a judge is incompetent to hear a case should be resolved in favor of disqualification or recusal. [Hamilton v. State, 403 S.W.2d 302, 303 (Tenn. 1966)].

Disqualification vs. Recusal Defined. While the terms Disqualification and Recusal are distinct, time has blended, merged and blurred their distinction. [Gulf Power Co. v. FCC, 226 F.3d 1220, 1222 fn. 3 (11th Cir. 2000)]. Today the two terms are often used interchangeably. [In Re: School Asbestos Litigation, 977 F.2d 764, 770 fn. 1 (3rd Cir. 2002) and Stempel, "Chief William's Ghost: The Problematic Persistence of the Duty to Sit," 57 Buffalo L. Rev. 813, 958 fn. 2 (May, 2009)]. As one commentator said, "Technically, there is a difference between disqualification and recusal – disqualification is mandatory, recusal is voluntary – but the difference is often blurred in many jurisdictions." [Goldberg, Sample and Pozen, "The Best Defense: Why Elected Courts Should Lead Recusal Reform," 46 Washburn L. J. 503, 534 fn. 5 (Spring, 2007)].

The practical distinction between recusal and disqualification is that a disqualification places the duty to step off a case on the ***judge*** while a recusal is usually a duty on the ***lawyer*** to ask the judge to step down from hearing a case. [Ex Parte City of Dothan Pers. Bd., 831 So.2d 1, 6 (Ala. 2002) and Marlow v. Winston & Strawn, 1994 U.S. Dist. Lexis 6790 (N.D. Ill. 5/24/1994) at 36-37]. Recusal motions are not to be filed as a basis of judge or forum shopping. [U.S. v. Baker, 441 F.Supp. 612, 615 (M.D. Tenn. 1977); Ellison v. Alley, 902 S.W.2d 415, 418 (Tenn. App. E.S. 1995) and Dunlap v. Dunlap, 996 S.W.2d 803, 813 (Tenn. App. W.S. 1998)]. A disqualified judge cannot hear a case. If the judge hears the case anyway, the decision from said case is void; while if a recusable judge makes any erroneous ruling, said ruling is voidable subject to timely objections. [F.S. New Prods v. Strong Indus., 129 S.W.3d 594, 604-605 (Tex. App. 2003)]. Recusal issues can be waived, but disqualification issues are not waivable. [Gulf Maritime Warehouse Co. v. Towers, 858 S.W.2d 556, 559-560 (Tex. App. 1993)]. Tennessee's new Rules of Judicial Conduct merge recusal and disqualification into a single rule termed "Disqualification." [Tenn. R. Sup. Ct. 10, Canon 2, Rule 2.11]. For this reason, the rest of this chapter will use the term recusal and disqualification interchangeably unless one or the other is specified. Unless there is a true and valid recusal or disqualification issue that blocks a judge from acting, a judge has a ***duty*** to rule on cases that come before him/her. [U.S. v. Hoffa, 382 F.2d 856, 861 (6th Cir. 1967)].

Rule 2.11: Tenn. R. Sup. Ct. 10, Canon 2, Rule 2.11(a) says "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." The list of examples set out are as follows:

> **1)** Bias by the judge against a party or lawyer or the judge has personal knowledge of the case. [Wiseman v. Spaulding, 573 S.W.2d 490, 493 (Tenn. App. M.S. 1978)]. Bias relating to information gained from the facts of trial, that were learned by the judge at trial, is not normally a valid recusal issue. [U.S. v. Porter, 701 F.2d 1158, 1166 (6th Cir. 1983)];
>
> **2)** A relative of the judge, within the ***third*** degree of relationship,[67] is a party or witness to the case, or they have more than a de minimus interest in the proceeding. [Waterhouse v. Martin, 7 Tenn. 373, 377-378 (1824)];
>
> **3)** Judge or family member have an economic interest in the outcome of the case. [Neely v. State, 63 Tenn. 174, 183-184 (1874)];
>
> **4)** A party to the suit made contributions to the judge's election campaign fund in an amount that the judge's impartiality might reasonably be challenged. [Eldridge v. Eldridge, 137 S.W.3d 1, 9 (Tenn. App. W.S. 2003), citing Collier v. Griffith, 1992 Tenn. App. Lexis 245 (Tenn. App. M.S. 3/11/1992) at 19 and Mackenzie v. Superkids Bargain Store,

[67] Aunts, uncles, nieces and nephews = 3rd degree of family relationships. [See, www.window.state.tx.us/taxinfo/protax/arb10/ch01.htm].

565 So.2d 1332, 1334-1335 and 1335 fn. 1 (Fla. 1990). But see, Eldridge v. Eldridge, 137 S.W.3d 1, 9 (Tenn. App. W.S. 2003) for a discussion of improper "sand-bagging" the recusal issue for later tactical advantage];

5) Judge made a public comment on a proceeding or area of the law which indicates prejudgment of a case. [State v. Ray, 984 S.W.2d 239, 240-241 (Tenn. Crim. App. 1998)];

6) Judge was a witness/judge/lawyer of the case at a past hearing. [State v. Smith, 906 S.W.2d 6, 11 (Tenn. 2003)].

A judge should keep a "stern morality" and he/she should, and must, "be legally indifferent to the parties." [Ex Parte Owens, 258 P. 758, 801 (Okla. Crim. App. 1927), quoting Gill v. State, 61 Ala. 169, 172 (1878)]. A judge works for ***justice***, not the State, the parties or the convenience of "the process." [State v. Costen, 213 S.W. 910, 911 (Tenn. 1919)]. Even the ***slightest*** pecuniary interest in a case should disqualify a judge from hearing matter. [Id]. That does not mean a judge is automatically disqualified from hearing a case simply because he/she heard basic information about a case prior to court. [Harrison v. Wisdom, 54 Tenn. 99, 109-112 (1872) and Grey v. State, 542 S.W.2d 102, 104 (Tenn. Crim. App. 1976)]. Likewise, if the judge doubts or questions his/her ability to be impartial, ***for any reason***; or the judge believes third party observers ***could question his/her impartiality***, recusal is justified as a discretionary and precautionary matter. [Lackey v. State, 578 S.W.2d 101, 104 (Tenn. Crim. App. 1978)]. The rule of thumb should be that "when in doubt, recuse yourself out." By way of example, Tenn. R. Sup. Ct. 10, Canon 2, Rule 2.11 sets three (3) degrees of relations, (aunts/uncles/nieces/ nephews), for disqualification, but Tenn. Code Ann. § 17-2-101 widens the disqualification ring of relatives to the sixth degree of family relations (second cousins). The Alley standard, which will be discussed below, states that if an objective third party could reasonably question your objectivity, ***for any reason***, the judge

should recuse himself/herself from a case. [Hamilton v. State, 403 S.W.2d 302, 303 (Tenn. 1966)]. All litigants deserve the objectivity of a neutral and impartial court. [Caudill v. Foley, 21 S.W.3d 203, 214 (Tenn. App. W.S. 1999)].

Alley Standard. The "White Horse Case" for judicial recusal/disqualification in Tennessee is Alley v. State, 882 S.W.2d 810 (Tenn. 1994). This standard sets forth the theory that "bias" and prejudice" are central to a determination of whether a recusal should be granted. [State v. Rimmer, 250 S.W.3d 12, 38 (Tenn. 2008), discussing the Alley standard and citing 46 Am. Jur. 2d "Judges" § 167 (1969)]. Recusal is necessary when a judge objectively can be questioned on bias/prejudice or the court has any subjective doubts of his/her own fairness to preside. [Rimmer, 250 S.W.3d at 38, citing Alley and Liteky v. U.S., 510 U.S. 540, 553 (1994)]. Basically, Due Process demands a fair trial with an impartial judge. [Rimmer, 250 S.W.3d at 37, citing State v. Bondurant, 4 S.W.3d 662, 668 (Tenn. 1999), Art. I § 17 of the Tennessee Constitution, and In Re: Cameron, 151 S.W. 64, 76 (Tenn. 1912), among others]. Every judge that is tempted to "not hold the balance [of justice] nice, clear and true between the State and the accused, denies the latter due process of law." [Rimmer, 250 S.W.3d at 37, citing Tumey v. Ohio, 273 U.S. 510, 532 (1927)]. The denial of a motion to recuse[68] is a matter within the sound discretion of a trial court. [Rimmer, 250 S.W.3d at 38, citing State v. Hines, 919 S.W.2d 573, 578 (Tenn. 1995). See also, Baker v. Hooper, 50 S.W.3d 463, 467 (Tenn. App. E.S. 2001)]. Simply because a judge has had a litigant in court before does not automatically make for a recusal/disqualification basis. [King v. State, 391 S.W.2d 637, 642 (Tenn. 1965)].

The Tennessee Supreme Court, in Alley, made the following declaration:

> When a motion to recuse is made, a judge should grant the motion whenever his or her "impartiality might reasonably be questioned"…Tennessee, like many jurisdictions, employs an objective rather

[68] For a form for recusal, see McLean & McLean, 5 Tenn. Practice (Civil) 2d § 6.14 at page 99 (West, 1987).

> than subjective standard. Thus while a trial judge should grant a recusal whenever the judge has any doubts about his or her ability to preside impartially,…recusal is also warranted when a person of ordinary prudence in the judge's position, knowing all of the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality.

[Alley, 882 S.W.2d at 820]. The last line of that quote, "knowing all of the facts known to the judge, would find a reasonable basis for questioning the judge's impartiality" basically blends the historic distinctions between disqualification and recusal. When the judge ***privately*** knows a reason he/she should not sit, he/she must disqualify himself/herself from a case. If a party formally seeks a recusal, and there is an objective ground for recusal, the judge must again step down from the case. Many states have adopted this merged standard for recusal/disqualification. [See, Alley, 882 S.W.2d 820 fn. 16 for a jurisdictional survey]. The Alley standard mirrors statutory federal recusal/disqualification rules. [See, 28 U.S.C. § 455(a) (recusal) and 28 U.S.C. § 144 (disqualification). See also, U.S. v. Nelson, 922 F.2d 311, 319 (6th Cir. 1990) and Lilieberg v. Health Svcs. Acquisitions Corp., 486 U.S. 847, 860 (1988)]. Both Tennessee and the Sixth Circuit follow the reasonable third person objective impartially review standard for recusal. [U.S. v. Norton, 700 F.2d 1072, 1076 (6th Cir. 1983); Roberts v. Bailar, 625 F.2d 125, 129 (6th Cir. 1980); Young v. Young, 971 S.W.2d 386, 390 (Tenn. App. W.S. 1997); and Dodd v. State, 499 S.W.2d 942, 944 (Tenn. Crim. App. 1973)].

If a judge ***should*** disqualify himself/herself from a case, but refuses to disqualify, or if he/she denies a validly fact based motion for recusal, and the court is a court of record, an expedited appeal of the recusal decision can be sought under Tenn. R. Sup. Ct. 10B. While this option would not apply often in municipal court, some municipal courts also act as juvenile courts – which is a court of record for matters such as custody cases between unwed parents. [See, State ex rel. Anglin v. Mitchell, 596 S.W.2d 779, 783 (Tenn. 1980)].

Practical Application of the Alley Standard. Motions seeking to recuse a judge must be specific as to why, ***factually and legally***, a judge should not hear a case. [Wiseman v. Spaulding, 573 S.W.2d 490, 493 (Tenn. App. M.S. 1978) and U.S. v. Bell, 351 F.2d 868, 878 fn. 13 (6th Cri. 1965)]. Failing to timely ask a judge to recuse himself/herself from a case amounts to a waiver of the issue. [See e.g., Corrado v. Hickman, 113 S.W.3d 319, 325 (Tenn. App. E.S. 2003); Obion County v. Coulter, 284 S.W. 372, 374-375 (Tenn. 1926); Woodson v. State, 608 S.W.2d 591, 593 (Tenn. Crim. App. 1980); Tennessee Pub. Co. v. Carpenter, 100 F.2d 728, 734 (6th Cir. 1939); and U.S. v. Baker, 441 F.Supp. 612, 616 (M.D. Tenn. 1977)]. The following bullet-points are relevant issues for recusal/disqualification:

A) If recusal/disqualification would destroy the only tribunal that could hear a case, the judge shall hear the matter. [See e.g., U.S. v. Will, 449 U.S. 200, 213 (1980) and State v. Humphreys, 40 S.W.2d 405, 406 (Tenn. 1931)];

B) Dissatisfaction with a court's ruling is not a basis for recusal to be granted. [Herrera v. Herrera, 944 S.W.2d 379, 392 (Tenn. App. W.S. 1996) and Kordenbrock v. Scroggy, 919 F.2d 1091, 1102 (6th Cir. 1990)];

C) A judge's mere acquaintance with a witness or party to a case, but no real relationship with the witness or party, is not a basis for either disqualification or recusal. [U.S. v. Dandy, 998 F.2d 1344, 1349-1350 (6th Cir. 1993)];

D) A special knowledge of a certain area of the law by a judge is not a basis for recusal. [Liteky v. U.S., 510 U.S. 540, 542-543 (1994) and Goodpasture v. T.V.A., 434 F.2d 760, 765 (6th Cir. 1970)];

E) Ministerial acts, that in no way affect the outcome of a trial, (e.g., signing a recusal order

which interchanges a second municipal judge to sit in your place on a case), may be performed by the recused or disqualified judge. [Glasgow v. State, 68 Tenn. 485, 486 (1876)];

F) A mere existence of friendship between the judge and one of the lawyers in a case does not automatically mandate recusal or disqualification of a judge. [State v. Cannon, 254 S.W.3d 287, 308 (Tenn. 2008)];

G) Manufactured grounds for recusal do not automatically mandate recusal. [State v. Parton, 817 S.W.2d 28, 29-30 (Tenn. Crim. App. 1991), (Defendant filed judicial grieveance against his trial judge); Malmquist v. Malmquist, 2011 Tenn. App. Lexis 504 (Tenn. App. W.S. 9/16/2011) at 30-32; (Litigant's spouse made death threat against judge); and State v. Ferguson, 1984 Tenn. Crim. App. Lexis 2935 (Tenn. Crim. App. 8/22/1984) at 2 (Defendant sued judge presiding over a criminal case in an attempt to disqualify judge)].

Final Thoughts on Recusal/Disqualifications. No case in a municipal court is worthy of a judge foregoing his/her dignity by trying a case where the judge clearly is disqualified or should recuse himself/herself. Simply get another judge to hear the case under Tenn. Code Ann. § 16-18-312. A judge must not only be impartial, he/she must be ***perceived*** by the ***public*** to be impartial. [Eldridge v. Eldridge, 137 S.W.3d 1, 7 (Tenn. App. W.S. 2003)].

CHAPTER XIV – PLEAS/SETTLEMENTS/ TRAFFIC SCHOOLS/CDLs

Case resolution options in municipal courts, be the case traffic, ordinance violations, or Class C misdemeanors, basically follow the options similarly available to defendants in General Sessions Court cases with a few slight modifications. This chapter will address those options.

Pleas. The plea options in municipal courts are fairly basic. Said options, for the most part, are as follows:

A) Plea of "Not Guilty," (proceed to trial on the merits);

B) Plea of "Guilty," (proceed to sentencing);

C) Pay the traffic ticket before trial, (considered a plea of guilty);

D) Plea of "Nolo Contendere," (treated as a de facto guilty plea without an admission of guilt); or

E) Request "Traffic School," (which amounts to a de facto pretrial diversion).

[See generally, Bishop, Municipal Courts 3d §§ 4.12 and 4.19, at pages 51 and 56 (Samford University Press, 1999) and Tenn. Op. Atty. Gen. 00-114, 2000 Tenn. AG Lexis 116 (6/20/2000) at 1-2. Accord, Town of Nolensville v. King, 2003 Tenn. App. Lexis 886 (Tenn. App. M.S. 12/19/2003) at 30, rev'd on other grounds]. A plea of guilty can ***possibly*** be used as an admission against interest if a civil case results from the events that brought the defendant to being charged in municipal court, (e.g., traffic accident). [Williams v. Brown, 860 S.W.2d 854, 857 (Tenn. 1993). See also, Tenn. R. Evid. 803(1.2)(D) at Advisory Commission Comments]. On the other hand, a plea of nolo contedre or simply paying a traffic ticket without appearing in open court is treated as a plea of guilty without any formal admission of guilt which could be used against the defendant

in a later civil case. [Williams v. Brown, 860 S.W.2d 854, 856-857 (Tenn. 1993) and Straub v. Roberts, 2000 Tenn. App. Lexis 217 (Tenn. App. W.S. 3/31/2000) at 13. Accord, Johnson v. Leuthongchak, 772 A.2d 249, 251 (D.C. App. 2001), citing Williams v. Brown, 860 S.W.2d at 856]. By way of comparison, if a defendant is granted traffic school, upon completion of the school (and usually paying the municipal court's court costs), the traffic ticket is dismissed. [Metro Gov't of Nashville and Davidson County v. Stark, 2008 Tenn. App. Lexis 58 (Tenn. App. E.S. 1/31/2008) at 6 and Tenn. Code Ann. § 55-10-301(b)]. Traffic schools will be discussed later in this chapter. Finally, if a defendant simply pays a traffic citation, the payment is considered a plea of guilty, but the action works like a nolo contendere plea for civil case considerations, so the paid traffic ticket is not an admission of negligence or liability. Many jurisdictions offer a set amount of traffic fines by a prescheduled scale so that traffic courts will not be flooded with contested traffic tickets trying to combat a potential civil lawsuit or reduce an unknown fine amount. [Williams v. Brown, 860 S.W.2d 854, 856 (Tenn. 1993) and Johnson v. Leuthongchak, 772 A.2d 249, 251 (D.C. App. 2001)].

Settlements. A municipal judge should look at settlements like the judge of a "Fish Fry Contest" looks at the results of those contests. By this, this author means the following:

> ***A)*** *The municipal judge doesn't help the prosecution catch the fish;*
>
> ***B)*** *The municipal judge doesn't help the prosecution clean the fish;*
>
> ***C)*** *The municipal judge doesn't help the prosecution cook the fish;*
>
> ***D)*** *The municipal judge simply looks in the pan after everything is done by the prosecution to see if the fish was caught, cleaned and cooked properly.*

The judge is not generally allowed to help either side of a case "jump hoops." [State v. Costen, 213 S.W. 919, 911 (Tenn. 1919)]. The

decision to settle a case is normally not for the judge to manipulate, demand or circumvent. [U.S. v. Barrett, 982 F.2d 193, 194 (6th Cir. 1992)]. The exception to this rule for municipal courts is "masking" of moving traffic violations for commercial drivers, (CDL holders), which is not allowed. [Tenn. Code Ann. § 55-10-301(c) and Metro Gov't of Nashville and Davidson County v. Stark, 2008 Tenn. App. Lexis 58 (Tenn. App. E.S. 1/31/2008) at 5-6, discussing 49 C.F.R. § 384.226]. Masking is a process of reducing a commercial driver's moving traffic violation to a non-moving violation (or by dismissing the case) in an effort to hide the actual moving traffic violation from being reported on the driver's CDL record. [49 C.F.R. §§ 384.225 and 384.226]. CDL's and masking will be discussed further later in this chapter.

It is important to remember that municipal court traffic issues have now been around for 100 years. [See e.g., Hendrick v. Maryland, 235 U.S. 610, 618-619 (1915)]. Even from the beginning, the safety and economic hazards associated with motor vehicles were a major issue in America. The U.S. Supreme Court, in ***1915***, declared:

> The movement of motor vehicles over the highways is attended by constant and serious dangers to the public, and is also abnormally destructive to the ways themselves. Their success depends on good roads, the construction and maintenance of which is exceedingly expensive; and in recent years insistent demands have been made upon the State for better facilities, especially by the ever-increasing number of those who own such vehicles.

[Hendricks, 235 U.S. at 622]. Drivers will actively try to keep their driver's license valid (which is normally a privilege, not a right) so settlements, when not statutorily prohibited, should be both encouraged and allowed. [See, Tenn. Code Ann. § 55-50-102(48), (53); State v. Goodson, 77 S.W.3d 240, 245 (Tenn. Crim. App. 2001); State v. Thompson, 88 S.W.3d 611, 616 (Tenn. Crim. App. 2000), citing Tenn. Op. Atty. Gen. 86-97, 1986 Tenn. AG Lexis 110

(5/19/1986) at 1-2 and Van Wagoner v. Van Wagoner, 346 N.W.2d 77, 80 (Mich. App. 1983)].

Traffic Schools. Traffic school is a form of pretrial diversion designed to allow non-commercial drivers to avoid adverse "points" getting placed on a person's driving record by a ticket being dismissed if the terms of traffic school are successfully completed. [Metro Gov't of Nashville and Davidson County v. Stark, 2008 Tenn. App. Lexis 58 (Tenn. App. E.S. 1/31/2008) at 6 and Trafficschool.com v. Edriver, Inc., 633 F.Supp. 2d 1063, 1080 (C.D. Cal. 2008)]. While "masking" traffic points through traffic school, dismissing cases or converting moving violations to non-moving violations is an option for non-commercial drivers, this option does not apply to "CDL" holders (commercial drivers licenses). [Tenn. Code Ann. § 55-10-301(c); 49 C.F.R. § 384.226; and Cummings v. Pa. Dept. of Trans., 2011 Pa. Commw. Unpub. Lexis 48 (Pa. Commw. 1/7/2011) at 5].

Tenn. Code Ann. § 55-10-301(b) allows for traffic schools that can be run by governments, non-profit 501(c)(3) organizations or private companies. [Tenn. Code Ann. § 55-10-301(b)(1)]. Traffic schools must follow the state requirements to be a valid traffic school and a city or municipal court cannot waive those state requirements. [Tenn. Op. Atty. Gen. 09-119, 2009 Tenn. AG Lexis 155 (6/12/2009) at 2-3, citing Tenn. Code Ann. §§ 55-10-301(b) and 55-10-307]. Traffic schools usually cost between $50.00 to $175.00 to attend. [Tenn. Code Ann. § 55-10-301(b)(2). But see, Tenn. Op. Atty. Gen. 09-119, 2009 Tenn. AG Lexis 155 (6/12/2009) at 3-4, which allows for traffic school costs to be below $50.00]. The municipal court gets to determine which traffic schools the court will approve for the purposes of this version of pretrial diversion. [Tenn. Code Ann. § 55-10-301(b)(4)]. Once a defendant completes traffic school and pays court costs, that defendant's attendance is reported to the State. [Tenn. Code Ann. § 55-10-301(b)(5)]. Tennessee's version of traffic school does not apply to commercial drivers, with a slight exception for parking violations by CDL holders. [Tenn. Code Ann. § 55-10-301(c), (d)].

While it will be discussed in more detail later in this chapter, a "commercial vehicle" (a/k/a chauffeur's license) is basically a person

driving a motor vehicle used in commerce to transport passengers or property if said motor vehicle:

A) Has a gross weight of 26,001 pounds or more; or

B) Is designed to transport more than fifteen (15) passengers, including the driver; or

C) Transports hazardous materials.

[Tenn. Code Ann. § 55-50-102(12)(A). See also, 49 U.S.C. § 31308]. The primary exceptions to what amounts to a "commercial vehicle" is farm equipment, emergency vehicles, military vehicles and vehicles for personal/non-business purposes. [Tenn. Code Ann. § 55-50-102(B)].

The rule that CDL holders are not subject to going to traffic school includes scenarios when the CDL driver is driving his/her personal vehicle for a non-work purpose. [Metro Gov't of Nashville and Davidson County v. Stark, 2008 Tenn. App. Lexis 58 (Tenn. App. E.S. 1/31/2008) at 1-3]. The Eastern Section of the Tennessee Court of Appeals, in Stark, found that even if the CDL holder was driving on personal business, in his personal vehicle (e.g., vacation), the CDL driver still cannot seek traffic school because both state and federal statutes deny this option for commercial drivers. [Stark, at 6].

Most municipal courts offer traffic school if the driver before the court hasn't had a traffic ticket ***anywhere*** within the past two (2) years (or within the past three (3) years, depending upon which court is hearing the case). This author suggest that TMJC set uniform standards for eligibility of traffic school for defendants in municipal courts (e.g., everybody set two (2) years as the lock-out period for traffic school) similar to the Tennessee Supreme Court's rule against judges being barred from using nepotism when assigning/approving traffic schools. ["New Judicial Resources," 41 Tenn. B.J. 7, 7 (June, 2005) Cf., In Re: Bell, 344 S.W.3d 304, 312-313 fn. 10 (Tenn. 2011)]. For the Tennessee Department of Safety's regulations on traffic school requirements, see Tenn. R. Dept. of Safety §§ 1340-03-07-.01 to 1340-03-07-.06 (October, 2010). For further discussions on traffic schools, see Chapter IV of this book.

CDLs. "CDLs," short for "Commercial Drivers License" (f/k/a "Chauffeur's License"). [Tenn. Code Ann. § 55-50-102(11) and State v. Banks, 875 S.W.2d 303, 306 (Tenn. Crim. App. 1993)]. Commercial drivers are held to a higher standard of safety than the average driver in Tennessee. [See e.g., Rowan v. Sauls, 260 S.W.2d 880, 882 (Tenn. 1953) and State v. Snyder, 835 S.W.2d 30, 32 (Tenn. Crim. App. 1992)]. Because of the economic issues associated with holding a CDL, once a driver obtains a CDL, that driver has a XIVth Amendment Due Process interest in keeping that CDL – even though driving is a privilege, not a right. [Bell v. Burson, 402 U.S. 535, 539 (1971)].

The State of Tennessee has an interest in regulating commercial motor carriers through agencies such as the Tennessee Public Service Commission. [State v. Hedden, 614 S.W.2d 383, 383-385 (Tenn. Crim. App. 1980). Accord, Hendrick v. Maryland, 235 U.S. 610, 622-623 (1915)]. CDL cases mix state law, federal law and federal regulations into a single lump of clay municipal judges must use to mold justice. [See, Tenn. Code Ann. §§ 55-50-401 to 55-50-412; 49 U.S.C. §§ 31309 and 31311; 49 C.F.R. §§ 384.225, 384.226, and 384.401]. In Kassel v. Consol. Freightways Corp., 450 U.S. 662 (1980), Justice William Brennan wrote a concurring opinion that noted the importance of state regulation of interstate commercial motor carriers not being interfered with by the federal government absent specific federal legislation. [Kassel, 450 U.S. at 690-691, Brennan concurring. Accord, Hendrick, 235 U.S. at 622]. That federal legislative interference came in 1986.

In 1986, the Federal Commercial Motor Vehicle Safety Act of 1986 ("FCMVSA") 40 U.S.C. § 31101 et seq., passed Congress and listed three (3) types of commercial motor vehicles, which are:

A) Vehicles with a gross weight of 26,001 pounds or more;

B) Vehicles carrying sixteen (16) people or more; and

C) Vehicles transporting hazardous materials.

[Bishop, Municipal Courts 3d §§ 7.51 and 7.52 at 153-154 (Samford University Press, 1999). Accord, Tenn. Code Ann. § 55-50-102(12)(A) and 49 U.S.C. § 31308]. Congress did not "officially" mandate state compliance with the FCMVSA, but as a practical matter, compliance is not optional because federal highway funds are directly connected to a State implementing the FCMVSA. [49 U.S.C. §§ 31313 and 31314 and Hamilton v. Gourley, 103 Cal App. 4th 351, 358 fn. 1 (Cal. App. 2002). Accord, Childress v. Cal. Dept. of Motor Vehicles, 2005 Cal. App. Unpub. Lexis 1870 (Cal. App. 3/3/2005) at 8]. Basically, Congress cannot ***force*** states to "drink" from the FCMVSA's funding cup, but the federals can take their funding cup away if the State won't lap up the de facto mandate of the FCMVSA. [49 U.S.C. § 31314 and 49 C.F.R. § 384.403].[69] By April, 1992, all fifty (50) states had implemented the FCMVSA of 1986. [CDL Program Review at 10 (Am. Assoc. of Motor Vehicle Admin. 12/2008)]. For a general discussion on CDLs and the FCMVSA, see Bishop, Municipal Courts, Chapter 7 at part VIII, at pages 153-161 (Samford University Press, 1999)].

It is clear that CDL drivers are treated differently than non-commercial drivers. [E.g., *Tenn. Code Ann. 55-50-405, DUI = .04 bac for CDL drivers v. Tenn. Code Ann. § 55-10-401(2), DUI = .08 bac for non-commercial drivers*]. The question for municipal judges is…why? First, keeping employment for a CDL driver is contingent on safe driving. [See e.g., State v. Coleman, 2009 Tenn. Crim. App. Lexis 277 (Tenn. Crim. App. 4/6/2009) at 4 and Chattanooga Area Reg'l Transp. Auth. v. Autry Unemployment Ins., 2002 Tenn. App. Lexis 283 (Tenn. App. E.S. 4/23/2002) at 8-9]. Second, to quote federal statistics, "Due to the massive sizes and heavy weights, trucks can cause serious damage and death, should they be involved in an accident." [www.truckaccidents.org/statistics]. This is a valid basis for the apparent Equal Protection violation between CDL holders and non-commercial drivers because all CDL holders are being treated the same and if you do not wish to have the stricter rules – don't apply for a CDL. [See generally, Duncan v. Missouri, 152 U.S. 377, 382 (1894) and Thorek v. DOT, Bureau of Driver Licensing, 938 A.2d 505, 512 (Pa. Commw. 2007)]. Seventy-five percent (75%) of

[69] The Code of Federal Regulations carry the force of law. [Boatman v. Hammons, 164 F.3d 286, 289 (6th Cir. 1998) and Save Our Valley v. Sound Transit, 335 F.3d 932, 943 (9th Cir. 2003)].

accidents involving "big rigs" trucks were caused by non-commercial drivers. [www.truckaccidents.org/statistics]. In 2010, 5,000 people died in wrecks involving commercial vehicles and experts anticipated a twenty-percent (20%) increase in CDL related wreck deaths for the year 2012 because of increased numbers of commercial trucks being on the road. [www.theautochannel.com/news/2011/02/ 22/520199. htm]. The very reasons the FCMVSA was passed was to reduce traffic accidents involving commercial motor vehicles. [State v. James, 2011 Tenn. Crim. App. Lexis 59 (Tenn. Crim. App. 1/26/2011), at 11-12, {not for publication on other grounds}; 49 C.F.R. § 384.1(1); and 49 C.F.R. § 383.1(a)]. The Federal Motor Carrier Safety Administration publishes a single volume Federal Motor Carrier Safety Regulations Handbook which is updated quarterly with all of the C.F.R. regs on motor carriers in the single, soft-bound, text. A copy of this handbook can be obtained from the publisher, J.J. Keller & Assoc., Inc., (800) 327-6868 or www.jjkeller.com. The most obvious issue from the FCMVSA's application is "***masking***."

49 C.R.R. § 384.226 states the following which is commonly called "masking:"

> The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, ***in any type of motor vehicle***, of a State or local traffic control law (except a parking violation) from appearing on [the Commercial Driver's Licenses Information System] driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

[Parenthetical added. Emphases added]. Another way of stating the "no masking" principal, "The State may not allow information regarding such [traffic] violations to be withheld or masked in any way from the [traffic] record of an individual possessing a commercial driver's license." [Cummings v. Pa. Dept. of Trans., 2011 Pa.

Commw. Unpub. Lexis 48 (Pa. Commw. 1/7/2011) at 5, parentheticals added]. The Code of Federal Regulations, which implements the FCMVSA, carry the force of law. [Boatman v. Hammons, 164 F.3d 286, 289 (6th Cir. 1998)]. The target for FCMVSA compliance is to make commercial drivers drive safely. [49 C.F.R. § 383.113(b)]. Since the implementation of the FCMVSA, the percentage of motor vehicle crashes have decreased for both fatal crashes and crashes with injuries involving CDL holders. [U.S. Dept. of Transportation "Large Truck and Bus Crash Facts – 2009," at "Trends" at 3 & 8 (Fed. Motor Carrier Safety Admin., October, 2011)]. For this tracking reason, a CDL driver can only have ***one*** (1) commercial driver's license instead of a different CDL for differing states. [Tenn. Code Ann. § 55-50-401; 49 U.S.C. § 31302; 49 C.F.R. § 381.1; and People v. Meyer, 186 Cal. App. 4th 1279, 1282-1283 (Cal. App. 2010). Accord, 49 C.F.R. § 383.21 and 49 U.S.C. § 31304(2)]. There is a national reporting service, called CDLIS,[70] which makes sure CDL drivers do not have multiple commercial drivers licenses and to monitor moving traffic violations. [49 U.S.C. § 31309 and 49 C.F.R. § 384.225. See also, State v. James, 2011 Tenn. Crim. App. Lexis 59 (Tenn. Crim. App. 1/26/2011) at 12]. The Federal Department of Transportation conducts regular audits of States to make sure a State is not masking CDL convictions. ["Commercial drivers still licensed despite DWI convictions," vol. 14 no. 16 (Workplace Substance Abuse Advisor 7/27/2000). Accord, 49 C.F.R. § 384.307 and Gingerly v. State, 2009 Mont. Dist. Lexis 343 at para. 10 (Mont. Dist. 3/13/2009)]. Ironically, even though a State can lose federal highway funding if courts, including municipal courts, are dismissing or masking CDL moving traffic violations, few actual penalties have been handed out by the Federal Motor Carrier Safety Administration for states caught masking CDL traffic offenses. ["Commercial drivers still licensed despite DWI convictions," vol. 14, no. 16 (Workplace Substance Abuse Advisor 7/27/2000)].

CDL cases involving laws against masking must be strictly enforced. An example of this mandate is State v. Snyder, 835 S.W.2d 30 (Tenn. Crim. App. 1992). In Snyder, a driver was clearly driving safely, but was stopped for a routine safety inspection when the

[70] CDLIS = Commercial Drivers License Information Service. [49 U.S.C. § 31309 and 49 C.F.R. § 384.225. Accord, Meyer v. Dir. of Revenue, 909 S.W.2d 397, 400 & 402 (Mo. App. 1995)].

inspection officer smelled alcohol on Mr. Snyder. [Snyder, 835 S.W.2d at 31]. Although the arresting officer testified to Mr. Snyder's sobriety, Snyder had a blood alcohol content (."bac") level of .04, which is DUI for CDL holders according to Tenn. Code Ann. § 55-50-405. [Id]. The DUI conviction was affirmed. [Snyder, 835 S.W.2d at 32]. A judge is under an ***obligation*** under Tenn. R. Sup. Ct. 10, Canon 2, Rule 2.2 that "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." That includes complying with CDL mandates from federal and state statutes and regulations. The National Judicial College ("NJC") has laminated "CDL Information Charts" to help judges navigate the CDL maze. The NJC can be contacted as follows:

National Judicial College
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Judicial College Building/ MS 358
Reno, NV 89557
Ph.: (800) 25-Judge
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Final Thoughts on Pleas, Settlements, Traffic Schools and CDLs. If the city and a defendant want to work out a settlement in a municipal traffic case, that process should be allowed and encouraged so long as the process does not violate state or federal law. Traffic school is a viable option to avoid having a traffic conviction adversely impact a person's driving record or insurance rates. If a commercial driver seeks to "mask" a moving violation, the municipal judge cannot allow the masking to occur. Once a case begins, the municipal court must rule fairly and not circumvent prevailing law.

CHAPTER XV – COLLATERAL CONSEQUENSCES OF MUNICIPAL COURT PROCEEDINGS

Once a judgment is entered in a municipal court, that finding of guilt may have some spill-over impact on other aspects of a defendant's life. This chapter will look at some of those potential collateral consequences that occur as a result of a municipal court trial and conviction.

Open Court Admissions. An open court admission of guilt to a traffic violation ***may*** possibly be used as an admission against interest in a civil liability lawsuit that springs from the facts that generated the municipal court citation. [Williams v. Brown, 860 S.W.2d 854, 856 fn. 2 (Tenn. 1993)]. The Tennessee Supreme Court has elected not to directly resolve this question yet, but has made clear that a nolo contendere plea or simply paying a traffic ticket without appearing in court ***cannot*** be used as an admission at a later civil case. [Williams, 860 S.W.2d 856-857]. The Williams court noted that nolo contendere pleas are very similar to paying a ticket without appearing in open-court and "nolo pleas" are not admissible in Tennessee pursuant to Tenn. R. Evid. 410(2) and the same logic should apply to Tenn. Code Ann. § 55-10-207(d) where paying a ticket is an election not to challenge or contest the charge. [Williams, 860 S.W.2d at 856. See also, Bell v. Tenn. Farmers Mut. Ins. Co., 1999 Tenn. App. Lexis 45 (Tenn. App. M.S. 1/22/1999) at 4 and Minor v. State, 2001 Tenn. Crim. App. Lexis 932 (Tenn. Crim. App. 12/5/2001) at 7].

Driver Points. A common question that comes up in municipal court traffic cases is "Will this affect the points on my license?" What the defendant is referring to is the Tennessee Driver Improvement Point System, Tenn. Code Ann. § 55-50-505(a). The "Points System" is not particularly popular with the general public. [See e.g., No Illegal Points, Citizens for Driver's Rights v. Florio, 624 A.2d 981, 983 (N.J. Superior, App. Div. 1993)]. Basically, the Tennessee Department of Safety monitors the number of convictions for traffic violations that all drivers with Tennessee driver's licenses receive in a twelve (12) month period. [Bishop, Municipal Courts, 3d § 7.20 at 127-129 (Samford University Press, 1999), discussing a similar program used in Alabama. Accord, City of Creve Coeur v. Nottebrok,

356 S.W.3d 251, 261 (Mo. App. 2011)]. By accumulating "points," a Tennessee driver may put himself in a position of having the Department of Safety revoke a person's driving privileges even if an individual judge did not suspend or revoke a defendant's driver's license for a single municipal traffic citation. [See, State v. Jacobson, 338 N.W.2d 648, 651 fn. 1 (N.D. 1983) and Bishop, Municipal Courts, 3d at 129]. The logic behind Tennessee's driver's point system is explained as follows:

> Point systems are used to help monitor and correct drivers, identify habitual reckless or negligent drivers, and promote safety on the road. All drivers start out with a zero points on their driving records and accumulate points according to the severity of any traffic violations for which they may be convicted. Once you accumulate a certain number of points, your license could be suspended or revoked. Plus, many insurance companies raise rates for drivers with excessive points on their driving records and many employers require clean driving records for employment.

[www.dmv.org/tn-tennessee/point-system.php. Accord, Sumpter v. Dir. of Revenue, 88 S.W.3d 491, 494-495 (Mo. App. 2002)]. Generally, if a driver accumulates twelve (12) points against their driving record in a twelve (12) month period, the Tennessee Department of Safety will start proceedings to suspend a driver's license unless the driver shows just cause not to have the State suspend the license. [Id. and Tenn. Code Ann. § 55-50-505(a)(1)(B). Compare, Allen v. Strelecki, 236 A.2d 129, 131 (N.J. 1967); Brown v. Dollison, 1982 Ohio App. Lexis 13080 (Ohio App. 7/22/1982) at 1; and Green v. Commonwealth, 445 A.2d 1341, 1342-1343 (Pa. Commw. 1982)].

Below you will find some of the Non-commercial Driver's Points, and how point valves were assigned, from the Tenn. Code Ann. § 55-50-505(a)(1)(A) and (C) Tennessee Driver Improvement Point System:

***Speeding tickets (no listed speed)* = 3 points**

***Speeding tickets (5 mph over posted speed limit or less)* = 1 point**

***Speeding tickets (6-15 mph over posted speed limit)* = 3 points**

***Speeding tickets (16-25 mph over posted speed limit)* = 4 points**

***Speeding tickets (26-35 mph over posted speed limit)* = 5 points**

***Speeding tickets (36-45 mph over posted speed limit)* = 6 points**

***Speeding tickets (46 mph or higher over posted speed limit)* = 8 points**

***Reckless driving* = 6 points**

***Failure to Obey Traffic Control Sign/Device* = 4 points**

***Improper Passing* = 4 points**

***Leaving the Scene of an Accident* = 5 points**

***Failure to Yield to Emergency Vehicles* = 6 points**

[www.tn.gov/safety/values.shtml. Compare, Gnecchi v. State, 364 P.2d 225, 229 (Wash. 1961), Rosellini, dissenting {for Washington State's point system}]. The concept of driver's points has been around many decades. [See e.g., Tenn. Code Ann. § 55-50-505 at History and Allen v. Strelecki, 236 A.2d 129, 132 (N.J. 1967)]. CDL holders generally have higher points than non-commercial drivers for the same moving traffic violations. [Id. E.g., speeding between 15-25

mph over posted speed limit = 5 points for CDL holder, but 4 points for non-commercial drivers]. A statutory distinction between the points/punishment of CDL holders and non-commercial drivers does not violate the Equal Protection Clause of the XIVth Amendment of the U.S. Constitution. [See, Thorek v. DOT, Bureau of Driver Licensing, 938 A.2d 505, 512 (Pa. Commw. 2007) and Commonwealth, DOT v. Huff, 310 A.2d 435, 435 (Pa. Commw. 1973)].

Insurance Rates/SR-22. "SR-22" is associated with proof of "high-risk" insurance coverage. [Pasman-Green, "Off the Roads & Out of Court," 24 J.L. & Health 217, 259 (2011) and Robben, "The DMV and Insurance," 680 Or. St. B. Bull, 25 (Aug./Sept. 2008)]. Traffic citations, just like automobile accidents,[71] can "drive" a defendant's insurance premium rates up. [www.ehow.com/how-does_4569464_traffic-ticket-affect-insurance.rates.html and www.onlineautoinsurance.com/quotes/how-accidents-affect/]. One observer noted that, "Research conducted from the National Highway Traffic Safety Administration (NHTSA) shows that drivers who get one ticket are more likely to get another one or be involved in an auto accident." [www.ehow.com/how-does_4569464_ traffic-ticket-affect-insurance-rates.html]. Insurance companies offering vehicle insurance usually look back at their insured's driving history for three (3) years on traffic citations if premium rates were increased due to tickets, then rates usually return to normal if a driver is ticket-free for three (3) years. [Id]. If an uninsured motorist has a ticket or accident resulting in a suspension of the defendant's driver's license, Tenn. Code Ann. § 55-50-505(a)(1)(D), makes proof of liability insurance, from an ***insurance company***, not the defendant, a condition precedent to the defendant's license being reinstated. The SR-22 form is the proof from the insurance company that the defendant has liability insurance.

One of the most common collateral insurance issues regarding a defendant losing a traffic case is the potential of needing a SR-22. Contrary to popular belief, a SR-22 is not ***insurance***, but is actually a

[71] While not always directly relevant to municipal courts, insurance companies often look at the following factors when determining fault for accidents and how/if an accident will impact a driver's insurance rates: **A)** Fault of the accident; **B)** Injuries; **C)** Did the accident involve an emergency vehicle; **D)** Alcohol involved; **E)** Amount of property damages; **F)** Time period from last accident; and **G)** Was a traffic citation issued. [www.onlineautoinsurance.com/quotes/how-accidents-affect/].

form ***proving*** that a person has financial responsibility/liability insurance. [See, Povident Gen. Ins. Co. v. Houts, 1990 Tenn. App. Lexis 702 (Tenn. App. E.S. 10/4/1990) at 3-4 and www.carinsurance.com/kb/content10055.aspx]. Usually SR-22 proof is required because the defendant was: **A)** convicted of a traffic offense, **B)** did not have proof of insurance at a traffic stop or accident, or **C)** a judge ordered the defendant to get a SR-22 form. [Id. and Am. Family Ins. Co. v. Globe Am. Cas. Co., 774 N.E.2d 932, 937-938 (Ind. App. 2002)].

HMVO/HTO. "HMVO" stands for "Habitual Motor Vehicle Offender." "HTO" stands for "Habitual Traffic Offender." [See, Tenn. Code Ann. § 55-10-603(2)]. Cases in Tennessee have used the abbreviations HTO and HMVO interchangeably. To be placed on HMVO status, a driver has three (3) or more major traffic offense convictions listed in the statute within a three (3) year period or convictions of five (5) of the offenses listed within a ten (10) year period. [Tenn. Code Ann. § 55-10-603(2)(A). See also, Rohlman v. Dir. of Revenue, 323 S.W.3d 459, 460-462 (Mo. App. 2010)]. These convictions can, by statute, come from a municipal court. [Tenn. Code Ann. § 55-10-603(2)(B) and (3)]. Driving while on HMVO status is an E felony. [Tenn. Code Ann. § 55-10-616(b)]. A HMVO case is civil in nature. [Davis v. State, 793 S.W.2d 650, 651 (Tenn. Crim. App. 1990)]. Violations of city ordinances which have the same elements as a criminal statute moving traffic offense can be used to make up the underlying offenses for a HMVO finding. [State v. Carter, 2008 Tenn. Crim. App. Lexis 655 (Tenn. Crim. App. 10/26/1988) at 3-4]. Driving without a license is a lesser included offense to Driving While on HMVO Status. [State v. Jones, 592 S.W.2d 906, 908 (Tenn. Crim. App. 1979)]. Records of prior traffic convictions recorded/collected by the Tennessee Department of Safety, which are attested to as accurate by the official record keeper of the Department of Safety, are admissible in a case to declare a defendant a Habitual Traffic Offender, as a public record. [State v. Shaw, 631 S.W.2d 477, 479 (Tenn. Crim. App. 1982)]. HMVO hearings, which use prior traffic convictions to establish HMVO status, do not violate the Double Jeopardy Clause of the Vth Amendment of the U.S. Constitution. [State v. Conley, 639 S.W.2d 435, 437 (Tenn. 1982)]. Actually, a court can use prior traffic convictions to both establish a driver's HMVO status as well as to

enhance the HMVO sentencing. [State v. Reid, 751 S.W.2d 172, 173 (Tenn. Crim. App. 1988)]. Once an order declaring a driver on HMVO status is entered, that finding remains effective until a court grants a petition to have the driver's license and driving privileges reinstated. [State v. Tate, 1994 Tenn. Crim. App. Lexis 91 (Tenn. Crim. App. 2/23/1994) at 5 and State v. Bellamy, 1987 Tenn. Crim. App. Lexis 2189 (Tenn. Crim. App. 3/13/1987) at 4-5]. If a driver wishes to have a HMVO finding set aside, the procedure to set the status aside can be found at Tenn. Code Ann. § 55-10-615.

Increased Insurance Rates. "If a person is stopped by a police officer, he/she tends to view his/her fate in one of two ways: a warning or a ticket (and increased insurance rates)." [Sink, "The Case Against Simplicity," 27 S. Ill. U. L.J. 637, 637 (Spring, 2003)]. There are collateral costs beyond the one-time fine associated with a traffic ticket "including increased insurance premiums, time costs, and feelings of guilt." [Bar-Ilan & Sacerdote, "The Response of Criminals and Noncriminals to Fines," 47 J. Law & Econ 1, 13 (April, 2004)]. As noted in Chapters IV and XIV of this book, a municipal judge is not allowed to mask CDL moving violation traffic tickets. As for non-commercial drivers, if the City and a non-commercial driver work out a settlement – that is between them. If the case is actually tried, the judge must rule fairly even if said ruling adversely affects the defendant's driving insurance coverage costs. [See Tenn. R. Sup. Ct. 10, Canon 2, Rules 2.2 and 2.4].

Retake the Drivers Exam. One of the collateral consequences of going to municipal court, if the judge is convinced the defendant/driver is either incompetent as a driver or a traffic hazard, is for the judge to order the defendant to retake the driver's license exam. [Tenn. Code Ann. § 55-50-505(c)]. If the court orders this discretionary option,[72] the defendant is allowed to keep their driver's license, but if the driver does not timely take the exam, or fails the exam, the defendant's driver's license shall be suspended or revoked. [Id]. Similarly the State of Tennessee Department of Safety or municipal judge can order elderly drivers, simply because of their age, to retake the driver's license examination. [See, Tenn. Op. Atty. Gen.

[72] Ordering a retake of the Tennessee Driver's License Exam is not a punishment, but a public safety issue.

11-80, 2011 Tenn. AG Lexis 82 (12/5/2011). See generally, Alpin, "Elderly Drivers," 87 Wash. U.L. Rev. 379, 389-391 (2009)].

Loss of CDL = Loss of Job. Several job descriptions require the employee to have a CDL. Common examples of this requirement would be bus drivers or over-the-road truckers. [See e.g., Rowland v. Franklin Career Servs., LLC, 272 F.Supp.2d 1188, 1195 (D. Kan. 2003) and Millage v. City of Sioux City, 258 F.Supp.2d 976, 980 (N.D. Iowa 2003)]. It is not unreasonable for an employer to make their employee keeping a valid CDL a condition-precedent to employment if being CDL certified/qualified is an essential element of a job description. [Fiumara v. President & Fellows of Harvard College, 526 F.Supp. 2d 150, 156 (D. Mass. 2007) and Gilligan v. Town of Moreau, 2000 U.S. App. Lexis 27198 (2nd Cir. 10/25/2000) at 9-10]. The municipal judge is limited by federal and state "masking" legislation to not being able to simply dismiss, divert, reduce, hide or not report traffic violations. [See Chapter XIV of this book]. Even if the defendant is facing a probable loss of the CDL…and in turn a probable loss of the defendant's job, the municipal judge must adjudicate the case before him/her, even when the judgment causes harsh collateral results for the defendant. [Tenn. R. Sup. Ct. 10, Canon 2, Rules 2.2 and 2.4].

Bar Letters. A "bar letter" is a written notice from a land owner or business owner that formally puts a defendant on notice that the defendant is not welcome at the real property or at the business location. Common examples of where bar letters are issued are shopkeepers barring shoplifters from a store or land owners stopping groups of youth from loitering at a parking lot or "cruising" a local business. The shop owner will often announce in open-court that the defendant is not welcome back at a store and then give the defendant the bar letter with a copy of said letter being given to the court and local police. Another common example of where a bar letter comes into play is for local police to have bar letters issued to known or suspected drug dealers via ordinance barring admittance of the drug dealer to local housing projects where the known or suspected drug dealer does not reside. [See generally, State v. Ash, 12 S.W.3d 800 (Tenn. Crim. App. 1999)]. If a bar letter is issued, and a barred defendant comes back on the property, said act amounts to a Class C misdemeanor of Criminal Trespass under Tenn. Code Ann. § 39-14-

405. [State v. Ash, 10 S.W.3d at 802]. The in-court delivered bar letter actually becomes a judicially noticeable fact that the defendant is on notice that he/she is not welcome at the property or store or housing project in question. [State v. Ash, 10 S.W.3d at 803].

Final Thoughts on Collateral Consequences. This chapter discussed some of the collateral issues associated with municipal court judgments. While other collateral consequences may exist, such as loss of license for not paying a municipal court fine, those collateral consequences have been addressed in other parts of this book. [See, Tenn. Code Ann. § 55-50-503(b), {suspension of license for not paying an assessed municipal court traffic fine}, as discussed in Chapter XVII of this book].

CHAPTER XVI – INTERPRETERS/FOREIGN NATIONALS

The municipal court judge will occasionally have a defendant that does not speak English, is deaf, or is a citizen of a country other than the United States. This chapter will first address interpreters and then immigration issues of a foreign national being in a municipal court.

Interpreters: Tenn. R. Civ. P. 28 and Tenn. R. Civ. P. 54.04(2) allow the expense of an interpreter to be assessed as a court cost. Tenn. R. Sup. Ct. 41 and 42 discuss the basic implementation and ethical duties of court interpreters. The appointment of an interpreter is within the Trial Court's sound discretion. [Denton v. State, 945 S.W.2d 793, 796-798 (Tenn. Crim. App. 1996) and State v. Heck Van Tran, 864 S.W.2d 465, 475-476 (Tenn. 1993)]. An interpreter must **A)** be an expert in the language translated and **B)** swear or affirm to translate accurately. [State v. Heck Van Tran, 864 S.W.2d 465, 475 (Tenn. 1993), Tenn. Code Ann. § 24-1-211 and Tenn. R. Evid. 604]. Interpretations can be either oral translations of another language or sign language for the deaf. [See e.g., Denton v. State, 945 S.W.2d 793, 797-798 (Tenn. Crim. App. 1996) and State v. Heck Van Tran, 864 S.W.2d 465, 475-476 (Tenn. 1993)]. The key issue is that the interpreter is an expert in the language he/she interprets and he/she interprets accurately. [Phillips, "A Comparative Study of Witness Rules," 39 Tenn. L. Rev. 379, 384 (Spring, 1972)]. Like other experts, an interpreter is subject to qualifications impeachment. [State v. Millsaps, 30 S.W.3d 364, 370 (Tenn. Crim. App. 2000) and Tenn. R. Evid. 604].

Most states, in one form or another, recognize a right to an interpreter for non-English speaking defendants in criminal cases. [Shulman, "No Hablo Ingles," 46 Vand. L. Rev. 175, 178-179 (January, 1993)]. Since the judge must actually recognize the need for an interpreter, this right requires the judge to keep in mind that some people can speak very basic English, yet do not understand the more detailed verbiage necessary to navigate the court system. [Id]. Merely looking to expense or a lengthened trial case because an interpreter is involved is not a valid basis to exercise the Court's wide discretion against appointing an interpreter. [Heck Van Tran, 864 S.W.2d at 475 fn. 3 for a discussion on this point]. The municipal

judge should remember that it would be a "cruel mockery" of justice to offer a defendant a trial without allowing the defendant a workable means of defending himself. [State v. Poe, 76 Tenn. 647, 654 (1881) and State v. Covington, 845 S.W.2d 785, 786 (Tenn. Crim. App. 1992)]. Conducting a trial on the merits in a language the defendant cannot understand is an obvious example of "form over substance" which cannot be tolerated or condoned in Tennessee municipal courts. [Dodge v. U.S., 362 F.2d 810, 813 (U.S. Ct. Claims 1966) and Schiefer v. State, 774 P.2d 133, 143 (Wyo. 1989), Urbigkit dissenting]. If the city wants to try a speeding ticket on a person who does not understand English, appoint an interpreter.

There is a duty upon judges to *"provide the necessary means for the defendant to understand the nature of the charges against him, the testimony of the witnesses, and to communicate to the court. Failure to do so would be a violation of one's constitutional right to be heard, to know the nature and cause of the accusation and to be confronted by the witnesses."* [8 Tenn. Juris. "Criminal Procedure" § 28 (Matthew Bender & Co, 2012), citing State v. Thein Duc Le, 743 S.W.2d 199, 202 (Tenn. Crim. App. 1987) and implicitly Art. I § 9, Tenn. Const.]. The determination of whether or not to provide interpretation to a defendant who has problems understanding English is a discretionary finding, but when the Due Process Clauses of the Tennessee and U.S. Constitution conflict with a budgetary rule of court, however laudable the rule, -- Due Process must prevail. [Arwood v. State, 463 S.W.2d 943, 946 (Tenn. App. E.S. 1970), Drowota, J.]. The constitutional Due Process aspect of granting interpreters so that a party to a lawsuit can understand what is occurring applies to both civil and criminal cases. [See, In Re: Valle, 31 S.W.3d 566, 572-573 (Tenn. App. W.S. 2000) and State v. Thien Duc Lee, 743 S.W.2d 199, 202 (Tenn. Crim. App. 1987)]. While not the preferred method, a non-professional interpreter can be used to translate if the person acting as interpreter is fluent in the language being translated and translates truthfully. [See, State v. Millsaps, 30 S.W.3d 634, 370 (Tenn. Crim. App. 2000)].

If you have questions regarding the appointment or finding of an interpreter, see, www.tncourts.gov/programs/court-interpreters. This webpage includes a "Judicial Interpreter Bench Card" that can be downloaded to determine which language a party in court speaks as

well as contact information for different interpreters. For more information regarding interpreters, contact Ms. Mary Rose Zingale at the AOC. [Ph. (615) 741-2687, email: mary.rose.zingale@tncourts.gov].

A municipal judge should remember that a person who cannot speak English (e.g., a deaf person) has a constitutional right to be able to address their government in both the state house and the courthouse. [See generally, Tenn. Op. Atty. Gen. 80-65, 1980 Tenn. AG Lexis 531 (2/5/1980)]. Both criminal and civil law allows this expense to be taxed as a discretionary cost. [Tenn. Code Ann. § 40-25-104, Tenn. R. Crim. P. 28 and Tenn. R. Civ. P. 54.04(2)]. Usually, this expense will probably be a cost for the city prosecuting the case so providing an interpreter may excede the cost of trial on a simple speeding ticket. [Cf., Tenn. Op. Atty. Gen. 99-211, 1999 Tenn. AG Lexis 187 (10/20/1999)]. As long as the officer, clerk or bailiff that acts as interpreter is not, in any way, a part of the case, it is possible to use an employee of the city to act as interpreter on a municipal court case, but this manner of justice is discouraged. [Id].

Foreign Nationals: The U.S. Supreme Court, in Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010), held that before a defendant could make a "knowing and voluntary" guilty plea, that defendant must be made aware of both potential direct and collateral consequences of a guilty plea. [Rigger v. State, 341 S.W.3d 299, 313 fn. 2 (Tenn. Crim. App. 2010)]. In the context of a foreign national, this means the defendant should know if his guilty plea may trigger deportation proceedings. [Calvert v. State, 342 S.W.3d 477, 488 (Tenn. 2011), discussing Padilla]. While this issue may not affect the foreign national with a speeding ticket, a simple shoplifting theft plea could potentially lead to a foreign national's deportation. [See e.g., Jose v. State, 2012 Tenn. Crim. App. Lexis 808 (Tenn. Crim. App. 9/28/2012) at pages 1 and 10)].

For municipal judges facing a defendant that may, or may not, be a citizen of another country, the main point to remember is that even misdemeanors can have possible deportation consequences.

Every defendant deserves to be treated fairly by the court system. [Brady v. Maryland, 373 U.S. 83, 87 (1963)]. The defendant

who does not speak English or who is a foreign national may need special accommodations simply to obtain minimal Due Process muster. [See, In Re: La'Asia S., 739 N.Y.S. 2d 898, 909-910 (N.Y. Fam. Ct. 2002), discussing the Americans with Disabilities Act as it applies to interpreters in court]. The Tennessee Supreme Court, in Poindexter v. State, 191 S.W.2d 445, 446 (Tenn. 1946), bluntly opined:

> …it is of transcendent importance that basic principles of justice and the constitutional right to a fair trial shall be observed…

The basic complaint of a political structure speaking in a language different than the language spoken by the people that are expected to follow the rules dates back to the days of Martin Luther and William Tyndale. [McGeady, "The Digital Reformation," 10 Harv. J. Law & Tec. 137, 140 (Fall, 1996); Stoffel, "Enlightened Decision Making," 75 Tul. L. Rev. 1195, 1198 (March, 2001); and Fornias, "Drawing a Line in the Sans Serif," 45 Lan. Bar Jnl. 592, 592 (April, 1998)]. Steven McGeady, the Vice President of computer giant Intel Corporation noted, the above fact is not "making a religious point, but a social one." [McGeady, "The Digital Reformation" supra, at 140]. The point is that if a person cannot understand what is being said around them, it is unfair to hold them to "the letter of the law" when they have no idea they are pleading guilty or being tried. Get an interpreter!

Final Thoughts on Interpreters and Foreign Nationals. Making sure all defendants understand the trial they are participating in is not unreasonable and should be mandated by the municipal judge. Remember Plato's quote ***"To do injustice is more disgraceful than to suffer it."*** [Reader's Digest "Quotable Quotes" at page 23 (May, 1992) and www. sermonillustrations. com/A-Z/i/injustice.htm].

CHAPTER XVII – COSTS/FINES/RECORD KEEPING

Municipal judges have specific authority to impose fines and costs, but also to collect the imposed fines and costs. [Tenn. Code Ann. § 6-4-302(a) and (b)]. Court costs for municipal courts are generally governed by Tenn. Code Ann. § 16-18-304(a). Municipal laws and ordinances set amounts of court costs, except one dollar ($1.00) is added to all municipal costs to defray the costs of training municipal judges and court clerks. [Tenn. Code Ann. § 16-18-304(a)]. On top of the courts costs, a state litigation tax of $13.75 is placed on all municipal court cases. [Tenn. Code Ann. § 16-18-305(a). See also, Barton & Ashburn, Municipal Courts Manual, (MTAS, 2007) at 4]. Further, another dollar litigation privilege tax is assessed to fund various state programs. [Tenn. Code Ann. § 16-18-305(b)]. Tenn. Code Ann. § 16-18-305(c) restricts legislators and special interest groups from using municipal court cases to fund "pet projects." It is the municipal court clerk's duty to collect costs and taxes and turn them in to the state. [Tenn. Code Ann. § 16-18-305(d). See also, Tenn. Code Ann. § 18-2-101(d)].[73] For their efforts, municipal court clerks retain two percent (2%) of all litigation taxes collected. [Tenn. Code Ann. § 16-18-305(f)]. A municipal court acting with concurrent General Sessions Court jurisdiction, under Tenn. Code Ann. § 40-1-107 and similar statutes, must collect General Sessions costs/fees/taxes which may exceed those of a municipal court, but the municipal court clerk still receives the two percent (2%) collection fee on "all privilege taxes on litigation," including the General Session cases. [Tenn. Code Ann. § 16-18-305(e) and (f) and Tenn. Op. Atty. Gen. 06-147, 2006 Tenn. AG Lexis 167 (9/27/2006) at 12. See also, Tenn. Code Ann. § 16-17-105].[74] Further, if a municipal court clerk allows fines/costs/taxes to be paid by credit card, the clerk can charge a convenience fee of up to five percent (5%) of the charged expense. [Tenn. Code Ann. § 8-21-107 and Tenn. Op. Atty. Gen. 01-15, 2001 Tenn. AG Lexis 15 (1/31/2001)

[73] But see, Tenn. Code Ann. § 6-21-507(a) and City of Clarksville v. Dixon, 2005 Tenn. App. Lexis 803 (Tenn. App. W.S. 12/20/2005) at 16-17 which places the duty of collecting costs and taxes on the municipal court judge.

[74] For guidance on how a "cross-over" municipal court that acts as a General Sessions court divides costs-fees/taxes, see generally, Tenn. Op. Atty. Gen. 99-174, 1999 Tenn. AG Lexis 134 (9/9/1999). For ***basic*** information on how cross-over jurisdiction works, see Moore v. State, 19 S.W.2d 233, 233 (Tenn. 1929).

at 2-3. See also, Tenn. Code Ann. § 9-1-108 for debit card application].

Every municipal court is required to have designated a city court clerk – either elected or appointed. [Tenn. Code Ann. § 16-18-301(a) and Tenn. Op. Atty. Gen. 08-183, 2008 Tenn. AG Lexis 228 (12/11/2008) at 2]. To avoid potential conflicts of interest, or an appearance of impropriety, the municipal court clerk should not be a police officer. [See generally Tenn. Op. Atty. Gen. 00-88, 2000 Tenn. AG Lexis 90 (5/5/2000); Tenn. Op. Atty. Gen. 97-135, 1997 Tenn. AG Lexis 168 (9/30/1997); and Tenn. Op. Atty. Gen. 90-07, 1990 Tenn. AG Lexis 24 (1/17/1990) at 6-8]. It is a personal duty and liability on the municipal court clerk to keep records showing:

> An accurate and detailed record and summary report of all financial transactions and affairs of the court. The record and report shall accurately reflect all disposed cases, assessments, collections, suspensions, waivers and transmittals of litigation taxes, court costs, forfeitures, fines, fees and any other receipts and disbursements.

[Tenn. Code Ann. § 16-18-310(b). See also, Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 8-10]. An annual audit shall be done of the clerk's records related to municipal court. [Id]. This audit can be compared with the court's annual budget to see if revenue or expenses are "out-of-line." [See Tenn. Code Ann. § 16-18-205(b)].

Fines in municipal courts are generally limited to $50.00 fines excluding court costs and these fines are usually considered civil in nature. [Tenn. Code Ann. § 16-18-302(a) and City of Knoxville v. Brown, 284 S.W.3d 330, 338 (Tenn. App. E.S. 2008). Accord, Tenn. Op. Atty. Gen. 06-75, 2006 Tenn. AG Lexis 84 (4/24/2006)]. The fifty dollars ($50.00) cap also applies to contempt issues. [Tenn. Code Ann. § 16-18-306]. The establishing of an exact amount of court costs in a municipal court case is determined on a case by case basis. [Barrett v. Town of Nolensville, 2011 Tenn. App. Lexis 119 (Tenn. App. M.S. 3/10/2011) at 9-10]. In the event that a party wishes

to appeal a municipal court decision, said appeal is de novo to the circuit court in the county where the municipal court sits and the appealing party must post a $250.00 appearance/appeal bond. [Tenn. Code Ann. § 16-18-307. See also, Tenn. Code Ann. § 27-5-102 and City of Memphis v. Schade, 59 Tenn. 579, 580-581 (1873)]. This appeal bond is required whether the appealing party is a person, corporation or the city. [Id].

A municipal court cannot assess a punitive fine in excess of $50.00 because fines over $50.00, according to Tenn. Const. Art. VI § 14, must be assessed by a jury and municipal courts cannot offer jury trials. [City of Chattanooga v. Davis, 54 S.W.3d 248, 261-264 (Tenn. 2001) and Brown, 284 S.W.3d at 337-338]. Likewise, a municipality cannot pass an ordinance which undercuts the State's criminal case jurisdiction, such as a DUI by enacting a parroting municipal ordinance of a DUI with punishment of a lesser degree, simply to give a drunk driver a "break" or to increase revenue for a city. [Id. at 279-280]. Of the fines and costs assessed, how can a municipal court enforce, and collect, its judgments? Tenn. Code Ann. § 40-24-101(a) says the municipal judge can demand an immediate payment, pay by a date certain, or pay by installments, but what if a defendant simply does not pay?

There are several options for collecting municipal court fines/ costs/taxes. One option is to recommend to the Tennessee Department of Safety to suspend a driver's license for failure to satisfy a ticket. [Tenn. Code Ann. § 55-50-503(b)]. For the purposes of this option, a Failure to Appear amounts to a conviction for suspension purposes. [Tenn. Code Ann. § 55-50-503(c)]. A similar suspension statute for Failure to Appear can be found at Tenn. Code Ann. § 55-50-502(a)(l)(H) and (I), but the suspension of a license may be lifted once a payment plan for the unpaid ticket is established. [Tenn. Code Ann. § 55-50-502(d)(2)]. Interstate compact agreements support the suspension of driver's license path to enforcing judgments from municipal courts across state lines. [See, Tenn. Code Ann. § 55-50-702(b)]. **Caveat:** The request to suspend a driver's license for failure to satisfy a ticket under this option must be filed within six (6) months of the date the ticket was issued. [Tenn. Code Ann. § 55-50-502(a)(1)(I)].

A second option is Tenn. Code Ann. § 40-24-104(b), which puts a mandatory obligation on the municipal judge to revoke a driver's license as a de facto version of civil contempt if a person was paying the fine in installment payments then quits paying. The person's driver's license, in this scenario, remains revoked until the fine is paid in full. The statute says:

> Whenever a court orders a defendant to pay a fine, imposed as a result of a traffic violation, in installment payments, the court shall revoke the defendant's privilege to operate a motor vehicle in this state…until the total amount of the fine imposed is paid.

[Tenn. Code Ann. § 40-24-104(b)]. This statute is mandatory and directory for the municipal judge as "shall means shall." [Kaplan v. Bugalla, 188 S.W.3d 632, 635 (Tenn. 2005) and Austin v. Shelby County, 640 S.W.2d 852, 854 (Tenn. App. W.S. 1982)]. In the event that a fine or costs or litigation taxes have not been satisfied within a year of the municipal court assessing the judgment, the defendant's driver's license will be suspended upon the municipal court clerk notifying the Tennessee Department of Safety. [Tenn. Code Ann. § 40-24-105(b)(1) and (2)]. The defendant may apply to the municipal court once (1 time) for hardship or indigency relief from the license revocation. [Tenn. Code Ann. § 40-24-105(b)(3) and (4)]. It is the judge's discretion if hardship relief is to be granted. [Id].

A third option for enforcing a municipal court orders is the old fashioned contempt power under Tenn. Code Ann. § 16-18-306 which allows municipal courts to enforce contempt with fines up to $50.00 per offense. [See also, Tenn. Op. Atty. Gen. 11-17, 2011 Tenn. AG Lexis 19 (2/15/2011)]. Contempt is discussed in Chapter IX of this benchbook.

A fourth way to collect outstanding fines and costs is by the city hiring an outside collection agency to collect judgments that are over sixty (60) days old. [Tenn. Code Ann. § 40-24-105(e)(1)]. This collection process does not automatically apply to outstanding parking because Tenn. Code Ann. § 6-54-513 requires notice to the owner of a vehicle with outstanding parking tickets before those costs can be

turned over to a collection agency. [Tenn. Code Ann. § 40-24-105(e)(4)]. The collecting agency can keep up to forty percent (40%) of the costs/fines collected. [Tenn. Code Ann. § 40-24-105(e)(2). See also, Tenn. Code Ann. § 20-12-144]. If your city selects this option, competitive bids for the collection agency are required before a city designates their collector. [Tenn. Code Ann. § 40-24-105 and Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 7].

Fines imposed pursuant to a city ordinance belong to the city and shall be paid to the city treasury. [Tenn. Code Ann. § 6-21-506(a)]. This is important because of the final option for collecting outstanding municipal court fines/costs/taxes which is execution/ garnishment. A municipal court judgment can be executed upon if over thirty (30) days past the judgment. [Tenn. Code Ann. § 6-54-303 and Tenn. Op. Atty. Gen. 92-64, 1992 Tenn. AG Lexis 63 (10/19/1992)]. Unlike other types of civil process, a municipal court execution can be served by city police anywhere within the county. [Tenn. Code Ann. § 6-54-303(b). See also, Tenn. Opp. Atty. Gen. 98-153, 1998 Tenn. AG Lexis 153 (8/17/1998) at 4-5]. In similar fashion, municipal courts can order an appearance bond if the city has an ordinance allowing such bonds. [Tenn. Op. Atty. Gen. 00-23, 2000 Tenn. AG Lexis 23 (2/15/2000) at 3-4]. One caveat with executions/garnishments is they can be cumbersome to implement and may actually require your municipal court clerk to file suit in General Sessions Court for execution. [Tenn. Code Ann. § 26-2-201 et seq. and Barton & Ashburn, Municipal Courts Manual (MTAS 2007) at 8]. As a practical matter, the garnishment/execution option for collecting municipal court fines/costs isn't particularly cost effective in comparison to other options discussed in this chapter.

Municipal court judges are required to be bonded official office holders. [Tenn. Code Ann. § 16-18-102(6) and Tenn. Code Ann. § 8-9-111(a)]. Part of the obligations of being a "bonded official" is that records of the bonded official acting in an official capacity must be maintained. [See generally, Tenn. Code Ann. § 8-19-301(2) and Tenn. Code Ann. § 10-7-503(a)(2)(A)]. Interestingly, Tenn. Code Ann. § 10-7-503(a)(2)(A) requires that "…municipal court records shall" be open for public inspection pursuant to the "Public Records Act," but the exact content of a municipal court's records are not defined. [Tenn. Op. Atty. Gen. 90-15, 1990 Tenn. AG Lexis 1

(2/6/1990) at 2-3]. This statute has been construed broadly so, when in doubt, keep the record. [Id., citing Memphis Pub. Co. v. Holt, 710 S.W.2d 513, 516 (Tenn. 1986)]. A "public record" includes orders, minutes and financial records. [Tenn. Op. Atty. Gen. 90-15, 1990 Tenn. AG Lexis 1 (2/6/1990) at 2]. While noting that a municipal court is not a "court of record,"[75] basic transaction records of a municipal court must be kept. [Tenn. Code Ann. § 10-7-101 (which includes the "several courts of this state") and Tenn. Code Ann. § 10-7-503(a)(2)(A). See also, Tenn. Code Ann. § 10-7-403(2), (which includes minute books and other records of "former courts of justices of the peace" as public records) and Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 5, 9-10 and 18]. The public has a right of access to inspect official court records. [Tenn. Op. Atty. Gen. 02-75, 2002 Tenn. AG Lexis 80 (6/12/2002) at 3-4].

A municipal court's record must be maintained because those rulings may impact later cases for a defendant. [See, State v. Ferrante, 269 S.W.3d 908, 914 (Tenn. 2008); Douglas v. Nixon, 459 F.2d 325, 326 fn. 1 (6th Cir. 1972); U.S. v. Cardenas-Velez, 88 Fed. Appx. 76, 78 (6th Cir. 2004); and State v. Henley, 2002 Tenn. Crim. App. Lexis 746 (Tenn. Crim. App. 8/27/2002) at 7-8]. The Henley court notes that municipal courts do not have "official minutes." [Henley, 2002 Tenn. Crim. App. Lexis 746 at 7, citing Howard v. State, 399 S.W.2d 738, 740 (Tenn. 1966)]. Nevertheless, a municipal judge and court clerk have an important responsibility to keep accurate records and this duty should not be taken lightly. [Cf, Howard, 399 S.W.2d at 741]. One obvious reason is that your clerk may be subpoenaed to testify about the records of your court in some later proceeding – just like the Clerk of the Germantown Municipal Court was subpoenaed in Henley. [Henley, 2002 Tenn. Crim. App. Lexis 746 at 8, which talks of a municipal court clerk's statutory duty to keep records and faithfully apply funds received for fines as dictated by law].[76] The Henley case involved a Habitual Motor Vehicle Offender case, so a municipal court traffic conviction was very relevant to the later circuit court prosecution. [Henley, 2002 Tenn. Crim. App. Lexis 746 at 9-

[75] State v. Henley, 2002 Tenn. Crim. App. Lexis 746 (Tenn. Crim. App. 8/27/2002) at 7.

[76] If Henley's praise doesn't motivate your clerk to keep records, and the prospect of being subpoenaed to discuss court records doesn't motivate – perhaps the fact that the failure to keep accurate books on municipal court financial transactions being a Class A misdemeanor will motivate your clerk to diligence. [Tenn. Code Ann. § 18-2-101(d). See also, Henley, 2002 Tenn. Crim. App. Lexis 746 at 8-9].

10]. For more information on Habitual Motor Vehicle Offenders, (a/k/a Habitual Traffic Offenders), see Chapter XV of this book.

Report forms that a judge may find useful for record keeping purposes are on the AOC website, www.tsc.state.tn.us, under "Judicial Resources." This resource includes everything from forms for executions on judgments to the judge's public report of outside compensation. Further guidance can be sought on collecting costs or reporting/record requirements from the AOC {Ph. 615-741-2687} or MTAS {Ph. 865-974-0411}. Also, MTAS has a specific section for municipal courts on their website which includes information on fines/costs/collections. The MTAS website also has a printable copy of Barton & Ashworths' Municipal Courts Manual (MTAS, 2007) which is primarily geared for court clerks. [See www.mtas.tennessee.edu/public/web.nsf/Web/Courts generally and www.mtas.tennessee.edu/Citydept/Courts/court_manual_2007 for the clerk's manual, noting pages 4-9 for taxes, dockets and action reports and page 18 for guidance on submitting court reports]. A general breakdown of the duties of a municipal court clerk is beyond the scope of this book, but a thumbnail summary of the job description can be found at Tenn. Code Ann. § 18-1-105. [See also, Tenn. Code Ann. § 16-15-303].

In regards to disposing of court records, the municipal court clerk must retain all original pleadings (i.e., the traffic ticket) and official dockets, but with permission of the municipal judge, other documents may be disposed of in an orderly fashion. While directed at courts of record, municipal courts may wish to see Tenn. Code Ann. § 18-1-201 et seq. before "house cleaning" regarding the municipal court's records file. Further, before a city gets "too creative" in collection efforts of city court judgments, a judge should read Tenn. Op. Atty. Gen. 97-29, 1997 Tenn. AG Lexis 28 (3/31/1997), which warns against restricting renewal of automobile license plates or refusing to renew a driver's license until outstanding municipal court traffic judgments are paid.

Final Thoughts on Costs/Fines/Record Keeping. The practical side to costs/fines/taxes is to have them paid at the time of judgment and if need be, set a review for payment status if the fine isn't paid immediately. For a general overview of collection rules, see Barton & Ashburn, Municipal Courts Manual (MTAS, 2007) at 7-11.

CHAPTER XVIII – WORKPLACE ISSUES

Municipal judges are not exempt from workplace issues. Non-elected city court judges are employees "at will" employed by the city and can be fired or replaced by the city council or board of aldermen at any time. [Tenn. Code Ann. § 16-18-102(3); Summers v. Thompson, 764 S.W.2d 182, 185-186 (Tenn. 1988); and LeClercq, "The Law of the Land: Tennessee Constitutional Law," 61 Tenn. L. Rev. 573, 604-605 (Winter, 1994)]. City councils, seeking to use a "speed trap" as a municipal funding source, can improperly put pressure on the "employee at will" judge, as well as the elected judge, to increase fines and thus infringe on judicial independence and integrity. [Summers, 764 S.W.2d at 183 and 186 and LeClercq, "The Law of the Land," supra, at 605-606]. Municipal judges, especially appointed municipal judges, risk losing their judicial position to public whim, but the judge must maintain the integrity of the judiciary – even if one gets fired or loses an election because of one's opinions from the bench. [See generally, Judicial Symposium Issue, 38 Akron L. Rev. 597, 603-604 (2005), discussion of Justice Penny J. White's election loss in the 1996 Tennessee Supreme Court retention election due to her signing off on an opinion written by another court member in State v. Odom, 928 S.W.2d 18, 20 (Tenn. 1996)].

Tennessee's municipal court judges are often the only face the public ever sees relating to the Tennessee judiciary, and commentators have therefore called for an enhancement of the status of municipal judges in Tennessee. [LeClercq, "The Law of the Land," supra at 606]. This chapter will set out several areas where municipal courts can focus to improve their service to the public as well as the municipal judge's professional image.

AVOID WORKPLACE HARASSMENT. On May 1, 2006, the AOC, with the approval of the then Chief Justice of the Tennessee Supreme Court[77] handed down AOC Administrative Policy 2.08 condemning workplace harassment. AOC Admin. Policy 2.08 applies to all judges, full-time or part-time, and paid or unpaid employees of the Tennessee court system. [AOC Admin. Policy 2.08 at pt. III].

[77] Chief Justice William M. Barker. The Tennessee Supreme Court can mandate rules for court administration/procedure under the authority of Tenn. R. Sup. Ct. 11(I)(5) and (6).

"Workplace Harassment" is defined in AOC Admin. Policy 2.08 as the following:

> Any unwelcome verbal, written, or physical contact that either degrades or shows hostility or aversion towards a person because of the person's race, color, national origin, age (over 40), sex, pregnancy, religion, creed, disability, or veteran's status that (1) has the purpose or effect of creating an intimidating, hostile or offensive work environment, (2) has the purpose or effect of unreasonably interfering with an employee's work performance; or (3) affects an employee's employment opportunities or compensation.

Examples of workplace opportunities or compensation harassment listed in AOC Admin. Policy 2.08, include: 1) unwelcome touching or near touching; 2) slurs/jokes about a class of persons; 3) e-mailing or forwarding e-mails which are tacky or demeaning; 4) displaying offensive or explicit photos/posters/calendars/cartoons at one's desk or office (e.g., a Playboy calendar); and 5) derogatory comments about a person's age, race, religion, language or accent. [AOC Admin. Policy 2.08 at IV (Definitions)].

AOC Admin Policy 2.08 condemns workplace and/or sexual harassment or retaliation for a person complaining of workplace harassment. [AOC Admin. Policy 2.08 at V (Policy)]. This policy sets out procedures for reporting workplace and/or sexual harassment to either the Board of Judicial Conduct, the EEOC[78] or the Tennessee Human Rights Commission.[79]

SEXUAL HARASSMENT. One might think that a judge would know enough law to not get caught committing sexual harassment. Think again! A federal judge was sanctioned in 2007 for committing sexual harassment. [See, Bazelon, "Putting the Mice in

[78] EEOC phone number = (800) 669-4000.
[79] Tennessee Human Rights Commission phone number = (615) 741-5825.

Charge of the Cheese: Why Federal Judges Cannot Always Be Trusted To Police Themselves," 97 Ky. L.J. 439, 481-486 (2008/2009) for a discussion on the public reprimand, and eventual arrest, of U.S. District Judge Samuel B. Kent]. A State Supreme Court Chief Justice from New York has been convicted of stalking his former mistress. [See McAnaney, et al, "From Imprudence to Crime: Anti-Stalking Laws," 68 Notre Dame L. Rev. 819, 909 fn. 9 (Spring 1983), for a discussion on Chief Judge Soloman Wachtler of the New York Court of Appeals].[80]

Tennessee has had its share of judicial sexual harassment issues. Probably the best known was the case of Sanders v. Lanier, 968 S.W.2d 787 (Tenn. 1998). In the Lanier case, a Dyer County Chancellor was sued for "quid pro quo sexual harassment" of a Youth Services Officer who worked in the Dyer County Juvenile Court. [Lanier, 968 S.W.2d at 788-789]. Chancellor Lanier presided over both Chancery Court and the Dyer County Juvenile Court. [Lanier, 968 S.W.2d at 789]. According to Ms. Sanders, Chancellor Lanier began making unwanted sexual advances and grabbing her breast and buttocks. [Lanier, 968 S.W.2d at 789]. As punishment for refusing his sexual advances, Chancellor Lanier unilaterally altered Ms. Sanders' job description and denied pay increases according to a Tennessee Human Rights Act ("THRA") complaint filed on sexual harassment against Chancellor Lanier because Lanier was a supervisor of Ms. Sanders who, when reading the complaint in the light most favorable to Ms. Sanders, conditioned Sanders' employment on sexual favors. [Id]. The Tennessee Supreme Court noted that this allegation set forth a viable claim of quid pro quo sexual harassment. [Lanier, 968 S.W.2d at 789, citing Carr v. U.P.S., 955 S.W.2d 832 (Tenn. 1987)].

The most important point coming from the Lanier case is that a city, county or state can be held strictly liable for a judge's sexual harassment under a respondeat superior theory of liability. [Lanier, 968 S.W.2d 790. Accord, Washington v. Robertson County, 29

[80] The New York Court of Appeals is that state's equivalent of the Tennessee Supreme Court. The Chief Judge of the New York Court of Appeals is equal to Tennessee's Chief Justice. The most famous Chief Judge of the New York Court of Appeals is the great Benjamin N. Cardozo, who served as Chief Judge from January 1, 1927 until March 7, 1932, when he became a member of the U.S. Supreme Court. [www.wikipedia.com/Chief_Judges_NY_Court of Appeals].

S.W.3d 466, 475-476 (Tenn. 2000) and Phillips, "Strict Liability for Quid Pro Quo Harassment," 13 Tenn. Employment Law Update, No. 10 (October, 1998)]. Mr. Philips, in his article on the Lanier case, published in the Tennessee Employment Law Update, warned employers, "*This is another reminder that you must make it a priority to educate your supervisors about sexual harassment and to make them understand that if they engage in it, they place you at a significant risk.*" The Tennessee Supreme Court held "The THRA explicitly provides that the State may be liable for employment related discrimination against an individual. Tenn. Code Ann. § 4-21-102(4) and 401." [Lanier, 968 S.W.2d at 790]. Under this declaration, a municipal judge could also possibly be liable for knowingly allowing a hostile work environment to endure on a "Captain of the Ship" theory of liability. [See generally, Kalich v. AT&T Mobility, LLC, 679 F.3d 464, 474 (6th Cir. 2012) and Spicer v. Beaman Bottling Co., 937 S.W.2d 884, 888 fn. 1 (Tenn. 1996), where the Tennessee Supreme Court declines to address how the issue of respondeat superior applies to THRA cases until the issue is directly requested in a viable case]. As Chancellor Lanier found, the action of sexual harassment can also be the basis for criminal liability. [See generally, U.S. v. Lanier, 201 F.3d 842 (6th Cir. 2000)]. For a full view of the long Lanier saga, simply Shepardize the above-cited 2000 opinion by the Sixth Circuit in this case for related cases preceding and following this opinion. The Lanier case even made its way to the U.S. Supreme Court. [See, U.S. v. Lanier, 520 U.S. 259 (1997)].

AMERICANS WITH DISABILITIES ACT. Every litigant has a constitutional right to a meaningful opportunity to participate in legal proceedings within reasonable limits of practicability. [Tennessee v. Lane, 541 U.S. 509, 532 (2004) and Boddie v. Connecticut, 401 U.S. 371, 379 (1971)]. The key case in this area from the U.S. Supreme Court offers facts where a state criminal court defendant and a court reporter sued the State of Tennessee and multiple individual counties in federal court for not having elevators in courthouses where the court was held on second floors or higher. [Lane, 541 U.S. at 513-514]. The suit was based on the Americans With Disabilities Act, 42 U.S.C. § 12131 et seq., because both the state criminal court defendant and the court reporter were wheelchair-bound paraplegics. [Lane, 541 U.S. at 513]. The U.S. Supreme Court held that accommodation for litigants to get into a courtroom is not

unreasonable and courts must make those accommodations. (e.g. elevators). [Lane, 541 U.S. at 532-533]. It is important to note that the criminal court defendant, George Lane, had to crawl up a flight of steps at one point and on another occasion he refused to have bailiffs carry him up the flight of steps at the courthouse,[81] so a court's duty to accommodate a person with physical handicap implicitly includes a duty to not strip the person of their personal dignity in the process of keeping accommodation costs low. [See generally, Alexander v. Choate, 469 U.S. 287, 304-305 (1985); Vowell v. State, 178 S.W. 768, 769 (Tenn. 1915); and Art. I § 17, Tenn. Const.].

Tenn. R. Sup. Ct. 45 declares that the AOC will propose and implement policies under the Americans with Disabilities Act ("ADA") to make sure that courts comply with 42 USC § 12131 et seq. [See also, Tenn. R. Sup. Ct. 11(I)(6). Guidance for ADA issues can be found at the AOC website at www.tncourts.gov/administration/human-resources/ada-policy. [See Tenn. R. Sup. Ct. 45 at commentary. See also, Atkins v. Marks, 288 S.W.3d 356, 373 (Tenn. App. W.S. 2008) and Marks v. Tennessee, 554 F.3d 619 (6th Cir. 2009)]. An example of an ADA issue that can get your court sued is when a person attempts to bring a service animal into court because the person has a physical handicap and the deputy/bailiff working security delays or denies entrance of the animal. [See, Sears v. Bradley County Gov't, 821 F.Supp.2d 987 (E.D. Tenn. 2011)]. Proper ADA training can avoid issues like that found in Sears. If you have questions, or would like information on ADA training, contact the AOC's Tennessee Judicial Program ADA Coordinator, Aaron Conklin. [Ph. (615) 741-2687 or (800) 448-7970 or email: adacoordinator@tncourts.gov].

In the scenario of an inaccessible courtroom, the municipal judge can "move the courtroom" for the handicapped person's case to accommodate the defendant, but this accommodation must be subtle and confidential to avoid a view that the moved case is retaliation to the defendant or preferential treatment of the defendant. [See, Langeland, "Misapplication of Precedent: The United States Supreme Court Ignores the Overbreath of the ADA by Abrogating State Sovereignty in Tennessee v. Lane," 38 Creighton L. Rev. 1065, 1075

[81] See, Lane, 541 U.S. at 513-514.

(June, 2005) citing Chief Justice Rehnquist's dissent in Tennessee v. Lane, 541 US 509, 543 fn. 4 (2004), and Cody et al., "Disability Law: Americans With Disabilities Act: Emerging Law," 75 MI B. Jnl. 382, 385 (May, 1996)]. If you cannot find a workable alternative courtroom location, which shouldn't be that hard since a trial on a traffic ticket doesn't take a long period of time usually, consider dismissing the ticket. The $50.00 lost revenue is greatly outweighed by the litigation cost of a civil rights suit under 42 U.S.C. § 1983 or the ADA, 42 U.S.C. § 12131 et seq.

FAMILY AND MEDICAL LEAVE ACT. The FMLA, 29 U.S.C. § 2601 et seq. will apply to court systems just as it would private sector businesses. A detailed discussion of the FMLA is beyond the scope of this book, but if you need to address this subject, see the following:

A) Willard v. Golden Gallon-TN LLC, 154 S.W.3d 571, 579-580 (Tenn. App. E.S. 2004);

B) Best v. Distrib. & Auto Svcs., 1999 Tenn. App. Lexis 630 (Tenn. App. W.S. 9/13/1999) at 11 fn. 3; and

C) Austin v. Shelby County Gov't., 3 S.W.3d 474, 477 (Tenn. App. W.S. 1999).

By way of example, a child support magistrate in Montgomery County is currently taking some personal time to fight breast cancer. The AOC is having senior judges sit in while the child support magistrate takes cancer treatments. The magistrate is bravely taking a public stand in her fight. Medical issues will sometimes cause delays in hearing cases. [See e.g., State v. Hoffman, 197 P.3d 904 (table), 2008 Kan. App. Unpub. Lexis 984 (Kan. App. 12/19/2008) at 7]. A happier reason for FMLA to apply in municipal court situations is that some judges need to take maternity leave. [See e.g., Barnett v. City of Chicago, 969 F.Supp. 1359, 1385 (N.D. Ill. 1997); Klapper v. Yackey, 2000 Ohio App. Lexis 4344 (Ohio App. 9/19/2000) at 2; and State v. Miller, 201 P.3d 1 (table), 2009 Kan. App. Unpub. Lexis 78 (Kan. App. 2/13/2009) at 3]. Since most municipal judges are part-time, FMLA issues will not be a normal part of the judge's duties, but the

issues should be considered by the municipal judge as part of "Workplace Issues."

WORKER'S COMPENSATION. While judicial benches are generally not considered overly dangerous, injuries do occur. A Connecticut judge died of a heart attack and his widow had to fight "the system" to seek worker's compensation relief. [See, Kinney v. State, 2006 Conn. Super. Lexis 2560 (Conn. Super. 8/18/2006)]. In another case, H. Michael Coburn, a Missouri circuit judge, fell down an elevator shaft while inspecting a condemned building and suffered serious injuries. [articles.orlandosentinel.com/1994-1225/news/9412240788_1_elevator-shaft-coburn-abdominal-injuries]. Sixth Circuit Senior Judge Harry Phillips was hit by a motor vehicle and killed in London while crossing the street at an ABA meeting in 1985. [www.fjc.gov/servlet/nGetInfor?jid=1878&cid=999 and http://harryphillipsaic.com/]. While beyond the scope of this book, worker's compensation issues will arise in municipal courts. Since most municipal judges are part-time, worker's compensation issues will not normally be part of the judge's duties, but the municipal judge should be aware of the issue when considering "Workplace Issues."

Final Thoughts on Workplace Issues. Often times, we act differently when we think nobody sees. Sadly, that is when we are watched for true character. Take this story from Paul F. Boller, Jr.'s book Presidential Antidotes:

> William McKinley, the 25th U.S. President, once had to choose between two equally qualified men for a key job. He puzzled over the choice until he remembered a long-ago incident.
>
> On a rainy night, McKinley had boarded a crowded street car. One of the men he was now considering had also been aboard, though he didn't see McKinley. Then an old woman carrying a basket of laundry struggled into the car, looking for a seat. The job candidate pretended not to see

> her and kept his seat. McKinley gave up his seat to help her.
>
> Remembering the episode, which he [McKinley] called "this little omission of kindness," McKinley decided against the man on the street car. Our decisions – even the small, fleeting ones – tell a lot about us.

["Bits and Pieces" (Lawrence Ragan Communications, 2008) at 12, parenthetical added]. Don't act in private in a manner that would be considered disgraceful in public. Workplace secrets seldom stay secret.

CONCLUSION

Some municipal judges underestimate the impact their position holds. The fact that many municipal judges lose their first name for the substitute "Judge" emphasizes the importance of the position. The office of municipal judge touches the lives of many people in the community. The simplest act of kindness, such as being polite to all litigants, can determine how a litigant acts in the future. Municipal judges should keep this fact in mind every time the judge takes the bench. By way of example on how the acts of a single person can impact unknown others in the future, let's look at Orion Ambrister.

Orion lived next door to the home where I grew up in Knoxville, Tennessee. He has two (2) daughters, one my age and one a year older. Orion's daughters were two of the most popular girls in my school. Both were cheerleaders, class favorites and Homecoming Queens. I, on the other hand, was merely "the kid next door." The local kids gave Orion the nickname "Oreo" because nobody could pronounce his name.[82] During the early to mid-1970's Oreo took a softball team his daughters were on to a State championship as one of the team coaches. I, on the other hand, had my oldest brother die a war hero in the Vietnam War and my father contract cancer. As one might expect, I got lost in the shuffle of a funeral, cancer treatments, and three older siblings.

Oreo had no reason, ***whatsoever***, to spend time on me. Even so, Oreo took time for me. Just like the cookie of a similar name, to be fully appreciated, an Oreo is often pulled in different directions and has to sacrifice part of itself to meet the needs and wishes of the person enjoying the Oreo's benefits. That person has little, if anything, to give back to the Oreo except appreciation. Years after leaving Knoxville, as a fluke, I had to sit as judge by interchange for a case near Knoxville. It would probably be the only time "hometown folks" would ever see me on the bench because I preside over court in Middle Tennessee. The person I asked to join me for the drive to that court session was Oreo. Again, Oreo gave ***his*** time to grant ***my*** wish.

[82] Pronounced O-ree-un. This is the less common pronunciation of the name of the nearest galaxy to Earth.

Over the past twenty (20) years, I have worked with 2-3 kids per year who have talent, but who could get "lost in the shuffle" of navigating the college scholarship maze.[83] Occasionally, one of "my kids" will ask "Why are you bothering to help me?" or "What do you get out of this?" At that point, we sit down and have a talk about the concept of "Paying Forward" and Holy Bible, Luke 18:15-17,…while we enjoy an Oreo together.

The proper use of your time, be it on the bench or off, can benefit others long after you permanently hang up your robe. I hope this book helps on your quest to be the best municipal judge in Tennessee.

Tetelestai

Greg Smith
March 31, 2013

[83] I do this without ever mentioning my judgeship. Interestingly, I didn't even know what Oreo did for a living until I was an adult. Watching somebody who is talented, impressive ***and*** humble is an honor…and a rarity. I'm glad Oreo allowed me to observe.

APPENDIX A

Suggested Readings/Library Additions
For Every Tennessee Municipal Judge

The following is a list of suggested books to read or include as reference for your library. The list is the author's personal opinion and does not reflect any endorsement of the listed books by either TMJC or the AOC. Each book will be designated either "read" or "reference." While the author suggests that each book listed would make an excellent addition to a library, some books aren't practical to read cover to cover, such as Bartlett's Familiar Quotations. Those books are "reference." A book listed "read" is a book worthy of a cover-to-cover reading.

1. U.S. Constitution (Read). Most U.S. Congressional offices have free copies of the U.S. Constitution.

2. Tennessee Constitution (Read).

3. Tennessee Code Annotated {Book Version} (Reference).

4. Paperback version of nearby states' criminal/traffic code. [E.g., Clarksville judges should have a copy of the Kentucky Code; Bristol judges should have the Virginia Code; Chattanooga judges should have the Georgia Code; or Memphis judges should have the Arkansas and Mississippi Code]. A soft-bound version of a neighboring state's criminal/traffic code can usually be purchased from either West Publishing or Lexis Publishing for about $30.00. Usually, a copy of a neighboring state's code need only be updated about every five (5) years. If a found statute needs to be checked for current validity, the Tennessee municipal court judge can use their free Lexis or Westlaw subscription to get the current version of a statute found. (Reference).

5. Paperback version of the U.S. Code's criminal laws. This can be purchased from West Publishing for about $30.00. If you are not actively practicing federal criminal law during your "non-judicial" work-time, the U.S. Code only needs to be updated about every five (5) years because the current code is available on Lexis and Westlaw. Once a reference is found, the Tennessee municipal court judge can use their free Lexis or Westlaw subscription to update the statute found. Also, if the judge wants an inexpensive version of the entire U.S. Code, the U.S. Printing Office sells a CD-Rom version of the U.S. Code for $30.00. [See, http://bookstore.gpo.gov/catalog/laws-regulations/united-states-code?page=2]. (Reference).

6. John F. Kennedy's Profiles in Courage (Black Dog & Leventhal Publishers). This Pulitzer Prize winning book reminds the reader that a true public servant doesn't cave in to public opinion, but stands for the "right" answer…even when that answer may costs the public servant his or her job. (Read).

7. William H. Rehnquist's The Supreme Court (Knopf Publishing). This book gives historic background for understanding the U.S. Supreme Court. (Read).

8. John Grisham's Ford County (Doubleday Publishing). This book gives an interesting and amusing look at the lives of rural lawyers and judges. (Read).

9. Dale Carnegie's How to Win Friends and Influence People (Pocket Books). This classic text on public and private relations is a must for any public servant. New copies of this book cost about $12.00. Used copies can be found on Amazon.com for under $5.00. (Read).

10. Pocket Guide to Tennessee Traffic Laws and Pocket Guide to Tennessee Criminal Laws. These 3" by 5" codes are published by Pocket Press, Inc. [www.pocketpressinc.com]. They costs under $20.00

each and easily fit in a coat pocket or glove compartment. They are updates regularly. This publishing house has similar pocket criminal codes for most states and the U.S. Code's criminal section. (Reference).

11. Peter & Cheryl Barnes' Marshall, the Courthouse Mouse. A Tail of the U.S. Supreme Court (VSP Books). [www.VSPBooks.com]. This book is an excellent primer for explaining the basic functions of court to younger children, up to about age eight (8). It is very helpful for presentations at elementary schools. (Reference).

12. John Reay-Smith's The Lawyer's Quotation Book (Barnes & Noble Books). This text is a listing of various quotes about lawyers, judges, justice and the law. It is a good reference for quotes for public speaking. (Reference).

13. Lisa Tucker McElroy's Meet My Grandmother, She's a Supreme Court Justice (The Millbrook Press). Sandra Day O'Connors granddaughter, around the age of ten (10), did a "Tour of Washington" book with Justice O'Connor. It is an excellent text when speaking to younger elementary school students. (Reference).

14. John Bartlett's Familiar Quotations (Little, Brown & Co.). This classic text is the prime quotations book on the market. It offers quotes from about anybody one can imagine, from W.C. Fields to Grover Cleveland. It also has about any topic one can imagine from atomic bombs to marriage. "Bartlett's Familiar Quotations," as it is usually called, is a necessary staple for anyone who speaks or writes to persuade. While new editions are fairly expensive, the books has been around about 150 years, so you should be able to find a cheap copy at most used book stores or on Amazon.com.

15. Harper Lee's To Kill a Mockingbird (HarperCollins Publishers). This Pulitzer Prize winning novel shows how a Southern lawyer can also be a Southern

gentleman. (Read). The movie version, with Gregory Peck, is excellent. This book can be found at most new or used bookstores. Used copies can be found on Amazon.com for under $5.00. The movie can be found at Wal-Mart or online for under $10.00.

APPENDIX B

Love that Quote

Early in my career, I started a notebook called "Love that Quote." The notebook is indexed alphabetically by topic. The quotes come from various places, but some of the best quotes are found in Reader's Digest's "Quotable Quotes" (hereinafter "Q.Q." with a page citation, the name of the speaker, and month/year of publication). Here are some relevant, yet random, quotes that Tennessee municipal judges might find helpful.

"To do injustice is more disgraceful than to suffer it."

Plato, Q.Q., 23 (May, 1992)

"Society wins not only when the guilty are convicted but when criminal trials are fair…The [government] wins its point whenever justice is done its citizens in the Courts."

Brady v. Maryland, 373 U.S. 83, 87 (1963)

"Courts should…limit their consideration of an unambiguous statute to the words of the statute itself."

Tenn. Mfr'd Housing v. Metro Gov't., 798 S.W.2d 254, 257 (Tenn. App. M.S. 1990)

"Lots of folks confuse bad management with destiny."

Kin Hubbard, Q.Q., 29 (March, 1995)

"Always try to be a little kinder than is necessary."

James M. Barrie, Q.Q., 157 (December, 1993)

"Learn to say no. It will be of more use to you than to be able to read Latin."

Charles Haddon Spurgeon, Q.Q., 7 (August, 1993)

"Give every man thy ear but few thy voice."

William Shakespeare, Q.Q., 9 (November, 1993)

"Whether or not an offender is punished in a given case is of importance to both society and the culprit, but it is of transcendent importance that basic principles of justice and the constitutional right to a fair trial shall be observed…without unreasonable interference or limitation."

Poindexter v. State, 191 S.W.2d 445, 446 (Tenn. 1946)

"When a man assumes a public trust, he should consider himself as public property."

Thomas Jefferson, Q.Q., 37 (February, 1993)

"The most important political office is that of private citizen."

Justice Louis Brandeis, Q.Q., 57 (November, 1992)

"Nothing in fine print is ever good news."

Andy Rooney, Q.Q., 127 (September, 1991)

"There is always hope when people are forced to listen to both sides."

John Stuart Mill, Q.Q., 23 (May, 1992)

"Wisdom too often never comes, and so one ought not to reject it merely because it comes late."

Justice Felix Frankfurter, Q.Q., 7 (March, 1992)

"To some lawyers all facts are created equal."

Justice Felix Frankfurter, L.J. Peter, Peter's Quotations, 289 (William Morrow and Co., Inc. 1977), hereinafter "Peter's" with page citation and speaker's name.

"Nobody has a more sacred obligation to obey the law then those who make the law."

Sophocles, Peter's, 294

"If a government becomes a lawbreaker, it breeds contempt for the law…"

Justice Louis D. Brandeis, Peter's, 293

"The minute you read something you can't understand, you can almost be sure it was drawn up by a lawyer."

Will Rogers, Peter's, 293

"The law itself is on trial in every case…"

Chief Justice Harlan F. Stone, Peter's, 290

"Police efficiency must yield to constitutional rights."

Judge John Minor Wisdom, Peter's, 288

"It is very hard to judge or understand a case…until we've heard both sides."

Euripides, Quotationary,[84] 419

"The magistrate is a speaking law, and the law a silent magistrate."

Cicero, Quotationary, 419

"A good Judge conceives quickly, judges slowly."

George Herbert, Quotationary, 419

"Judges are but men, and in all ages have shown a fair share of frailty."

Senator Charles Sumner at the 1854
Massachusetts Republican Convention,
Quotationary, 420

"A judge should not stand in judgment over a person whom he likes or dislikes."

Talmud, Quotationary, 420

"Justice is indiscriminately due to all, without regard to numbers, wealth or rank."

Chief Justice John Jay in Georgia v.
Brailsford, 3 U.S. 1, 4 (1794)

"No man is above the law…Obedience to the law is demanded as a right; not asked as a favor."

[84] L.R. Frank, Quotationary (Random House, 2001), hereinafter "Quotationary" with name of the person being quoted and a page citation to the book.

Reay-Smith, The Lawyer's Quotation Book (Barnes & Noble, Inc. 1991),[85] Theodore Roosevelt, 35.

"For my part I think it a less evil that some criminals should escape than that the government should play an ignoble part."

LQB, Oliver Wendell Holmes, 44

"Mr. Justice Ridley was known as Mr. Justice Necessity, since necessity knows no law."

LQB, Francis Pearson, 56

"As judges we are neither Jew nor Gentile, neither Catholic nor agnostic."

LQB, Sir Arthur Stanley Eddington, 56

"Justice must not only be seen to be done. It must be seen to be believed."

LQB, J.B. Morton, 63

"Injustice anywhere is a threat to justice everywhere."

LQB, Martin Luther King, Jr., 72

"How dreadful it is when the right Judge judges wrong."

LQB, Sophocles, 75

"It is by the goodness of God that we have in our country three unspeakably precious things: freedom of speech, freedom of conscience, and the prudence never to practice either."

LQB, Mark Twain, 92

"Let the punishment match the offense."

LQB, Cicero, 96

[85] Hereinafter "LQB" with the name of the person being quoted and a page citation to the book.

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JUDICIAL ETHICS COMMITTEE
ADVISORY OPINION NO. 12-01

October 23, 2012

The Judicial Ethics Committee has been asked to provide an ethics opinion as to whether judges may utilize social media such as Facebook, Twitter, LinkedIn, and MySpace and, if so, the extent to which they may participate. As we will explain, while the Code of Judicial Conduct allows judges to do so, it must be done cautiously. For the purposes of this opinion, we shall utilize Facebook to refer to social media, for it is one of the most widely-used sites and appears to operate in a fashion similar to others.

Maryland Judicial Ethics Committee Opinion No. 2012-07 explains the services offered by Facebook:

> Facebook is used by millions of people worldwide. After joining this networking site, participants create personal profile pages containing various types of information about themselves, and then send "friend requests" to others, through a process known as "friending." Typically, "Facebook friends" are people who knew one another before joining the site, have mutual acquaintances and/or common interests. By becoming "friends," they are able to see photos, videos and other information posted by or about one [an]other on their respective Facebook pages. Many people post their thoughts, views and opinions on almost any subject, as well as details of their daily lives. Moreover, unless specific privacy settings are used to limit those with whom information is shared, others in the network can view that information. Thus, information posted by a judge on a social networking site can be quickly and widely disseminated, and possibly beyond its intended audience.

Several provisions of the Code of Judicial Conduct are relevant to this question.

Tennessee Supreme Court Rule 10, Canon 1, Rule 1.2 requires that "judge[s] shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." Comments to this rule provide, in pertinent part, Comment [1], that it applies to "both the professional and personal conduct of a judge"; Comment [2], that "[a] judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens"; Comment [3], "[c]onduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary"; and Comment [5], that a judge must avoid "conduct [that] would create in reasonable minds a perception that the judge violated [the Code of Judicial Conduct] or engaged in other conduct that reflects adversely on the judge's honesty,

impartiality, temperament, or fitness to serve as a judge."

Rule 1.3 provides that "[a] judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."

Canon 2, Rule 2.4(B) and (C) provides, in part, that "[a] judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment"; and that "[a] judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge."

Rule 2.9(A) provides that "[a] judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter[.]"

Rule 2.11 sets out the procedures for disqualification in situations where the judge has a conflict or there is an appearance that this is the case. Of particular relevance to a judge's use of social media are subsections (A)(1) and (A)(5), providing that the impartiality of a judge might be reasonably questioned if it appears the judge "has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding"; or, the judge "has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy." Additionally, a judge's use of social media may require that the judge "disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification." Rule 2.11, Comment [5].

Canon 3, Rule 3.1 sets out the extent to which judges may participate in non-judicial activities:

> A judge may engage in personal or extrajudicial activities, except as prohibited by law or this Code. However, when engaging in such activities, a judge shall not:
>
> (A) participate in activities that will interfere with the proper and timely performance of the judge's judicial duties;
>
> (B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality[.]

Judicial ethics committees of several states have addressed this question, with the majority concluding that judges may utilize social networking sites, but must do so with caution. See Maryland Judicial Ethics Committee Opinion No. 2012-07 ("While they must be circumspect in all of their activities, and sensitive to the impressions such activities may create, judges may and do continue to socialize with attorneys and others.); Florida Judicial Ethics Advisory Opinion 2009-20 (while judges may participate in social media, they may not "friend" lawyers who may appear before them); Oklahoma Judicial Ethics Advisory Opinion 2011-3 (judges may participate in social media, "friending" those who do not "regularly appear or [are] unlikely to appear in the Judge's court"); Massachusetts Judicial Ethics Committee Opinion 2011-6 (judges may participate in social media but "may only 'friend' attorneys as to whom they would recuse themselves when those attorneys appeared before them").

California Judicial Ethics Committee Opinion 66 sets out several matters a judge should consider before participating in a particular social media site:

(1) the nature of the site, the more personal sites creating a greater likelihood that "friending" an attorney would create an appearance of favoritism;

(2) the number of persons "friended" by the judge, with the greater the number of friends resulting in less likelihood of an appearance that any one "friend" would be in a position to influence the judge;

(3) the judge's procedure for deciding whom to friend, such as allowing only some attorneys to become "friends," while excluding others; and

(4) how regularly an attorney who is a friend appears in the judge's court, the more frequent the appearance, the greater the likelihood of the appearance of favoritism.

Maryland Judicial Ethics Committee Opinion No. 2012-07 concludes that "the mere fact of a social connection" does not create a conflict, but, quoting California, "'[i]t is the *nature* of the [social] interaction that should govern the analysis, not the *medium* in which it takes place.'"

Accordingly, we conclude that, while judges may participate in social media, they must do so with caution and with the expectation that their use of the media likely will be

scrutinized various reasons by others. Because of constant changes in social media, this committee cannot be specific as to allowable or prohibited activity, but our review, as set out in this opinion, of the various approaches taken by other states to this area makes clear that judges must be constantly aware of ethical implications as they participate in social media and whether disclosure must be made. In short, judges must decide whether the benefit and utility of participating in social media justify the attendant risks.

FOR THE COMMITTEE:

_____

ALAN E. GLENN, JUDGE

CONCUR:

CHANCELLOR THOMAS R. FRIERSON, II
JUDGE CHERYL A. BLACKBURN
JUDGE JAMES F. RUSSELL
JUDGE BETTY THOMAS MOORE
JUDGE PAUL B. PLANT
JUDGE SUZANNE BAILEY

WEDDING ETHICS FOR MUNICIPAL JUDGES

using the

TENNESSEE MUNICIPAL JUDGES BENCHBOOK

TENNESSEE JUDICIAL ACADEMY

2014

1.5 hours DUAL CLE
August 21, 2014
8:00 a.m. – 9:30 a.m.

Embassy Suites Hotel
1200 Conference Center Boulevard
Murfreesboro, TN 37219

By: Judge Gregory D. Smith
Pleasant View City Court
Pegram City Court
331 Franklin Street, Suite 1
Clarksville, TN 37040
(931) 647-1299

SPEAKER BIO

Gregory D. Smith, [J.D., Cumberland, 1988; B.S., MTSU, 1985], is the municipal judge for the towns of Pleasant View, TN and Pegram, TN. Judge Smith has been a municipal judge since 1997 and was president of the Tennessee Municipal Judges Association, ("TMJA"), the predecessor to the Tennessee Municipal Judges Conference.[1] Judge Smith is the author of the Tennessee Municipal Judges Benchbook, which was published by the Tennessee Administrative Office of Courts, ("AOC"), in November, 2013. Judge Smith is also the compiler/editor of the Tennessee Judicial Ethics Opinions Handbook, (AOC, 2012). Judge Smith served on the Tennessee Court of the Judiciary from 2005 – 2009.

[1] Actually, Judge Smith would have been the president of the Tennessee Municipal Judges Conference, ("TMJC"), for about four (4) minutes as the TMJA voted on becoming the TMJC immediately before the new officers of the new TMJC were elected. The first official president of the TMJC was Judge Connie Kittrell of Gallatin.

INTRODUCTION

Congratulations on your election or appointment as a municipal judge in Tennessee! If you take only one (1) thing from this presentation, remember this:

THE JOB DOESN'T PAY ENOUGH TO BE A JERK!

This presentation will show how the Tennessee Municipal Judges Benchbook, ("Benchbook"), will help answer everyday questions for municipal judges. While I hope all answers in the Benchbook are current, the book is a ***starting*** point for research, not an end for research. In honor of my daughter's upcoming wedding, (and your need for CLE credits in ethics), the scenarios presented will be ethical situations which might arise for municipal judges attending weddings.

SCENERIO I

"W" IS FOR "WEDDING". "G" IS FOR "GPS".

"Marriage is the sole cause of divorce."
Lawrence J. Peter

Your favorite niece, NeeCee, is set to get married in beautiful Erin, Tennessee, which sits in Houston County, Tennessee. Erin claims it is "A Little Piece of Ireland, Right Here in Middle Tennessee". You are the municipal judge for the town of Alpine, Tennessee (as well as the coach of their 9u travel baseball team the "Alpine Sliders"). Alpine, Tennessee is in Overton County, Tennessee. Ten minutes before the wedding is set to begin, NeeCee comes to you in a panic because Reverend Isaiah P. Freelee, of the Yellow Creek Baptist Church, thought the wedding was in Er***W***in, Tennessee, not ***ERIN***, TN! Reverend I.P. Freelee is calling from two hundred miles away! Erwin[2] is in upper East Tennessee. Erin is in lower Middle Tennessee. There are no other preachers available. NeeCee begs you, as judge, to officiate the wedding ceremony. Can you ethically grant her request?

[2] Erwin is ***unfairly*** best known for only hanging elephants after a full and fair jury trial. True story! See, www.swampfoot.wordpress.com/2007/04/25/erwin-tns-elephant-execution/.

ANSWER: "W" IS FOR "WEDDING"

This simple scenario sets out the basic format for using the Benchbook. First, figure out the basic topic. In this case, I used "wedding" or "marriage" and "jurisdiction". Both wedding index topics lead you to page 53 of the Benchbook. You ***can*** actually save the day! Tenn. Code Ann. § 36-6-301(k) allows municipal judges, both elected and appointed, to perform weddings in any county in Tennessee. Do not accept pay or gratuity for this service. [See, Tenn. Coe Ann. § 8-21-101 and Tenn. Op. Atty. Gen. 84-286, 1984 Tenn. AG Lexis 57 (10/25/1984)]. If the wedding party insists on giving you a gift, make sure the gift is a token gift, small in valve…even if big in sentiment. [See, Benchbook at 111-112, "Gifts to Judge"]. Keep in mind, the judge is a ***servant*** of the people, not their master. [Benchbook at 4].

SCENERIO II

NEVER OUTSHINE THE BRIDE

"A man looks pretty small at a wedding…"
Play, "Our Town", Act II

Judge Myne R. Wisdom,[3] is the municipal judge of Defeated, TN. [Real town in Smith County]. He attended the wedding of Ima Hogg, the daughter of former Texas Governor James Hogg. [Real Governor and the real name of his daughter. See, http://en.wikipedia.org/wiki/Ima_Hogg. Ima was actually very pretty]. Judge Myne R. Wisdom posted the following on his personal Facebook page:

Just "MADE" a Bride's Maid! ☺ She has the morals of a cat in heat! Who knew a gavel made a great pick-up stick?

Judge Myne R. Wisdom is now wondering who Tim Descenza is and what the heck is the Board of Judicial Conduct? Where can Judge Wisdom turn for ethics advice?

[3] Judge John Minor Wisdom was a great judge of the old U.S. Court of Appeals for the Fifth Circuit. While his name was a punch line, he was a brilliant jurist. This scenario has ***no*** connection to the late Judge Wisdom. [See, http://en.wikipedia.org/wiki/John_Minor_Wisdom]. Among Judge Wisdom's many distinguished former law clerks is Tennessee Senator Lamar Alexander. [Id]. The Federal Court of Appeals Building in New Orleans, LA is named in honor of this late/great jurist.

ANSWER: OUTSHINE THE BRIDE

Topics for Benchbook index:

A) Facebook;

B) Social Media;

C) Board of Judicial Conduct;

D) Disciplinary Complaints;

E) Ethics Issues;

F) Abuse of Position; and

G) Freedom of Speech.

Start with the basic issue – Facebook. [Benchbook 114].[4] This topic references a "JEO 12-11". To figure out what a "JEO" is, look up the abbreviation in the Benchbook index. [Abbreviations = pages 7-8 of Benchbook. JEO is defined at page 7 and 116 of Benchbook]. You can find most of the JEOs in the Tennessee Judicial Ethics Opinions Handbook or at the AOC website. [http://www.tncourts.gov/administration/judicial-resources/ethics-opinions].[5] A copy of JEO 12-11 is attached to this answer. Basically, what a judge personally does on Facebook can impact on the judgeship. The implication here is that Judge Myne R. Wisdom is using his judgeship to seduce women. That could be construed as an abuse of the position. Generally, look up the "Blackeye" discussion in the Benchbook. [Benchbook pages 3-5]. A judge gives up some Free Speech rights by taking the position of judge. [Benchbook at 122]. As for judicial ethics advice, Tennessee has a Judicial Ethics Committee which can give a judge ethics advice as long

[4] "Social Media Issues" takes you to the same page of the Benchbook.
[5] The Tennessee Judicial Ethics Opinions Handbook is indexed. The AOC website is not indexed.

as there is not a pending BJC complaint on the issue for which the judge seeks advice. [Benchbook at 39].

SCENERIO III

WINCHESTER CATHEDRAL, YOU'RE BRINGING ME DOWN…

"Marriage is a great institution, but I'm not ready to be institutionalized just yet."
Mae West

Judge Anita D. Cash is the circuit judge for Franklin County, TN. Judge Anita D. Cash's little girl, Bhloda, (pronounced like "Rhoda"), is getting married in October. Here is where the problem arises. Bhloda Cash's wedding is about $8.00 shy of costing the same as a British coronation. Bhloda has her heart set on getting married in Franklin County's famed "Winchester Cathedral", the nickname of Winchester's beautiful First Cumberland Presbyterian Church, 202 Second Avenue, NW, Winchester, TN 37398, (the oldest church in Winchester). Judge Anita D. Cash presumes that Winchester Cathedral is free for weddings of church members…but Bhloda is a member of Disco Tabernacle, (the contemporary service begins at 11:00 a.m.), and Judge Anita D. Cash is Lutheran. Judge Cash doubts the Winchester Cathedral pastors, Rev. Dr. Michael Clark and his wife, Rev. Amber Clark, will "comp" Bhloda's wedding, but Judge Anita D. Cash writes the following letter…just to test the water:

Franklin County Circuit Court
Honorable Anita D. Cash, Judge
1471 Hang'em Highway
Winchester, TN 37398

Dr. Rev. Michael Clark
Rev. Amber Clark
c/o Winchester First Cumberland Presbyterian Church
202 Second Avenue, NW
Winchester, TN 37398

Dear Revs. Clark:

My daughter, Bhloda, grew up here in Winchester admiring the beauty of your church. Her greatest hearts desire is to marry in the "Winchester Cathedral". As a long-time resident of the area, is it possible to waive the usage fee on the building or to give a major discount? Bhloda and I

would be in the debt of both you and your congregation if you grant this request.

Respectfully,

Judge Anita D. Cash

Right before mailing this letter, Judge Anita D. Cash decides to call you to see if there is any problem sending the letter because she believes you just “reek with judicial ethics”. What do you tell her?

ANSWER: WINCHESTER CATHEDRAL

Topics for Benchbook index:

A) Judicial Ethics Advice;

B) Letters or Stationary;

C) Gifts to Judges; and

D) Abuse of Position.

The Benchbook index has a reference to "Letters", and "Stationary", which takes the judge to pages 32, 37 and 114 of the Benchbook. While none of the discussions are directly on point, the discussion on page 37 is extremely interesting! These pages give the implication that writing personal letters on court stationary is a bad idea. Judge Cash can turn to the JEC for advice and the contact information is found at page 32, 39 and 115 of the Benchbook. As for gifts to judges, that topic is addressed on pages 111-112 of the Benchbook. For an interesting discussion on why using the judge's robe for pressure and profit is a bad idea, see pages 9-10 of the Benchbook, citing the Schoolfield case.

SCENERIO IV

DO YOU HAVE ANY IDEA WHO I AM?

"Back of every achievement is a proud wife and a surprised mother-in-law".

Brooks Hays

Judge Dave V. Krokette, the newly appointed city judge for Alamo, TN,[6] was at the wedding of Joe Mauma and Angie Dattie in beautiful Pixie, TN.[7] The reception was getting a bit rowdy. The mother of the bride had the best man in a headlock when Pixie's Police Chief, Robert Santa Anna arrived. As Chief Santa Anna was placing the bride's mother in handcuffs, Samantha Bowie, the maid of honor, spits some of her Levi Garrett on the police chief's shoe and said "Who invited the Fuzz to this wedding". Judge Krokette stops, up, flashes his neat-o-keen judge's badge, and says to Ms. Bowie, "I got this, Sam". Krokette tells Santa Anna "Just let me take care of the folks in this little church. There is no need to get upset. Anyway, I'm buddies with your local judge". How does the BJC view Judge Krokette injecting himself into the stand-off with Chief Santa Anna?

[6] Alamo, TN is in Crockett County, Tennessee.
[7] Pixie is in Davidson County, Tennessee.

ANSWER: DO YOU KNOW WHO I AM?

Benchbook Index Topics:

A) Influence;

B) Abuse of Position; and

C) Arrogance.

Page 114 of the Benchbook discusses a judge trying to influence another judge's decisions. Don't' do it! Page 12 of the Benchbook warns against arrogant judges. Page 123 of the Benchbook points out that the "Do you know who I am?" approach of judges attempts to bullying police is not a smart approach to judicial ethics. If that approach didn't work for the Chief Justice of the Illinois Supreme Court, it won't work for you.

SCENERIO V

"GET ME TO THE CHURCH ON TIME"

"When a man is wrapped up in himself, he makes a pretty small package".

John Ruskin

U. Jess Waite, the municipal judge for Como, TN,[8] habitually oversleeps. Judge Waite was scheduled to preside over a wedding on Saturday, August 2, 2014 at 9:00 a.m. An annoyed father of the bride calls Judge Waite at 9:45 a.m. demanding to know why Judge Waite is not present for the wedding. Old Jess isn't phased one bit! He says, "I had a Como Coma", which is the nickname of Judge Waite's habitual oversleeping and being late for court. In an effort to speed up the wedding ceremony process, Judge Waite parks his city issued judge's vehicle next to a fire hydrant while the ceremony was taking place. Sure enough, U. Jess Waite got a parking ticket from the Como Police Department. Laughing at the absurdity of the Como judge getting a parking ticket to be heard by the Como City Court; Judge Waite dismisses the ticket because "I was in a city car, so I would just invoice the city to pay the ticket, so it would be a big waste of time". Phil Williams of Nashville's News Channel 4 now wants to interview Judge Waite. Also, the BJC has a few questions for Jess. He calls you for advice. What do you tell him?

[8] Como is in Henry County, Tennessee.

ANSWER: GET ME TO THE CHURCH ON TIME

While habitually starting court late is a disciplinary infraction for judges, being tardy for officiating a wedding is not a judicial ethics violation per se – just ***horrible*** public relations! [See Benchbook page 25]. If the BJC investigates, cooperate! [Benchbook at 109]. As for a television interview, "a closed mouth gathers no foot". [Benchbook at 122]. In regards to dismissing one's own parking tickets, that is a crime, an ethics violation…and bad public relations! [Benchbook at 98-99]. Any of the actions discussed in this scenario can get an attorney elected or appointed back to the status of "lawyer without a robe". Judge Waite should have looked up "recusal" in his Benchbook! [See Benchbook at Chapter VIII].

CONCLUSION

Becoming a judge is a great honor! Your city did you right by entrusting this role to you. Do everything in your power to justify that trust. Pages 142-143 of the Benchbook talks of how to handle courtroom decorum. Pages 130-136 of the Benchbook gives advice on how a judge can control her courtroom. Go be judicial!

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