TENNESSEE MUNICIPAL JUDGES

BENCHBOOK

Second Edition

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Dedication

To all the judges of TMJC and the staff at the Tennessee Administrative Office of Courts. For two decades the Tennessee Municipal Judges Conference has improved the quality of everyday justice in Tennessee. Thank you for your professionalism and dedication.

Special Recognition

The author wishes to thank Judge Kim Koratsky, (the Municipal Judge for Lakeland, Tennessee), and Ms. Ann S. Trost. Judge Koratsky provided invaluable research and insight for Chapter VII. Ms. Trost formatted and typed the text. Thanks go out to both for their support and help!

TENNESSE MUNICIPAL JUDGES BENCHBOOK
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INTRODUCTION

The first edition of this book was produced in 2013 and updated in 2014 and 2016. That version of the text was cited by the Harvard Law Review in 2020. *See*, Alexandra Natapoff, *Criminal Municipal Courts*, 134 Harv. L. Rev. 964, 1054 n.565 (2020). As with all legal treatises, much of the original information carries over, but time demands a renewed and revised publication. Since the first edition was distributed, TMJC has endured a worldwide pandemic, a crash course in computer aided litigation, riots at the U.S. Capitol, and even protesters at a TMJC training conference.[1] It is time to update the benchbook.

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***, case facts and litigants are the focus. The judge should avoid the limelight. [Lani 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

[1] For a discussion on how the pandemic of 2020 flipped the world on its head, *see* Gregory D. Smith, *Pandemic Pirates: An Essay Calling for Legislation Curbing Pandemic Profiteering*, 8 LMU L. Rev. 1, 5-16 (2021). On February 1, 2022, the Tennessee Supreme Court implemented a safety policy to protect judges attending live judicial training seminars and conferences from terrorist threats and protesters. [*See* Tenn. Sup. Ct. Admin. Policy & Pro. § 3.04 (2/1/2022), Hon. Roger A. Page, C.J.].

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.*, Gregory N. 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. 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 he later 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*, T. Brad 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

[2] TMJA became TMJC in 2004 when the Municipal Court Reform Act, Tenn. Code Ann. § 16-18-301 *et seq*., was enacted. TMJA ran from 2002-2004 with an eye towards promoting legislation to update, regulate, and consolidate municipal court justice and jurisprudence in Tennessee.

> of his friends and neighbors in the thought of justice and the institutions which represent it.

[Wallace J. Smith, *Judicial Ethics and Courtroom Decorum*, 27 Tenn. L. Rev. 26, 26 (1959)]. I suggest all municipal judges heed Judge Godbold's and Judge Smith'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 to TMJC conferences 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 also be fair to the most important person. For this reason, you will often find me in jeans at TMJC conferences. Simply put, ***be yourself, but get over yourself!***[3] Every judge will do things a little differently, which 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 John C. Godbold, *"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]. The terms "higher court" and "superior court" denote the authority of a jurist's bench, not the quality of justice coming from the judge making a ruling.[4]

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

[4] One might ask, "*Would a 'higher' court judge agree with your comment, Smith*?' Since I also sit as an appellate justice on six (6) Native American Tribal Supreme Courts (Chief Justice of three) and as Chief Judge of the U.S. Department of the Interior's Court of Indian Appeals (a federal court); I can safely say that at least ***one*** judge on each of those courts agree with my statement.

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* Andrew G. Brigham and Thomas B Norris, Tennessee General Sessions Handbook, (M. Lee Smith Pub. 2010) and 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 benchbook useful.

Research Suggestion for Internet Version of TMJC Benchbook:

If searching for a specific topic in this book's online version. One can do a word search by typing Control F, (*ctrl* button + the letter "*f*"), and when the pop-up box appears, type the word you are looking to find within the 300 +/- pages.

AUTHOR'S BIO

Gregory D. Smith, [J.D. – Cumberland 1988, B.S. – MTSU 1985], is the part-time municipal judge for the city of Pleasant View, Tennessee. His law practice is in Clarksville, Tennessee. Judge Smith served a term on the Tennessee Court of the Judiciary, and he was the TMJC Judge of the Year for 2017. Judge Smith served as the President of both TMJA (2002-2004) and TMJC (2018-2020). 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. He has been listed in Who's Who in American Law and Mid-South Super Lawyers in multiple years. He is an adjunct professor at the Lincoln Memorial University School of Law instructing classes in Federal Indian Law and he teaches for the National Judicial College in the fields of Ethics and Evidence. Judge Smith is on six (6) Native American Tribal Supreme Courts (Chief Justice on several) and is the Chief Judge of the U.S. Department of the Interior's Court of Indian Appeals. From 2005-2009, Judge Smith served on the Tennessee Court of the Judiciary (today called the Board of Judicial Conduct). In 2019, the ABA Journal did a feature article on Judge Smith's unique practice.

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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.

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 was slightly revised and modified in 2019, but remains essentially the same animal. The BJC investigates and tries ethics complaints against judges throughout the Tennessee state judiciary system. [*See*, Tenn. Code Ann. § 17-5-201].

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

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

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 from 1982 – 2012 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.

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

MTAS = The Municipal Technical Advisory Service. MTAS offers 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].

TMJA = Tennessee Municipal Judges Association, (2002-2004), the predecessor of TMJC.

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.

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." [Peter A. Joy, *A Professionalism Creed for Judges Leading by Example*, 52 S.C. L. Rev. 667, 682, (2001). *Accord*, Pamela Coyle, *Bench* Stress, 81 ABA J. 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. [Ann Marshall Young, *Judicial Independence*, 19 J. NAALJ 101, 113 (Fall, 1999)]. Even good judges sometimes endure unfounded charges of Black Robe Fever. [*See e.g.*, Gentzler v. Hamilton Cty., 2018 U.S. Dist. Lexis 221216 (E.D. Tenn. 8/1/2018), at page 8].

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-attorn

eys-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]. All TMJC members should strive to make a better legacy for themselves.

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]. In fairness to Hamilton County and Chattanooga, many highly respected jurists, (such as TMJC Judge of the Year for 2020, Sherry Paty), hail from Hamilton County, Tennessee.

Arrogance on the bench will bring you trouble, no matter how important you consider yourself to be.[5] Instead of learning this lesson, Judge Schoolfield published a book about his impeachment trial which can still be purchased on the internet. [*See*, Raulston 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.

[5] *See generally*, Gregory D. Smith, *Native American Tribal Appellate Courts: Underestimated and Overlooked*, 19 J. App. Prac. & Process 25, 26 n.4 (2018).

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). *Accord*, Ruther v. Kaiser, 983 N.E.2d 291, 297 (Ohio 2012); Carter v. Carter Coal Co., 298 U.S. 238, 318 (1936); and Commonwealth v. Vascovitch, 661 N.E.2d 117, 118 (Mass. App. 1996)].[6] 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. *Accord*, Bowsher v. Synar, 478 U.S.714, 722 (1986)]. 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]. Remember, when a judge puts on the badge of police officer or the prosecutor's coat, she may be taking off her cloak of absolute judicial immunity for the actions taken. [*See*, Barnes v. Winchell, 105 F.3d 1111, 1117-1118 (6th Cir. 1997), (Ohio municipal judge allegedly acting as prosecutor)].

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 law 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…"

[6] In fairness to judges and courts, legislatures also occasionally try to encroach on governmental separation of powers. *See e.g.*, Donahue v. Getman, 432 N.W.2d 281, 285 (S.D. 1988). U.S. Presidents, even "Honest Abe" Lincoln, have encroached on powers belonging to other branches of government, (*e.g.*, Lincoln suspending *habeas corpus*). [*See*, In Re: Habeas Corpus Cases, 298 F. Supp. 2d 303, 306 (E.D.N.Y. 2003)].

> **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 as to adjective}* 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 pages 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![7] [*See*, *Ex Parte* Owens, 258 P. 758, 807 (Okla. Crim. App.

[7] Nadine Strossen, a law professor at the New York School of Law and former president of the A.C.L.U., once quipped, *"What's the difference between federal judges and God? Answer: God does not think he is a federal judge."* [Nadine Strosser, *Symposium: Judge Jon O. Newman: A Symposium Celebrating his Thirty Years on the Federal Bench…*, 46 N.Y.L. Sch. L. Rev. 1, 4 (2002/2003)]. Please remember as I cite this joke, that I am a federal judge as a member of the Court of Indian Appeals. Be serious with your work; but never take oneself ***too*** seriously. [Murff v. U.S., 785 F.2d 552, 553 (5th Cir. 1986), Circuit Court admitting they misread a court transcript].

1927) for a discussion of how a state constitution, and the law of contempt, were partially written to nullify an overly-arrogant Territorial 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. *See also,* Richard J. Pierce, Jr., *Judge Lamberth's Reign of Terror at the Department of Interior*, 56 Admin. L. Rev. 235 (2004)]. 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" (Nov. 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)]. "Judges are public servants and play a critical role in our society." [Recorder v. Comm'n on Judicial Performance, 72 Cal. App. 4th 258, 274 (1999)]. Let your actions, both on and off the bench, justify the trust the people of your town or city place in you.

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 21st century 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)[8] and Frank Murphy (Detroit, Michigan's Recorder Court Judge). [www.wikipedia.org/wiki/William_F_Murphy and www.wikipedia.org/wiki/Hugo_Black]. Tennessee Supreme Court Chief Justice Sharon G. Lee was a member of TMJA and a municipal judge for the City of Madisonville, Tennessee prior to her appointment to the appellate bench in 2004. [http://*www.tncourts.gov/courts/supreme-court/judges/sharon-g-lee*]. 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 judicial court benches, (Davidson County General Sessions and Nashville Municipal), 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 as Presiding Judge of 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]. A former TMJC member, Judge Carma D. McGee, sits on the Tennessee Court of Appeals for the Western Section, and served as the City Judge for Savannah, Tennessee from 2004-2005. [Carma Dennis McGee | Tennessee Administrative Office of the Courts (tncourts.gov)].

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

[8] I served on the same bench as Justice Black during my days at law school. I was a municipal court magistrate in Birmingham, Alabama from 1986-1988. I worked midnight shifts on the weekends.

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, the late Judge Herman L. Reviere retired and served 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. and Willeford v. Klepper, 597 S.W.3d 454, 464 (Tenn. 2020). *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 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." [James G. France, *Effective Minor Courts: Key to Court Modernization*, 40 Tenn. L. Rev. 29, 43 (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 n.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 four (4) decades. In 2022, there are less than ten (10) non-lawyer city judges.

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*. [Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at page 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].[9] The MCRA, collectively calling all of the referenced courts "municipal courts," 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)];

[9] 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)]. That being said, the Tennessee Constitution guarantees that ***all*** judges, including municipal judges, may (and must) act independently from dictates of other branches of the government. [Moses v. City of Jellico, 2009 Tenn. App. Lexis 19 (Tenn. App. E.S. 1/26/2009), at pages 7-8].

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 two (2) decades, 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*, Gail Vaughn Ashworth, *President's Perspective*, 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 the current (2020-2022) 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. The National Judicial College now has a specific training certification for Tennessee Municipal Judges and the Harvard Law Review recently cited the first edition of the Tennessee Municipal Judges Benchbook in a published law review article. [*See*, Alexandra Natapoff, *Criminal Municipal Courts*, 134 Harv. L. Rev. 964, 1054 n.565 (2020)]. Respect is greatly increasing for TMJC and the judges within the TMJC.

PRESIDENTS OF TMJC

Judge Gregory D. Smith (Pleasant View/Pegram) 2002-2004[10]
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

[10] President of TMJA (Tennessee Municipal Judges Association), the precursor organization to TMJC. Judge Smith presided over the original TMJC for approximately two (2) minutes in 2004, when the TMJA voted to become a conference and then the new TMJC elected Judge Connie Kittrell of Gallatin as the official first TMJC President from 2004-2006.

Judge John H. Lowe (Millersville) 2012-2014
Judge R. Price Harris (Mason/Gallaway/Germantown) 2014-2016
Judge Sherry B. Paty (Chattanooga) 2016-2018
Judge Gregory D, Smith (Pleasant View) 2018-2020
Judge James D. Petersen (Nolensville) 2020-2022

Sharon G. Lee Tennessee Municipal Judge of the Year Award Winners[11]

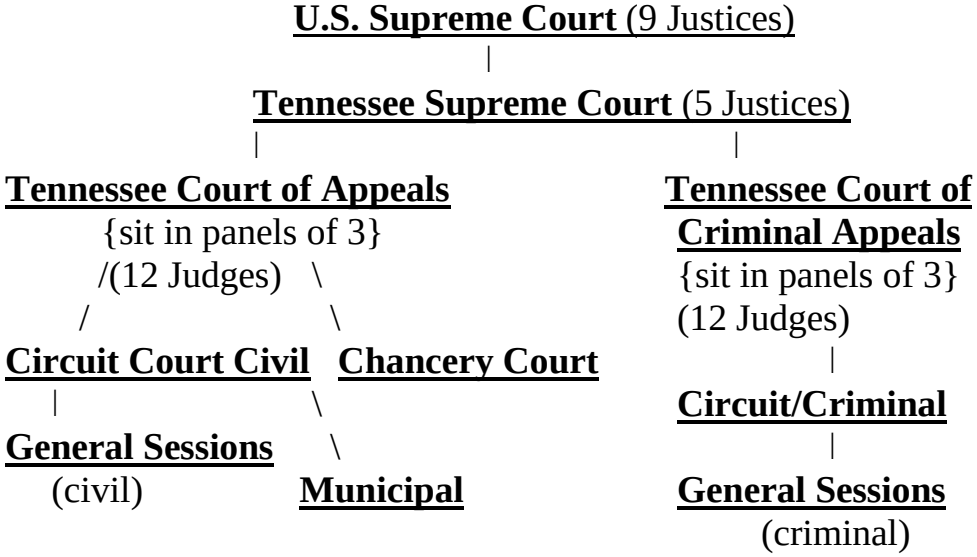
Judge James D. Petersen (Nolensville) 2015
Judge R. Price Harris (Mason/Gallaway/Germantown) 2016
Judge Gregory D. Smith (Pleasant View) 2017
Judge Connie W. Kittrell (Gallatin) 2018[12]
Judge Charles W. Smith (Clarksville) 2019
Judge Ewing T. Sellers (Murfreesboro) 2020
Judge Sherry B. Paty (Chattanooga) 2021

[11] The Honorable Sharon G. Lee. Judge Lee was the city judge for Madisonville, TN, from 2002-2004. She was also a member of the TMJA. Judge Lee was sworn in as Chief Justice of the Tennessee Supreme Court on September 1, 2014. [*See* http://www.tncourts.gov/courts/supreme-court/judges/sharon-g-lee]. The TMJC Judge of the Year Award, created in 2015, is named in honor of Chief Justice Lee.

[12] Judge Kittrell is a non-lawyer who proves that a law license is not always a condition-precedent to qualified judicial performance.

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) and State v. Springer, 406 S.W.3d 526, 532 (Tenn. 2013)]. While other courts, such as juvenile and administrative, play into this structure, the above chart represents 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. [www.tba.org/index.cfm?pg=tennessee-juridical-districts and Tennessee Legal Directory at 69-70]. At last count, there are approximately 250 municipal courts in Tennessee.

Municipal court jurisdiction, like other inferior Tennessee courts, is a legislative creature. [Person v. Bd. of Comm'rs, 2009 Tenn. App. Lexis 652 (Tenn. App. M.S. 9/28/2009), at page 14-20]. 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 n.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 in Tennessee – A) constitutionally elected to an eight (8) year term[13] 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)]. Although a city court is not technically an "inferior" court in Tennessee because a traditional or standard city court solely enforces city ordinances; the city court must still meet constitutional Due Process muster in compliance with the Tennessee Constitution, (especially when exercising "cross-over" jurisdiction as a General Sessions Court). [State ex rel. Newsom v. Biggers, 911 S.W.2d 715, 717 (Tenn. 1995)]. Remember, municipal courts in Tennessee are deemed "arms of the state." [HLFIP Holding Inc. v. Rutherford Cty., 2021 U.S. Dist. Lexis 189754 (M.D. Tenn. 10/1/2021), at pages 20-21, citing Gregory v. City of Memphis, 6 S.W.2d 332 (Tenn. 1928)].[14]

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

[13] 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].

[14] Several state supreme courts have cited Gregory with approval for the concept that ***all*** courts within a state are "courts of a state" – even if the court, (*e.g.*, a municipal court), is not formally considered a part of the state court stems. [*See*, People v. Hallner, 277 P.2d 393, 395 (Cal. 1954); Avant v. Ouachita Parish School Bd., 41 So.2d 854, 859 (La. 1949); and In Re: American Surety Co., 181 A.2d 364, 365 (Pa. 1935)].

"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 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)].[15] By way of example, between 2017 and 2022, TMJC, the AOC and the National Judicial College (NJC) teamed up to create a ground-breaking training series that led to TMJC members obtaining state judicial certification in municipal court jurisprudence. This was one of the first such programs in the United States.

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 city judge is "grandfathered in," the subsequent city 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

[15] 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].

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 common in the municipal court system.

If 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]. This statute also allows a city to create an ordinance to designate a "substitute judge" for up to thirty (30) days per appointment. [*Id*.]. A lingering issue for municipal court judges is whether 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].

If 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 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. On the other hand, if an agreement order is signed with the local county juvenile court, a municipal court may hear juvenile traffic offenses without the blessing of a city council or county commission. [Tenn. Code Ann. § 37-1-146(c)].

As with other "inferior courts" (courts other than the Tennessee Supreme Court), the Tennessee 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; 27-5-102; and 2 Tenn.

Juris. § 206 *Appeals from General Sessions Court and Municipal Courts* (LexisNexis 2021). *Accord*, Wood v. Town of Grand Junction, 52 Tenn. 440, 441-443 (1871) and Lawrence A. Pivnick, Tennessee Circuit Court Practice 2d § 3-10 at page 60 (The Harrison Co., 1986)].[16] [17] 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*, Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at page 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)]. On appeal, if timely demanded, a litigant can seek a jury trial in Circuit Court for their *de novo* appeal from the municipal court. [City of Athens v. Straser, 2020 Tenn. App. Lexis 464 (Tenn. App. E.S. 10/20/2020), at pages 10-12].

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. Code Ann. § 17-3-301(d)(1)]. For convenience, the AOC and TMJC also offer spring mini-conferences and access to recorded training to help TMJC member judges obtain the three (3) hours of judicial training statutorily mandated per year. TMJC is run by an elected board of directors. [Tenn. Code Ann. § 17-3-301(a)]. Expenses

[16] The *de novo* appeal guarantee is a bit odd in the Tennessee Code because neither statute cited specifically uses the term "*de novo*." Tenn. Code Ann. § 27-5-102 makes clear that a municipal court appeal follows the procedure used in General Sessions Court…which is *de novo*. *See*, Tenn. Code Ann. § 27-5-108(c)

[17] Grand Junction still has an active city court nearly 150 years after the Wood decision. The current judge, as of 2021, is Judge R. Blake Sain. Judge Sain hears cases in Grand Junction, population 392 (2019), every month. The City of Grand Junction is located 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].

associated with municipal judges 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)]. C.L.E. hours obtained by municipal judges at a TMJC conference can apply towards the attorney C.L.E. requirements. Most annual TMJC conferences offer approximately ten (10) hours of C.L.E., while the Spring TMJC mini-conferences offer three (3) hours of C.L.E.

CHAPTER IV – PRACTICAL CONSERATIONS FOR MUNICIPAL COURT JUDGES

Municipal judges should be courteous, professional and respectful to all coming into the court. [Wallace J. Smith, *Judicial Ethics and Courtroom Decorum*, 27 Tenn. L. Rev. 26, 31 (1959)]. The question at hand is…how? Some litigants and lawyers "have attitudes" and 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.[18]

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. Some litigant and lawyers presume that a judge is ignorant of the law. [*See e.g.*, State v. Bays, 1998 Ohio App. Lexis 227 (Ohio App. 1/30/1998), at page 54]. There is an old saying "A lawyer without a rule book is like a gunslinger without a gun." Fundamental fairness requires a judge that is not ignorant of the law. [*See*, U.S. v. Payne, 3 M.J. 354, 356 n.9 (C.A.A.F. 1977)]. As stated by several courts, "a judge who is ignorant of the law cannot afford due process of law to an individual…" [Treiman v. State, 343 So.2d 819, 823 (Fla. 1977); and State v. Duncan, 238 S.E.2d 205, 208 (S.C. 1977)]. Even if the statute or law books are seldom opened, the

[18] 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)]. When a Tennessee judge needs ethics advice, the judge should turn to the Tennessee Judicial Ethics Committee (JEC). [Tenn. R. Sup. Ct. 10A]. A JEC opinion offers ethical guidance for Tennessee judges. [Tenn. R. Sup. Ct. 10A, § 10A.6]. TMJC has a seat on the JEC. [Tenn. R. Sup. Ct. 10A, § 10A.1(a)].

public needs to see a judge that can access the law if questions arise.[19] 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/or through MTAS 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 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 Robert E. Burch, Trial Handbook for Tennessee Lawyers, § 203, at page 187 (Law Co-Op. 1980)]. Remember, if understanding the law were "clear-cut and easy," for either judge, lawyer or litigant, there would be no need for appellate courts. [Burdette v. Commissioner, 25 B.T.A. 692, 695 (Bd. Tax App. 1932); Topolewski v. Plankington Packing Co., 126 N.W. 554, 561 (Wis. 1910); Ryan v. State, 30 S.E. 678, 680 (Ga. 1898); and Barr v. Chicago S.L. & P.R. Co., 37 N.E. 814, 817 (Ind. App. 1894)].

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 former Chief Justice for the Alabama Supreme Court, for the public to expect court to start on time. [Sue Bell 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.

[19] 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*].

City of Detroit, 467 Fed. Appx. 420, 421-422 (6th Cir. 2012)]. Habitual tardiness is a judicial discipline infraction. [Inquiry Concerning Stokes, 821 S.E.2d 343, 343-344 (Ga. 2018) and In Re: McVay, 158 P.3d 198, 198-199 (Ariz. 2007)].

Kill Them with Kindness. The municipal judge has a duty to be kind and courteous to all persons she has in her court, even when litigants and/or attorneys misbehave. [*See e.g.*, Inquiry Concerning McBrien, 49 Cal. 4th CJP Supp. 315, 333 (Cal. Comm. Jud. Perf. 2010) and People v. Blue, 724 N.E.2d 920, 942 (Ill. 2000) and Harvie Wilkinson, III, *The Role of Reason in the Rule of Law*, 56 U. Chi. L. Rev. 779, 785 (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 (Tex. 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 page 3 and People v. Howick, 2010 Cal. App. Unpub. Lexis 9665 (Cal. App. 12/6/2010), at pages 2-3, noting n.2].[20] That being said, "trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. [In Re: Buckley, 514 P.2d 1201, 1211 n.21 (Cal. 1973). *See*, Fletcher v. Comm. on Judg. Perf., 968 P.2d 958, 980 (Cal. 1998), for the same quote applied to attorneys instead of defendants]. Proper decorum and respect may be demanded during court appearances for both lawyers and litigants. [In Re: Vaughan, 2014 Bankr. Lexis 160 (Bky. E.D. Va. 1/15/2014), at page 3]. As Plato once said, "Be kind, for everyone you meet is fighting a hard battle."

[20] 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" ruder than what you have to tolerate, Howick's conviction being affirmed on appeal might be an opinion read which brings you comfort. *See also*, Gordon v. Lafler, 2015 U.S. Dist. Lexis 46357 (E.D. Mich. 4/9/2015), at pages 22-26.

Let Litigants Have Their Say. Don't cut off or interfere with a litigant "telling her story" until the testimony appears to be a filibuster or a manifesto pronouncement. [Patrick Murphy Meter, *An Analysis of the Unified Court System of Michigan*, 20 Quinnipiac L. Rev. 697, 705 (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 Scott L. Cummings, *The Politics of Helping*, 6 Geo. J. Poverty Law & Pol'y 43, 55 (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)]. A judge is not a mere moderator of how court proceedings occur – he is the governor of how court proceedings should be handled. [U.S. v. Young, 470 U.S. 1, 10 (1985) and U.S. v. Raymundi-Hernandez, 984 F.3d 127, 146 (1st Cir. 2020)]. Control the courtroom with ***grace***, not tyranny – a concern the founding fathers feared might evolve. [In Re: Univ. of Mich., 936 F.3d 460, 461 (6th Cir. 2019)].

Look Professional. Even if you do not wear a robe for court, don't come to court wearing sweatpants and t-shirt. You are a member of the judiciary! Look the part! [Peter J. 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

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 T. Brad Bishop, Municipal Courts 3d § 2.11 at page 19 (Samford University Press 1999). *Cf*., Robert L. McFarland, *Please Do Not Publish This Article in England: A Jurisdictional Response to Libel Tourism*, 79 Miss L.J. 617, 654 (2010)].

Be "Honorable." You worked hard to get the position of judge. Don't go into court allowing litigants, police officers, or attorneys to call you by your first name or appear to "chummy" as that may imply favoritism to "outsiders" looking in. [Jason M. Scally, *Counsel May Confer Where Conflict is Borderline*, (news article) Mass. Lawyer's Weekly, (7/28/2003)]. 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 requires respect for the bench, and those sitting on the bench, or the system ceases to function if respect is lost. [Marcy Eason, *President's Perspective: Judges, Courts Deserve Respect*, 43 Tenn. B.J. 3, 3 (Aug. 2007)]. The municipal judge must be careful not to act, personally or publicly, that embarrasses the judiciary. [*See e.g.*, Harris v. Smartt, 57 P.3d 58, 72 (Mont. 2002) (judge watching 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)]. On the other hand, a judge should have confidence. As Liberace once said, "Nobody will believe in you unless you believe in yourself." For a primer on judicial expectations on integrity, *see* Joseph W. Bellacosa, *Devils and Angels of Judicial Integrity*, 90 St. John's L. Rev. 1 (2016).

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)]. Commentators have referred to judges "fixing tickets" as a "chronic problem." [Raymond J. McKoski, *Disfavoring Justice*, 87 U. Cin. L. Rev. 417, 443-444 (2018)].

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.

[J. Harvie Wilkinson, III, *The Role of Reason in the Rule of Law*, 56 U. Chi. L. Rev. 779, 785 (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 n.12 (C.M.A. 1978) and Clark v. State, 489 P.3d 914, 914 (Nev. 2021)]. Harsh comments from judges last longer and hit harder than average citizens. [In Re: Fuller, 798 N.W.2d 408, 414-415 (S.D. 2011), (judge "involuntarily retired" for calling juveniles "little peckerheads" in hallway of chambers) and 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 victim's 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 page 10 and T. Brad 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]. Speaking out of turn as a judicial vice is not limited to American jurists. [*See*, Fyfe Strachan, *Keeping Up Appearances: Apprehended Bias in Antoun v. The Queen*, 29 Sydney L. Rev. 175, 181 (2007)].

Hijacking a Case. Judges are not "wallflowers or potted plants," nor should judges be "super-legislators." [Susan Bandes, *We Lost it at the Movies: The Rule of Law Goes from Washington to Hollywood and Back Again*, 40 Loy. L.A. L. Rev. 621, 642 (2007)]. 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,"[21] it does not allow the judge to be prosecutor, judge and jury. [*See e.g.*, Terry v. Commonwealth, 153 S.W.3d 794, 803 (Ky. 2005), (trial judge asked 103 questions at trial)].

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). *See also*, Heather Ellis Cucolo and Michael L. Perlin, *They're Planting Stories in the Press: The Impact of Media Distortion on Sex Offender Law and Policy*, 3 U. Den. L. Rev. 185, 220 (2013)]. "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*].[22] Make your ruling without checking the newspapers. [Tracy Carbasho,

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

[22] For a discussion on how today's 24-hour news media impacts free speech against judges, *see*, Terri R. Day and Danielle Weatherly, *Speech Narcissism*, 70 Fla. L. Rev. 839, 864-866 (2018).

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"[23] has been a pun, not an observation. [*See*, In Re: Smith's Will, 92 A. 223, 225 (Vt. 1914) and Molly A. 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 (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. § 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. In 2017, the NJC started a Tennessee municipal court training certification which is completed by a TMJC judge in five (5) years. 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 full-time judge can obtain

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

either a master's degree or certificate of judicial education through the NJC Certificates of Judicial Education, (which can be obtained by either full-time or part-time judges). 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 Lexis computer research. [*See*, AOC Memo to TMJC members on Westlaw/Lexis 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 page 7 n.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)]. In the twenty-first century, attempts at *ex parte* influence on a judge now includes social media contracts. [*See*, In Re: B.J.M., 944 N.W.2d 542, 561 (Wis. 2020)]. Traditional means of contact are also still commonly used. [*See e.g.*, In Re: Ogden, 10 N.E.2d 499, 501 (Ind. 2014), (attorney not involved in a case sent letter to judge)].

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)]. If you are stopped by a police officer, do not show your TMJC Judge card! [*See generally*, Cynthia Gray, *Perspectives on Judicial Independence*, 28 U. Ark. Little Rock L. Rev. 63 (2005)].

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." [Margaret 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." [Gerald J. Clark, *An Introduction to Constitutional Interpretation*, 34 Suffolk U. L. Rev. 485, 508 n.194 (2001), quoting Holmes, "Codes and the Arrangement of the Law," 5 Am. L. Rev. 1 (1870)]. Sometimes, the mentor judge may give simple advise similar to what legendary federal circuit judge Learned Hand said to a "newbie," Judge Henry Friendly, "Damn it, Henry, just decide it. That's what you're paid for!" [Colin Starger, *Constitutional Law and Rhetoric*, 18 U. Pa J. Const. L. 1347, 1355 n.40 (2016)].

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 J. Ross Dyer, Chair
Tennessee Court of Criminal Appeals
5050 Poplar Avenue, Suite 1414
Memphis, TN 38157-1414

Ph.: (901) 537-2978
Fax: (901) 537-2909
Email: judge.ross.dyer@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 Steven Lubet, 35 Court Review 6, 6-7 (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 blueprint 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*, Frank F. Drowota, III, *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 and Inquiry Concerning a Judge (Fogan), 646 So.2d 191, 193 (Fla. 1994)].

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]. To do otherwise, a judge lends the prestige of the bench to his character testimony on behalf of a litigant – which is a violation of Canon 2 of the Code of Judicial Conduct. [Leslie W. Abramson, *Canon 2 of the Code of Judicial Conduct*, 79 Marq. L. Rev. 949, 976-977 (1996)].

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 fourteen (14) days from receiving written notice of a BJC complaint to answer the complaint. [Tenn. Code Ann. § 17-5-306(c)]. The failure to timely answer a BJC complaint by an accused judge is deemed an admission to the charged misconduct. [Tenn. Code Ann. § 17-5-306(e)]. Negotiations on discipline matters are possible, to include a deferred discipline agreement (a/k/a diversion). [*See e.g.*, Katherine Hergies, *You Need to Know: Licensure & Discipline*, 53 Tenn. B. J. 11, 12, at Board of Judicial Conduct (March 2017)].

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. [Metro Gov't of Nashville & Davidson County v. Stark, 2008 Tenn. App. Lexis 58 (Tenn. App. E.S. 1/31/2008), at pages 4-5; State v. James, 2011 Tenn. Crim. App. Lexis 59 (Tenn. App. Crim. 1/26/2011), at page 12; 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 U.S.C. § 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 n.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*, Jans v. State, 964 N.W.2d 749, 755 n.6 (S.D. 2021) and Childress v. Cal. Dept. of Motor Vehicles, 2005 Cal. Dept. of Motor Vehicles, 2005 Cal. App. Lexis 1870 (Cal. App. 3/3/2005), at page 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)]. By way of example, a CDL holder convicted of a DUI is barred by statute from seeking a restricted license. [State v. Banks, 875 S.W.2d 303, 305-306 (Tenn. Crim. App. 1993)]. 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 page 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 the video "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 § 14(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. [*See*, In Re: Amendment to Tenn. Supreme Court Rule 10, Comments to R.J.C.s 2.6 and 3.9, 2021 Tenn. Lexis 244 (Tenn. 2021), at comment 1 to R.P.C. 3.9]. 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 gameshow "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 (Tenn. Crim. App. 1/13/2004), at pages 32-34]. "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 page 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.'"

"American legal writing has been characterized by legalese: arcane terminology, convoluted phrasing, and condescension." [David Raatz, *Plain Language is Always Practicable Possible*, 25 Hawaii B.J. 12, 12 (Nov. 2021)]. If you have something to say as a judge, be brave enough to do so in plain English. [*See*, Estate of Jennings v. Gulfshore Private Home Care, LLC, 2020 U.S. Dist. Lexis 68090 (M.D. Fla. 4/17/2020), at page 3]. Don't talk down to litigants, but talk straight with, (and to), litigants. Simply put, attorneys must "avoid condescending legalese" when speaking in court. [Larisa Dismoor & Denise Crawford, *Shut Up and Listen! Conducting a Successful Vior Dire*, 56 Orange County Lawyer 36, 36 (Jan. 2014)].

Be Yourself. Every judge will manage their court a little differently. [U.S. v. Laura, 607 F.2d 52, 53 (3rd Cir. 1979) and The Cayene, 5 F. Cas. 322, 323 (D. Del. 1870)]. No judge is perfect, so don't try to become perfect, even the best judges make mistakes; but give your best efforts. [State v. Maisonet, 246 A.3d 1279, 1288 (N.J. 2021); U.S. v. Alcantara-Castillo, 788 F.3d 1186, 12036 (9th Cir. 2015); and In Re: Garner, 177 P. 162, 165 (Cal. 1918)]. "Judges make mistakes every day." [U.S. v. Penoncello, 510 F.Supp.3d 816, 823 (D. Minn. 2020]. There are no "perfect trials" and judges are only expected to give "best effort," not perfection. [Brown v. U.S., 411 U.S. 223, 231-232 (1973); McGregor v. State, 491 S.W.2d 619,

623 (Tenn. Crim. App. 1972); and U.S. v. Wilson, 788 F.3d 1298, 1315 (11th Cir. 2015)].

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)]. Sometimes, the higher court will simply declare "He was wrong" when reviewing your decision. [*See e.g.*, U.S. v. Wynn, 11 M.J. 536, 538 (Army Ct. Crim. App. 1981)]. Have honor – give honor – ***get*** honor. [Cohen v. G&M Realty L.P., 320 F. Supp.3d 421, 433 (E.D.N.Y. 2018) and People v. Stover, 240 N.Y.S.2d 94, 101 (N.Y. County Crim. App. Div. 1963), Creel, dissenting].

Sovereign Citizens. The Sovereign Citizens movement as referenced in early 2022 as:

> Legal-sounding but meaningless verbiage commonly used by adherents to the so-called sovereign citizen movement is nothing more than a nullity…[and] that legal theories espoused by sovereign citizens have been consistently rejected as utterly frivolous, patently ludicrous, and a waste of…the court's time, which is paid by hard-earned tax dollars.

[Benton v. Benton, 2022 U.S. Dist. Lexis 44 (E.D. Pa. 1/3/2022), at pages 6-7]. The Tennessee Court of Criminal Appeals has referred to the sovereign citizens movement (a/k/a freeman movement) as "a

loose network of anti-government extremists who do not recognize federal, state, or local laws and are known for creating legal documents that contain peculiar or out-of-place language." [Ralph v. State, 2012 Tenn. Crim. App. Lexis 1062 (Tenn. Crim. App. 12/20/2012), at page 7 n.1] These groups go by various names such as the "Knoxville Patriots." [Ralph v. State, 2021 Tenn. Crim. App. Lexis 100 (Tenn. Crim. App. 3/22/2021), at pages 39-40]. Sovereign citizens, by whatever name, have been called a terrorist group and cult. [Michael N. Colacci, *Sovereign Citizens A Cult Movement That Demands Legislative Resistance*, 17 Rutgers J. Law & Relig. 153, 158 n.51 (2015)].[24] For a general overview of the Sovereign Citizens movement, *see* Samuel Barrows, *Sovereigns, Freemen, and Desperate Souls: Towards a Rigorous Understanding of Pseudolitigation Tactics in United States Courts*, 62 B.C. L. Rev. 905 (2021) and Francis X. Sullivan, *The "Usuprising Octopus of Jurisdictional Authority": The Legal Theories of the Sovereign Citizens Movement*, 1999 Wis. L. Rev. 785 (1999).

If you are presiding over a Sovereign Citizen's case, know the filings will be "dense, complex, and virtually unreadable." [U.S. v. Cook, 2019 U.S. Dist. Lexis 108991 (E.D. Tenn. 6/28/2019), at page 4]. Understand that when the Sovereign Citizen actually appears in court, their goal is often to disrupt and delay proceedings through chaos, not to get a trial on the merits. [Commonwealth v. Haltiwanger, 169 N.E.3d 1198, 1210 (Mass. App. 2021)]. Part of this tactic is "paper terrorism," which floods the court with frivolous documents in an attempt to "wreck havoc upon the legal system." [Patrick H. Hill, *"The Twain Shall Meet": A Real Property Approach to Article 9 Perfection*, 64 Emory L. J. 1103, 1106 (2015)]. Do not get into a debate with a Sovereign Citizen and if you find a Sovereign Citizen on your docket, put their case last. The rest of the people in court should not be delayed and the Sovereign Citizen's audience for the drama disappears when the courtroom empties. ***CAVEAT*:** Sovereign Citizens love to bring a of couple friends to videotape the court hearing on cell phones to later post on the internet. [Caesar Kalinowski IV, *A Legal Response to the Sovereign Citizen Movement*, 80 Mont. L. Rev. 153, 167 n.110 (2019)].

[24] Sovereign Citizens have been referred to as "an increasingly active domestic terrorist group." [Metro. Alliance of Police, Dupage Sheriff's Police v. County of Dupage, 2014 IL LRB Lexis 288 (Ill. Labor Rel. Bd. Decisions 7/1/2014), at page 8].

***Pro Se* (Self-Represented) Litigants.** *Pro Se* litigants are the most common defendant that TMJC members and other municipal court judges see. [*See e.g.*, Julie McMahon, *Q&A with Providence Municipal Court Chief: Judge Frank Caprio Embraces Role as Guide*, (news article), R.I. Lawyer's Weekly (11/15/2013)]. *Pro se* litigants differ from Sovereign Citizens in that the *pro se* litigant may be representing themselves due to economics, arrogance or anger, not to promote a political agenda. [*See* J.J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 Vand. L. Rev. 1993, 2003-2004 (2017)]. Also, "self-help" legal resources are available which make the "cost-benefit analysis" convince many "litigants" to be "self-represented litigants." [*Id*. *See also*, Gregory D. Smith, *The Court of Indian Appeals: America's Forgotten Federal Appellate Court*, 44 Am. Indian L. Rev. 211, 225 (2020)].[25] Unlike the Sovereign Citizen, *pro se* litigants often proceed by happenstance, necessity, or default instead of by tactical or philosophical choice. [*Compare*, Gravitt v. Cleveland Reg'l Med. Ctr., 37 S.W.3d 465, 476 (Tex. App. 2012), McCally, dissenting v. State v. Tucker, 62 N.E.3d 893, 897-898 (Ohio 2016)].

Since *pro se* litigants are generally untrained in the law, pleadings and arguments are reviewed with a less stringent review than pleadings or arguments presented by lawyers. [Tenn. State Bank v. Mashek, 616 S.W.3d 777, 792 (Tenn. App. E.S. 2020)]. Simply because *pro se* litigants may present inarticulate arguments – it does not mean those arguments lack substance. [In Re: Bucurescu, 282 B.R. 124, 126 (Bky. S.D.N.Y. 2002)]. Show respect to all people coming before your court because you may be the only judge that person ever meets and those representing themselves should enjoy the same respect as any other plaintiff, petitioner or attorney coming before your court. [State v. Smith, 243 A.3d 1045, 1052 (R.I. 2021), Goldberg, dissenting and Jacob v. Houston, 2015 U.S. Dist. Lexis 20119 (D. Neb. 2/17/2015), at page 3].

Do not underestimate self-represented and/or *pro se* litigiants' insight, intelligence or preparation. [*See generally*, Ashley Gargour, *Ethical Consideration When Litigating Against a Pro Se Debtor*, 55 S.

[25] The author of this book also penned Gregory D. Smith, *A Streamlined Model of Tribal Appellate Court Rules for Lay Advocates and Pro Se Litigants*, 4 American Indian L.J. 27 (2015), which addressed similar situations for self-represented Native American litigants.

Tex. L. Rev. 751, 756-757 and 765-797 (2014)]. Remember, Clarence Earl Gideon took his case all the way to the U.S. Supreme Court as a *pro se* litigant before Abe Fortas was appointed to represent Mr. Gideon. [Lewis v. Casey, 518 U.S. 343, 374 n.4 (1996), Thomas, concurring].

Stay in your own lane. Judges will sometimes have family or close friends that are lawyers. Lawyers in litigation occasionally bicker and butt heads "in the heat of battle." [*See e.g.*, Barrio Bros. v. Revolution, 2021 U.S. Dist. Lexis 114245 (E.D. Ohio 5/14/2021), at page 12]. Likewise, judges sometimes are in a position where favoritism or retribution can be dished out to family, friend or foe. [*See e.g.*, In Re: Bell, 344 S.W.3d 304, 312 n.10 (Tenn. 2011) and DeRitis v. McGarrigle, 861 F.3d 444, 450 (3rd Cir. 2017)]. Do not become entangled in another person's battles – even if the person you wish to defend is precious to you. [*See e.g.*, In Re: Gasaway, *www.tncourts.gov/sites/default/files/docs/public_reprimand_judge_john_gasaway_pdf* (Tenn. Ct. Judiciary 6/24/2012)].

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.[26] 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 magazine 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 "voluntary" resignation from the Tennessee state judicial appellate

[26] 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.

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 human. Errors are made." [U.S. v. Wedd, 993 F.3d 104, 118 n.7 (2nd Cir. 2021) and 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)]. Multiple courts have quoted former Tennessee Supreme Court Justice Penny J. White, (who authored the original Municipal Court Judges Benchbook for Tennessee), in stating the following:

> Don't seek out confrontation rather than cooperation…Common sense and common courtesy, right and wrong, and justice still matter. Make them our trademark.

[*See e.g.*, Miro Tool & Mfg. v. Midland Mach., 556 N.W.2d 437, 443 (Wis. App. 1996), Anderson concurring and Muster v. Muster, 921 A.2d 756, 769 (Del. Fam. Ct. 2005)].

That is as practical as advice comes. It is also advice that covers most any situation a judge encounters…including feuding lawyers. [Wilson v. Level One HVAC Servs., 2021 U.S. Dist. Lexis 134721 (E.D. Mich. 7/20/2021), at page 7].

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 coming 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 guidance of other TMJC[27] members is a great source of insight. [*See e.g.*, In Re: Inquiry Concerning McCormick, 639 N.W.2d 12, 14 (Iowa 2002) and John Bainbridge, Jr., *In Memorium: The Honorable Howard S. Chasandew – A Remembrance*, 77 Md. L. Rev. 938, 938 (2018)]. Some municipal judge conferences have established FaceBook blogs to share information between courts and the community. [*See e.g.*, Aaron S. Kaufman, *2010-2011 State Bar of Texas Section Reports (Municipal Judges)*, 74 Tex. B.J. 638, 645 (July, 2011)].

AOC: The AOC[28] has a large bank of resources, such as the Tennessee Judicial Ethics Opinions Handbook, which can provide guidance to TMJC members. The AOC, under the "Administration" pull-down tab on the AOC website, (www.tncourts.gov/courts/supreme-court), offer free CLE videos for both judges and attorneys. TMJC members can also find a good *pro se* litigants judge's benchbook on the AOC website. Also, the staff at the AOC have insight into legislative trends, new statutes and the training of judges throughout Tennessee. The competing interests 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 judicial conference "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

[27] Tennessee Municipal Judges Conference.
[28] Tennessee Administrative Office of Courts.

Michelle J. Long. 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

JEC: The JEC[29] 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[30], {ethics advisory opinion}, addressing the dilemma can be rendered. [Tenn. R. Sup. Ct. 10A.4 and State v. Lipford, 67 S.W.3d 79, 84 n.4 (Tenn. Crim. App. 2001)]. 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 and State v. Watson, 507 S.W.3d 191, 196 (Tenn. Crim. App.2016)]. While the JEO does not bind the BJC[31] 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 J. Ross Dyer. Judge Dyer's contact information is as follows:

Tennessee Judicial Ethics Committee
c/o Honorable J. Ross Dyer, Chair
Tennessee Court of Criminal Appeals
5050 Poplar Avenue, Suite 1414
Memphis, TN 38157-1414
Ph.: (901) 537-2980
Fax: (901) 537-2909

[29] Tennessee Judicial Ethics Committee.
[30] Judicial Ethics Opinion.
[31] Tennessee Board of Judicial Conduct.

Email: judge.ross.dyer@tncourts.gov

At the time of this text being written, the TMJC representative on the JEC is the Honorable Deana C. Hood, 317 Main Street, #204, Franklin, TN 37064. [Ph.: (615) 595-2991]. 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 which is 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, from 1982 to date, can be found on the AOC website or in the Tennessee Judicial Ethics Opinions Handbook which is put out by the AOC chronicled and indexed JEO rulings from 1982-2012. The text compilation of the 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 certificates in judicial studies for judges throughout the United States. The NJC will offer judicial training throughout the country. 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. The NJC is teaming up with the AOC and TMJC to offer a Tennessee specific judicial certification for municipal court judges. 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

The NJC website, at www.judges.org/bench-books-cards/, offers several online resources, such as a "CDL Benchcard," with TMJC members might find useful.

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. [*See generally*, Henderson v. City of Mt. Pleasant, 2016 Tenn. App. Lexis 890 (Tenn. App. M.S. 11/28/2016), at page 9 n.2]. 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 for municipal courts. MTAS may be contacted as follows:

> Municipal Technical Advisory Service
> c/o University of Tennessee Institute of Public Service
> 1610 University Ave.
> Knoxville, TN 37921
> 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*, Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at Intro]. While MTAS and the Tennessee Attorney General's office are both authorized to provide cities legal guidance; sometimes the two options for advice conflict on answering a single question. [*See e.g.*, Tenn. Atty. Gen. Op. 06-132, 2006 Tenn. AG Lexis 149 (8/15/2006), at page 4].

TLAP: The Tennessee Lawyers Assistance Program ("TLAP") exists pursuant to Tenn. R. Sup. Ct. 33 and has been around for approximately twenty-five years. [Janice M. Holder, *20 Years of Hope: Tennessee Lawyers Assistance Program Celebrates Lives Saved*, 55 Tenn. 14, 15 (Apr. 2019)]. 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
214 Second Avenue, North, Suite 1
Nashville, TN 37201
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 J.E. "Buddy" Stockwell, III. The judicial contacts currently for TLAP are Judge D. Kelly Thomas, Jr. (East TN); Judge Vicki Snyder (West TN): Judge Tammy Harrington (East TN); and Judge Michael E. Spitzer (Middle TN). For an overview of the benefits of TLAP, *see*, Stacy Shrader, *What is the Tennessee Lawyer's Assistance Program?* 42 Tenn. B.J. 8, 8-9 (Apr. 2006).

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)]. There is also a National Helpline for Judges Helping Judges, (800) 219-6474.

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 Ryan Mouser at 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 page 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)]. GHSO offices can regulate driving school's accreditation. [*See e.g.*, 1st Class Driving Acad. v. State, 2009-Ohio-5174 (Ohio App. 2009), at ¶ 1].

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; Barrett v. Tenn. OSHRC, 284 S.W.3d 784, 789 n.3 (Tenn. 2009); 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 jurist presiding over 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 McMinnville v. Hubbard, 2019 Tenn. Crim. App. Lexis 104 (Tenn. Crim. App. 2/20/2019), at pages 9-11; 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 pages 7-8 and 7 n.1; and Tenn. R. Crim. P. 1 at Advisory Comments].[32] 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 page 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]. Decisions by a cross-over jurisdiction municipal court's ruling on procedural matters may invoke *res judicata* claims preclusion. [*See e.g.*, Novotny v. City of Wauwatosa, 783 Fed. Appx. 623, 624-625 (7th Cir. 2019)].

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

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 municipal ordinances, Class C misdemeanors and traffic jurisdiction cases. [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 (Tenn. 1953)]. Technically, a standard municipal court is not an "inferior court" under Tenn. Cost. Art. VI, § 4, unless the municipal judge is elected for an eight (8) year term of office. [City of Church Hill v. Elliott, 2017 Tenn. Crim. App. Lexis 515 (Tenn. Crim. App. 6/15/2007), at pages 10-11]. Municipal court jurists have been unflatteringly termed as "essentially administrative judges." [Summers v. Thompson, 764 S.W.2d 182, 184 (Tenn. 1988) and Fredric S. LeClercq, *The Law of the Land: Tennessee Constitutional Law*, 61 Tenn. L. Rev. 573, 605 (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)]. 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 pages 6-7]. As noted in Summers v. Thompson, "Judicial independence is as essential for a city judge…as it is for a Justice of the Supreme Court." [Summers v. Thompson, 764 S.W.2d at 196].

There is no question that the Tennessee Legislature can expand, reduce, or even eliminate municipal courts and/or their jurisdictional powers. [Art. VI § 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)]. Art. VI § 8 of the Tennessee Constitution says, "The jurisdiction of the Circuit, Chancery and other

Inferior Courts, shall be as now established by law, until changed by the Legislature." What that clause means "we think it too plain and obvious to require discussion." [Jackson, Morris & Co. v. Nimmo & Thornhill, 71 Tenn. 597, 614 (1879)]. 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*, Burns v. State, 601 S.W.3d 601, 614 (Tenn. App. E.S. 2019); Wortman v. State, 2021 Tenn. App. Lexis 441 (Tenn. App. E.S. 11/8/2021), at pages 30-31; Hodge v. State, 188 S.W. 203, 205-206 (Tenn. 1916); Masada Invest. Corp. v. Allen, 697 S.W.2d 332, 334 (Tenn. 1985); and Ellipsis, Inc. v. Colorworks, Inc., 329 F. Supp.2d 962, 966 (W.D. Tenn. 2004)]. 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 state traffic statutes by reference. [City of Chattanooga v. Davis, 54 S.W.3d 248, 277 and 277 n.25 (Tenn. 2001). *See also*, Hill v. State, 392 S.W.2d at 952].[33] The *caveat* of Tenn. Code Ann. § 55-10-308 requires city courts to implement "full compliance 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" under Tenn. Code Ann. §16-18-302(a)(2). [*See* City of Church Hill v. Elliott, 2017 Tenn. Crim. App. Lexis 515 (Tenn. Crim. App. 6/15/2017), at pages 8-9].

When one looks at jurisdiction, one must distinguish between subject matter jurisdiction and personal jurisdiction. [Wood v. A. Wilbert's Sons Shingle & Lumber Co., 226 U.S. 384, 389 (1912)]. 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) and Memphis S.R. Co. v. Byrne, 104 S.W. 460, 471 (Tenn. 1907)]. 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

[33] 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.*, T. Brad Bishop, Municipal Courts 3d § 9-1, at pages 239-240 (Samford University Press, 1999)].

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 and Hogan v. Hogan, 2009 Tenn. App. Lexis 579 (Tenn. App. W.S. 8/27/2009), at pages 26-27]. 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) and Brown v. Memphis Hous. Auth., 2015 Tenn. App. Lexis 379 (Tenn. App. W.S. 5/27/2015), at pages 7-8]. 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. [Gonzalez v. Thaler, 565 U.S. 134, 141 (2012) and 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. [*See generally*, Turner v. Turner, 473 S.W.3d 257, 280 n.18 (Tenn. 2015)]. 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) and Hirt v. Metro Bd. of Zoning Appeals, 542 S.W.3d 524, 527-528 (Tenn. App. W.S. 2016)]. 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]. For an excellent primer on jurisdiction, *see* In Re: Ryat M., 2021 Tenn. App. Lexis 382 (Tenn. App. W.S. 9/27/2021), at pages 12-14].

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 pages 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, *supra*, 2011 Tenn. App. Lexis 512, at pages 13-14, citing Shaffer v. Heitner, 433 U.S. 186, 209 n.31 (1977)]. Both personal jurisdictions must meet Due Process mandates. [Crouch Ry. Consulting, LLC v. L.S. Energy Fabrication, LLC, 610 S.W.3d 460, 469-470 (Tenn. 2020)]. An example of actual *in rem* personal jurisdiction action in a city court 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 pages 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. This "property" led to a major class-action litigation which eventually forced a modification of how traffic fines and court costs are collected and enforced in Tennessee. [Robinson v. Long, 814 Fed. Appx. 991, 922-993 n.1 (6th Cir. 2020)].

Professor Frederic S. LeClercq, of the University of Tennessee College of Law, described the "standard" municipal court's[34] jurisdiction as "The jurisdiction of the [standard] city court 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…" [Fredric S. LeClercq, *The Law of the Land: Tennessee Constitutional Law*, 61 Tenn. L. Rev. 573, 605 (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 contemporary 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]. That does not mean that a $50.00 per day fine will not add up quickly. [City of Johnson City v. Paducah, 224 S.W.3d 686, 694-695 (Tenn. App. E.S. 2006)]. By way of example, look at two "real value" dollars calculators that will compare values of $50.00 in 2020 and 1796/1800. See the following:

[34] Municipal courts that do not have concurrent "cross-over" jurisdiction with General Sessions Courts are "standard municipal courts." Tenn. Code Ann. § 16-18-302(a)(2).

$50.00 in 1800 = $651.00 in 2011;
$50.00 in 2020 = $3.95 in 1796.

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

and

$50.00 in 1796 = $1084.89 in 2020;
$50.00 in 2020 = $2.55 in 1796.

[*www.measuringworth.com/uscompared/relativevalue.php* and *www.officialdata.org/us/inflation/2020?endYear=1796&amount=50*].

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 via legislative proposed and voter approved constitutional mandate. [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. OSHRC, 284 S.W.3d 784, 788 (Tenn. 2009)]. Although the Tennessee Supreme Court does not see the prospect of an increase in the constitutional fee cap 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.[35] [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

[35] 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). There are also some other unique aspects to municipal court jurisdiction, such as the municipal judge's ability to issue an administrative inspection warrant for real property. [Levitt v. City of Oak Ridge, 2018 Tenn. App. Lexis 410 (Tenn. App. E.S. 7/24/2018), at pages 13-32].

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)]. By way of example, Mt. Juliet City Code § 2-154(c) says, "Any defendant found guilty in the municipal court of the violation of any ordinance shall be required to pay the court costs associated with the cause, in additional to any other fine or remedial civil sanction." "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. [Brown, *supra*, at page 338]. 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) and Tenn. Atty. Gen. Op. 05-061, 2005 Tenn. AG Lexis 61 (4/27/2005)]. Municipal judges 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 that 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 n.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 pages 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)]. In "small cities," if only one lane of an interstate is within the city's jurisdiction, but the other lane is outside of the city, Tenn. Code Ann. § 55-10-308(f), declares that the interstate falls outside of the city court's jurisdiction. [Tenn. Atty. Gen. Op. 18-09, 2018 Tenn. A.G. Lexis 8 (3/9/2018)].

The Constitution and Legislature set subject matter jurisdiction for Tennessee courts. [Cox v. Lucas, 576 S.W.3d 356, 359 (Tenn. 2019) and 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*, In Re: D.Y.H., 226 S.W.3d 327, 330 (Tenn. 2007); 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 by said court would be void. [U.S. v. Cotton, 535 U.S. 625, 630 (2002); Hickman v. State, 153 S.W.3d 16, 24 (Tenn. 2004); and Capital v. TNG Contrs., LLC, 622 S.W.3d 227, 232 (Tenn. App. M.S. 2020)]. Likewise, a small town issuing a lot of tickets on the Interstate, as several towns tried around 2010; can cause extremely 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," which are often unpopular with citizens. [State v. Craighead, 2018 Tenn. Crim. App. (Tenn. Crim. App. 11/15/2018), at pages 32-33 and U.S. v. Bills, 93 F.Supp.3d 899, 902 (N.D. Ill. 2015)]. 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 pages 5-6]. Red Light Cameras have also been upheld as constitutional in federal courts in the Sixth Circuit. [Mendenhall v. City of Akron, 374 Fed. Appx. 598, 600 (6th Cir. 2010)]. Citations given solely based upon Red Light Cameras are a statutorily mandated non-moving traffic violation. [Tenn. Code Ann. § 55-8-198(a) and Am. Traffic Solutions, Inc. v. City of Knoxville, 2013 Tenn. App. Lexis 686 (Tenn. App. E.S. 10/18/2013), at page 3]. 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), at pages 4-5]. 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].[36]

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 pages 4-6 and Tenn. Op. Atty. Gen. 08-179, 2008 Tenn. AG Lexis 219 (11/26/2008)]. Legislative restrictions on Red Light Cameras are also popular legislation. [*See e.g.*, Tenn. Op. Atty. Gen. 16-28, 2016 Tenn. A.G. Lexis 28 (7/22/2016)]. 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.johnsoncity press.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)]. 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 would pull out of their contract

[36] In a note of irony, considering how unpopular Red Light Cameras are, the companies that own the Red Light Cameras appeared surprised at not being offered contractual mercy when their contracts became economically disadvantageous to the companies. [*See* Am. Traffic Solutions, Inc. v. City of Knoxville, 2013 Tenn. App. Lexis 686 (Tenn. App. E.S. 10/18/2013), at pages 23-24].

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)].[37] 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/#]. Media coverage of court proceedings requests from media outlets are exploding. [Mitchell T. Galloway, *The States Have Spoken: Allow Expanded Media Coverage of the Federal Courts*, 21 Vand. J. Ent. & Tech. L. 778, 806 (2019)].

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 of the intent to publicize a pending case. [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]. Scandal invites and promotes media circus situations, which victim advocates

[37] 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.

argue further "victimizes the victim." [*See e.g.*, State v. Vandenburg, 2019 Tenn. Crim. App. Lexis 468 (Tenn. Crim. App. 8/8/2019), at page 61]. 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:

> 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, clearly 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. § 8-21-101 and Tenn. Op. Atty. Gen. 84-286, 1984 Tenn. AG Lexis 57 (10/25/1984)]. For a basic overview on Tennessee wedding law, *see* Janet Leach Richards, 1 Richards on Tennessee Family Law § 3-1(a)(2) (Matthew-Bender & Co., Inc. 2021)]. It is important, in 21st century Tennessee, for the judge to be culturally and socially aware that gender norms have changed in

recent years. [*See e.g.*, Harrison v. Harrison, ___S.W.3d ___, 2021 Tenn. App. Lexis 417 (Tenn. App. M.S. 2021); Fulton v. City of Philadelphia, 141 S. Ct. 1868 (2021); and Potts v. Potts, 2021 Tenn. App. Lexis 222 (Tenn. App. M. S. 6/2/2021), at page 30 n.11]. Remember that Tenn. Code Ann. § 36-3-303 requires any marriage certificate be mailed back to the County Clerk's office within three (3) days of the marriage ceremony being performed ***by the judge performing the wedding***. The failure to return the certificate of marriage timely is a Class C misdemeanor ***for the judge***.

Final Thoughts on Jurisdictional Issues. "Municipal courts fill a vital role in city government. They are a necessity until and unless replaced by something better." [State v. Kappos, 189 N.W.2d 563, 566 (Iowa 1971), Becker, dissenting]. Likewise, "Part-time municipal courts serve a vital role in many communities, improving access to justice for residents." [Wash. Senate Bill 5353, 2007 Bill Text WA S.B. 5353 (2/27/2007), at § 8]. 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 usurp jurisdiction beyond that legislatively assigned to the court. Self-anointed jurisdictional expansions/promotions of authority by a single municipal judge hurts the reputation of all municipal courts in Tennessee. Stay within your jurisdictional limits. "A greedy man stirs up dissention." [Holy Bible, Prov. 28:25]. On appeal, the circuit court hearing a *de novo* trial from a municipal court, is not bound by the punishment given to a defendant by the municipal court and the circuit court can give a harsher punishment than the municipal court gave. [State v. Bishop, 2019 Tenn. Crim. App. Lexis 354 (Tenn. Crim. App. 6/17/2019), at pages 53-54].

CHAPTER VII – CLASS C MISDEMEANORS & MUNICIPAL ORDINANCES

Standard Tennessee 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). *See generally*, Vol. 6A Tenn. Juris. § 26, Independence of the Judiciary (Lexis 2022)]. 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), at page 2]. This text focuses on the traditional municipal judge who generally can fine up to $50.00 plus court costs. [*See*, City of Johnson City v. Paducah, 224 S.W.3d 686, 696 (Tenn. App. E.S. 2006) and 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*, Rex Barton & Melissa Ashburn, Municipal Courts Manuel (MTAS, 2007), at pages 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 municipal ordinances will be discussed. This chapter will discuss these statutes in the following order: **A)** Criminal Code Class C Misdemeanors; **B)** Traffic Code Class 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. [*See generally*, Metro Govt. of Nashville v. Dreher, 2021 Tenn. App. Lexis 97 (Tenn. App. W.S. 3/12/2021), at pages 11-13]. Municipal judges have contempt powers to fine up to $50.00. [Tenn. Code Ann. § 16-18-306 and Tenn. Op. Atty. Gen. 11-17, 2011 Tenn. AG Lexis 19 (2/15/2011), at page 2].

A) CRIMINAL CODE C MISDEMEANORS

8-18-102: Acceptance of Public Office by Ineligible Person. It is a Class C misdemeanor for any person to take office if disqualified as described in the statute. [$50.00 fine, 30 days in jail. *See also*, Tenn. Op. Atty. Gen. 15-72, 2015 Tenn. AG Lexis 73 (11/3/2015), at page 12].

Elements:

A) A person takes on any office by election or appointment; and

B) Is under any of the disqualifications that are listed in Tenn. Code Ann § 8-18-101(2)–(5), specifically:

1) Has an unpaid judgment for money received in official capacity that is due to the U.S., the state, or any county in this state; or

2) Is in default to the treasury at the time of election; or

3) Is a soldier, sailor, marine, or airman in the regular army or navy or air force of the U.S.; or

4) Is a member of Congress or holds any office of profit or trust under any foreign power, other state of the union, or the United States.

8-10-104: Constable In-Service Education Violation. It is unlawful for a constable to exercise law enforcement powers if the constable has failed to complete the required in-service education requirements. [$50.00 fine, no jail].

Elements: A) A constable is exercising law enforcement powers conferred on the constable by statute; and

B) The constable has failed to complete 40 hours of in-service course time as outlined by Tenn. Code Ann. § 8-10-202.

Not applicable to constables with 20 years of cumulative service as a constable before May 3, 2018.

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. [38]

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[38] **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 certificate form back to the county clerk's office within three (3) days of performing the marriage. [$50.00 fine, 30 days in jail]. This is a Class C misdemeanor. [Ochalek v. Richmond, 2008 Tenn. App. Lexis 398 (Tenn. App. M.S. 1/30/2008), at page 9].

Elements: A) Defendant is an official allowed to perform marriage ceremonies 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.

Governor Hooper's grandson, Ben W. Hooper, II, presided as the 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.

38-3-106: Failure to Obey Command to Aid Police. It is a Class C misdemeanor to refuse to aid a police 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) and Tenn. Op. Atty. Gen. 09-113, 2009 Tenn. AG Lexis 149 (6/10/2009), at page 5.

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]. This statute was in common use during the COVID-19 pandemic by requiring the wearing of germ-catching or surgical masks for all persons coming into courtrooms.

Elements:

A) A proclaimed civil emergency exists; and

B) The mayor puts out an ordinance or emergency proclamation 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 or proclamation.

39-13-306(a)(5): Interfering with Non-Custodial Parent's Visitation. It is unlawful for a custodial parent or another family member to withhold a child from the non-custodial parent during a set visitation. [$50.00 fine, 30 days in jail]. For a discussion on this statue, *see* Odom v. Claiborne Cty., 498 S.W.3d 882, 884 (Tenn. App. E.S. 2016)].

Elements: A) Non-custodial parent's visitation time; and

B) Custodial parent or their proxy interferes with the visit.

39-13-903(a)(1-5): Improper Use of a Drone or Drone Photos. It is unlawful to use a drone to capture images or fireworks events, or drop items, without a person's consent. It is also unlawful to fly a drone near a prison. [$50.00 fine, 30 days in jail]. For a discussion on drones, *see*, James L. Cresswell, Jr., *Who Controls the Airspace? Issues Increase as Unmanned Aerial Systems – Drones – Fill Tennessee's Skies*, 56 Tenn. B. J. 12 (Feb. 2020).

Elements: A) Flying a drone or other unmanned aircraft; and

B) Taking unauthorized photos or flying near a prison; or

C) Dropping any item or substance into. an open-air event, where more than 100 persons are gathered, without the venue owner or operator's consent.

39-13-904(a)(2)(A): Intentional Possession or Distribution of Unauthorized Drone Photography Images. It is unlawful to possess unauthorized drone images. [$50.00 fine, 30 days in jail].

Elements: A) Possession of drone photography; and

B) Photo was unauthorized by person in image.

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.[39] 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

[39] 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(b): 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 to 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 Class 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(a): 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]. For a discussion of the differences between burglary, aggravated criminal trespass, and criminal trespass, *see* Moore v. State, 485 S.W.3d 411, 425 n.14 (Tenn. 2016).

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. [State v. Christensen, 517 S.W.3d 60, 82-83 (Tenn. 2017), Lee, dissenting].*

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**]. For a discussion on the different grades of Criminal Littering, *see*, McCullough v. State, 2020 Tenn. Crim. App. Lexis 210 (Tenn. Crim. App. 3/31/2020), at pages 39-40.

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 sells 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 Class 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 Class 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 Class C misdemeanor to knowingly possess or sell a radar jamming device or operate a motor vehicle with a radar jamming device in the motor vehicle. [$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/Possess):

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

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

*** Use of a radar jamming device to interefere with law enforcement is a class B misdemeanor.***

39-17-101: Snake Handling.[40] It is a Class 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.

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

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

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 Class 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 Class 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(a)(2): Obstructing Highway or Street or Other Passageway. It is a Class C misdemeanor to disobey a reasonable request or order to move issued by a person known to be a law enforcement officer, a firefighter, or a person with authority to control the use of the premises. [$50.00 fine, 30 days in jail].

Elements: A) The order to move is intended to prevent obstruction of a highway or passageway; or

B) To maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot or other hazard.

39-17-310: Public Intoxication. It is a Class 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.

39-17-313: Aggressive Panhandling. It is a Class C misdemeanor for a person to panhandle in a public place by touching, following or blocking a path where 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 panhandling; and

B) The Defendant 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]. For a discussion on the "*Whizzinator*" and other synthetic urine methods, *see* State v. Alexander, 2021 Tenn. Crim. App. Lexis 371 (Tenn. Crim. App. 8/6/2021), at page 11.

Elements: A) Defendant is selling synthetic urine, and

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

Note: Intentionally using synthetic urine (or any substance or device) to falsify drug test results is a class A misdemeanor.

39-17-502: Gambling. It is illegal to gamble. [$50.00 fine, 30 days in jail]. *See generally*, Capital v. TNG Contrs, LLC, 622 S.W.3d 227, 234 (Tenn. App. M.S. 2020).

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 Class 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 will be sold to minors.

39-17-651: Selling Annual Charity Raffle Tickets Beyond 28 Days Prior to Event. It is a Class 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 Class 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. [Maximum fine is the lesser of $5,000 or the gross proceeds derived from the annual event].

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 sells or rents pornographic material, (*e.g.*, magazines or videos); 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 Class 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. [*See*, Capital News Co. v. Metro Gov't of Nashville & Davidson County, 562 S.W.2d 430, 431-432 (Tenn. 1978)].

39-17-1101: 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 the first offense) for a person to carry a gun or club 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 or club with the intent to be armed with a weapon.

The statute includes exceptions for possession of firearm in a vehicle or boat, as well as for open or concealed carry so long as the person satisfies the requirements outlined in Tenn. Code Ann. § 39-17-1307(g).

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.

39-17-1504: Sale of Tobacco or Vape Items to a Minor. It is a Civil violation to sell tobacco or vape products to a minor [1st offense = Warning. Further violations = fine through

Commissioner's office (not court). *See* Tenn. Code Ann. § 39-17-1509(b). *This does not bar a city ordinance which tracks the intent of the statute*].

Elements: A) Defendant is merchant; and

B) The Defendant sells or distributes tobacco or vape products to a minor.

39-17-1505: Possession of Tobacco or Vape Products by a Minor. It is a Class C misdemeanor (civil violation only) for a person under age 21 to be in possession of tobacco or vape products. The statute specifies this statute applies to General Sessions Courts or Juvenile Courts. Municipal courts are not specifically included, but some municipal courts have some juvenile court jurisdiction. [$10.00 to $50.00 fine, no jail. Civil penalty only.].

Elements: A) Defendant is under age 21; and

B) The Defendant possesses tobacco or vape products.

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(f)(2): 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 a valid dealer's license from the Tennessee Department of Agriculture to sell/transport dogs and/or cats to research facilities.

49-6-3009: Educational Neglect. It is unlawful for a parent, guardian, or other person to violate the provisions of a progressive truancy plan. [$50.00 fine, 30 days in jail].

Elements:

A) A local education agency has implemented a progressive truancy plan which has been applied to the truant student; and

B) The progressive truancy plan and interventions under the plan have failed to address the student's poor school attendance; and

C) The parent, guardian, or other person has control of the truant child; and

D) The school can document the parent's or guardian's unwillingness to cooperate with the truancy intervention requirements (including failure to attend truancy meetings and/or refusing sign the truancy intervention contract).

The statute outlines a number of events that may serve as evidence of a parent's or guardian's unwillingness to cooperate with the truancy intervention requirements.

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.

57-3-1003: Advertising or Selling Liquor Below Cost. It is a Class C misdemeanor for any retailer to advertise, offer to sell, or sell at retail, intoxicating liquor at less than cost to the retailer. [$50.00 fine, 30 days in jail].

The advertising, sale, or offer to sell of intoxicating liquor by any retailer at less than cost to the retailer shall be prima facie evidence of both a violation of this part, and of intent to injure competitors, or destroy or lessen competition.

Any individual who, as a director, officer, partner, member, or agent of any person violating this part, assists or aids, directly or indirectly, in such violation also commits a Class C misdemeanor (see Tenn. Code Ann. § 57-3-1004).

58-8-104: Failure to Evacuate When Ordered Under a Declared State of Emergency. When a municipal or county mayor or executive declares a local state of emergency, it is unlawful to refuse to evacuate when ordered to do so. [$50.00 fine, 30 days in jail].

Elements: A) A local state of emergency is declared by a municipal mayor or executive, or county mayor or executive; and

B) In the interest of public health, safety, and welfare, that mayor or executive also issues orders to direct and compel the evacuation of part or all of the unincorporated area of the

county, or the incorporated area of the municipality, as the case may be; and

C) A person willfully violates the evacuation order issued under this statute.

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.

69-9-218: Jet Boats for Hire. This statute sets forth a number of parameters under which jet boats that carry passengers for hire must operate. [$50.00 fine for each offense, 30 days in jail].

Elements: A) Operates a jet boat for hire; and

B) Violates the hours of operation provisions, speed limits, noise restrictions, or performs a "donut" within 100' of shore; or

C) Locates their business within 5,000 feet of another outfitter or other business that carries passengers for hire on jet boats.

This statute only applies to a county having more than 5% of its territory within the boundaries of a national park established pursuant to 16 U.S.C. § 203 (i.e., a "tourist resort county") (see Tenn. Code Ann. § 42-1-301).

69-9-225: Life Jackets for Children. It is a Class C misdemeanor to have a child age 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 age 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.

69-9-228: Failure to Yield to an Emergency Vessel. It is a Class C misdemeanor to fail to yield the right-of-way to an emergency vessel making use of flashing lights. [$50.00 fine, 30 days in jail].

Elements:

A) Defendant is operating a vessel that is approached by an authorized emergency vessel making use of flashing lights; and

B) Defendant fails to move over at least 100 feet to a position of safety from the emergency vessel until the emergency vessel has passed; or

C) Defendant is operating a vessel that is approaching a stationary authorized emergency vessel utilizing flashing lights; and

D) Defendant fails to yield the right-of-way by slowing to a no wake speed, or moving over at least 100' to a position of safety from the emergency vessel.

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 homeowner'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.

(1) This statute does not apply to people confined to motorized wheelchairs. (2) If one is hunting from a motor vehicle on a public road or right-of-way, it is a Class A misdemeanor (see Tenn. Code Ann. § 70-4-108(d)).

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, and a court may order restitution for the animal to the agency in an amount that varies depending on the animal involved (*see* Tenn. Code Ann. § 70-4-116(f))].

Elements:) 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.[41] 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.

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

Persons with a wildlife rehabilitation permit may receive skunks from the wild for the purpose of rehabilitation and release.

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]. For a discussion on this statute, *see* Tenn. Op. Atty. Gen. 00-27, 2000 Tenn. AG Lexis 31 (2/18/2000), at pages 13-14.

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].

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[42]

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 tollbooth is a Class C misdemeanor. [$50.00 fine, no jail]. This statute is odd because, according to TollGuru.com and TripAdvisor.com, Tennessee does not have tollbooths.[43]

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.

[42] MTAS has a single page "pdf" of the list of Tennessee's "Rules of the Road" one can download at www.mtas,tennessee.edu/courts.

[43] *See* https://www.tollguru.com/toll-wiki/Tennessee-toll-roads# and https://www.tripadviosr.com/ShowTopic-g28963-i149-k9389662. *But see*, potential toll booth at 4 Little Lane, Bristol, TN 37620 (google.com/maps/place/Booth/@36.575768.-82.2369067.152/data).

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.

Applies to passenger cars manufactured after January 1, 1969 (see Tenn. Code Ann. § 55-5- 110).

55-5-115: Incorrect Registration or Plates. It is a Class 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 Class C misdemeanor to knowingly attach a stolen vehicle license plate 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" Class C misdemeanors for differing technical violations on commercial vehicle sizes and weights. *Caveat: 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. For a detailed discussion of this statute, and how it is applied, *see* State v. Smith, 484 S.W.3d 393, 403-412 (Tenn. 2016).

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 invested by law with authority to direct, control or regulate traffic is directing traffic; and

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

A violation of this statue can be probable cause for a stop and search* [*See*, State v. Anglin, 2009 Tenn. Crim. App. Lexis 597 (Tenn. Crim. App. 7/29/2009), at pages 12-13].

55-8-109: Failure to Obey Traffic Control Device. It is a Class 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 is present giving traffic instruction; and

B) Defendant disregards the traffic control devise; and

Exception: When directed to disregard the traffic control device by a traffic or police officer.

55-8-113: Displaying Bogus Traffic Control Device. 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 device on a Tennessee highway without authorization by a state, city or county government to place said traffic control devise on a highway. [*See*, Howell v. Nelson Gray Enters., 2019 Tenn. App. Lexis 429 (Tenn. App. E.S. 8/30/2019), at page 10].

55-8-114: Interference with Official Traffic Control Device. 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 device; and

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

55-8-118: Passing on Right-Hand Shoulder of the Road. It is unlawful to pass on the right-hand shoulder absent unique circumstances. [$50.00 fine, 30 days in jail].

Elements: A) Traffic stalls; and

B) Vehicle passes on the shoulder of the road.

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 an unsafe manner by failing to maintain a safe lookout, failing to devote the driver's full time and attention to vehicle operation, *etc.*.

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: Limitations on Standing Along Roadway. It is a Class C misdemeanor to stand next to a road soliciting a ride or employment from passing motorists. It is also a Class C misdemeanor to loiter or conduct any commercial activity in,

or in proximity to, the median of a state highway. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was hitchhiking or soliciting employment while standing in a roadway; or.

B) Defendant was standing on a street or highway to solicit, watching, or guarding of a vehicle about to be parked; or

C) Defendant was loitering or conducting commercial activity in or in proximity to the median (loitering/commercial activity requires written warning for first offense).

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]. ***The proverbial "rolling stop" is not a stop.***

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.

Does not apply to farm tractors or implements of husbandry.

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.. Also, clerks should note the cost division included in subsection (e) of this statute

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 hills. [$50.00 fine, 30 days in jail].

Elements: A) Defendant was coasting with the vehicle in neutral upon a down grade.

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 on any street, private driveway, or streetcar track, to be used at any 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; or

C) Any person who removed a wrecked or damaged vehicle from a highway and failed to remove any glass or other injurious substance dropped on the highway from the vehicle.

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 and includes electric bicycles..***

55-8-172: The Rules of the Road Apply to Bicyclists. It is a Class C misdemeanor for a bicyclist (includes electric bikes) 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, which has grown almost every year since 2015, 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). See also, Tenn. Op. Atty. Gen. 14-97, 2014 Tenn. A.G. Lexis 100 (10/30/2014)].

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 is 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.

55-8-193: 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)(6) and (m)]. [$50.00 fine, no jail, non-moving violation].

These cameras are extremely unpopular and cause major proof problems if challenged in court. There are approximately a dozen Attorney General Opinions addressing Red Light Cameras.

55-8-199: Utilizing Wireless Telecommunication Devices While Driving. It is a Class C misdemeanor to text while driving, or to read a received text while driving, and to otherwise hold or support a phone or other stand-alone electronic device (*see* definition in statute) while driving. [$50.00 fine, no jail. Court costs limited to $10.00]. However, a third and subsequent offense is $100 fine and, if a violation occurs in a work zone or school zone, $200 fine. [Court costs limited to $10.00].

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

B) Physically holding or supporting a wireless telecommunications device or stand-alone electronic device..

The statute lists a number of exceptions such as using an earpiece or headphone device, using only one button to initiate or terminate a voice communication, and using the phone for navigation. 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)}. A citation based solely upon violation of this section is a moving violation. {Tenn. Code Ann. § 55-8-199(e)}.

55-8-204: Slow Poke Law. It is unlawful to drive on a divided highway or interstate in the passing lane at a slow pace that restricts the natural flow of traffic. [$50.00 fine only].

Elements:
A) Driving in highway passing lane at slow pace; and
B) Driver is clogging the traffic flow.

55-8-205: Driving a Vehicle in Bike Lane. It is unlawful to drive a car or truck in the designated bike lane. [Fines only, amount increases with number of violations starting with $20 on second offense].

Elements:
A) Knowingly driving a vehicle; and
B) In a designated bike lane.

55-8-304: Unlawful Modification of Electric Bicycle. It is a Class C misdemeanor to modify an electric bicycle to change the speed capability and not replace the classification label. [$50 fine, 30 days in jail].

Elements: A) Knowingly modify the speed capability of an electric bicycle; and

B) Failed to replace, or cause to be replaced, the label indicating the classification as specified in Tenn. Code Ann § 55-8-303.

55-8-305: Electric Bicycle Equipment Requirements. Sets forth equipment requirements for electric bicycles. [$50.00 fine, 30 days in jail].

Elements: A) Operating an electric bicycle on the street or highway; and

B) The bicycle not properly equipped pursuant to the statute with a motor disengagement device and speedometer.

55-8-306: Operation of Electric Bike on a Path, Trail, or Sidewalk. It is unlawful to ride an electric bicycle on a path or trail intended for bicycles, or on a sidewalk. [$50.00 fine, 30 days in jail].

Elements: A) Riding a class 3 electric bike on a path or trail where bicycles are authorized to travel unless electric bikes are specifically authorized by resolution or ordinance; or

B) Riding any electric bike on the sidewalk unless bicycles are specifically authorized on sidewalk by resolution or ordinance.

55-8-307: Operation of Class 3 Electric Bicycle Without a Helmet. The operator and all passengers of a class 3 electric bicycle shall wear a helmet. [$50.00 fine, 30 days in jail].

Elements: A) Riding a class 3 electric bike as an operator or passenger; and

B) Failing to wear a properly fitted and fastened bicycle helmet meeting federal standards according to the label which must be affixed on the helmet.

Note: Although they may legally be a passenger, Part (a) of this statute makes it a juvenile offense for any person under age 14 to operate a class 3 electric bicycle on any street or highway [$50 fine, no jail].

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. See, State v. McNair, 2015 Tenn. Crim. App. Lexis 151 (Tenn. Crim. App. 2/25/2015), at pages 24-25 for a discussion on window tinting mandates.

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.

55-9-202: 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]. This statute has withstood a Sovereign Citizen's "constitutionality" attack. [*See*, State v. Fields, 1991 Tenn. Crim. App. 621 (Tenn. Crim. App. 8/7/1991), at pages 1-2].

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.

The driver and the owner of the truck both commit a Class C misdemeanor for

*violation.***

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.

55-9-305: Motorcycle Equipment Violations. This statute lists required items for riding motorcycles on public roads, (*e.g.*, review mirrors, foot pegs, *etc*.). [$50.00 fine, 30 days in jail]. Motorcycle equipment violations are not "moving violations." [Tenn. Op. Atty. Gen. 80-474, 1980 Tenn. AG Lexis 125 (9/30/1980)].[44]

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. §§ 55-9-302 to 55-9-305; and

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

[44] Also listed as "10 Tenn. Op. Att'y Gen. 258."

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 is 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 Class 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.

55-10-110: 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: 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 for a judge or other public official 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.* [*See also*, Williams v. City of Burns, 465 S.W.3d 96, 106 (Tenn. 2015)].

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.* [*See generally*, State v. Kelly, 2021 Tenn. Crim. App. Lexis 330 (Tenn. Crim. App. 7/20/2021), at pages 14-15].

55-14-101 & 55-14-103: Secondhand 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 Class 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.

55-17-403: Manufacture or Sale of Recreational Vehicle Without a License. It is a Class C misdemeanor to engage in the business of manufacturing or selling RV's without first obtaining a license. [$50.00 fine, 30 days in jail].

Elements: A) Engaging in business to manufacture, sell, or distribute recreational vehicles; and

B) Not first qualifying for and obtaining a license to do so.

In addition to the company, salespersons are also required to be licensed.

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); Robinson v. Purkey, 326 F.R.D. 105, 116 (M.D. Tenn. 2018); 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." This often applies to homeless persons. [These types of ordinances are unpopular with appellate courts due to the vagueness of drafted vagrancy ordinances offering unfettered discretion to police. [Schall v. Martin, 467

U.S. 253, 307 (1984), Marshall, dissenting and citing Papahristou v. City of Jacksonville, 405 U.S. 156, 168 (1972)].

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 and again on January 21, 2022. Each of these ordinances are still "on the books."

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…or how the evidence is secured before evaporation and dissipation of evidence occurs.

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. In fairness to the City of Clarksville, an unpublished 1993 appellate decision cross-references the repealed statute to the new statute, (Tenn. Code Ann. § 39-17-310), but few city court defendants have access to Westlaw or Lexis. [Etowah v. Carruth, 1993 Tenn. App. Lexis 255 (Tenn. App. E.S. 3/31/1993), at page 1]. 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. Those elements, statutes or ordinances can change whenever a Legislature, city council, or court goes into session. [*See e.g.*, N.Y. State Rifle & Pistol Ass'n v. City of New York, 140 S. Ct. 1525, 1527-1528 (2020), Alito, dissenting and U.S. v. Cooney, 875 F.3d 414, 416 (8th Cir. 2017)].

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*, Richard H. Underwood, *What Gets Judges In Trouble*, 23 J. NAALJ 101, 103 (2003). *See also*, *Ex Parte* Owens, 258 P. 758, 807 (Okla. Crim. App. 1927) discussing a demigod Justice of the Oklahoma Territorial Supreme Court]. In this column, National Law Journal writers 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 and State v. Watson, 507 S.W.3d 191, 195 (Tenn. Crim. App. 2016)]. This code applies to both full-time and part-time municipal court judges, but some aspects of the Code of Judicial Conduct may not apply to part-time judges, such as the mandate that a full-time 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." [Fredric S. LeClercq, *The Law*

of the Land: Tennessee Constitutional Law, 61 Tenn. L. Rev. 573, 606 (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.

[Fredric S. LeClercq, *The Law of the Land: Tennessee Constitutional Law*, at page 606]. Municipal judges have been accused, by the popular and proverbial "unnamed source," incorrectly 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/tn courts.htm]. From this author's experience as a member of the Tennessee Court of the Judiciary from 2005-2009,[45] 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 Britain's Lord Acton said, "Power tends to corrupt and absolute power corrupts absolutely." [In Re: Goulding, 79 B.R. 874, 875 (Bky. W.D. Mo.

[45] *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." [Lawrence A. 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].

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 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)[46] 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 on 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 for the judiciary is not questionable. [*See e.g.*, In Re: Gillard, 271 N.W.2d 785, 809 n.7 (Minn. 1978)]. This section of this chapter will break down aspects of the CJC which apply to municipal judges.

[46] *See*, Fredric S. LeClercq, *The Constitutional Policy That Judges Should Be Learned In the Law*, 47 Tenn. L. Rev. 689, 725-727, and 740 (1980) and Fredric S. LeClercq, *The Law of the Land: Tennessee Constitutional Law*, 61 Tenn. L. Rev. 573, 606 n.153 (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/]. On the other hand, Judge Connie Kittrell was the TMJC Judge of the Year for 2018. She does not have a law degree.

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 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*, Bellamy v. Cracker Barrel Old Country Store, 302 S.W.3d 278, 281 (Tenn. 2009) and State v. Carriger, 2000 Tenn. Crim. App. Lexis 966 (Tenn. Crim. App. 12/20/2000), at page 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 relative 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***), [Ryan v. Soucie, 2019 Tenn. App. Lexis 354 (Tenn. App. E.S. 7/18/2019), at pages 30-31 and In Re: Hughes, 947 N.E.2d 418, 419 (Ind. 2011)].

Rule 1.2 – Promote Confidence in Judiciary (***shall***), [In Re: Bell, 344 S.W.3d 304, 319-320 (Tenn. 2011) and In Re: Hughes, 947 N.E.2d 418, 419 (Ind. 2011)]. Judges must appear fair to all litigants, with no

partisanship, but judges may have political affiliations and opinions – so long as those connections do not prejudge decisions or ignore conflicts of interest. [Groves v. Ernst-Western Corp., 2016 Tenn. App. Lexis 679 (Tenn. App. E.S. 9/16/20165), at page 22].

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 – Judges shall follow law and act fairly/impartially (***shall***), [Hobbs Purnell Oil Co. v. Butler, 2017 Tenn. App. Lexis 19 (Tenn. App. W.S. 1/12/2017), at page 11 and In Re: Aziza S.B., 53 A.3d 1001, 1009 (Conn. App. 2012)]. "Courts frown upon the manipulation of the impartiality issue to gain procedural advantage." [Cain-Swope v. Swope, 523 S.W.3d 79, 87 (Tenn. App. M.S. 2016)].

Rule 2.3 – No bias/prejudice/harassment by the judge (***shall***), [State v. Dotson, 450 S.W.3d 1, 90 (Tenn. 2014) and 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)]. This rule does not mean that a judge must isolate herself from the bar association or the community. [Boren v. PC Hill Boren, 557 S.W.3d 542, 547 (Tenn. App. W.S. 2017)].

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 pages 7-10. *Accord,* T. Brad 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 – Judges have a responsibility to decide cases assigned to the court unless the judge is disqualified from a case (***shall***), [Shelby County Gov't v. City of Memphis, 2015 Tenn. App. Lexis 10 (Tenn. App. W.S. 1/8/2015), at pages 13-14 and State v. Desmond, 2011 Del. Super. Lexis 6 (Del. Super. 1/6/2011), at pages 40-41].

Rule 2.8 – Judges must ***graciously*** control their courtroom (***shall***), [State v. Halliburton, 2015 Tenn. Crim. App. Lexis 1078 (Tenn. Crim. App. 9/22/2015), at pages 14-16, Glenn concurring and 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***), [Malmquist v. Malmquist, 415 S.W.3d 826, 836-837 (Tenn. App. W.S. 2011); In Re: Estate of Ellis, 2019 Tenn. App. Lexis 460 (Tenn. App. W.S. 9/20/2019), at page 22; and 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***), [In Re: Russell, 392 B.R. 315, 356 (Bky. E.D. Tenn. 2008); Depew v. Anderson, 311 F.3d 742, 752 (6th Cir. 2002); and Steve D. Berlin, *Clearing the High Hurdle of Judicial Recusal*, 204 Mil. L. Rev. 223, 246 (2010)].

Rule 2.11 – Judge shall disqualify himself if the judge's impartiality can be reasonably questioned (***shall***), [State v. Griffin, 610 S.W.3d 752, 758 (Tenn. 2020) and Wersal v. Sexton, 674 F.3d 1010, 1045 & 1051 (8th Cir. 2012)].

Rule 2.12 – Judges shall properly supervise staff and the court (***shall***), [Willis v. Johnson, 2018 Tenn. App. Lexis 563 (Tenn. App. W.S. 9/27/2018), at page 11 and Majors v. State, 252 P.3d 435, 439 (Wyo. 2011)]. This means a judge is under an obligation to ensure that staff act professionally and in a manner consistently with the judge's duty to promote access to justice. [Moore-Pennoyer v. State, 515 S.W.3d 271, 280 (Tenn. 2017)].

Rule 2.13 – Judge shall handle administrative responsibilities without showing favoritism and impartiality (***shall***), [Stark v. Stark, 2019 Tenn. App. Lexis 302 (Tenn. App. W.S. 7/18/2019), at pages 21-22 and 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 Author F. Greenbaum, *Judicial Reporting of Lawyer Misconduct*, 77 UMKC L. Rev. 537, 568 (2009)].

Rule 2.15 – Report lawyers/judges that legitimately appear to be in violation of the CJC or the Rules of Professional Conduct (***shall***), [State v. Murphy, 2019 Tenn. Crim. App. Lexis 679 (Tenn. Crim. App. 10/23/2019), at pages 10-11 and Miller v. U.S., 14 A.3d 1094, 1134 (D.C. App. 2011)]. For a discussion on the internal conflict this rule creates, *see* Lindsey D. Blanchard, *Rule 37(a)'s Loser-Pays "Mandate": More Bark Than Bite*, 42 U. Mem. L. Rev. 109, 143 n.131 (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***), [In Re: Williams, 987 S.W.2d 837, 840 (Tenn. 1998) and 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 a subpoena. {***Does not apply to part-time judge acting as lawyer***} (***shall***), [*See generally*, In Re: Gridley, 417 So.2d 950 (Fla. 1982) and Barbara 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 a subpoena (***shall***), [People v. Casias, 279 P.3d 667, 678 n.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***), [*See generally*, Ortiz v. U.S., 138 S. Ct. 2165 (2018) and Lisa T. McElroy & Michael C. Dorf, *Coming Off the Bench*, 61 Duke L.J. 81, 114-117 (2011)].

Rule 3.5 – No discussing pending or appealed litigation; Non-disclosure of non-public information. [Hancock v. Bd. of Prof. Resp., 447 S.W.3d 844, 851 (Tenn. 2014)]. {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***), [Samuel Vincent Jones, *Judges, Friends and Facebook*, 24 Geo. J. Legal Ethics 281, 299 (2011)].

Rule 3.6 – A judge shall have no affiliation with discriminatory organizations. This does not apply to a judge's personal religious views. [*See* Tenn. Op. Atty. Gen. 18-147, 2018 Tenn. A.G. Lexis 16 (4/3/2018), at pages 8-9]. {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*, Duwe v. Alexander, 490 F.Supp.2d 968, 974 (W.D. Wis. 2007) and Sean V. 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 fundraise for 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}. For a discussion on this point, *see* JEO 21-01 (5/10/2021).

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)***}.

ule 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 § 14(i)***}.

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)***; Conley v. Conley, 181 S.W.3d 692, 699 (Tenn. App. E.S. 2005); and Wilson v. Johnson County, 879 S.W.2d 807, 811 (Tenn. 1994)}.

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***), [Gerald J. Clark, *Caperton's New Right to Independence in Judges*, 58 Drake L. Rev. 661, 691-692 (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*, Judicial Discipline & Disability Comm'n. v. Thompson, 16 S.W.3d 212, 219 (Ark. 2000) and Ross S. Davies, *From the Bag: The Judiciary Fund*, 11 Green Bag 2d 357, 369-372 (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***), [In Re: Howes, 880 N.W.2d 184, 204-205 (Iowa 2016) and Elizabeth G. 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.** Violating this rule can get you a visit from the FBI. [*See* Commonwealth v. D.P., 221 A.3d 201, 211-212 (Pa. Super. 2019)].

Rule 3.14 – A judge can seek reimbursement of expenses/waiver of fees for judicial activities. [*See e.g.*, Adm'rs of Tulane Educ. Fund v. Biomeasure, Inc., 2009 U.S. Dist. Lexis 138848 (E.D. La. 2/2/2009), at pages 1-2]. {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***), [Dana Ann Remus, *Just Conduct: Regulating Bench-Bar Relationships*, 30 Yale L. & Pol'y Rev. 123, 141-142 (2011)]. The bigger the waiver, the less likely it is acceptable. (*e.g.*, fully paid CLE in Hawaii for non-speaking/presenting judge).

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); JEO 21-3; JEO 21-2 and JEO 18-01].

Rule 4.2 – Activity of judge or judicial candidate in contested political elections. {The window of campaigning is 365 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)]. For a discussion on the interplay of this rule and Rule 4.1, *see* JEO 21-02 (9/7/2021).

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,* Alan B. 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 365 days before election and for 90 days after an election (***may***), [Richard Gillispie, *Buying a Judicial Seat for Appeal*, 30 J. Nat. Ass'n Admin. L. Jud. 309, 320-321 (2010). *See also,* JEO 13-01 (8/15/20132)].

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,* State v. Owens, 1990 Tenn. Crim. App. Lexis 119 (Tenn. Crim. App. 1/25/1990), at page 4; Duant v. Benson, 999 F.3d 299, 318 (6th Cir. 2021); and William G. 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). "Part-time judge" basically includes any part-time judicial officer – such as a deputy child support referee. [JEO 16-01]. 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 (Social Media) Activities. Social media issues should be conditionally avoided or carefully handled by all judges. [JEO 12-1]. For discussions on this ever-expanding ethical problem, *see*, Beaman v. Beaman, 2018 Tenn. App. Lexis 609 (Tenn. App. M.S. 10/19/2018), at pages 27-28 n.6; Frazier v. Frazier, 2016 Tenn. App. Lexis 629 (Tenn. App. E.S. 8/26/2016), at pages 17-18; and State v. Madden, 2014 Tenn. Crim. App. 208 (Tenn. Crim. App. 3/11/2014), at pages 21-22]. As a cautionary tale, *see* Livingston v. Livingston, 2020 Tenn. App. Lexis 505 (Tenn. App. W.S. 11/12/2020), at pages 2-3].

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 judicial notice 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 and JEO 18-01]. A municipal judge can endorse another ***judicial*** candidate (but not non-judicial candidates). [JEO 21-03]. A judge can contribute money to another judge's election campaign. [JEO 21-02].

Campaign Activity Generally. A judicial candidate cannot solicit funds or publish their candidacy outside of 365 days before an election ***via outside help***. [Tenn. R. Sup. Ct. 10, Canon 4, Rule. 4.2(B)]. The candidate ***can*** self-fund and self-promote their campaign. [JEO 13-01]. A candidate or judge can contribute to the general fund of a political party, but not pay "assessments." [JEO 21-02]. A judge can contribute to a candidate's fundraising. [JEO 21-02]. A judge cannot be listed as a member of another candidate's fundraising "host committee." [JEO 21-03]. Likewise, a judge cannot actively solicit funds for another candidate. [JEO 18-01].

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].

Fundraising or Helping "For Profit" Organizations. DON'T DO IT! [JEO 21-01]. This rule applies to direct or indirect solicitations – even if the funds raised will eventually be given to a non-profit. [JEO 21-01]. Active help of a non-profit is possible, if done by the judge ***directly*** to/for the non-profit organization. [JEO 21-01].

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 J. Ross Dyer, Chair
Tennessee Court of Criminal Appeals
5050 Poplar Avenue, Suite 1414
Memphis, TN 38157-1414
Ph. (901) 537-2980
Fax (901) 537-2909
Email: judge.ross.dyer@tncourts.gov[47]

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].

[47] The current municipal judge on the JEC is the Honorable Deana C. Hood, Ph. (615) 595-2991.

The JEOs can be found at the AOC website,[48] 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]. 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. [State v. Griffin, 610 S.W.3d 752, 762 (Tenn. 2020) and Davis v. Liberty Mut. Ins. Co., 38 S.W.3d 560, 565 (Tenn. 2001)]. This is an objective standard. [Holsclaw v. Ivy Hall Nursing Home, Inc., 530 S.W.3d 65, 69 (Tenn. 2007); Hooker v. Haslam, 2012 Tenn. Lexis 719 (Tenn. 7/29/2012), at 39-40 and State v. Cannon, 254 S.W.3d

[48] www.tncourts.gov/administration/judicial-resources/ethics-opinions.

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 n.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 into 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 n.1 and 667 n.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 n.17 (Tenn. 2011). *See also*, Eisenstein v. WTVF-TV, News Channel 5 Network, LLC, 389 S.W.3d 313, 316 n.1 (Tenn. App. M.S. 2012)]. 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. § 17-5-309, sets out a fourteen (14) day 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,[49] 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

[49] Tenn. Code Ann. § 17-5-201. The BJC consists of sixteen (16) members. [Tenn. Code Ann. § 17-5-201(a)]. The municipal judge currently on the BJC is Judge H. Allen Bray [Ph. (865) 983-8383].

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) and Armstrong v. State, 2017 Tenn. App. Lexis 871 (Tenn. Crim. App. 9/27/2017), at pages 4-5]. 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. § 17-5-310]. 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 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 n.12 (CMA 1978). *Cf.*, Reliant Bank v. Bush, 631 S.W.3d 1, 13-14 (Tenn. App. W.S. 2021)]. 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 n.1 and 667 n.17 (Tenn. 2003), Tenn. R. Sup. Ct. 10 Application (V), and Tenn. R. Sup. Ct. 10, Application (I) at comment [1]].[50] 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

[50] 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].

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 2021, (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 fifty-six (56) public judicial disciplines handed out by the BJC or its predecessor, the Tennessee Court of Judiciary, between 2008 to 2021. There are eleven (11) cases that became "public cases" from the BJC between 2009-2021. Therefore, there have been seventy-seven (77) public discipline actions from the BJC between 2008 to 2021. These numbers are slightly inflated because five of the judges disciplined were 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 BJC or CJC are not designed to punish judges, but instead are 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]. One disciplinary case involved charges of child rape against a municipal judge from 2019.

The twenty-seven (27) public BJC disciplinary actions from 2012 and before 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);[51]

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.***

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.

[51] 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.

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 Richard Underwood, *What Gets Judges in Trouble*, 23 J. NAALJ 101 (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 to drink while deliberating 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 page 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 page 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 page 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 page 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 page 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 page 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 page 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 page 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!" [State v. Murphy, 2019 Tenn. Crim. App. Lexis 679 (Tenn. Crim. App. 10/23/2019), at pages 10-11]. There is always a member of the press who will fill in unflattering purported blanks in your disciplinary scenario with their "take" on the facts if you have a bad memory. [*See e.g.*, Eisenstein v. WTVF-TV, 389 S.W.3d 313 (Tenn. App. M.S. 2012)]. When in doubt, ask for a Judicial Ethics Opinion. [State v. Lipman, 67 S.W.3d 79, 84 n.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 2012 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.,* Wallace J. 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. The NJC offers many free resources for judges. [www.judges.org].

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 Edward J. Imwinkelried, *The Meaning of Probative Value and Prejudice in Federal Rule of Evidence 403*, 41 Vand. L. Rev. 879, 879 and 879 n.1 (Oct. 1988)]. The judicial ethics rules for Tennessee are designed to eliminate judicial misconduct by rule, education and, as a last resort, discipline. If you need guidance on judicial issues, contact the Judicial Ethics Committee (JEC) for an ethics opinion. [*See*, State v. Watson, 507 S.W.3d 191, 196 (Tenn. Crim. App. 2016)].

CHAPTER IX – CONTEMPT/FTA/ COURTROOM CONTROL

A municipal judge needs to hold the attention and respect of all who enter the court. [In Re: Montanez, 164 N.E.3d 683, 699 (Ill. App. 2020) and People v. Blue, 724 N.E.2d 920, 942 (Ill. 2000)]. Unfortunately, this need sometimes requires a bit of "leverage" to accomplish this goal. [*See generally*, Lisa A. Houston, *Criminal Procedure – Pounders v. Watson: Summary Contempt – Zealous Advocates Beware!*, 29 U. Mem. L. Rev. 463 (1999)]. This chapter will discuss a judge's wide discretion in the areas of contempt, failure to appear and how the municipal judge can control the courtroom. [U.S. v. Barta, 888 F.2d 1220, 1226 (8th Cir. 1989)]. 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); State v. Cummings, 36 Mo. 263, 278-279 (1865); and Martin v. State, 747 So.2d 386, 390 (Fla. 2000)]. Sometimes, a firm warning from the Judge will maintain control. [State v. Haskins, 1988 Tenn. Crim. App. Lexis 196 (Tenn. Crim. App. 4/7/1988), at page 39]. Other times, a well-placed recess, (for ten minutes or ten days), will do the job. [Berg v. Berg, 2018 Tenn. App. Lexis 433 (Tenn. App. M.S. 6/25/2018), at page 19 n.3]. Be careful on how you control your courtroom because decorum demands can be perceived as demigod delicacies by onlookers. [*See*, Donald C. Langevoort, *Ego, Human Behavior, and the Law*, 81 Va. L. Rev. 853, 882 (1995)]. Pat Buchanan, while running for President in 1996, referred to federal judges as, "little dictators wearing black robes." [Nadine Strossen, *The Current Assault on Constitutional Rights and Civil Liberties: Origins and Approaches*, 99 W. Va. L. Rev. 769, 807 (1997)].

CONTEMPT: Judges confronted with disruptive or defiant litigants or attorneys must have discretion when addressing the unique circumstances of each case. [Illinois v. Allen, 397 U.S. 337, 343-344 (1970); State *ex rel*. Groesse v. Sumner, 582 S.W.3d 241, 250 (Tenn. App. W.S. 2019); and Tenn. Op. Atty. Gen. 89-03, 1989 Tenn. AG Lexis 144 (1/2/1989) at 1. *See also*, Louisiana State Bar Assn. v. Spencer, 245 So.2d 374, 3798 (La. 1971)]. 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) and State v. Hammock, 2021-Ohio-3574 ¶ 25 (Ohio App. 10/6/2021), Zayas, dissenting]. History has shown some judges are tyrants from the bench. [Poulos v. New Hampshire, 345 U.S. 395, 426 (1953), Douglas & Black dissenting and Maldanado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 584 (5th Cir. 1994)]. Contempt should be used sparingly. [In Re: Brown, 470 S.W.3d 433, 445 (Tenn. App. W.S. 2015); 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, (an awesome power), finding against the attorney]. That is why contempt discretion must be so carefully handled by a municipal judge. [Sanchez v. Rose, 459 P.3d 336, 337 (Wash. App. 2020) Reese v. Bacon, 176 S.W. 971, 973 (Tex. App. 1943)]. There needs to be a rule which guides this use of wide discretion. [Hope v. Warden, York County Prison, 972 F.3d 310, 322 (3rd Cir. 2020) and 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 and Trezevant v. Trezevant, 568 S.W.3d 595, 637-638 (Tenn. App. W.S. 2018)]. 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 must be used "with the utmost restraint." [In Re: Gorcyca, 500 Mich. 588, 648 (2017), Bernstein, dissenting].

Contempt power in Tennessee is statutory. [In Re: Hickey, 258 S.W. 417, 425 (Tenn. 1923); McClain v. McClain, 539 S.W.3d 170,

221 (Tenn. App. E.S. 2017); 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 908, 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) and State v. Beeler, 387 S.W.3d 511, 520 (Tenn. 2012)]. Civil contempt is designed to encourage or 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. [In Re: Brown, 470 S.W.3d 433, 443-444 (Tenn. App. W.S. 2015) and 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].[52] 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)]. Another option is to suspend a driver's license for failing to appear. [Robinson v. Purkey, 326 F.R.D. 105, 132-133 (M.D. Tenn. 2018)].

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)];

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.

[52] 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)].

[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 defendant's 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), at page 15]. 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 page 2]. Irrespective of how 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* Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at pages 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[53] or **B)** fails to timely pay a traffic fine after court.[54] ***Caveat*:** It is strongly suggested that prior to suspending a license solely for failing to pay fines and costs, offer a payment plan. [*See*, Robinson v. Purkey, 326 F.R.D. 105 (M.D. Tenn. 2018) and Robinson v. Long, 814 Fed. Appx. 991 (6th Cir. 2020)]. 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.

[53] Tenn. Code Ann. § 55-50-502(a)(1)(I).
[54] Tenn. Code Ann. § 55-50-502 (a)(1)(H).

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 judge, if the contemptor's objectionable actions were not directed at the judge, the judge does not have to recuse himself/herself from hearing the contempt. [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) for failure to appear. If the defendant does not appear or 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). *See generally*, Joni Kirsch and Priya Sarathy, *Driver's License Suspension for Unpaid Fines and Fees; The Movement for Reform*, 54 U. Mich. J. L. Reform 875 (2021)].

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. [Chad Roberts, *Florida's New Magistrate Corps: Jurists, Administrators, or Neither?*, 17 Fla. St. U. L. Rev. 675, 679-680 (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 that courtroom 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 pages 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. [Lasar v. Ford Motor Co., 239 F. Supp. 2d 1022, 1044 (D. Mont. 2003)]. "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.[55] You can get a basic black robe through Amazon 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*, T. Brad 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, including spectators, immediately shows which person in the courtroom is in charge. [Thompson v.

[55] 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]. The wearing of robes, or not, is still a debated subject among respected American jurists. [*See e.g.*, Charles A. Reich, *Keeping Up Walking with Justice Douglas*, 36 Touro L. Rev. 721, 751 (2020)]. The counter-balancing concerns are uniformity and enhancing prestige of office versus an invitation to arrogance. [*See*, Willy Muntunga, *Dressing and Addressing the Kenyan Judiciary: Reflecting on the History and Politics of Judicial Attire and Address*, 20 Buff. Hum. Rts. L. Rev. 125, 140-141 (2013)].

U.S., 571 A.2d 192, 195 (D.C. App. 1990), spectator held in contempt for not rising]. The boost to one's ego is simply a satisfying collateral effect of controlling the courtroom. Be careful to differentiate between inability to rise and deliberate defiance before "pulling the trigger" on contempt. [Reule v. M&T Mortg., 483 S.W.3d 600, 627 (Tex. App. 2015), Frost dissenting; In Re: Tulper, 345 B.R. 322, 324-325 (Bky. D. Colo. 2006); and U.S. v. Konicov, 49 Fed. Appx. 607, 608 (6th Cir. 2002)]. While a bit of a stretch, the failure to rise when the judge enters the courtroom can be considered a contempt issue. [*See*, U.S. v. Ali, 822 F. Supp.2d 916, 918 (D. Minn. 2011); *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 pages 4-5].

C) Calling the Docket. If you call the docket, you can observe the defendants and their demeanor. [Bobby Marzine Harges, *Law Professor's Sabbatical in District Attorney's Office*, 17 Touro L. Rev. 383, 393 (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 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." [Tatum v. Giarruso, 347 F.Supp.2d 324, 326-327 (E.D. La. 2004) and In Re: Romious, 240 P.3d 945, 948 (Kan. 2010)]. Courts have wide discretion in determining the order in which the court hears cases on the docket. [Roby v. Nationstar Mortg. LLC, 2020 Tenn. App. Lexis 212 (Tenn. App. W.S. 11/11/2020), at page 24; State v. King, 40 S.W.3d 442, 448 (Tenn. 2001); Torkelsen v. Maggio, 72 F.3d 1171, 1177 (3rd Cir. 1996) and Amy E. Sloan, *A Government of Laws and Not Men*, 79 Ind. L.J. 711, 763 (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. [Gayle v. Scully, 779 F.2d 802, 814 (2nd Cir. 1985), Oakes, dissenting and *Ex Parte* Owens, 258 P. 758, 801 (Okla. Crim. App. 1927)]. Also, do not "pick on" a litigant or lawyer that is not popular with the Court. [Gentry v. Judicial Conduct Comm'n, 612 S.W.3d 832, 849-850 (Ky. 2020)].

E) **Don't be a Comedian.** Even Bob Hope would have trouble getting a good review for humor while issuing fines for criminal acts. [Fowler v. State, 2014 Tenn. App. Lexis 696 (Tenn. Crim. App. 7/9/2014), at page 10]. 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. [In Re: Henderson, 343 P.3d 518, 528-529 (Kan. 2015) and 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. [People v. Jackson, 319 P.3d 925, 978 (Cal. 2014), Liu, dissenting and citing People v. Stevens, 218 P.3d 272, 285 (Cal. 2009)]. 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 pages 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 because courts, even if the state constitution has an "open courts" amendment, can control what occurs in the courtroom. [Wallace v. Law

Offices of Bruce M. Spencer, PLLC, LPH, Inc., 495 P.3d 1047, 1048 (Mont. 2021)]. 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. [*See generally*, State v. Gomez, 347 P.3d 876, 880 n.3 (Wash. 2015); D.G. *ex rel.* J.G. v. North Plainfield Bd. of Educ., 945 A.2d 707, 721 (N.J. Super. App. Div. 2008); and 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. [State v. Alexis, 185 A.3d 526, 532 (R.I. 2018)]. It also allows a litigant's attorney or on-lookers to tell a person "cool it!" [State v. Evans, 497 P.3d 214 (Table) (Kan. 2021); Sacher v. U.S., 343 U.S. 1, 36 (1952), Frankfurter, 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]. A recess taken to benefit a defendant cannot be a basis for said defendant claiming error. [State v. Smith, 367 P.3d 420, 438 (N. M. 2016)].

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 (Haw. App. 2012) with multiple citations on point. *See also*, David E. Rigney, *Gestures, Facial Expressions, or Other Nonverbal*

Communication of Trial Judge, 45 A.L.R. 5th 531 (1997) and Clark A. Hiddleston, *Corruption Courts, Gang Courts, and White Collar Crime Courts: Overcoming Widespread Group Crime Through the Use of Specialized Collaborative Courts*, 38 U. La Verne L. Rev. 99, 140 (2017)].

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 pages 41-42]. If this does not work, *see* suggestion "G" above. [People v. Best, 49 Cal. App. 5th 747, 766 (2020), Brown, dissenting].

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. [*See e.g.*, Turley v. Marino, 2001 Tenn. App. Lexis 583 (Tenn. App. M.S. 8/14/2001), at pages 6-8]. Generally, a warning is prudent before a judge proceeds to a contempt finding. [Gilliam v. United States Dep't. Agric., 486 F. Supp.3d 856, 881 (E.D. Pa. 2020)].

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 from work because the offender insisted on

losing his composure. [Osborne v. Thompson, 481 F. Supp.162, 171 (M.D. Tenn. 1979)]. 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*, Fowler v. Benson, 924 F.3d 247, 261 n.8 (6th Cir. 2019); Motor Vehicle Admin. v. Geppert, 233 A.3d 102, 124 n.42 (Md. 2019); Hazelton v. Amestoy, 2003 U.S. Dist. Lexis 20558, at pages 8-9 (D. Vt. 11/4/2003); and Mink v. Arizona, 2010 U.S. Dist. Lexis 67245, at page 1 (D. Ariz. 7/6/2010)].

P) **Online Options.** COVID taught judges that court can be conducted online to a large extent – to include trials over the internet. [In Re: Payton G., 2021 Tenn. App. Lexis 326 (Tenn. App. W.S. 8/21/2021), at page 6 n.5].

Q) **Take Time to Teach.** Don't be afraid to take a second to explain your ruling. For younger drivers, reminding them that family needs them home safely and that police officers do more than just eat donuts and give traffic tickets – they notify families of loved ones who die or are in hospitals due to traffic accidents. [Rekemeyer v. Cerone, 252 A.D.2d 22, 23-24 (N.Y. Sup. Ct. App. Div. 1999)]. That beings said, judges are "not marriage counselors or moral dictators." [Pruitt v. Pruitt, 445 A.2d 955, 956 (Del. Fam. Ct. 1982)].

R) **"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 talk about a woman who traded a $50.00 traffic ticket for two (2) to four (4) years of 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 pages 17-18 and 20-21]. Suborning perjury to "fix" a traffic ticket is "intrinsically serious." [People v. Anthony, 42 Misc. 3d 411, 423 (Bronx Co. Sup. Ct. 2013)].

S) **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.; In Re: Oliver, 333 U.S. 257, 266-267 (1948) and State v. Ware, 498 N.W.2d 454, 458 (Minn. 1993)].

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]. Nobody will agree with every single one of your decisions, especially on emotional topics – so do your duty without worrying about pleasing the masses. [*See e.g.*, Patrick Emery Longan, *You Can't Flinch in the*

Face of Duty, 48 Stetson L. Rev. 379, 416 (2019) and Jaye v. Barr, 2021 U.S. Dist. Lexis 117405 (S.D. Ga. 6/7/2021), at pages 53-54].

CHAPTER X – COURTROOM SECURITY AND DECORUM

Small claims and traffic courts are often, by design, less formal in structure and procedures than general jurisdiction courts. [Heredia Realty, LLC v. Harvey, 2021-Ohio-4218 (Ohio App. 12/3/2021), at ¶ 23, citing Cleveland Bar Assn. v. Pearlman, 832 N.E.2d 1193, 1196 (Ohio 2005). *Accord*, Reyes v. First Net. Ins. Co., 2009 Guam 17 (Guam 12/28/2009), at page 16]. Many municipal judges in Tennessee and other states are lax on courtroom formalities, 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. [*See e.g.*, In Re: A.N., 462 P.3d 974, 975 n.1 (Cal. 2020) and Linus Chan, *Unjust Deserts: How the Modern Immigration System Lacks Moral Credibility*, 16 Ohio St. J. Crim. L. 103, 107 (2018)]. This is not correct. Courts of all levels face problems, and "lax security" concerns. [*See e.g.*, Perry v. Delaney, 74 F.Supp.2d 824, 829 (C.D. Ill. 1999)]. Courtroom safety, control and decorum is necessary for any court to operate effectively. [Deck v. Missouri, 544 U.S. 622, 656 (2005), Thomas dissenting. U.S. v. Turner, 2021 U.S. Dist. Lexis 123419 (E.D. Tenn. 7/1/2021), at page 32]. Judges have wide discretion when it comes to courtroom security. [U.S. *ex rel.* Alegman v. Sterns, 205 F. Supp.2d 906, 914 (N.D. Ill. 2002) and 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…" [Theodore R. Boehm, *Rededication of the Federal Courthouse in Indianapolis*, 37 Ind. L. Rev. 605, 606 (2004) and Joseph W. Tucker, *No Hats in Court; Michigan's Justification for Free Exercise Indifference*, 40 U. Tol. L. Rev. 1039, 1061 (2010)]. 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,[56] 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,[57] judges,[58] litigants,[59] and court staff.[60]

The Tennessee Municipal Judges Conference ("TMJC") has never adopted minimum security courtroom procedures, but the Tennessee Judicial Conference and the Tennessee General Sessions Judges Conference have set security standards for those courts. [*See* Chapter 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 page 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 need to address this issue was driven home at the TMJC Annual Conference of 2021, when non-jurists staged a "sit-in" demanding to monitor the Sovereign Citizen training segment of the conference. Eventually, the leader of the sit-in was removed from the building against his will be police. [https://www.thepostmail.com/2021/11/7/judges-order-arrest-of-2-journalist-to-keep-tn-meetings-sec ret/]. As a result of this intrusion, the Tennessee Supreme Court implemented a policy to protect all Tennessee judges attending mandatory judicial training seminars and conferences from safety threats. [*See*, Tenn. Sup. Ct. Admin. Policy & Pro. § 3.04 (2/1/2022)]. It is time to address courtroom safety in Tennessee municipal courts. 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):

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[56] 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].

[57] People v. Ruef, 114 P. 54, 66 (Cal. App. 1910), district attorney killed in court.

[58] 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.

[59] State v. Baumruk, 280 S.W.3d 600, 605 & 620-621 (Mo. 2009), *en banc*, wife killed during divorce hearing.

[60] Dowdell v. Wilhelm, 699 S.E.2d 30, 31-32 (Ga. App. 2010), deputy and court reporter killed during an inmate escape attempt.

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. Moses, 2016 Tenn. Crim. App. Lexis 337 (Tenn. Crim. App. 5/4/2016), at pages 4-5; State v. Mullens, 893 N.E.2d 870, 877-878 (Ohio App. 2008) and Dorris v. County of Washoe, 885 F. Supp. 1383, 1385 n.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*, Kimberly Hicks, *The Rise of Appellate Litigators*, 29 Rev. Litig. 545, 592 (2010) and 54 F.R. 46206, at pt. C, "Security Systems"]. "Bulletproofing" a judge's bench can be as easy and inexpensive as stacking discarded statutory replacement volumes under the judge's bench. [William W. Bedsworth, *Waste of Space: It Costs How Much?*, 62 Orange County Lawyer 67, 68 (Mar. 2020)];

3) Armed/uniformed court officers in the courtroom during court. [Tenn. Op. Atty. Gen. 14-56, 2014 Tenn. AG Lexis 59 (5/19/2014), at page 3 n.2 and U.S. v. Chavez-Flores, 404 Fed. Appx. 312, 314 (10th Cir. 2010)]. The mere presence of armed bailiffs in a courtroom is a deterrence to most unsafe situations. [*See e.g.*, Commonwealth v. Fonseca, 5 N.E.3d 2 (table) (Mass. App. 3/14/2014), at pages 1-2];

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 Tenn. Op. Atty. Gen. 10-107 (10/28/2010), at page 2 n.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 and Music v. Qualls, 2020 U.S. Dist. Lexis 153172 (M.D. Tenn. 8/24/2020), at pages 3 and 7].

Minimum Court Security Procedures:

1) Contact AOC Communications Director, Barbara Peck, (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.

[*See generally*, Tenn. Op. Atty. Gen. 00-09, 2000 Tenn. AG Lexis 9 (1/19/2000), at pages 24-25 and Tenn. Code Ann. § 16-2-505(d)]. 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. [*See*, *Essential Ten Elements for Effective Courtroom Safety and Security Planning*, CCJ/COSCA Court Security Handbook, (2012), at page iv]. 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.[61] This is an exploding concern throughout the country. [*See*, Sadie Shroud, *Shackling Prejudice: Expanding the Deck v. Missouri Rule to Nonjury Proceedings*, 73 Vand. L. Rev. 535, 565 n. 235 (2020)]. 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

[61] *See e.g.*, State v. Sutton, 2020 Tenn. Crim. App. Lexis 83 (Tenn. Crim. App. 2/11/2020), at pages 11-12; 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 page 15; State v. Hurt, 2007 Tenn. Crim. App. Lexis 959 (Tenn. Crim. App. 12/27/2007), at pages 9-10; and State v. Rimmer, 2001 Tenn. Crim. App. Lexis 399 (Tenn. Crim. App. 5/25/2001), at pages 15-17.

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)** Keep the gun concealed; and
>
> **C)** Qualify as a judge under Tenn. Code Ann. § 16-1-101.

[Tenn. Code Ann. § 39-17-1306(c)(3)]. For a general discussion on this point, *see* Tenn. Op. Atty. Gen. 22-01, 2022 Tenn. AG Lexis 1 (1/24/2022).

A judge must be on guard because of their position at all times. [State v. Williams, 368 P.3d 1065, 1073 (Kan. 2016)]. On March 26, 18.79, 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)]. This threat to judges is not limited to yesteryear. [*See e.g.*, U.S. v. Onyeri, 996 F.3d 274, 277 (5th Cir. 2021) and In Re: Adams, 134 N.E.3d 50, 53 (Ind. 2019)]. 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 later…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." [Erby L. Jenkins & A. B. Neil, *Presentation of Lawyers Before Supreme Court*, 27 Tenn. L. Rev. 33, 33 (1959)].[62]

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.*, Williams v. Burt, 949 F.3d 966, 971 (6th Cir. 2020) and People v. Blue, 724 N.E.2d 920, 942 (Ill. 2000)].

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."* [Wallace J. Smith, *Judicial Ethics and Courtroom Decorum*, 27 Tenn. L. Rev. 26, 26 (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." [Susan E. Elwell and Christopher D. Carlson, *The Iowa Small Claims Court*, 75 Iowa L. Rev. 433, 496 (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. Dotson, 450 S.W.3d 1, 90 (Tenn. 2014); 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

[62] 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].

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. [State v. Jordan, 325 S.W.3d 1, 52 (Tenn. 2010); 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). *See also*, In Re: Bundy, 840 F.3d 1034, 1049 (9th Cir. 2016)].

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). *See also*, State *ex rel.* Olka. Bar Ass'n v. Roller, 2022 OK 2 (Okla. 1/10/2002), at ¶2 and Brown v. State, 848 S.E.2d 126, 133 (Ga. App. 2020)]. The rules of decorum address media coverage. [State v. Schiefelbein, 230 S.W.3d 88, 114 (Tenn. Crim. App. 2007); State v. Morrow, 1996 Tenn. Crim. App. Lexis 222 (Tenn. Crim. App. 4/12/1996), at pages 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, spectators, and litigants. [*See e.g.*, State v. Hicks, 618 S.W.2d 510, 519 (Tenn. Crim. App. 1981); U.S. v. Wessel, 2 F.4th 1043, 1052 (7th Cir. 2021); and State v. Wright, 283 P.3d 795, 803 (Idaho App. 2012)]. 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)]. Courts can set local rules for appropriate courtroom dress and decorum. [*See e.g.*, *You Need To Know*, 50 Tenn. B.J. 5, 6 (Feb. 2014), Chattanooga General Sessions Court judges promulgate rules].

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 page 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), at page 2]. Vague rules that parties must be "appropriate" and wear "proper clothes" are useless because the inexact rule is no rule at all. [*Id*. *Cf.*, Joan

McLeod Heminway, *Women Should Not Need to Watch Their Husbands Like [a] Hawk: Misappropriation Inside Trading In Spousal Relationships*, 15 Tenn. J. L. & Pol'y 162, 166-167 (2020), discussing inexact legislative mandates]. 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 page 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 page 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 page 5]. The prevailing view is that municipal court[63] 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); Metro Gov't of Nashville v. Drekher, 2021 Tenn. App. Lexis 97 (Tenn. App. W.S. 3/12/2021), at pages 12-14; and Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at page 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

[63] A "standard" or traditional municipal court does not have concurrent criminal jurisdiction with General Sessions Courts and a standard municipal court's jurisdiction is generally limited to traffic violations, violation of city ordinances, and Class C misdemeanors with a $50.00 civil fine limit. [Tenn. Code Ann. § 16-18-302(a); City of Knoxville v. Brown, 284 S.W.3d 330, 333 (Tenn. App. E.S. 2008); City of Church Hill v. Elliott, 2017 Tenn. App. Lexis 515 (Tenn. App. E.S. 6/15/20127), at page 12; and Summers v. Thompson, 764 S.W.2d 182, 184 (Tenn. 1988) (pre-Municipal Court Reform Act of 2004 law)].

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*, 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)]. Civil adjudications, such as municipal property codes cases, have a slightly relaxed court procedures process. [Tri-Cities Holdings v. Tenn. Admin. Procedures Div., 260 F.Supp.3d 913, 932 (E.D. Tenn. 2017)]. 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 page 10. *But see*, Mendenhall v. City of Akron, 374 Fed. Appx. 598, 600 (6th Cir. 2010)]. 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) and City of Murfreesboro v. Norton, 2010 Tenn. App. Lexis (Tenn. App. 5/6/2010), at pages 10-11].

Since municipal courts are civil in nature, civil rules of procedure generally apply. [Clark v. Metro. Gov't of Nashville & Davidson County, 827 S.W.2d 312, 315 (Tenn. App. M.S. 1991) and 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]. On the other hand, the Tennessee Rules of Evidence apply to ***all*** courts in Tennessee. [Welch v. Tenn. Bd. of Prof'l Resp., 193 S.W.3d 457, 463 (Tenn. 2006)]. This chapter shall

generally follow the constitutional rules of a Tenn. R. Crim. P. 11 guilty plea, commonly called a Mackey plea,[64] 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). *Accord*, States v. Toomes, 2020 Tenn. Crim. App. Lexis 700 (Tenn. Crim. App. 10/29/2020), at page 35]. Fundamental constitutional rights must be personally waived by a defendant or said waiver is invalid. [Momon, 18 S.W.3d at 162 and State v. Willis, 496 S.W.3d 653, 714-715 (Tenn. 2016)]. We will now see which parts of Tenn. R. Crim. P. 11 apply to municipal courts.

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*). See also*, Ward v. State, 315 S.W.3d 461, 465 (Tenn. 2010) and State v. Albright, 564 S.W.3d 809, 825 (Tenn. 2018)]. 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 pages 20-25. *Cf.*, State v. Price, 579 S.W.3d 332, 343 n.7 (Tenn. 2019)]. 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)[65] 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 pages 5-7 and Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at page 2]. The "knowing and voluntary" aspect of a guilty plea cannot be inadvertently waived by a defendant. [State v.

[64] State v. Mackey, 553 S.W.2d 337 (Tenn. 1977).

[65] 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].

Albright, 564 S.W.3d 809, 825 (Tenn. 2018); 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). *But see*, Rigger v. State, 341 S.W.3d 299, 313 (Tenn. Crim. App. 2010)]. 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 pages 1 and 6, (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); Wills v. State, 859 S.W.2d 308, 309 (Tenn. 1993); and Baker v. Baker, 2012 Tenn. App. Lexis 161 (Tenn. App. M.S. 3/9/2012), at page 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 witnesses. [State v. Davis, 446 S.W.3d 49, 68 (Tenn. 2015); 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. [Davis v. Shelby Cnty. Sheriff Dep't, 278 S.W.3d 256, 266 (Tenn. 2009); Goodwin v. Metro Bd. of Health, 656 S.W.2d 383, 387-388 (Tenn. App. W.S. 1983); Admin. Mgmt. Res., LLC v. Neeley, 2015 Tenn. App. Lexis 501 (Tenn. App. M.S. 6/23/2015), at page 25; 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)]. This allows "subjection of the witness to the greatest legal device ever invented for the

ascertainment of truth, cross-examination." [Hicks v. State, 490 S.W.2d 174, 178 (Tenn. Crim. App. 1972)]. 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)].[66] 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.[67] [Parker v. Gladden, 385 U.S. 363, 364-365 (1966) and Fletcher v. McKee, 355 Fed. Appx. 935, 937 (6th Cir. 2009)].

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 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

[66] 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].

[67] 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. [*See*, U.S. v. Williams, 43 M.J. 348, 354 (CAAF 1995)].

(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 necessarily the case. [*See generally*, Bristol v. Burrow, 73 Tenn. 128, 129 (1880)].[68] 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); Purifoy v. Mafa, 556 S.W.3d 170, 198 (Tenn. App. W.S. 2017); and Clark v. Crow, 37 S.W.3d 919, 921 (Tenn. App. M.S. 2000). *See e.g.*, Tenn. Code Ann. § 29-20-307, Tennessee's Governmental Tort Liability Act which decides cases "without the intervention of a jury"].[69] 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. [Young v. City of Lafollette, 479 S.W.3d 785, 795 (Tenn. 2015); 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); State v. Godsey, 165 S.W.3d 667, 672 (Tenn. Crim. App. 2004); Chattanooga v. Myers, 787 S.W.2d 921, 927 (Tenn. 1990); and State v. Huskey, 2002 Tenn. Crim. App. Lexis 550 (Tenn. Crim. App. 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

[68] For an interesting discussion of Burrow, *see* Forture v. Wilburton, 82 S.W. 738, 739 (C.D. Indian Terr. 1904) vs. Forture v. Wilburton, 142 F. 114, 114-115 (8th Cir. 1905). This is an odd situation where a municipal court in Indian Territory (later Indiana, Arkansas, or Oklahoma) is appealed to a tribal appellate court, cited in the Southwestern Reporter (usually a state reporter), and then landing in a Federal Court of Appeals and cited in the Federal Reporter. The jurisdictional scenario presented would make a great bar exam question.

[69] 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].

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 page 4 and Tenn. Code Ann. § 16-18-307].[70] 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 page 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. [Metro Gov't of Nashville v. Dreher, 2021 Tenn. App. Lexis 97 (Tenn. App. W.S. 3/12/2021), at page 10; City of Oak Ridge v. Brown, 2009 Tenn. App. Lexis 188 (Tenn. App. E.S. 5/8/2009), at page 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), cited with approval in State v. Tolle, 591 S.W.3d 539, 543 (Tenn. 2019)].

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

[70] 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 and Tenn. Op. Atty. Gen. 15-07, 2015 Tenn. AG Lexis 6 (1/27/2015), at pages 1-4]. 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 n.5.

court via the theory of dual sovereignties. [*See e.g.*, State v. Tomberlind, 1989 Tenn. Crim. App. Lexis 240 (Tenn. Crim. App. 3/28/1989), at page 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). *See also*, Marlow v. Marlow, 563 S.W.3d 876, 882 (Tenn. App. M.S. 2018)]. 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.[71] [*See*, State v. Watkins, 362 S.W.3d 530, 548 (Tenn. 2012)]. "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) and State v. Thompson, 285 S.W.3d 840, 846 (Tenn. 2009)]. 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)].[72] Remember, HMVO cases originate as civil, not criminal, matters. [State v. Dodson, 2018 Tenn. Crim. App. Lexis 862 (Tenn. Crim. App. 11/26/2018), at pages 10-11].

E) Right to Counsel. As with any lawsuit, a party in a municipal case can bring in a retained attorney. If a litigant act *pro se*, that litigant is entitled to fair fundamental treatment and equal

[71] 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)].

[72] For more information on Habitual Motor Vehicle Offenders, *see* Chapter XV of this book.

treatment to represented litigants. [City of LaVergne v. LeQuire, 2016 Tenn. App. Lexis 778 (Tenn. App. W.S. 10/19/2016), at pages 5-6]. 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 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). *Accord*, Nicole K. v. Stigdon, 990 F. 3d 534, 539 (7th Cir. 2021)].[73] There are calls to create a "Civil Gideon," but that issue is for some future date, not today. [*See e.g.*, Frase v. Barnhart, 840 A.2d 114, 138 (Md. App. 2003)].

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 pages 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 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

[73] 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 pages 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)].

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. [Mabry v. Bd. of Prof'l Responsibility, 458 S.W.3d 900, 907 (Tenn. 2014); 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 188 (Tenn. App. E.S. 5/8/2009), at page 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*, Richardson v. Bd. of Dentistry, 913 S.W.2d 446, 462 (Tenn. 1995) and Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at page 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 n.4 (Tenn. App. E.S. 2008)].[74] A year later, the Tennessee Court of Appeals specifically noted that the option of self-incrimination ***does***

[74] 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 page 339 and 339 n.5].

apply in municipal court cases. [City of Knoxville v. Kimsey, 2009 Tenn. App. Lexis 209 (Tenn. App. E.S. 5/13/2009), at page 4]. 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)].[75]

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) and Barrett v. Tenn. OSHRC, 284 S.W.3d 784, 788 (Tenn. 2009)]. No presumptions of criminal guilt attach to a defendant who properly invokes the Right Against Self-Incrimination. [Griffin v. California, 380 U.S. 609, 614-615 (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, 392 S.W.3d 616, 620 (Tenn. Crim. App. 2011), at page 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 conflict with that witness's legitimate right to remain silent, the Right Against Self-Incrimination prevails. [State v. Eldridge, 888 S.W.2d 457, 461 (Tenn. Crim. App. 1994); 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)]. A court hearing a civil case, (*e.g.*, codes violation), may draw a negative inference when a witness invokes their right against self-incrimination. [In Re: Elijah H., 2021 Tenn. App. Lexis 401 (Tenn. App. E.S. 10/6/2021), at page 24].

[75] 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)].

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. [Eldridge, 888 S.W.2d at 461 and 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. 1894)]. The allowance or denial of hearsay evidence in an available or unavailable subpoenaed witness situation is within the trial court's sound discretion. [Tenn. State Bank v. Mashek, 616 S.W. 3d 777, 810 (Tenn. App. E.S. 2020)].

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) and City of Chattanooga v. Davis, 2000 Tenn. App. Lexis 722 (Tenn. App. E.S. 10/31/2000), at page 57, Franks, dissenting]. The reason that Equal Protection does not show as a stand-alone issue often in city court 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 page 6; Barrett v. Town of Nolensville, 2011 Tenn.

App. Lexis 119 (Tenn. App. M.S. 3/10/2011), at pages 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) and Tenn. Op. Atty. Gen. 93-51, 1993 Tenn. AG Lexis 51 (7/29/1993), at pages 2-3]. 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. tty. Gen. 93-51, 1993 Tenn. AG Lexis 51 (7/29/1993), at pages 2-3]. 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, irrespective 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)]. The reason for this rule is simple – it ensures that all pleas are made knowing, voluntary, and understanding of the defendant's options and the ramifications of a plea. [State v. Norton, 2022 Tenn. Crim. App. Lexis 25 (Tenn. Crim. App. 1/25/2022), at pages 13-14].

K) Speedy/Public Trial. The "Speedy" aspect of a speedy trial[76] in a public forum is usually not a problem in municipal courts. A municipal court docket usually runs fairly fast. Emergency issues, such as the COVID-19 pandemic, can excuse a case from a quick start date. [*See e.g.*, State v. Anderson, 2021 Tenn. Crim. App. Lexis 586

[76] *See*, Art. I § 9, Tennessee Constitution and VIth Amendment, U.S. Constitution.

(Tenn. Crim. App. 12/22/2021), at pages 10-11]. 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. As with the Speedy Trial discussion above, issues such as the COVID-19 pandemic, have opened up concern for public trials because of limitations on people in the courtroom or the necessity for video trials. [*See*, In Re: Payton G., 2021 Tenn. App. Lexis 326 (Tenn. App. M.S. 8/21/2021), at page 6 n.5; In Re: Jayda J., 2021 Tenn. App. Lexis 290 (Tenn. App. W.S. 7/21/2021), at page 6 n.10; and Tenn. Op. Atty. Gen. 20-14, 2020 Tenn. AG Lexis 36 (7/24/2020)].

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)]. If the public has ***access*** to a trial, (*e.g.*, date/time/location) the trial is "public." [*Id*.].[77] 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. [*See generally*, State v. Pike, 978 S.W.2d 904, 916-917 (Tenn. 1998)]. Tenn. R. Sup. Ct. 30 rules focus on television, not print media. [King v. Jowers, 12 S.W.3d 410, 411 (Tenn. 1999) and Tenn. R. Sup. Ct. 30(B)(2)]. 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 Fine 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)]. Remedial sanctions, such as the cost of clean-up or reimbursing administrative costs, do not count as "fines."

[77] For a discussion on how COVID-19 and courtroom technology are merging into a 21st Century norm, *see* Frederic I. Lederer, *The Evolving Technology – Augmented Courtroom Before, During and After the Pandemic*, 23 Vand. J. Ent. & Tech. L. 301 (2021).

[*See*, 8 Tenn. Juris. § 53, at n.3544 (Matthew Bender, 2022)]. 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.

N) Due Process. The elusive "Due Process Clause" in Tennessee law 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. [Heyne v. Metro Nashville Bd. of Pub. Educ., 380 S.W.3d 715, 731 (Tenn. 2012); State v. James, 315 S.W.3d 440, 448 n.4 (Tenn. 2010); Nelson v. Justice, 2019 Tenn. App. Lexis 36 (Tenn. App. M.S. 1/25/2019), at page 4; 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…

[Smith v. Metro. Gov't, 1997 Tenn. App. Lexis 28 (Tenn. App. W.S. 1/15/1997), at page 10].[78] 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,

[78] For a discussion on the Open Courts Clause by a former Tennessee Supreme Court Justice, *see* William C. Koch, Jr., *Reopening Tennessee's Open Courts Clause: A Historical Reconsideration of Article I, Section 17 of the Tennessee Constitution*, 27 U. Mem. L. Rev. 333 (1997).

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 pages 36-37; and Polk County v. State Bd. of Equalization, 484 S.W.2d 49, 55-56 (Tenn. App. M.S. 1972)]. The unique aspect of the Tennessee Constitution's Open Courts Clause is that said clause creates a mechanism and place for Due Process to exist, but not a separate substantive right apart from the other Due Process/Law of the Land Clauses. [Dellinger v. State, 2015 Tenn. Crim. App. Lexis 669 (Tenn. Crim. App. 8/18/2015), at pages 44-45]. This distinction is more academic than practical for traffic court jurisprudence and practical answers often work the best in "fairness" scenarios. [*See e.g.*, Fields v. Gordon, 203 S.W.2d 934, 937 (Tenn. App. W.S. 1947)].

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 n.2 (1963). *Accord*, State v. Decosimo, 555 S.W.3d 494, 506 (Tenn. 2018)]. Treat all coming into court fairly and Due Process normally will take care of itself. [*See*, Whitehead v. State, 402 S.W.3d 615, 623 (Tenn. 2013); 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 page 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. [*See e.g.*, 145 Fisk, LLC v. Nicklas, 986 F.3d 759, 764-765 (7th Cir. 2021)].

CHAPTER XII – EVIDENCE AND BURDENS OF PROOF

Municipal courts face an unusual situation under Evidence and Burdens of Proof. Technical applications of procedural rules in municipal courts are civil, not criminal, mandates. [Smith v. Metro Gov't of Nashville & Davidson Cnty., 2015 Tenn. App. Lexis 219 (Tenn. App. M.S. 4/13/23015), at pages 3-4]. 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." [Metro Gov't of Nashville v. Dreher, 2021 Tenn. App. Lexis 97 (Tenn. App. W.S. 3/12/2021), at pages 10-11 and City of Murfreesboro v. Norton, 2010 Tenn. App. Lexis 322 (Tenn. App. W.S. 5/6/2010), at pages 10-11]. Therefore, the burden of proof for municipal cases is "preponderance of evidence." [*See*, City of Soddy Daisy v. Marceaux, 2018 Tenn. App. Lexis 705 (Tenn. App. E.S. 12/3/2018), at pages 2-3; 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 pages 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 pages 4-5]. Ordinance violations retain their civil nature even if the ordinance refers to the violation as "misdemeanors" or "criminal." [City of Church Hill v. Elliott, 2017 Tenn. Crim. App. Lexis 515 (Tenn. Crim. App. 6/15/2017), at page 11 and City of Murfreesboro v.Norton, 2010 Tenn. App. Lexis 322 (Tenn. App. W.S. 5/6/2010), at page 10 n.4]. Municipal courts track the basic procedural rules as General Sessions Court, (*e.g., de novo* appeals). [City of Chattanooga v. Marceaux, 2018 Tenn. App. Lexis 706 (Tenn. App. E.S. 12/3/2018), at pages 2-3 and City of Knoxville v. Kimsey, 2009 Tenn. App. Lexis 209 (Tenn. App. E.S. 5/13/2009), at page 3]. A jury trial on appeal from a municipal court ruling may be demanded by defendants dissatisfied with an outcome in municipal court. [City of Athens v. Straser, 2020 Tenn. App. Lexis 464 (Tenn. App. E.S. 10/20/2020), at pages 10-11 and City of Johnson City v. Jones, 2005 Tenn. App. Lexis 300 (Tenn. App. E.S. 5/20/2005), at pages 5-6].

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, 23 S.W. 182 (Tenn. 1891), 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, 23 S.W. 182, 184 (Tenn. 1891). The quote, except for the first parenthetical, is verbatim from Myers. The first parenthetical is added. *See also*, Butler v. City of Jackson, 63 S.W.3d 372, 375 (Tenn. App. W.S. 2001)].[79]

[79] 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. [*See generally*, City of Chattanooga v. Davis, 2000 Tenn. App. Lexis 722 (Tenn. App. E.S. 10/31/2000), at page 57]. Over the years, the Tennessee Supreme Court has expanded constitutional rights in municipal courts. [*See e.g.*, Smith v. Metro Gov't of Nashville & Davidson Cnty., 2015 Tenn. App. Lexis 219 (Tenn. App. M.S. 4/13/2015), at pages 3-4 and City of Murfreesboro v. Norton, 2010 Tenn. App. Lexis 322 (Tenn. App. W.S. 5/6/2010), at page 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 Class 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

Having set forth the general premises of the burden of proof being a "preponderance of evidence," other evidentiary issues should be noted by a municipal judge. [*See generally*, Camera v. Municipal Court, 387 U.S. 523, 538-539 (1967)]. 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.[80]

The Overall Burden of Proof. In a municipal court prosecution, "the City at all times must establish the necessary

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city court defendant to argue for a potentially harsher sentence than a municipal court can offer. [*But see*, Earl v. State, 314 So.3d 1253, 1255 (Fla.2021) and McGuire v. State, 2021 Ala. Crim. App. Lexis 40 (Ala. Crim. App. 7/9/2021), at pages 19-21 for examples of defendants requesting increased punishment]. The small fines and short duration of Class 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 *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); Christ Church Pentecostal v. Tenn. State Bd. of Equalization, 428 S.W.3d 800, 822 (Tenn. App. W.S. 2013); and Andrews v. City of Mentor, 11 F.4th 462, 473 (6th Cir. 2021)]. If this issue "comes up," there is a ***potential*** problem with Tenn. Code Ann. § 16-18-302(a)(2) meeting Equal Protection muster.

[80] 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).

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*, William H. 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) and Pope v. Nebco of Cleveland, Inc., 585 S.W.2d 874, 887 (Tenn. Worker's Comp. App. 2018)]. The party carrying the burden of proof keeps that obligation throughout the entire trial. [Waste Conversion Sys., Inc. v. Greenstone Indus., Inc., 33 S.W.3d 779, 783 (Tenn. 2000); 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*, In Re: Jon J., 760 N.E.2d 934, 935-936 (Ohio App. 2001) and 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 and Williamson v. State, 476 S.W.3d 405, 419 (Tenn. Crim. App. 2015)]. 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 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.

[Lawrence A. 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*, William H. 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)]. "Case in Chief" has been defined by two of Tennessee's U.S. District Court judges as, "any part of a trial in which a party introduces evidence to support a claim or defense." [Robert L. Echols and Eli J. Richardson, *White-Collar Defense*, 47 Tenn. B.J. 14, 19 (Dec. 2011)].

Venue. Venue "is the term used for the geographical place where an action may be filed and determined." [Lawrence A. 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 Tennessee Court of Appeals explains this concept as follows:

> Venue is defined as the county, jurisdiction, geographical subdivision or territorial area within the state or district in which the prosecution is or must be brought or tried. Proper venue is based on the locality of the offense, not on the personal presence of the offender.

[State v. Price, 2000 Tenn. Crim. App. Lexis 679 (Tenn. Crim. App. 8/24/2000), at page 3, citing 22 C.J.S. Criminal Law § 178 (1989)]. The city must prove the traffic citation or ordinance violation being tried occurred inside the city limits. [Robert E. Burch, Trial

Handbook for Tennessee Lawyers, § 207 (Law Co-Op. 1980)]. To do otherwise is an invitation for a 42 U.S.C. § 1983 Civil Rights lawsuit against your city. [*See e.g.*, Austin v. City of Tuskegee, 2008 U.S. Dist. Lexis 61348 (M.D. Ala. 6/16/2008), at pages 2 and 6-8].

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." [David L. 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). *Accord*, State v. Donaldson, 50 Tenn. 48, 51 (1870)]. This burden of proving venue applies to the jurisdictional basis of all cases involving punitive matters. [State v. Haven, 2020 Tenn. Crim. App. Lexis 431 (Tenn. Crim. App. 6/19/2020), at pages 21-22; Thomas v. Mayfield, 2004 Tenn. App. Lexis 269 (Tenn. App. M. S. 4/27/2004), at pages 17-18; and State v. Clay, 1988 Tenn. Crim. App. Lexis 492 (Tenn. Crim. App. 7/26/1988), at page 4, Byers, dissenting]. A municipal court can take Tenn. R. Evid. 202(b) discretionary judicial notice of the general city limits. [Robert E. 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). *Accord*, City of Clovis v. Gomez, 2009 N.M. App. Unpub. Lexis 464 (N.M. App. 12/29/2009), at page 1]. 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 and State v. Ellis, 89 S.W.3d 584, 598 (Tenn. Crim. App. 2000)]. 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 and State v. Martin, 2016 N.H. Lexis 223 (N.H. 9/15/2016), at page 2].

Basically, a preponderance of evidence is proof that a fact is "more probable than not" and said burden applies to venue. [William H. 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) and In Re: Google LLC, 949 F.3d 1338, 1347 (Fed. Cir. 2020)]. Venue is based on deep public policy issues. [U.S. v. Cores, 356 U.S. 405, 407 (1958); Travis v. U.S., 364 U.S. 631, 634 (1961); and U.S. v. Clark, 728 F.3d 622, 625 (7th Cir. 2013)]. Venue is a personal privilege which may be waived. [Freeman v. Bee Machine Co., 319 U.S. 448, 453 (1943); Clark v. Givens, 2020 Tenn. App. Lexis 345 (Tenn. App. W.S. 7/30/2020), at page 7 n.6; and Lovelace v. Copley, 418 S.W.3d 1, 10 n.2 (Tenn. 2013)].

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. Dep't. of Corr. v. Pressley, 528 S.W.3d 506, 522 (Tenn. 2017) and 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*, Bates v. State, 973 S.W.2d 615, 637 (Tenn. Crim. App. 1997) and 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." [Porterfield v. State, 2013 Tenn. Crim. App. Lexis 530 (Tenn. Crim. App. 6/20/2013), at page 59 and Morris v. Morris, 1985 Tenn. App. Lexis 3287 (Tenn. App. W.S. 12/17/1985), at page 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 or unconsitiutional, that party must carry the burden of proof when attacking the ordinance. [Hutcherson v. Criner, 11 S.W.3d 126, 132-133 (Tenn. App. W.S. 1999); Wright v. City of Shelbyville, 2009 Tenn. App. Lexis 744 (Tenn. App M.S. 11/3/2009), at page 6; Lamar Advertising v. City of

Knoxville, 1997 Tenn. App. Lexis 246 (Tenn. App. E.S. 4/11/1997), at page 9; S&P Enterprises, Inc. v. Memphis, 672 S.W.2d 213, 217 (Tenn. App. W.S. 1983); 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. [Edwards v. Allen, 216 S.W.3d 278, 289 (Tenn. 2007); Bd. of Comm'rs of Roane County v. Parker, 88 S.W.3d 916, 923 (Tenn. App. E.S. 2002); and City of Bartlett v. Jeckels, 1984 Tenn. App. Lexis 2908 (Tenn. App. W.S. 6/6/1984), at pages 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. [Thacker v. City of Greenville, 2021 Tenn. App. Lexis 292 (Tenn. App. W.S. 7/23/2021), at page 21 n.15; Robert E. 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) and Turner v. WW Steeplechase, LLC, 2021 Tenn. App. Lexis 291 (Tenn. App. M.S. 7/23/2021), at page 18 n.3].

Authentication/Judicial Notice of City Records. A municipal court can take judicial notice of its own records. [Felts v. State, 354 S.W.3d 266, 275 (Tenn. 2011) and 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) and Montepeque v. Adevai, 2010 Tenn. App. Lexis 489 (Tenn. App. E.S. 8/4/2010), at page 21]. 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*, Fusner v. Coop Constr. Co., LLC, 211 S.W.3d 686, 693 (Tenn. 2007); 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 Robert E. 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) and Robinson v. Purkey, 326 F.R.D.105, 116 (M.D. Tenn. 2018)]. 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.[81] In most cases, the vehicle owner simply pays the child's ticket in Red Light Camera cases. [*See* previous parenthetical note]. 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.

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[81] The author wishes to thank his beloved daughter, Leora, for giving him ***personal*** insight into this issue. Leora attended 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 was 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 attended the church where Leora was 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; Davis v. Shelby County Sheriff Dep't., 278 S.W.3d 256, 266 (Tenn. 2009); and Moss v. Shelby County Civ. Serv. Merit Bd., 2021 Tenn. App. Lexis 415 (Tenn. App. W.S. 10/14/2021), at page 40]. 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. *Accord*, State v. McCaleb, 582 S.W.3d 179, 188 (Tenn. 2019)]. These rules should equally apply in municipal court cases, even if the term "trial courts" is a bit ambiguous. [Neil P. Cohen, *A Meta-Analysis of the Tennessee Rules of Evidence*, 57 Tenn. L. Rev. 1, 20 (1989) and Rex Barton and Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), page 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, 235 S.W.3d 136, 141 (Tenn. 2007) and Highlands Physicians, Inc. v. Wellmont Health Sys., 625 S.W.3d 262, 278 (Tenn. App. E.S. 2020)]. 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*, Rex Barton and Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at pages 2-3].[82] 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*, Lawrence A. Pivnick, Tennessee Circuit Practice 2d § 3-1, at pages 49-50 (The Harrison Co., 1986]. Personal and/or in-rem

[82] 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* Rex Barton and Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at pages 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. [Lawrence A. Pivnick, Tennessee Circuit Practice §§ 24-22 and 24-27 (The Harrison Co., 1986)].

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*, Lawrence A. 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*, Donald F. Paine, *Comparing the Tennessee and Federal Rules of Evidence*, 26 Tenn. B.J. 37 (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) and Commonwealth v. Avram A., 982 N.E.2d 548, 554 (Mass. App. 2013)].

Tenn. R. Evid. 102: ***{Purpose of Rule}.*** The T.R.E. is designed "to secure the just, speedy and inexpensive determination of [trial or legal] 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)]. This is a "gatekeeper of the evidence" function. [Spearman v. Shelby Cty. Bd. of Educ., 2021 Tenn. App. Lexis 17 (Tenn. App. W.S. 1/15/2021), at page 40].

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) and Vandergriff v. Parkridge E. Hosp., 482 S.W.3d 545, 551 (Tenn. App. M.S. 2015)]. 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 page 10. *See also*, 1 Tenn. Evid. Courtroom Manuel § 201.04].

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, with proper notice by a party, ***may*** take judicial notice of the city's ordinances. [Williams v. Epperson, 607 S.W.3d 289, 297 (Tenn. App. E.S. 2020) and 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. Rimmer, 623 S.W.3d 235, 295 (Tenn. 2021) and 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, 41 (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. Davidson, 509 S.W.3d 156, 206 (Tenn. 2016) and 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. [State v. Jones, 450 S.W.3d 866, 894 (Tenn. 2014)]. 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 to in a trial, *see*, State v. Dutton, 896 S.W.2d 114, 117-118 (Tenn. 1995) and Tenn. R. Evid. 405. *See also*, Neil Henson, *A Taste of Their Own Medicine: Examining the Admissibility of Experts' Prior Malpractice Under the Federal Rules of Evidence*, 71 Vand. L. Rev. 995, 1030 (2018)].

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 pages 17-18 n.3; Twenty Holdings, LLC v. Land South TN, LLC, 2019 Tenn. App. Lexis 348 (Tenn. App. W.S. 9/5/2019), at page 56; 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. [*See e.g.*, State v. Jackson, 444 S.W.3d 554, 587 (Tenn. 2014)]. 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) and State v. Hampton, 2014 Tenn. Crim. App. Lexis 645 (Tenn. Crim. App. 6/27/2014), at page 16]. 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. [State v. Nash, 294 S.W.3d 541, 548 (Tenn. 2009)]. 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. [*See generally*, Lexon Ins. Co. v. Windhaven Shores, Inc., 601 S.W.3d 332, 340 (Tenn. App. M.S. 2019)]. The municipal judge determines if

a witness is competent to testify in municipal court. [Kendrick v. State, 454 S.W.3d 450, 479 (Tenn. 2015) and 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) and State v. Toles, 2019 Tenn. Crim. App. Lexis 315 (Tenn. Crim. App. 5/17/2019), at page 52].

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. [*See*, Taylor v. State, 130 A.3d 509, 537 n.17 (Md. App. 2016)]. 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) and Olvera v. State, 2010 Tenn. Crim. App. Lexis 1080 (Tenn. Crim. App. 12/22/2010), at pages 22-23]. 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, 549 (Tenn. 2009)]. A collateral attack on a judgment, (or a civil rights-type case), is an exception to the rule. [*See*, State v. Washington, 2004 Tenn. Crim. App. Lexis 369 (Tenn. Crim. App. 4/14/2004), at pages 4-5]. Even in the unlikely event a municipal judge possibly testifying does arise, it is "a course fraught with peril and should be avoided whenever possible." [Henderson v. State, 2005 Tenn. Crim. App. Lexis 667 (Tenn. Crim. App. 6/28/2005), at page 81].

Tenn. R. Evid. 607: ***{Who May Impeach}.*** Any party can impeach any witness. [*See e.g.*, Evans v. State, 2014 Nev. Unpub. Lexis 492 (Nev. 3/26/2014), at page 12]. 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) and State v. Jones, 2019 Tenn. Crim. App. Lexis 338 (Tenn. Crim. App. 6/5/2019), at page 31].

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). [Cited with approval in In Re: Starkey, 556 S.W.3d 811, 815 (Tenn. App. E.S. 2018)].

Tenn. R. Evid. 614: ***{Judge Calling Witnesses}.*** A judge should not call witnesses except in extreme circumstances. [*See e.g.*, Rural Devs., LLC v. Tucker, 2009 Tenn. App. Lexis 29 (Tenn. App. M.S. 1/14/2009), at pages 27-28]. Basically, the judge must not "pick sides" or "show bias" during the evidence of a trial. [State v. Johnson, 401 S.W.3d 1, 19 (Tenn. 2013) and State v. Williams, 828 S.W.2d 397, 403 (Tenn. App. M.S. 1991)]. If a judge has questions, the judge may wish to call a sidebar and suggest to the attorney questions to be asked of a witness. [State v. Millsaps, 1998 Tenn. App. Lexis 247 (Tenn. Crim. App. 2/25/1998), at page 8].

Tenn. R. Evid. 615: ***{Sequestration/The Rule}.*** Commonly called "The Rule," which is sequestration of witnesses. [*See e.g.*, State v. Jordan, 325 S.W.3d 1, 37-38 (Tenn. 2010)]. 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***. It is noteworthy that "The Rule" usually applies to ***all*** witnesses – including rebuttal witnesses. [Zukowski *ex rel.* Zukowski v. Hamilton Cty. Dept. of Educ., 2021 Tenn. App. Lexis 299 (Tenn. App. E.S. 2021), at pages 30-31)].

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)]. The calling of one's own witness cannot be as a pretext for impeachment. [State v. Rayfield, 507 S.W.3d 682, 699 (Tenn. Crim. App. 2015)].

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, 636 (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. [State v. Ayers, 200 S.W.3d 618, 621 (Tenn. Crim. App. 2005) and 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, or the weight of said evidence in municipal court cases, 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. [State v. Davidson, 509 S.W.3d 156, 210-211 (Tenn. 2016) and 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)]. The standard of review on the admission or exclusion of evidence from experts is "abuse of discretion." [Holder v. Westgate Resorts, Ltd., 356 S.W.3d 373, 376 (Tenn. 2011)].

Tenn. R. Evid. 802: ***{Hearsay}.*** Hearsay is generally inadmissible in court. [State v. McCoy, 459 S.W.3d 1, 11 (Tenn. 2014)]. 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, 147-148 (Tenn. 2006) and State v. Brooks, 249 S.W.3d 323, 328 (Tenn. 2008)]. 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 and should be strictly construed. [Trueman v. City of Alexandria, 818 So.2d 1021, 1024 (La. App. 2002)]. Tenn. R. Evid. 803 and 804 set 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. [State v. Kursakov, 34 S.W.3d 534, 543 (Tenn. Crim. App. 2000); In Re: Thompson, 1998 Tenn. App. Lexis 639 (Tenn. App. M.S. 9/23/1998), at page 10 and State v. Gilboy, 857 S.W.2d 884, 890 n.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)]. The failure to do so can lead to judicial disciplinary proceedings and sanctions against the judge. [*See e.g.*, Miss. Comm.'n on Judicial Performance v. McGee, 266 So.3d 1003, 1006-1008 (Miss. 2019) and https://www.tncourts.gov/sites/default/files/docs/crozier_public_reprimand.pdf].

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. [Focke v. U.S., 597 F.Supp. 1325, 1352 (D. Kan. 1982). *Accord*, Michelle Gordon, *The Integrity of Courts: Political Culture and a Culture of Politics*, 44 Melbourne U. L. R. 863, 882-883 (2021), a Justice of the High Court of Australia, (Australia's equal to the U.S. Supreme Court), discussing Marbury v. Madison, 5 U.S. 137 (1803)]. ***The resulting ruling in burden of proof situations says less about the character of the evidence than the character of the judge ruling on***

that evidence. [Martha 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."

[David B. Kopel and Trevor Burrus, *Law in an Age of Austerity*, 35 Harv. J. L. & Pub. Pol'y 543, 568 n.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.[83] 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, 769 n.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. The gist of this discussion boils down to the fact that "Litigants in Tennessee have a fundamental right to a fair trial before an impartial tribunal." [State v. Styles, 610 S.W.3d 746, 749 (Tenn. 2020)].

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

[83] Courts of yesteryear debated the difference without a distinction between adultery and fornication – only to prove that a long-winded jurist can make ***any*** topic boring! [*See e.g.*, Wood v. State, 48 Ga. 192, 282-284 (1873); State v. Fellows, 6 N.W. 239, 240 (Wis. 1880); and Ledbetter v. State, 17 S.W. 427, 428 (Tex. App. 1886)]. For this reason, the discussion on recusal/disqualification in this chapter will focus on ***practical*** application of the rules instead of hyper-technical application.

pursuant to Tenn. Code Ann. § 16-18-312(b). [Tenn. Op. Atty. Gen. 19-14, 2019 Tenn. AG Lexis 16 (9/19/2019), at page 1]. 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]. Under Tenn. Code Ann. § 16-18-312(a), a municipal court may appoint a "substitute judge" for up to thirty (30) days at a time, subject to reappointment.

A substitution of a judge can be necessary for disqualification, illness, or the municipal judge is unavailable on the date court is being held.[84] 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); **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;[85] **D)** seek a substitute judge under Tenn. Code Ann. § 16-18-312(a); or **E)** 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 and Tenn. Op. Atty Gen. 05-127, 2005 Tenn. AG Lexis 129 (8/22/2005)].[86] The plus side

[84] For a discussion of the difference between Special Masters and Substitute Judges in Tennessee, *see* Christy Kinard, *Special Masters and Substitute Judges: What is the Difference and When are They Proper?*, 6 Tenn. J. Prac. & Proc. 7 (2003)].

[85]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.

[86] The three (3) hours of judicial training per year mandate applies to both lawyer and non-lawyer TMJC members. [Tenn. Op. Atty. Gen. 05-061, 2005 Tenn. AG Lexis 61 (4/27/2005), at page 17]. The failure to obtain said yearly continuing education renders the municipal judge's rulings

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 or other research tools. [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. [In Re: Adoption of Rule 10C of the Rules of the Tenn. Supreme Court, 2018 Tenn. Lexis 746 (Tenn. 12/20/2018), at pages 47-56 and Black's Law Dictionary 5th ed., "Incompetency," at page 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 rule unless all parties agree to waive the judicial incompetency[87] 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) and Jay M. Zitter, *Disqualification of Judge Because of Political Association or Relation to Attorney in Case*, 65 A.LR 4th 73];

3) The judge was previously an attorney in the case. [Mathis v. State, 50 Tenn. 127, 128 (1871)];

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void (inviting a lawsuit against both the judge and the city). [Tenn. Op. Atty. Gen. 05-127, 2005 Tenn. AG Lexis 129 (8/22/2005), at pages 11-12].

[87] *See*, Metro Gov't. of Nashville v. Jones, 2021 Tenn. App. Lexis 171 (Tenn. App. M.S. 4/23/2021), at page 7; 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).

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.

[Dye v. Dye, 2019 Tenn. App. Lexis 607 (Tenn. App. W.S. 12/18/2019), at pages 8-9. *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). *But see*, Thompson v. State, 958 S.W.2d 156, 171 (Tenn. Crim. App. 1997)]. That being said, "Conceptual difficulty is not an appropriate basis for finding judicial incapacity; such a determination should only be based on the court's ability to consider effectively the relevant factors." [William L. Dunker, *Constitutional Amendments – The Justiciability of Ratification and Retraction*, 41 Tenn. L. Rev. 93, 110 (1973)]. For a general discussion on disqualifications, *see* David L. Raybin, 10 Tenn. Practice (Crim.) § 24.11 (West, 1985) and Lawrence A. Pivnick, Tennessee Circuit Court Practice 2d § 2-5, at pages 42-44 (The Harrison Co., 1986).

Tennessee's current constitution was written in 1870. [Preamble, Tennessee Constitution and Embody v. Cooper, 2013 Tenn. App. Lexis 343 (Tenn. App. E.S. 5/22/2013), page 10 n.10]. Before that, previous Tennessee Constitutions were penned in 1796 and 1834. [*See* Tenn. Code Ann. Vol. 1A, at pages 895 and 909 (Lexis/Nexis 2017 Replacement Volume). *Accord*, McClay v. Airport Mgmt. Servcs., LLC, 596 S.W.3d 686, 696 (Tenn. 2020), Clark, dissenting and In Re: Estate of Trigg, 368 S.W.3d 483, 491 (Tenn. 2012)]. 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…

[*See generally*, State v. Clark, 610 S.W.3d 739, 743-745 (Tenn. 2020)]. 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 page 7 n.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 page 7, n.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. [Smith v. State, 357 S.W.3d 322, 341 (Tenn. 2011); Harris v. State, 2019 Tenn. App. Lexis 616 (Tenn. App. W.S. 12/20/2019), at pages 13-14; and 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 n.3 (11th Cir. 2000)]. Today the two terms are often used interchangeably. [In Re: School Asbestos Litigation, 977 F.2d 764, 779 n.1 (3rd Cir. 2002) and Jeffrey W. Stempel, *Chief William's Ghost: The Problematic Persistence of the Duty to Sit*, 57 Buffalo L. Rev. 813, 958 n.2 (May 2009)]. As one set of commentators 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." [Deborah Goldberg, James Sample and David E. Pozen, *The Best Defense: Why Elected Courts Should Lead Recusal Reform*, 46 Washburn L. J. 503, 534 n.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 pages 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) and AVPM Corp. v. Trout, 583 S.W.3d 216, 218 (Tex. App. 2018)]. Recusal issues can be waived, but disqualification issues are not waivable. [Liput v. Grinder, 405 S.W.3d 664, 668 n.2 (Tenn. App. W.S. 2013); State v. Scott, 2021 Tenn. Crim. App. Lexis 487 (Tenn. Crim. App. 10/14/2021), at pages 10-11; and Gulf Maritime Warehouse Co. v. Towers, 858 S.W.2d 556, 559-560 (Tex. App. 1993)]. Tennessee's Rules of Judicial Conduct merge recusal and disqualification into a single rule termed "Disqualification." [Cook v. State, 606 S.W.3d 247, 254-255 (Tenn. 2020) and 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. [Mitchell v. Forsyth, 472 U.S. 511, 542 n.8 (1985), Stevens, concurring; U.S. v. Hoffa, 382 F.2d 856, 861 (6th Cir. 1967); and McLaughlin v. Mont. State Legislature, 489 P.3d 482, 488 (Mont. 2021)].

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." Some common of examples of disqualification issues are set out 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) and Elseroad v. Cook, 553 S.W.3d 460, 466-467 (Tenn. App. M.S. 2018)];

2) A relative of the judge, within the ***third*** degree of relationship,[88] 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) and Martindale v. Granville Pillows, 1987 Tenn. App. Lexis 3194 (Tenn. App. M.S. 5/27/1987), at page 45];

3) Judge or family member have an economic or personal interest in the outcome of the case. [*Cf*., Neely v. State, 63 Tenn. 174, 183-184 (1874) and State

[88] Aunts, uncles, nieces and nephews = 3rd degree of family relationships. [*See*, www.window.state.tx.us/taxinfo/protax/arb10/ch01.htm].

v. Hester, 324 S.W.3d 1, 51 (Tenn. 2010)];

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 page 19 and Mackenzie v. Superkids Bargain Store, 565 So.2d 1332, 1334-1335 and 1335 n.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)].

For a general discussion on disqualification of judges, *see*, Leslie W. Abramson, *Appearance of Impropriety: Deciding When a Judge's Impartiality "Might Reasonably Be Questioned,"* 14 Geo. J. Legal Ethics 55 (2000).

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) and State v. Tate, 925 S.W.2d 548, 554 (Tenn. Crim.

App. 1995)]. Even the ***slightest*** pecuniary interest in a case should disqualify a judge from hearing matter. [Costen, *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); In Re: Am Bonding Co., 2015 Tenn. Crim. App. Lexis 318 (Tenn. Crim. App. 2/26/2015), at page 19; 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) and Davis v. State, 2016 Tenn. Crim. App. Lexis 864 (Tenn. Crim. App. 11/16/2016), at pages 26-27]. The rule of thumb should be that "when in doubt, *but only when in doubt*, recuse yourself out." [State v. Thornton, 10 S.W.3d 229, 237 (Tenn. Crim. App. 1999)]. 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. [In Re: Nat'l Prescription Opiate Litig., 2019 U.S. App. Lexis 30501 (6th Cir. 10/10/2019), at pages 2-3 and 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) and Elizabeth Nevins-Saunders, *Judicial Drift*, 57 Am. Crim. L. Rev. 331, 341 (2020)]. For a short primer on judicial disqualification and the doctrine's application, *see*, Brumit v. Durham, 2012 Tenn. Lexis 38 (Tenn. 1/18/2012).

Alley Standard. The "White Horse Case" for judicial recusal/disqualification in Tennessee is Alley v. State, 882 S.W.2d 810 (Tenn. 1994). [Cook v. State, 606 S.W.3d 247, 254 (Tenn. 2020)]. 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. [Watson v. State, 2020 Tenn. Crim. App. Lexis 814 (Tenn. Crim. App. 12/30/2020), at pages 28-29; 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[89] 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) and State v. Reid, 213 S.W.3d 792, 815 (Tenn. 2006)].

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 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.

[89] For a form motion for recusal, *see* McLean & McLean, 5 Tenn. Practice (Civil) 2d § 6.14 at page 99 (West, 1987).

[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. [Duke v. Duke, 398 S.W.3d 665, 671 (Tenn. App. M.S. 2012)]. Many states have adopted this merged standard for recusal/disqualification. [*See*, Alley, 882 S.W.2d 820 n.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, § 2. [Dougherty v. Dougherty, 2021 Tenn. App. Lexis 388 (Tenn. App. W.S. 9/29/2021), at pages 5-6]. 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)]. Tenn. R. Sup. Ct. 10B has withstood a constitutional challenge. [Gentry v. Casada, 2020 Tenn. App. Lexis 416 (Tenn. App. M.S. 9/17/2020), at pages 17-18].

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. [Boren v. P.C. Hill Boren, 557 S.W.3d 542, 547 (Tenn. App. M.S. 2017); Wiseman v. Spaulding, 573 S.W.2d 490, 493 (Tenn. App. M.S. 1978) and U.S. v. Bell, 351 F.2d 868, 878 n.13 (6th Cir. 1965)]. Failing to timely ask a judge to recuse

himself/herself from a case amount 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). *Accord*, Haase v. Countrywide Home Loans, Inc., 838 F.3d 665, 667 (5th Cir. 2016) and Meso Scale Diagnostics, LLC v. Roche Diagnostics GmbH,, 247 A.3d 229, 249 (Del. 2021)];

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); Roman v. U.S., 2021 U.S. App. Lexis 35229 (6th Cir. 11/29/2021), at page 12; and Kordenbrock v. Scroggy, 919 F.2d 1091, 1102 (6th Cir. 1990)]. While it can hopefully be avoided by a judge "expressions of impatience, dissatisfaction, annoyance, and even anger" from a judge do not automatically justify recusal or disqualification. [In Re: Haas, 292 B.R. 167, 177 (Bky. S.D. Ohio 2003)];

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) and U.S. v. Wright, 133 Fed. Appx. 229, 232-233 (6th Cir. 2005)];

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); Steadman v. State, 806 S.W.2d 780, 785 (Tenn. Crim. App.1990); and Brown v. State, 1991 Tenn. Crim. App. Lexis 466 (Tenn. Crim. App. 6/6/1991), at pages 7-8];

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 grievance against his trial judge); Malmquist v. Malmquist, 2011 Tenn. App. Lexis 504 (Tenn. App. W.S. 9/16/2011), at pages 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 page 2 (Defendant sued judge presiding over a criminal case in an attempt to disqualify judge)]. Other courts agree that manufactured recusal grounds must be discouraged. [*See e.g.*, SEC v. Loving Spirit Found, 392 F.3d 486, 497 (D.C. Cir. 2004)].

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. [*See generally*, In Re: Krake, 942 So.2d 18, 30 (La. 2006) and Holt v. State, 650 So.2d 1267, 1277 (Miss. 1994), Hawkins, dissenting]. 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. 2002)].

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*, T. Brad 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 pages 1-2. *Accord*, Town of Nolensville v. King, 2003 Tenn. App. Lexis 886 (Tenn. App. M.S. 12/19/2003), at page 30, rev'd on other grounds]. A plea of guilty in municipal court 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) and State v. Beard, 1995 Tenn. Crim. App. Lexis 496 (Tenn. Crim. App. 6/22/1995), at page 7. *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 as an admission against interest against the defendant in a later civil case. [Williams v. Brown, 860 S.W.2d 854, 856-857 (Tenn. 1993); State v. Moran, 2018 Tenn. Crim. App. Lexis 206 (Tenn. Crim. App. 3/20/2018), at page 5; and Straub v. Roberts, 2000 Tenn. App. Lexis 217 (Tenn. App. W.S. 3/31/2000), at page 13. *Accord*, Johnson v. Leuthong-Chak, 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 non-CDL 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 page 6; Cummings v. Commonwealth, 2010 PA CW. Ct. Briefs Lexis 1130 (Pa. Commonw. Ct. 8/23/2010), at pages 22-23; 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 automatically an admission of negligence or liability. [Patty v. Lane, 2013 Tenn. App. Lexis 441 (Tenn. App. E.S. 7/3/2013), at pages 19-20]. 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) and Gafurova v. Sessions, 712 Fed. Appx. 540, 545 (6th Cir. 2017)]. 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) and U.S. v. Ushery, 785 F.3d 210, 219 (6th Cir. 2015)]. 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 pages 5-6, discussing 49 C.F.R. § 384.226. *See also*, S.C. Op. Atty. Gen., 2019 S.C. AG Lexis 20 (4/1/2019), at pages 2-5]. 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. *See also*, S.C. Op. Atty. Gen., 2019 S.C. AG Lexis 20 (4/1/2019), at pages 2-5]. 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 over 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. Henry, 539 S.W.3d 223, 243 (Tenn. Crim. App. 2017); 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 pages 1-2 and Van Wagoner v. Van Wagoner, 346 N.W.2d 77, 80 (Mich. App. 1983)]. Due process must be met before a driver's license is suspended. [Bell v. Burson, 402 U.S. 535, 539 (1971); Tenn. Op. Atty. Gen. 11-80, 2011 Tenn. AG Lexis 82 (12/5/2011), at page 6; and Tenn. Op. Atty. Gen. 08-91, 2008 Tenn. AG Lexis 89 (4/8/2008), at page 4].

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 page 6; People v. Marroquin, 15 Cal. App. 5th Supp. 31, 36 (Cal. App. 2017); 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; State v. James, 2011 Tenn. Crim. App. Lexis 59 (Tenn. Crim. App. 1/26/2011), at pages 11-13; Tenn. Op. Atty. Gen. 15-35, 2015 Tenn. AG Lexis 35 (4/17/2015), at pages 2-3; and Cummings v. Pa. Dept. of Trans., 2011 Pa. Commw. Unpub. Lexis 48 (Pa. Commw. 1/7/2011), at page 5].

Tenn. Code Ann. § 55-10-301(b) allows for traffic schools that can be run by governments, (including cities), non-profit 501(c)(3) organizations or private companies. [Tenn. Code Ann. § 55-10-

301(b)(1) and Tenn. Op. Atty. Gen. 09-119, 2009 Tenn. AG Lexis 155 (6/1/2009)]. 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 pages 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 pages 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)]. A city cannot remove Tenn. Code Ann. § 55-10-301(b) traffic school judicial discretion from a municipal judge for specific areas where traffic school may apply, but the city does not like the statutory grant of discretion given to the judge, such as speeders in school zones. [Tenn. Op. Atty. Gen. 15-35, 2015 Tenn. AG Lexis 35 (4/17/2015)]. 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)]. If your city wishes to create a traffic school, *see* Tenn. Comp. R. & Regs. 1340-03-07-.01, *et seq*.

While it will be discussed in more detail later in this chapter, a "commercial vehicle driver" (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) and Beaver v. Ford Motor Co., 2013 Tenn. App. Lexis 509 (Tenn. App. W.S. 7/31/2013), at pages 7-11. *See also,* 49 U.S.C. § 31308 and Tenn. Comp. R. & Regs. 1240-

04-04-11(E)(4)]. The primary exceptions to what amounts to a "commercial vehicle" are 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 pages 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 page 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 suggests that TMJC set uniform standards for eligibility of traffic school for defendants in municipal courts (*e.g.*, everybody in TMJC 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 n.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," is short for "Commercial Drivers License" (f/k/a "Chauffeur's License"). [Tenn. Code Ann. § 55-50-102(11); State v. Contreras, 2019 Tenn. Crim. App. Lexis 642 (Tenn. Crim. App.10/9/2019), at page 10; 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). *But see*, Jones v. Wiseman, 2019 U.S. Dist. Lexis 239127 (W.D. Tenn. 12/30/2019),

at page 6]. 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)]. Commercial drivers convicted of DUIs are ineligible for a restricted drivers license. [State v. McCord, 1995 Tenn. Crim. App. Lexis 657 (Tenn. Crim. App.8/4/1995), at pages 1 & 4].

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.

[T. Brad Bishop, Municipal Courts 3d §§ 7.51 and 7.52, at pages 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; Watson v. Cleveland Chair Co., 789 S.W.2d 538, 544 (Tenn. 1989); and Hamilton v. Gourley, 103 Cal App. 4th 351, 358 n.1 (Cal. App. 2002). *Accord*, Childress v. Cal. Dept. of Motor Vehicles, 2005 Cal. App. Unpub. Lexis 1870 (Cal. App. 3/3/2005), at page 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].[90] By April 1992, all fifty (50) states had implemented the FCMVSA of 1986. [CDL Program Review, at page 10 (Am. Assoc. of Motor Vehicle Admin. 12/2008)]. For a general discussion on CDLs and the FCMVSA, *see* T. Brad 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. See also,* State v. Wilburn, 2021 Tenn. Crim. App. 278 (Tenn. Crim. App. 6/22/2021), at page 10]. 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 page 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 pages 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)]. Effective March 22, 2022, the Uniform Commercial Drivers License Act, which many states such as

[90] The Code of Federal Regulations carry the force of law. [Boatman v. Hammons, 164 F.3d 286, 289 (6th Cir. 1998); Davis v. O'Hara, 40 S.W.3d 24, 42 n.17 (Tenn. App. W.S. 2000); Lozier Corp. v. Douglas County Bd. of Equalization, 829 N.W.2d 652, 658 (Neb. 2013); and Save Our Valley v. Sound Transit, 335 F.3d 932, 943 (9th Cir. 2003)].

Georgia follow, will set minimum physical requirements for CDL drivers. [*See*, 49 C.F.R. § 391-41].

Seventy-five percent (75%) of 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 pages 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 (a/k/a the "Green Book"), 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., (877) 564-2333 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 page 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) and Rollins v. Wilson County Gov't., 967 F. Supp. 990, 993 (M.D. Tenn. 1997)]. Anti-masking laws and regulations for CDL holders probably apply to any traffic violation. [S.C. Op. Atty. Gen. (*no number in original*), 2019 S.C. AG Lexis 20 (4/1/2019), at pages 6-7]. The target for FCMVSA compliance is to make commercial drivers drive safely. [49 C.F.R. § 383.113(b) and Yazzie v. Fezatte, 2018 U.S. Dist. Lexis 25207 (D.N.M. 2/14/2018), at page 9 n.11]. 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 pages 3 & 8 (Fed. Motor Carrier Safety Admin., Oct. 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,[91] 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 page 12]. States are required to post CDL violations on CDLIS. [U.S. v. Smith, 519 Fed. Appx. 853, 858 (5th Cir. 2013); Jans v. State, 964 N.W.2d 749, 756 (S.D. 2021); and Tirado v. Bd. of Appeal on Motor Vehicle Liability Policies & Bonds, 34 N.E.3d 334, 337 (Mass. 2015)]. 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

[91] 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)].

convictions," vol. 14 no. 16 (Workplace Substance Abuse Advisor 7/27/2000). *Accord*, 49 C.F.R. § 384.307; State v. Hargrave, 51 N.E.3d 255, 260 (Ind. App. 2016); and Gingerly v. State, 2009 Mont. Dist. Lexis 343, at ¶ 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)]. For a general discussion on masking, *see* Elizabeth Earleywine, *Mastering Masking: Why and How to Avoid Masking CDL-Holder Convictions*, 27 Nat. Traffic Law Center, *Between the Lines*, 1, 1-10 (July 2019).

CDL cases involving laws against masking must be strictly enforced. [State v. Seisney, 1997 Tenn. Crim. App. Lexis 1040 (Tenn. Crim. App. 10/16/1997), at page 18)]. 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 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. *Accord*, State v. Munson, 2001 Tenn. Crim. App. Lexis 968 (Tenn. Crim. App. 12/31/2001), at pages 5-6]. 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." [State v. Styles, 610 S.W.3d 746, 749 (Tenn. 2020)]. 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
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

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 for non-commercial drivers 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. [*See e.g.*, City of Lawrence v. Driscoll, 425 P.3d 374 (table) (Kan. App. 9/7/2018), at page 2]. 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 n.2 (Tenn. 1993) and State v. Moran, 2018 Tenn. Crim. App. Lexis 206 (Tenn. Crim. App. 3/20/2018), at page 5]. 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, at pages 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*, Younger v. Okbahhanes, 632 S.W.3d 531, 536-537 (Tenn. App. E.S. 2021); Bell v. Tenn. Farmers Mut. Ins. Co., 1999 Tenn. App. Lexis 45 (Tenn. App. M.S. 1/22/1999), at pages 3-4 and Minor v. State, 2001 Tenn. Crim. App. Lexis 932 (Tenn. Crim. App. 12/5/2001), at page 7].

Driver Points. A common question that comes up in municipal court traffic cases is "Will this affect the points on my license?" [Aaron v. City of Ketchikan, 927 P.2d 335, 336-337 (Alaska App. 1996); Ruscavage v. Zurah, 821 F.Supp. 1078, 1080-1081 (E.D. Pa. 1993); and Alaska Op Atty. Gen. J-66-063-81, 190 Alas. AG Lexis 500 (8/5/1980), at pages 1-6]. 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 but has existed for over fifty (50) years. [*See e.g.*,

Metro Gov't of Nashville & Davidson County v. Gelle, 2022 Tenn. App. Lexis 73 (Tenn. App. E.S. 2/25/2022), at pages 17-18; No Illegal Points, Citizens for Driver's Rights v. Florio, 624 A.2d 981, 983 (N.J. Superior, App. Div. 1993) and Holloway v. N.J. Motor Vehicle Comm'n., 2014 N.J. Super. Unpub. Lexis 2035 (N.J. Super. App. Div. 8/15/2014), at page 6]. 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. [Tenn. Dept. of Safety, TAC 1340-1-4-.01 to .07, 2005 TN Regulation Lexis 9666 (8/26/2005) and T. Brad Bishop, Municipal Courts, 3d § 7.20, at pages 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 n.1 (N.D. 1983) and T. Brad Bishop, Municipal Courts, 3d at 129]. The Driver Improvement Points System does not violate Double Jeopardy Principles. [David S. Rudstein, *Civil Penalties and Multiple Punishment Under the Double Jeopardy Clause: Some Unanswered Questions*, 46 Okla. L. Rev. 587, 638 n.274 (1993)]. While there is no statute of limitations on a "points revocation," the prudent path is to notify the driver expeditiously of the revocation – instead of lingering 18-20 months after the arrest that led to the points revocation. [Allen v. Scott, 2012 U.S. Dist. Lexis 8180 (W.D. Mo.1/24/2012), at pages 7-8].

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 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*, Cox v. Reagan, 2009 U.S. Dist. Lexis 72718 (E.D. Tenn. 8/17/2009), at pages 4-6 and 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*, Dep't of Hwy. Safety & Motor Veh. v. Hagar, 581 So.2d 214, 217-218 (Fla. App. 1991); Klingbeil v. State, Dep't. of Rev., Motor Vehicle Div., 668 P.2d 930, 931 (Colo. 1983); Best v. State, Dep't. of Transp. Div. of Motor Veh., 299 N.W.2d 604, 608 (Wis. 1980); 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 page 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/content/tn/safety/driver-services/reinstatements/values.html and www.tn.gov/safety/driver-improvement.html. *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*, Bullard v. Kan. Dep't. of Revenue, 2015 Kan. App. Unpub. Lexis 419 (Kan. App. 5/22/2015), at pages 38-41; Thorek v. DOT, Bureau of Driver Licensing, 938 A.2d 505, 511-512 (Pa. Commw. 2007) and Commonwealth, DOT v. Huff, 310 A.2d 435, 435 (Pa. Commw. 1973)]. For a discussion on the Tennessee Driver Points System, *see*

Tenn. Op. Atty. Gen. 07-73, 2007 Tenn. AG Lexis 71 (5/17/2007) and Tenn. Comp. R. & Regs. 1340-01-04-.01]. Court clerks should read about mandatory reporting of CDL traffic violations found at www.tn.gov/content/dam/tn/safety/documents/NewTNLawBrochure.pdf (11/1/2011), giving special note to page 2.

Insurance Rates/SR-22. The U.S. District Court for the Western District of Tennessee has declared, "A SR-22 form is proof of future financial responsibility and is required under Tenn. Code Ann. § 55-12-144 under certain circumstances. It is not itself a form of [insurance] coverage." [Hale/Camacho v. Tenn. Dep't. of Safety & Homeland Sec., 2019 U.S. Dist. Lexis 179144 (W.D. Tenn. 8/30/2019), at page 4 n.1]. "SR-22" is associated with proof of "high-risk" insurance coverage. [Nora J. Pasman-Green, *Off the Roads & Out of Court*, 24 J.L. & Health 217, 259 (2011) and Janine Robben, *The DMV and Insurance*, 680 Or. St. B. Bull, 25 (Aug./Sept. 2008)]. Traffic citations, just like automobile accidents,[92] 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. [James J. Bell & Kathleen E. Rudis, *Advising Criminal Defendants in*

[92] 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/].

Indiana of Potential Collateral Consequences of a Guilty Plea in the Aftermath of Padilla v. Kentucky, 54 Res. Gestae 84, 88 n.69 (Apr. 2011)].

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 form ***proving*** that a person has financial responsibility/liability insurance. [*See*, Provident Gen. Ins. Co. v. Houts, 1990 Tenn. App. Lexis 702 (Tenn. App. E.S. 10/4/1990), at pages 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*.; Rosenbaum v. State, 930 N.E.2d 72, 75 (Ind. App. 2010); and Am. Family Ins. Co. v. Globe Am. Cas. Co., 774 N.E.2d 932, 937-938 (Ind. App. 2002). *Cf*., Starr v. Hill, 353 S.W.3d 478, 483-484 n.4 (Tenn. 2011)].

HMVO/HTO. "HMVO" stands for "Habitual Motor Vehicle Offender." "HTO" stands for "Habitual Traffic Offender." [*See*, State v. Johnston, 2009 Tenn. Crim. App. Lexis 726 (Tenn. Crim. App. 8/31/2009), at pages 11-12 and Tenn. Code Ann. § 55-10-603(2)]. Cases in Tennessee have used the abbreviations HTO and HMVO interchangeably. [*See e.g*., State v. Harmon, 2021 Tenn. Crim. App. Lexis 402 (Tenn. Crim. App. 8/30/2021), at page 15 (**HMVO**) vs. State v. Johnson, 2019 Tenn. Crim. App. Lexis 265 (Tenn. Crim. App. 4/25/2019), at pages 2-3 (**HTO**)]. 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) and State v. Godsey, 165 S.W.3d 667, 673 (Tenn. Crim. App. 2004). *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, 1988 Tenn. Crim. App. Lexis 655 (Tenn. Crim. App. 10/26/1988), at pages 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)]. Underlying convictions which support HMVO or HTO findings that are final are not subject to collateral attack in the HMVO hearing. [State v. Lucas, 1999 Tenn. Crim. App. Lexis 810 (Tenn. Crim. App. 8/10/1999), at pages 6-7]. 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 page 5 and State v. Bellamy, 1987 Tenn. Crim. App. Lexis 2189 (Tenn. Crim. App. 3/13/1987), at pages 4-5].

HMVO petitions are civil in nature and do not justify more extreme measures used in criminal cases such as a "*capias*" body attachment. [*See*, Stacie Smith, *State v. Lucas: Issuance of Capias Under the Motor Vehicle Habitual Offender Act*, 4 Tenn. J. Prac. & Proc. 48, 48 (2002)]. HMVO petitions function in a nature similar to a permanent injunction. [State v. Cooper, 2001 Tenn. Crim. App. Lexis 680 (Tenn. Crim. App. 8/29/2001), at pages 5-6]. 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)." [Jennifer Sink,

The Case Against Simplicity, 27 S. Ill. U. L.J. 637, 637 (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." [State v. Dahl, 57 P.3d 965, 968 (Ore. App. 2002); Terry v. Neff, 2007 Mont. Dist. Lexis 169 (Mont. 21st Dist. Ct. 1/10/2007), at page 10; and Anver Bar-Ilan & Bruce 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]. Technology improvements, such as automated automobiles, driven by computers instead of humans, are touted as the means of helping older or disabled persons and controlling speeders – as well as reducing traffic accidents and insurance premiums. [Rachel E. Sachs, *Regulating Intermediate Technologies*, 37 Yale J. on Reg. 219, 269 (2020)]. Tomorrow's "strange new world" may be "the world of Go!" [Dr. Seuss Enters., L.P. v. ComicMix, LLC, 983 F.3d 443, 454 (9th Cir. 2020)].

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,[93] 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. 11-80, 2011 Tenn. AG Lexis 82 (12/5/2011). *See generally*, Garrick Alpin, *Elderly Drivers*, 87 Wash. U.L. Rev. 379, 389-391 (2009)].

[93] Ordering a retake of the Tennessee Driver's License Exam is not a punishment, but a public safety issue.

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 pages 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 Jans v. State, 964 N.W.2d 749, 752 (S.D. 2021)].

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 and the violation of a bar notice can lead to an arrest for criminal trespass. [State v. Welch, 2019 Tenn. Crim. App. Lexis 44 (Tenn. Crim. App. 1/23/2019), at pages 10-11]. If a police officer spies a person the officer knows was barred from visiting at a location; the officer can immediately arrest the violator. [Hardin v. State, 2019 Tenn. Crim. App. Lexis 692 (Tenn. Crim. App. 10/25/2019), at page 25]. Common examples of where bar letters are issued are shopkeepers barring shoplifters from a store or landowners stopping groups of youth from loitering at a parking lot or "cruising" a local business. [*See e.g.*, State v. Lawson, 2019 Tenn. Crim. App. Lexis 632 (Tenn. Crim. App. 10/8/2019), at page 27, shoplifter barred from Wal-Mart]. 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]. A bar letter can include the "collective knowledge" of all local police officials – not just the police officer who detains a person. [State v. Butler, 2016 Tenn. Crim. App. Lexis 415 (Tenn. Crim. App. 6/6/2015), at page 41].

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]. Follow the lead of Tennessee Supreme Justice Thomas J. Freeman, (who was also the first dean of the University of Tennessee's College of Law),[94] when he opined:

> **…we must administer the law regardless of consequences.**

[Thomas v. Blanchard, 70 Tenn. 528, 531 (1879)].[95]

[94] *See*, https://volopedia.lib.UTK.edu/entries/college-of-law/.

[95] In 1878, Freeman narrowly defeated Howell Edmunds Jackson for a seat on the Tennessee Supreme Court. Jackson, a Cumberland School of Law graduate, eventually served on the U.S. Supreme Court. [Terry Calvani, *The Early Legal Career of Howell Jackson*, 30 Vand. L. Rev. 39, 40, 45 & 65 (1977)].

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. Sup. Ct. 41 and 42 set the basic rules for court interpreters. These rules call for accuracy, qualifications, impartiality and confidentiality. [*See,* Tenn. R. Sup. Ct. 41]. Interpreter rules apply to municipal courts and includes potential indigent appointments for interpreter services. [Tenn. R. Sup. Ct. 42, § 2 (10), (11); § 3, and § 7]. Tenn. R. Civ. P. 28 and Tenn. R. Civ. P. 54.04(2) allow the expense of an interpreter to be assessed as a discretionary court cost. [*Accord*, Fannon v. City of Lafollette, 329 S.W.3d 418, 433-434 (Tenn. 2010)]. 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); State v. Heck Van Tran, 864 S.W.2d 465, 475-476 (Tenn. 1993); and State v. Pena, 2020 Tenn. Crim. App. 403 (Tenn. Crim. App. 6/11/2020), at page 10]. This is an Access to Justice issue which justified state funding for interpreters. [Anne Louise Wirthlin & Mary Rose Zingale, *Access to Justice: New Finding for Court Interpreters Helps Clients, Judges …and Justice*, 49 Tenn. B.J. 15, 15-17 (Jan 2013)]. 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 translates and he/she interprets accurately. [Jerry J. Phillips, *A Comparative Study of Witness Rules*, 39 Tenn. L. Rev. 379, 384 (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. [Michael B. Shulman, *No Hablo Ingles*, 46 Vand. L. Rev. 175, 178-179 (Jan. 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*]. For this reason, courts should ensure that the interpreter and person needing translation have easy access to each other. [*See e.g.*, State v. McCarter, 2005 Tenn. Crim. App. Lexis 895 (Tenn. Crim. App. 8/18/2005), at pages 13-15]. 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 n.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. [State v. Nehad Sobhi Abdelnabi, 2018 Tenn. Crim. App. Lexis 472 (Tenn. Crim. App. 6/26/2018), at pages 61-63; 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, such as a "T.I.P." (Telephone Interpreting Program). [*See e.g.*, U.S. v. Gonzales, 339 F.3d 725, 728-729 (8th Cir. 2003)].

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)]. The grant of an interpreter is reviewed on appeal as an abuse of discretion. [State v. Fung, 907 P.2d 1192, 1194 (Utah App. 1995), citing Heck Van Tran].

In an interesting twist, a federal court in the Sixth Circuit has opined that if an ***attorney*** does not speak English; the court must appoint an interpreter, at court expense, for the ***attorney***. [Mosier v. Kentucky, 2009 U.S. Dist. Lexis 114699 (E.D. Ky. 12/9/2009), at page 20]. 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 Mr. Ryan Mouser at the AOC. [Ph. (615) 741-2687, email: ryan.mouser@tncourts.gov or visit the AOC website at the "programs" tab and go to the "Court Interpreters" scroll-down point].

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 exceed 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. [Wadri v. State, 2020 Tenn. Crim. App. Lexis 797 (Tenn. Crim. App. 12/15/2020), at pages 22-23 and Rigger v. State, 341 S.W.3d 299, 313 n.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. [*See generally*, Carlie, Malone, *Plea Bargaining and Collateral Consequences: An Experimental Analysis*, 73 Vand. L. Rev. 1161 (2020)].

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. [Steven McGeady, *The Digital Reformation*, 10 Harv. J. Law & Tec. 137, 140 (Fall, 1996); Walter A. Stoffel, *Enlightened Decision Making*, 75 Tul. L. Rev. 1195, 1198 (March, 2001); and Vincent P. Fornias, *Drawing a Line in the Sans Serif*, 45 La. 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. [U.S. v. Ademaj, 170 F.3d 58, 61 (1st Cir. 1999)]. 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. [Wylie v. Glenncrest, 143 A.3d 73, 86 n.22 (D.C. App. 2016)]. 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); City of La Vergne v. LeQuire, 2016 Tenn. App. Lexis 778 (Tenn. App. M.S. 10/19/2016), at pages 4-5; and Barrett v. Tenn. OSHRC, 284 S.W.3d 784, 788-789 (Tenn. 2009)]. Court costs for municipal courts are generally governed by Tenn. Code Ann. § 16-18-304(a). [Tenn. Op. Atty. Gen. 06-147, 2006 Tenn. AG Lexis 167 (9/27/2006)]. 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) and Tenn. Op. Atty. Gen. 06-147, 2006 Tenn. AG Lexis 167 (9/27/2006). *See also*, Rex Barton & Melissa Ashburn, Municipal Courts Manual, (MTAS, 2007), at page 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)].[96] 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 page 12. *See also*, Tenn. Code Ann. § 16-17-105].[97] Further, if a municipal court clerk allows fines/costs/taxes to

[96] *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 pages 16-17 which places the duty of collecting costs and taxes on the municipal court judge.

[97] 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

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; TAC 0780-2-1-.01 *et seq*., 2008 TN Regulation Text 10603 (12/31/2008); and Tenn. Op. Atty. Gen. 01-15, 2001 Tenn. AG Lexis 15 (1/31/2001), at pages 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 page 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 pages 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*, Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at pages 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

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(9/9/1999). For ***basic*** information on how cross-over jurisdiction works, *see* Moore v. State, 19 S.W.2d 233, 233 (Tenn. 1929).

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) and State of Tubwell, 2012 Tenn. Crim. App. Lexis 1032 (Tenn. Crim. App. 12/13/2012), at pages 4-5. *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; Tenn. Op. Atty. Gen. 11-17, 2011 Tenn. AG lexis 19 (2/15/2011), at page 3; and Tenn. Op. Atty. Gen. 07-147, 2007 Tenn. AG Lexis 147 (10/19/2007), at pages 8-9]. 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 pages 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 and Tenn. Op. Atty. Gen. 15-07, 2015 Tenn. AG Lexis 6 (1/27/2015), at pages 1-2. *See also*, Tenn. Code Ann. § 27-5-102; State v. Moses, 2016 Tenn. Crim. App. Lexis 337 (Tenn. Crim. App. 5/4/2016), at pages 5-6; 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); Metro. Gov't of Nashville v. Johnston, 2013 Tenn. App. Lexis 39 (Tenn. App. M.S. 1/23/2013), at page 6; 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? [*See e.g.*, Hixon v. Haslam, 329 F.Supp. 3d 475, 523 (M.D. Tenn. 2018)].

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) and State v. Panchikal, 2019 Tenn. Crim. App. Lexis 339 (Tenn. Crim. App. 6/5/2019), at page 20 n.4]. For the purposes of this option, a Failure to Appear amounts to a conviction for suspension purposes. [Tenn. Code Ann. § 55-50-503(c) and Tenn. Op. Atty. Gen. 97-029, 1997 Tenn. AG Lexis 28 (3/31/1997), at pages 11-12]. 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). *Accord*, Robinson v. Purkey, 326 F.R.D. 105, 120-122 (M.D. Tenn. 2018)]. 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) and Robinson v. Lane, 814 Fed. Appx. 991, 992 n.1 (6th Cir. 2020)]. This statute is mandatory and directory for the municipal judge as "shall means shall." [Crestwood Farm Bloodstock v. Everest Stables, Inc., 751 F.3d 434, 445 (6th Cir. 2014); 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)]. If 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 may be suspended upon the municipal court clerk notifying the Tennessee Department of Safety. [Tenn. Code Ann. § 40-24-105(b)(1) and (2) and Thomas v. Haslam, 2021 U.S. App. Lexis 25897 (6th Cir. 8/25/2021), at page 1]. 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*]. This discretion led to the "Purkey"[98] litigation, which strongly suggests, (if not mandates), that if a defendant requests a payment plan for a traffic ticket; said request should be granted and attempted before a drivers' license is suspended. [Robinson v. Purkey, 326 F.R.D. 105, 120-123 (M.D. Tenn. 2018)]. Tennessee had suspended over 250,000 licenses between 2012-2018. [Purkey, 326 F.R.D. at 121]. Eventually, Tennessee's drivers license suspension rules were upheld, but to avoid another two-year injunction and more litigation, the prudent path is for TMJC members to allow payment plans for paying fines and costs. [*See*, Robinson v. Long, 814 Fed. Appx. 991, 992-993 and 995 (6th Cir. 2020)]. If the defendant's requested payment plan is not followed by a defendant, then the court may proceed to suspending the driver's license. [*See generally*, Joni Hirsch & Priya Sarathy Jones, *Driver's License Suspension for Unpaid Fines and Fees: The Movement for Reform*, 54 U. Mich. J.L. Reform 875 (2021)].

A third option for enforcing a municipal court order 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

[98] Purkey = David W. Purkey, Commissioner of the Tennessee Department of Safety and Homeland Security. [Robinson v. Purkey, 326 F.R.D. 105, 115 (M.D. Tenn. 2018)].

collection process does not automatically apply to outstanding parking fines 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 Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at page 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 pages 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 pages 3-4]. One *caveat* with executions/garnishments is they can be cumbersome to implement and may require your municipal court clerk to file suit in General Sessions Court for execution. [Tenn. Code Ann. § 26-2-201 *et seq.* and Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS 2007), at page 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 pages 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 page 2]. While noting that a municipal court is not a "court of record,"[99] 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 Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at pages 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 pages 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 n.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 pages 7-8]. The Henley court notes that municipal courts do not have "official minutes." [Henley, 2002 Tenn. Crim. App. Lexis 746, at page 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 page 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].[100] The

[99] State v. Henley, 2002 Tenn. Crim. App. Lexis 746 (Tenn. Crim. App. 8/27/2002), at page 7.

[100] 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

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 pages 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 Rex Barton & Melissa Ashworth's 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].[101] 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]. Even during the COVID-19 Pandemic, judges and court clerks were tasked with ensuring that the courts continue to function properly. [In Re: COVID-19 Pandemic, 2021 Tenn. Lexis (Tenn. 2/12/2021), at page 5].

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

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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 pages 8-9].

[101] If one has trouble finding the Barton/Ashworth text, the MTAS Library still has it in pdf form. Call MTAS at 865/974-0411. One can also go to the MTAS website and search "The MORE Database" and the searcher will see various topics that are useful to municipal courts throughout Tennessee.

wish to see Tenn. Code Ann. § 18-1-201 *et seq.* before "house cleaning" regarding the municipal court's records file. [*See also*, Tenn. Op. Atty. Gen. 86-93, 1986 Tenn. AG Lexis 114 (5/8/1986), at pages 1-2]. 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, if possible. Otherwise, a reasonable payment plan should be established, or the judge should set a review for payment status if the fine isn't paid immediately. For a general overview of collection rules, *see* Rex Barton & Melissa Ashburn, Municipal Courts Manual (MTAS, 2007), at pages 7-11.

CHAPTER XVIII – WORKPLACE ISSUES

Municipal judges are not exempt from workplace issues. [*See e.g.*, Hays v. Forsman, 458 F. Supp. 2d 1177, 1182 (D. Nev. 2006), discussing a court reporter suing a federal judge and court clerk for free speech 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 Frederic S. 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 Frederic S. LeClercq, *The Law of the Land, supra*, at 605-606]. Municipal court 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*, Phyllis Williams Kotey, *Public Financing for Non-Partisan Judicial Campaigns: Protecting Judicial Independence While Ensuring Judicial Impartiality*, 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) and Sam D. Elliott, *President's Perspective: Hometown Legal History*, 47 Tenn. B.J. 3, 13 (Apr. 2011)].

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]. Only about five percent (5%) of speeding tickets issued are contested in court. [Erin Horan Mendez, *Don't be a D*ck by Sending a Pic: Texas Attempts to Attack the "D*ck Pic" Epidemic by Criminalizing the Sending of Unsolicited Sexual Photographs*,[102] 58 Hous. L. Rev.

[102] "*" in original text.

511, 523-524 (2020)]. 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, the Tennessee Supreme Court[103] 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]. "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.

[*Accord*, Cook Cnty. Sheriff's Office v. Cook Cnty. Comm'n on Human Rights, 53 N.E.3d 1144, 1153 (Ill. App. 2016)]. 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, gender, language, or accent.

[103] 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 (3) and (4).

[AOC Admin. Policy 2.08 at IV (Definitions). *Accord*, Ellis v. Houston, 742 F.3d 307, 314 (8th Cir. 2014)].

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[104] or the Tennessee Human Rights Commission.[105]

SEXUAL HARASSMENT. One might think that a judge would know enough law to not get caught committing sexual harassment. [Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 65 (1986)]. Think again! [Inquiry Concerning Johnson, 9 Cal. 5th CJP Supp. 1, 47 & 81 (Cal. Comm'n on Jud. Perf. 2020) and In Re: Shaw, 207 A.3d 442, 444 (Pa. Ct. Jud. Discipline 2019)]. A federal judge was sanctioned in 2007 for committing sexual harassment. [*See*, Lara A. Bazelon, *Putting the Mice in 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* Kathleen G. McAnaney, *et al, From Imprudence to Crime: Anti-Stalking Laws*, 68 Notre Dame L. Rev. 819, 909 n.9 (1983), for a discussion on Chief Judge Soloman Wachtler of the New York Court of Appeals].[106]

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,

[104] EEOC phone number = (800) 669-4000.

[105] Tennessee Human Rights Commission phone number = (615) 741-5825.

[106] 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].

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") sexual harassment complaint that Ms. Sanders' filed against Chancellor Lanier because Lanier was a supervisor of Ms. Sanders. When reading the complaint in the light most favorable to Ms. Sanders, Chancellor Lanier conditioned Sanders' employment on Lanier enjoying sexual favors from Ms. Sanders. [*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 practical point coming from the Lanier case, (besides don't sexually harass co-workers), 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 S.W.3d 466, 475-476 (Tenn. 2000). *But see*, Adams v. Ohio University, 300 F.Supp. 3d 983, 995 (S.D. Ohio 2018) and Adair v. Hunter, 236 F.Supp. 3d 1034, 1047 (E.D. Tenn. 2017)]. An article on the Lanier case, published in the Tennessee Employment Law Update, the author 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 n.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)]. For a detailed discussion on the Lanier case, without Sherardizing 2000 cases, *see* Gail L. Storck, *United States v. Lanier: The Judge is Judged*, 27 Cap. U. L. Rev. 393 (1999).

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); McPherson v. Shea Ear Clinic, 2007 Tenn. App. Lexis 265 (Tenn. App. W.S. 4/27/2007), at page 33 n.7; 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. *See also*, Wendy Murphy, *Traumatized Children Who Participate in Legal Proceedings are Entitled to Testimonial and Participatory Accommodations Under the Americans With Disabilities Act*, 19 Roger Williams U. L. Rev. 361, 365 n.20 (2014)]. 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, Mr. Lane refused to have bailiffs carry him up the flight of steps at the courthouse,[107] 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); Hearring v. Sliwowski, 712 F.3d 275, 280-281 6th Cir. (2013); Vowell

[107] *See*, Lane, 541 U.S. at 513-514.

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(3). 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, John Coke. [Ph. (615) 741-2687 or (800) 448-7970; www.tsc.state.tn.us; 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 relocated case is retaliation to the defendant or preferential treatment of the defendant. [*See*, David J. 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 (2005) citing Chief Justice Rehnquist's dissent in Tennessee v. Lane, 541 US 509, 543 n.4 (2004), and Mark 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 before Due Process is undermined. [*See generally*, Miss. Op. Atty. Gen. 2008-00089, 2008 Miss. AG Lexis 111 (3/21/2008), at pages 2-3]. 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. [*See*, McKlintic v. 36th Judicial Circuit Court, 464 F. Supp. 2d 871, 873-875 (E.D. Mo. 2006) and Patricia Manson, *Appeals Court Ends FMLA Claim Against Illinois Court System. (Family and Medical Leave Act of 1993) (7th Circuit Court of Appeals on Tibbs v. Administrative Office of the Illinois Courts)*, 163 Chicago Daily Law Bulletin 119 (7/20/2017)]. 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), {Employee subpoenaed to court};

B) Best v. Distrib. & Auto Svcs., 1999 Tenn. App. Lexis 630 (Tenn. App. W.S. 9/13/1999) at 11 n.3, {Discussing the Pregnancy Discrimination Act};

C) Austin v. Shelby County Gov't., 3 S.W.3d 474, 477 (Tenn. App. W.S. 1999), {Hypertension and doctor appointments};

D) Spann v. Abraham, 36 S.W.3d 452, 463-464 (Tenn. App. M.S. 1999), {Pregnancy discrimination}; and

E) Coates v. Tyson Foods, Inc., 2020 Tenn. Lexis 281 (Tenn. Worker's Comp. App. 7/28/2020), at page 6, {Discussing FMLA time-off allocution amounts}.

Tennessee offers a co-existing statute to federal family medical leave act offerings in Tenn. Code Ann. § 4-21-408. [Russell v. Convergys Customer Mgmt. Group, 2002 U.S. Dist. Lexis 26908 (E.D. Tenn. 7/10/2002), at page 9 n.1]. By way of example, a child support magistrate in Montgomery County took personal time off from work to fight breast cancer in 2013. The AOC tasked senior judges to sit while the child support magistrate received cancer treatments. The magistrate fought bravely, but she lost her fight. Medical issues will sometimes cause delays in hearing cases. [*See e.g.*, State v. Miller,

201 P.3d 1, 3 (Kan. App. 2009) and State v. Hoffman, 197 P.3d 904 (table), 2008 Kan. App. Unpub. Lexis 984 (Kan. App. 12/19/2008), at page 7]. A happier reason for FMLA to apply in municipal court situations is that some judges need to take maternity leave. [*See e.g.*, Pryor v. Bostwick, 818 N.E.2d 6, 10 (Ind. App. 2004); 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 page 2; and State v. Miller, 201 P.3d 1 (table), 2009 Kan. App. Unpub. Lexis 78 (Kan. App. 2/13/2009), at page 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. [*See e.g.*, Jackson v. St. Helena Parish Sheriff's Dep't., 835 So.2d 842, 844-845 (La. App. 2002)]. 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 Judge Coburn suffered serious injuries. [articles.orlandosentinel.com/1994-1225/news/9412 240788_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.[108] Sadly, that is when we are

[108] Called "The Hawthorne Effect," people behave differently, (usually in a more productive, hard working, or articulate manner), when the person knows or believes they are being watched. [State ex rel. Rosenthal v. Poe, 98 S.W.3d 194, 206 n.2 (Tex. Crim. App. 2003)]. TMJC members would be well-served to presume that they are ***always*** being watched…because you ***are*** being watched – by everyone in your community.

watched for true character. [U.S. v. Int'l Bhd. of Teamsters, 247 F.3d 370, 390 n.13 (2nd Cir. 2001)]. 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 streetcar. 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 streetcar. Our decisions – even the small, fleeting ones – tell a lot about us.

[*Bits and Pieces* (magazine) (Lawrence Ragan Communications, 2008) at 12, parenthetical added]. Don't act in private in a manner that would be considered disgraceful in public. [City of Riverdale v. Diereks, 806 N.W.2d 643, 645 (Iowa 2011), quoting U.S. Supreme Court Justice Louis Brandeis saying, "Sunlight is said to be the best of disinfectants"]. Workplace secrets seldom stay secret (Kerckhoff's Principle). [Ido Kilovaty, *Freedom to Hack*, 80 Ohio St. L. J. 455, 518 n.460 (2019)].

CONCLUSION

Many changes have occurred in the world since the first edition of this TMJC Benchbook was penned in 2013. Today's lexicon includes new terms such as "COVID," "Social Distancing," and "Fake News." Terms long forgotten, such as "Pandemic," have resurfaced. Some believe concepts such as hugs and handshakes are slipping away in a world where blowing out the candles on a birthday cake is seen as a reckless and dangerous potential disease "***super-spreader"*** instead of a beloved family tradition. That being said, not ***everything*** changed between 2013 and 2022.

Manners were sometimes lost in a fog of masks, hand sanitizer, and quarantines during the "***World According to COVID***." While kindness temporarily dissipated, it did not evaporate. Judges such as Chattanooga's Russell Bean continued to grace the bench with courtesy to lawyers, litigants and other jurists. The recently retired AOC Director, Deborah Taylor Tate would generously listen to concerns of TMJC members with compassion, interest, and tact – even when little courtesy was offered by TMJC members showing signs of 'COVID Stress" during the conversation. John Crawford mediated judicial egos of TMJC members with a soothing demeanor only equaled by the Balm of Gilead. As Wendell Willkie, (FDR's 1940 presidential election opponent), once said, "***The test of good manners is to be able to put up pleasantly with bad ones***." TMJC members should take this point to heart and remember that emotions run high in any "courtroom drama" – even traffic court.

In 2013 and before, I would occasionally say, "I feel like I've been hit by a Mack Truck." That phrase ended, and the import of my role as a traffic judge received a different insight, upon meeting my future son-in-law, Jacob Coleman. Jacob met my daughter, Leora, at the University of Tennessee – Chattanooga, after a job change. Jacob was a firefighter/EMT responding to a wreck on I-65 in 2011 when he was literally, hit by a Mack Truck. The CDL driver had an impressive history of masked traffic tickets. If other judges had followed the law,

Jacob would have not endured multiple surgeries and a near-death experience. When asked by a CDL holder for traffic school or a "non-moving violation," I think of Jacob …and follow the law.

If one relies on the press and social media to determine importance and self-worth; one may receive inaccurate information. An example of this is the January 10, 2022 cover of People Magazine. That cover celebrates the upcoming 100th birthday of actress Betty White. An article inside the magazine talks of how excited "stars" are to wish Betty White "Happy Birthday." The problem is that Ms. White died on December 31, 2021,[109] almost two weeks before the January 10, 2022 edition of People Magazine was placed on grocery store shelves.[110] In an apparent cost/benefit decision, People Magazine ran the article on Ms. White "as is," without even mentioning in an editor's note the blatant change of fact that the "Birthday Girl" would not be attending her party. Municipal judges must follow the law and rule on the facts presented; not on a glossy story that may, or may not, be accurate. Understand that the person telling the story may have an agenda. A neutral magistrate should only want to find truth.

One academic actor is calling for the total elimination of municipal courts in America.[111] More commentators declare that "***municipal courts serve a very significant function in the trial court system***."[112] I am in the second opinions' camp. While it flatters me that the Harvard Law Review cited the first edition of this book, the approval of the people mentioned in this conclusion mean much more to me. Impressive institutions have tradition. TMJC members have faces. I learned that lesson, ironically, by obtaining a three-year graduate leadership certification through Harvard University in 2020. Peer approval trumps resume highlights. The year 2022 marks the twentieth (20th) anniversary of the creation of the Tennessee Municipal Judges Conference. I have enjoyed the honor of seeing TMJC blossom from infancy to date. The quality of this branch of the

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[109] *See*, https://www.cnn.com/2022/01/10/entertainment/betty-white-cause-of-death/index.html.
[110] Ms. White would have turned 100 years old on January 17, 2022, according to the article. [Liz McNeil, *Betty White Turns 100, Forever Funny*, 97 (no. 2) People (Magazine) 36 (1/10/2022)].
[111] Brendan D. Roedinger, *Abolish Municipal Courts: A Response to Professor Natapoff*, 34 Harv. L. Rev. F. 213, 225-227 (2021).
[112] Daniel C. Minteer, *Trial Court Consolidation in California*, 21 UCLA L. Rev. 1081, 1120 (1974). *Accord*, N.D. Op. Atty. Gen. 92-23, 1993 N.D. AG Lexis 19 (12/22/1993), at page 6.

Tennessee judiciary continues to improve and expand. I hope that my peers smile when they see my face. As we begin the third decade of TMJC, I encourage members of this body to follow the direction of Star Trek's Jean-Luc Picard and:

Engage!

Greg Smith
March 18, 2022[113]

[113] I will be on a cruise with my family celebrating my daughter, Leora's, 30th birthday the date that this book is released. Family is more important than ***any*** job, recognition, or honor. TMJC members must keep their perspective on and off the bench.

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 $50.00. 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 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

$100.00. If you are not actively practicing federal criminal law during your "non-judicial" worktime, 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 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 approximately $50.00. [*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 into public opinion but stands for the "right" answer…even when that answer may cost 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 $20.00. 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,[114] 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."

[114] 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),[115] 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

"The job doesn't pay enough to be a jerk!"

Judge Arthur J. Hanes, Jr.

[115] Hereinafter "LQB" with the name of the person being quoted and a page citation to the book.

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