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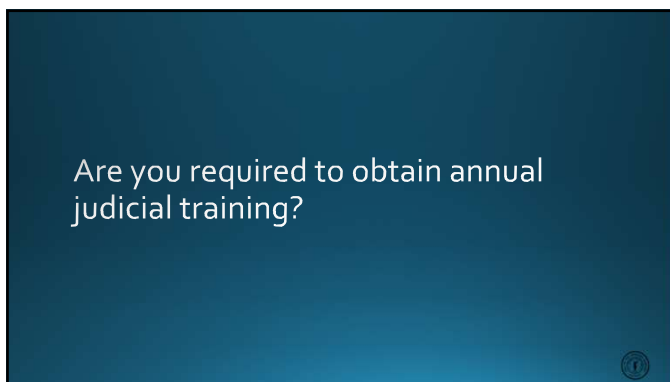
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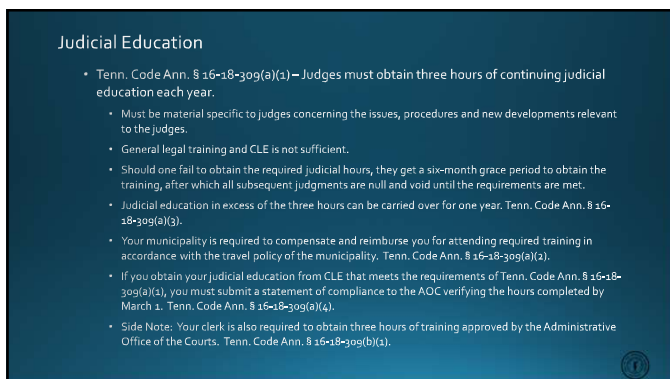
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How do you maintain an efficient docket?

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#### Handling Your Docket

- Group cases by type
  - Can be done by your clerk in advance
  - Dispose of non-contested cases before hearing contested cases
- Set a special hearing at the end of your docket or at a later time
- Judicial Mineral Oil...

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When someone you know appears before you, when is it appropriate to recuse yourself?

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### Dealing with people you know

- Depends on the relationship with the party/parties
- In municipal court setting, you may not know the litigants until they appear.
- Tenn. S.Ct. Rule 10, Canon 1: "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."
- Our Tennessee Constitution entitles litigants to the "cold neutrality of an impartial court." Leighton v. Henderson, 220 Tenn. 91, 414 S.W.2d 419, 421 (Tenn. 1967).
- Remember, failure to recuse, when appropriate, can result in action against the judge by the Tenn. Board of Judicial Conduct.

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Do you do pre-court announcements  
and, if so, what do you emphasize?



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### Pre-Court Announcements

- General announcements
  - Explain what will happen so they know what to expect
    - Raising their hand when docket is called
    - Stepping to the podium when their case is called
- Being sworn in and what that means
  - Tenn. Code Ann. § 39-16-703 (perjury)
- How questioning will occur
  - Be civil when asking questions of the City's witness



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How do you handle *ex parte* communication on cases that will be heard in your court?

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#### *Ex Parte* Communication

- What is *Ex parte* communication?
- Ethical rule prohibiting *ex parte* communication
  - RJC 2.9 on Ex Parte Communication States in Relevant Part that "A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter . . ."
- Rule regarding impartiality
  - RJC 2.2 on Impartiality: "Judges shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially."

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How much explanation do you provide when rendering decisions, especially on contested matters?

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### Explaining Decisions

- Maintain impartiality
  - Must be fair and impartial both in fact and in perception. See State v. Reid, 213 S.W.3d 792, 815 (Tenn. 2006).
- Promote confidence in the fairness of the system.
- Also give confidence in the integrity of the court.

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### What do you do when you want to take a day off?

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### Taking a Day Off

- You have several options:
  - 1) Municipal judges are allowed to sit by interchange with any other municipal judge in Tennessee.
    - Tenn. Code Ann. § 16-18-312(b) – The person sitting for you can be a municipal or General Sessions judge.
    - You contact another judge to sit for you and draft an order of interchange. This also works in the event you are disqualified from hearing a case. The order ("written designation") is filed with your municipal court clerk.
    - Trial courts must generally go through the AOC for substitute judges.
    - Tenn. Code Ann. § 16-18-312(a) – A municipal judge may appoint a substitute judge for up to thirty (30) days at a time, subject to reappointment.
  - 2) You may simply hold court on a different day.
  - 3) You can also cancel court for the day you are not available.
  - 4) Finally, your municipality can pass an ordinance designating a permanent substitute judge that can serve if the primary judge is unavailable.
    - If the person appointed is not already a municipal or General Sessions judge, they must meet all the qualifications of a municipal judge. They must also satisfy the annual judicial education requirements required by Tenn. Code Ann. § 16-18-310 that we discussed earlier.

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How do you handle a non-English speaking litigant?

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#### Court Interpreters

- AOC has interpretation services available as does MTAS
- You can designate an interpreter to serve and swear them in separately.
  - Remind them that they are only to give an accurate interpretation of what is being said by each person speaking.

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How do you handle evidentiary issues when no one knows to object to the inappropriate question or answer?

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#### Evidentiary Issues

- No specific rules for municipal courts
- Can follow the Tennessee Rules of Evidence and judges are the "gatekeeper" for evidence allowed – HOWEVER
  - Still have obligation to be fair and impartial – neutral
  - Do not advocate from the bench for either side



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What do you keep on the bench with you in addition to your gavel?



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How do you handle a juvenile offender?



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#### Juvenile Offenders

- Tennessee Statute on juvenile cases
- Parents or legal guardian present with the litigant (with documentation)
- Consent for Municipal Court to hear citation for juvenile cases
- Alternative sentencing and practical pointers



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How do the *pro se* litigants in your court provide evidence? In other words, do they generally just “tell their story” or do they also engage in the cross-examination of the other party and/or witness?



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How do you collect when a defendant fails to pay an ordinance or code violation (non-traffic)?



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### Failure to Pay

- "Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action. Tenn. Code Ann. § 40-24-105(a).
- You may "enforce all orders assessing any fine remaining in default by contempt upon a finding by the court that the defendant has the present ability to pay the fine and willfully refuses to pay." Tenn. Code Ann. § 40-24-105
- Collection Agency. Tenn. Code Ann. § 40-24-105:
  - (1) The governing body of any municipality may by ordinance authorize the employment of a collection agency to collect fines and costs assessed by the municipal court where the fines and costs have not been collected within sixty (60) days after they were due. The authorizing ordinance shall include the requirement that the contract between the municipality and the collection agency be in writing.
  - (2) The collection agency may be paid an amount not exceeding forty percent (40%) of the sums collected as consideration for collecting the fines and costs.
  - (3) The written contract between the collection agency and the municipality shall include a provision specifying whether the agency may institute an action to collect fines and costs in a judicial proceeding.
  - (4) Nothing in this subsection (e) shall be interpreted to permit a municipality to employ a collection agency for the collection of unpaid parking tickets in violation of § 6-54-533.



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### Failure to Pay Continued...

- Garnishment through General Sessions Court.
  - The district attorney general or the county or municipal attorney, as applicable, may, in that person's discretion, and shall, upon order of the court, institute proceedings to collect the fine, costs and litigation taxes as a civil judgment. Tenn. Code Ann. § 40-24-105(c) (emphasis added).
- File a state court action and obtain a lien against defendant's property.
- Statutory authority must exist in order to attach liens against property. No such authority exists for municipal court fines and costs, so the city must go to the expense of a lawsuit to attach such liens. Liens are generally collected only if the property sells.



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How do you handle a failure to appear for non-traffic violations such as environmental or property maintenance violations?



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### Failure to Appear

- Failure to appear may be treated as contempt resulting in up to a \$50 fine (Tenn. Code Ann. § 16-18-306)
- Failure to appear may be considered a default judgment. After you enter the default, convicted defendants have 10 days to appeal under Tenn. Code Ann. § 16-18-307 and, after that, they have essentially lost the case.
- Cities may adopt an ordinance making failure to appear a separate ordinance violation.
  - A new citation for failure to appear is served by certified mail.
  - The defendant is entitled to a hearing on the failure to appear charge.
  - May result in up to a \$50 fine.
  - Since this is a separate citation, court costs and litigation taxes may attach.



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### Failure to Appear Continued...

- MTAS Sample language for Failure to Appear Ordinance:

3-305. Failure to appear. Any person who fails to appear in city/town court to answer a summons or citation for the violation of any ordinance or provision of this code shall be guilty of a civil offense punishable under the general penalty provision of this code. Any person who fails to appear to answer a summons or citation for prosecution of a criminal violation of the law may have a warrant issued for their arrest and face further punishment as provided by general law.



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### How to Contact Us:

- Kim Koratsky: [kkoratsky@lakelandtn.org](mailto:kkoratsky@lakelandtn.org)
- Beau Pemberton: [beaupemberton@hotmail.com](mailto:beaupemberton@hotmail.com)
- Jade Willis: [jwillis@MPERLaw.com](mailto:jwillis@MPERLaw.com)

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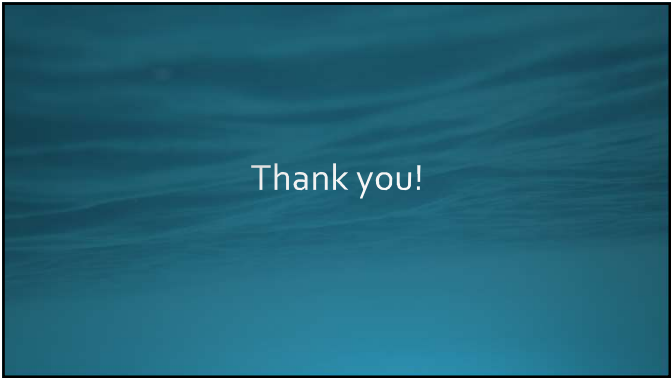
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