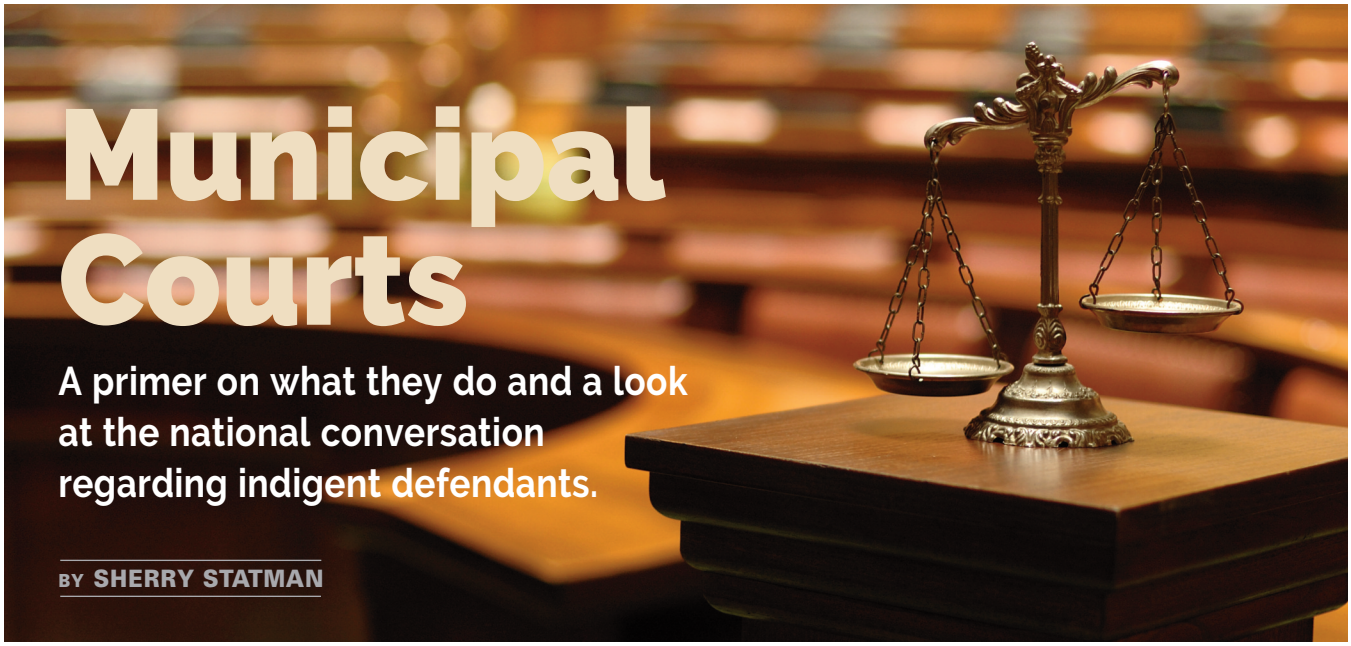

Municipal Courts

A primer on what they do and a look at the national conversation regarding indigent defendants.

BY SHERRY STATMAN

Although municipal judges comprise 40 percent of the judiciary in Texas, the workings of municipal courts are not widely known or understood by most attorneys. The majority of defendants in municipal courts are pro se and most lawyers only find themselves in a municipal court on that rare occasion when friends or family persuade them to handle a traffic citation.

By the Numbers[1]

- There are 933 municipal courts in Texas with 1,278 municipal court judges;
- There are 162 municipal courts of record;
- 56 percent of municipal judges are licensed attorneys, 44 percent are non-attorney judges;
- 99 percent of municipal judges are appointed by local governments; 1 percent are elected by citywide vote;
- There are more than 3,015 municipal court administrators, coordinators, clerks, juvenile case managers, and teen court specialists;
- In 2016, municipal courts handled 5,589,502 new cases;
- Almost one half (46 percent) of the 1,374,050 civil cases filed in 2016 were in municipal courts; and
- Municipal courts collected approximately $680 million in fines and court costs in 2016.

What Do Municipal Courts Do?

Many lawyers use the term "traffic court" synonymously with municipal court. However, municipal court jurisdiction goes far beyond speeding tickets. Municipal court judges may preside at jail magistrations,[2] pre-trial hearings, bench and jury trials, show cause hearings, indigence hearings, mental health hearings, dangerous dog hearings, code enforcement hearings, stolen property hearings, bond revocation hearings, and juvenile magistrate warnings; issue emergency protective orders, ignition interlock orders, and community service orders; and review/issue search, inspection, seizure, and arrest warrants.

Municipal Courts Have Both Criminal and Civil Jurisdiction

Municipal courts have exclusive subject matter jurisdiction over city ordinance violations in their city limits. Municipal and justice courts may have concurrent subject matter jurisdiction over Class C offenses punishable by fines up to $500 and jurisdiction also exists for fines up to $2,000 for certain violations related to fire safety, zoning, public health, and sanitation.

Many municipal courts have jurisdiction over property hearings, code abatement cases, dangerous dog determinations, civil parking or red light camera offenses, and various appeals of administrative determinations made by other city departments. Municipal court judges may also perform weddings.

Procedural Differences

Generally, the rules of evidence that apply to district or county courts at law also apply to municipal courts. However, procedures for justice and municipal courts may vary from that of higher courts and are found in Tex. Crim. Pro. Code Ch. 45. Here are a few key differences:

- The charging instrument in a municipal or justice court is a sworn complaint not an information or indictment;[3]
- Indigent defendants who cannot afford an attorney are not automatically entitled to counsel as with higher criminal charges;[4]
- Indigent defendants who cannot pay their fines are entitled to alternative means of payment such as payment plans and community service;[5] and
- Appeals from municipal courts are heard in county courts and the remedy is generally a trial de novo.

Practice Suggestions

Municipal courts, like higher courts, are statutorily authorized to develop their own local rules. Although Austin has had various defendants and potential jurors show up in pajamas, wearing jester hats, and on one occasion accompanied by an emotional support iguana,[6] I've been told that some courts have strict dress and conduct codes.

Failure to appear can result in the issuance of a warrant for your client, as well as the addition of warrant fees.

Be aware of the venue: Some judges may not be amused to

review generic discovery motions requesting medical records or autopsy reports on offenses such as failure to signal a lane change or an expired registration.

National Conversation Regarding Indigent Defendants and Municipal Courts

In 2015, the Department of Justice issued a comprehensive report[7] concerning the practices and activities of the Ferguson, Missouri, police department. The report concluded that Ferguson was utilizing its municipal court as a revenue generator for the cash-strapped city. The DOJ also found that, in many instances, inappropriate fees and fines were being added to cases and unrepresented, indigent defendants were being jailed without being offered payment plans or community service options. Other anomalies included ethical conflicts such as the chief of police supervising court staff. Civil rights advocates have voiced concerns that municipal courts across the country may be acting in similar fashion and creating modern-day debtors prisons.

Unlike many other states, Texas has had protections for indigent defendants in place for over four decades. *Tate v. Short*[8] mandated that indigent defendants in Texas could not be jailed solely because they were unable to pay a criminal fine. *Tate* also required that courts provide alternative means of payment. Tex. Crim. Pro. Code art. 45.0491 further allowed judges to waive fines and costs for indigent defendants with hardships. However, indigent defendants can be committed to jail under Tex. Crim. Pro. Code art. 45.046 *if* they were offered community service in lieu of payment, failed to perform the ordered community service, and failed to show that performing the community service would have caused them an undue hardship.

Class C citations are an economic disincentive to change negative or potentially dangerous behaviors. Jailing economically disadvantaged defendants who are already struggling to make ends meet can have devastating, unintended consequences including leaving minor children without supervision, loss of employment, and loss of housing. In Texas, defendants who are committed to jail receive a statutory minimum of $50 per 24 hours toward their outstanding judgment. This means that a defendant with $500 in unpaid fines could spend up to 10 days in jail for what was originally a fine-only offense. In Austin, defendants receive at least $100 per 24 hours of time served and many judges choose to apply more credit.

There are those who inevitably comment that defendants facing jail for failure to pay "should've just paid the ticket" or "shouldn't have broken the law in the first place." Unfortunately, it is not that simple. Anyone who drives can get a ticket. Even in the booming economy of Austin, people can suddenly find themselves in unforeseen financial situations that require them to make tough choices such as feeding their children or making a payment on a traffic ticket. Missing a payment or two can result in the issuance of a warrant and additional, state-mandated fees that can rapidly escalate a minor economic issue into an insurmountable one. Many defendants avoid coming to court because they are intimidated by the system or are fearful of any potential contact with law enforcement.

Some Texas municipal judges now favor the expansion of "safe harbor" courts that allow defendants with Class C warrants to appear in court without fear of arrest. This is nothing new to the Austin Municipal Court where we have had such a docket for over 20 years. Defendants who need to talk about setting up payment plans, discuss community service options, or request other assistance can walk in without an appointment Monday through Thursday during regular business hours as well as Thursday evenings to see a judge. It is incumbent upon municipal judges to not only be accessible but also to take the time to analyze each case and utilize the existing legal safeguards appropriate for each defendant's unique situation.

Another contributing factor to concerns about courts becoming debtors prisons is that judges are not required to automatically appoint counsel for indigent defendants with Class C citations but may do so if it is in the "interests of justice." This raises the question of whether the "interests of justice" would, at a minimum, dictate appointment of counsel for an unrepresented, indigent defendant in those situations where such a defendant is facing potential incarceration for failing to pay. Even if a judge does find it appropriate to appoint counsel, most cities have no budget or mechanism to pay for it. The Fair Defense Act created a fund into which a $2 fee is assessed from every criminal conviction for the purposes of paying for indigent defense statewide. Municipal courts collect the money but are excluded from utilizing this funding. In 2016, the Austin Municipal Court implemented a hardship docket as a stopgap measure to reduce jail commitments. This allows a judge to release an indigent defendant arrested on traffic warrants to appear at court on Wednesday mornings in lieu of commitment if the defendant indicates a hardship.

The Austin City Council has also been proactive regarding protections for indigent defendants. In 2016, the council initiated nationwide best practices to study determination of indigence, expansion of community service options, and "interests of justice" appointment of counsel. This ultimately resulted in the passage of a city ordinance[9] that, among other things, sets out broad guidelines for the determination of indigence that are more inclusive than many other state and federal poverty guidelines.

The national conversation regarding indigent defendants presents an opportunity for all Texas municipal courts to address these concerns and make whatever modifications may be necessary to ensure fairness and justice. If you would like additional information on programs implemented by the Austin Municipal Court, please contact sherry.statman@austintexas.gov. **TBJ**

NOTES

1. *TMCA Fact Sheet,* Texas Municipal Courts Association (2018), http://www.txmca.com/resources/tmca-fact-sheet.
2. "Magistration" is a commonly used term referring to the warnings provided to defendants under Tex. Crim. Pro. Code art. 15.17.
3. Tex. Crim. Pro. Code art. 45.018.
4. *Id.* at art. 1.051.
5. *Id.* at art. 45.049.
6. Reptiles are rare in this role but no criticism is intended toward the use of emotional support animals. I have observed them to be extremely beneficial for several defendants.
7. U.S. Dept. of Justice Civil Rights Div., *Investigation of the Ferguson Police Department* (March 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.
8. 401 U.S. 395 (1971).
9. Austin, Tex., Ordinance 201771109-019 (Nov. 19, 2017), available at http://www.austintexas.gov/edims/document.cfm?id=288216.

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