

Judicial Independence in the Municipal Court: Preliminary Observations from Missouri

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Studies of judicial independence abound. Yet most of them focus on the federal courts, even though the overwhelming bulk of the contacts between the public and the courts take place in state and municipal courts.¹ And there are real questions about judicial independence at the state and local level.

Preliminary results from a recent survey of the municipal courts in Missouri show significant structural and attitudinal barriers to judicial independence. The results are preliminary in light of the deadline for this issue: only a relatively short time was available to analyze the responses before submitting this article. Even the early returns suggest real problems, however.

A 15-question survey was sent August 6, 2004 to all of the 473 reported municipal courts in Missouri. The questionnaire was designed to assess the administrative structure of each court, problems that might be associated with that structure, and attitudes about the role and purpose of the court. Responses were requested within two weeks. By the end of August, 198 survey responses had been received. That represents a return rate of 43% once the 11 cities that reported they no longer have a municipal court are eliminated. While a slightly higher response rate would have been preferable,² since we cannot determine the extent to which the views of non-responders differ from those who returned the surveys, the responses appear to provide a great deal of useful information.

Before turning to the substantive results, we should consider the characteristics of those who responded. Almost half of the respondents worked in courts that had fewer than 1,000 case filings during all of 2003 (Figure 1). Thus, a significant portion

of these courts will necessarily be part-time in nature. Another 16% worked in courts with 5,000 or more case filings per year and a total of 34% worked in courts with 2,000 or more case filings per year. Thus, the sample included significant numbers for all sizes of municipal courts found in Missouri.

In total, for those who responded and answered the question on number of filings for 2003, more than 847,000 case filings were represented. That is a lot of people, and yet many courts are very small and located in rural Missouri. A few have dockets every workday of the week; many have court once a month; and some have court only once every three months.

Most of the respondents were court clerks, although two were judges (Figure 2). About three-fourths of the respondents were court clerks; about one-fourth worked both as a court clerk and also had a separate, executive branch job title.

This article does not address the constitutional and statutory provisions governing the courts of Missouri. To do so would exceed the scope of this article and the space available in this issue of *Court Review*. Suffice it to say, for purposes of this article, that there are both constitutional and statutory provisions that appear to provide for separation of powers of the judiciary in Missouri—and that the office of the Missouri State Court Administrator has taken the position that the doctrine of separation of powers does apply to the municipal courts of Missouri.³

PRELIMINARY OBSERVATIONS

The respondents were very open in their replies to this survey. For example, although providing the name of their court

Footnotes

1. The excellent 1997 report of the American Bar Association's Special Commission on Separation of Powers and Judicial Independence is a case in point. Focused on the federal courts, the commission report included a brief segment on judicial independence in the state courts. That section began: "The focus of this study is on judicial independence in the federal courts; limited time and resources have not allowed a detailed examination of the intrusions, both real and apparent, on the independence of the state courts. Nevertheless, since 97% of all litigation occurs in the state courts, the Commission felt it was essential to survey the major issues affecting state judicial independence, if only briefly." AMER. BAR ASS'N, AN INDEPENDENT JUDICIARY: REPORT OF ABA SPECIAL COMMISSION ON SEPARATION OF POWERS AND JUDICIAL INDEPENDENCE § 5 (1997), available at <http://www.abanet.org/govaffairs/judiciary/report.html> (last visited October 9, 2004).

2. The "standard" for an adequate response rate in a mail survey has long been considered to be 50%. E.g., EARL R. BABBIE, SURVEY RESEARCH METHODS 165 (1973); EARL R. BABBIE, THE PRACTICE OF

SOCIAL RESEARCH 242 (5th ed. 1989). Professor Shari Seidman Diamond has suggested that when the response rate is below 50%, "the survey should be regarded with significant caution as a basis for precise quantitative statements about the population from which the sample was drawn." Shari Seidman Diamond, *Reference Guide on Survey Research*, in FEDERAL JUDICIAL CENTER, REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 245-46 (2d ed. 2000). Here, of course, we are not trying to make "precise quantitative statements" about the exact percentages of Missouri municipal court officials who have a specific opinion. Rather, we are trying to gauge what problems may exist to at least some degree given the administrative structures now in place. Thus, we consider the response rate sufficient for our purpose and would note that it likely exceeds that of most mail surveys. See PAMELA L. ALRECK & ROBERT B. SETTLE, THE SURVEY RESEARCH HANDBOOK 45 (1985) (finding that response rates above 30% are rare in mail surveys).

3. See Letter from Ronald L. Larkin, Missouri State Court Administrator, to Margaret Kelly, Missouri State Auditor, Aug. 20, 1997 (on file with the author).

FIGURE 1: SURVEY RESPONDENTS BY SIZE OF COURT

Size of Court by No. of Filings in 2003	
Less than 500	33%
500-999	16%
1,000-1,999	17%
2,000-4,999	18%
5,000-9,999	7%
10,000-19,999	5%
Greater than 20,000	4%
	100%

FIGURE 2: JOB TITLES OF SURVEY RESPONDENTS

Job of Survey Respondent		
Court administrator or court clerk	143	72%
Court clerk plus executive branch job	53	27%
Judge	2	1%
Total	198	100%

was optional, more than 75% did so—and close to 60% made additional comments. Many shared horror stories. Some of those will be included along the way as we review the data and some preliminary observations from that data.

Many of the municipal courts in Missouri do not have staff who work only for the municipal court. Seventy-two percent of respondents reported a title that could be classified either as court administrator or court clerk, while 27% reported that their title of court clerk was in conjunction with another position—one that would be characterized as part of the executive branch of government. For example, 29 respondents (15%) listed titles either as city clerk, city clerk/court administrator, or court clerk. Others had additional titles such as police dispatcher, records clerk, city collector, communications supervisor, police municipal clerk, or even “city clerk/prosecutor/police/maintenance.”

Most of Missouri’s municipal court staff work only part-time for the court. Seventy-six percent of the judges and 88% of the city prosecutors were reported to work only part-time in those jobs. In addition, 36% of the respondents who serve as court clerks or administrators themselves worked only part-time. Many of the others, while full-time city employees, are not full-time within the courts. Rather, they also work in city departments within the executive branch of government. Nearly half (48%) of the respondents listed at least one other city department in which they work. At least one court clerk is a contract employee who is paid for hours worked and works only as needed.

The part-time status of many of the judges undoubtedly affects the way in which business is handled. One clerk said, “Actually, I am pretty well on my own. The judge isn’t here, but if there is something I just can’t handle I *try* to get the judge.” Another noted the difference in availability between the city clerk and the judge: “The city clerk is here all the time. The judge is only here while court is in session one evening a month.”

Of major concern, only about half of the municipal court administrators and clerks report to the judge. Even among those who do report to the judge, many also report to another official of city government or even to the local police department. A minority of the respondents (44%) report only to the judge, which would seem to be the ideal (Figure 3). Another 21% report both to the judge and to another city official. Those “other” city officials include prosecutors, chiefs of police, and city finance directors. Thirty-four percent report only to city officials. For 9%, their sole supervisor is the city prosecutor; for another 9%, the sole supervisor is the city police chief (or, in one case, a police sergeant). The city finance director, collector, or another city employee in the finance department either was the sole supervisor, or supervised along with the judge, for 5% of the court clerks. Perhaps the two who are not confused over separation between the branches of government are the lucky two who answered that they did not report to anyone!

FIGURE 3: REPORTING STRUCTURE FOR COURT CLERK

Court administrator/clerk reports to:		
Judge	86	44%
Judge and city prosecutor	14	7%
Judge and city manager/administrator	11	6%
Judge and director of finance	5	3%
Judge and other city officials	10	5%
Circuit court clerk	1	1%
City clerk	20	10%
City manager/administrator	11	6%
Chief of police or other police officer	9	5%
City prosecutor	9	5%
Director of (or other person in) finance dept.	4	2%
Various other city officials	12	6%
No one	2	1%
	194	100%

As is true in most human endeavors, not one of the administrative structures was without problem. For those who reported to a judge, the greatest problems appear to arise from the part-time status of three-fourths of the judges. One court administrator said, “I have a part-time (one day a week) judge

who is not here enough to make a 'good judgment' in evaluating my work." Another put it this way: "Part-time judge means that most of the responsibilities fall on the clerk/administrator. Further workload can become easily backlogged due to lack of hours dedicated to the court by a part-time judge. Part-time judges really don't know what all goes on in court and therefore do not realize the importance of staying on top of the work. I am pleased with our structure; however, I would like to see the part-time judge take a role (however slight) in the municipal court (*i.e.*, annual review, etc.)."

These court administrators and clerks look to the judge for leadership, even when the judge is part-time. As one court administrator who reports to a part-time judge and a person in the executive branch of city government said, "I think the judge should be the department head for the court. We have to answer to someone who knows nothing about the court. Problem is the judge doesn't really care. He shows up for court—does his thing and out the door he goes. He is not involved with the budget or personnel. Judge makes \$30,000 a year." That clerk added, "I have a problem with getting the judge to agree with me. I have asked that we have more court dates and even a morning court (once a month). He says no. We have a lot of attorneys certifying cases to the county court. They do this because they don't like night court. It would help a lot to have a day court."

The greatest share of reported problems occurred for those who report either to city clerks or city finance personnel. Three major problems seem to surface here: (1) the belief on the part of the court administrator that the city clerk or director of finance does not understand their job and could not do it if the court administrator or clerk is absent; (2) conflicts of power seem to develop between these positions; and (3) conflicts develop over non-court staff having access to closed court records that are not open to the public. One court administrator put it this way: "Unable to protect the integrity of the court. City clerk trying to make court like any other city office. Does not or refuses to recognize that we are a part of the state courts and presiding judge and municipal judge are actually the chain of command. With that, the mayor, city manager, and city attorney ignore [state court rules]." With regard to records, one administrator said: "Area not secure. Anyone can and does have access to court records. Court files are not to be open to the general public and must not be available to non-court staff. The department head likes to remind you she is the department head and you have no right to an opinion or say-so in what will be done in your office. She has no training in the court. The city administrator believes the city clerk is right and knows what she is doing in regards to the court."

Positive comments were obtained from some of the court administrators and clerks who report at least in part to city prosecutors and city managers. With respect to prosecutors (who, like the judges, are often part-time), we suspect this is related strongly to the prosecutor's knowledge of the legal system. Court administrators feel comfortable with their knowledge of the purposes and responsibilities of the courts; good prosecutors know how the court is supposed to function. Several comments noted that reporting at least in part to a city manager is a good way to make sure that city officials are informed about the activities and accomplishments of the

court, as well as its needs and problems. This was seen as advantageous to both the court and to the city.

A particularly problematic reporting relationship has the court administrator or clerk reporting to a city finance director or finance official. Administrators who had this reporting relationship generally reported significant problems. As one administrator put it, "My city uses the court for one of their main sources of income with no regards to my training. The judge is appointed and part-time; therefore, he won't overstep his boundaries. I don't feel I get his back-up when really needed." Another said, "In two previous cities where I was a clerk, the finance director and assistant city manager did not allow the court to properly follow state statutes. Did not understand closed/open cases. Undermined the authority of the court clerk. Did not feel the judge should be in charge of the court—both thought they should be in charge of the court, yet neither had any understanding of the court, its rules, or its role."

Also problematic are those courts in which the court clerk or administrator reports to the police department. Most respondents, though, found this structure to their liking (apparently because of good personal relationships with the police chief involved).

One administrator provided this overall assessment of the tension that can arise when the court is supervised by non-judicial personnel: "As a court administrator, I have always tried to maintain a certain degree of independence from the other offices of city government and I am finding this harder and harder and more frustrating all the time. I have lost several judges that I have worked for, because they stood up for what they believed the Constitution stands for, and because they were appointed and not elected, they were 'let go' by a majority of the board of aldermen or mayor. This does not give us, as court administrators or court clerks, much security in our positions."

Most court administrators and clerks want a separation from the executive branch of government. The vast majority of respondents wanted to report to the judge: 76% wanted to report only to the judge, while another 19% wanted to report to the judge and another city official (Figure 4). Many of those who suggested dual reporting both to the judge and to a city official suggested that this was important for the city officials to understand the court's operations and any problems faced there. A handful of respondents wanted to report to the city prosecutor or police chief; in each case, these respondents were suggesting the arrangement already in place in their city. Most, though, believed that it was especially important to make sure that judges not allow someone in the executive branch of city government to influence the judging of cases, and that the court structure should be separate from the executive branch of city government (Figure 8).

Respondents identified a number of areas of concern. Concerns appear to be higher among those who report at least in part to city officials, rather than solely to a judge. Respondents were asked to say whether "your current administrative structure (who you report to) [has] caused you to" do or experience a variety of things. The number one response, at 26%, was that it had caused them to experience stress

FIGURE 4: RECOMMENDED REPORTING ARRANGEMENT

Who should the court administrator/clerk report to:	
Judge	76%
Judge and city manager/administrator	13%
Judge and city prosecutor	6%
City manager/administrator	2%
City prosecutor	2%
Chief of police	1%

(Figure 5). A significant 11% said they had experienced “hopelessness” as a result of this reporting arrangement. More than 10% said it had undermined the authority of the court and caused a loss in control over how the court handles its budget. More than 5% said it had affected the way in which training money for court staff could be used or had changed how cases are decided. Smaller numbers indicated improper handling of confidential information, failure to file required reports, and even directives to violate judicial conduct rules.

Preliminary review of the types of reporting arrangements in place for those who noted these concerns or problems suggests that some of the supervisory arrangements are especially troublesome. While it is a small part of the overall sample, *all* of those who reported solely to a city finance director reported significant problems in response to this question. Similarly, 61% of those who reported to a city clerk and 73% of those who reported to the judge and a city manager reported one or more of these problems, while only 22% of those who reported solely to a judge reported one of them. The incidence of these problems was in the middle ground for those who report both to a judge and a prosecutor: 42% of those respondents reported at least one of these listed problems as a result of the reporting structure.

One person said that “stress comes with the job” and that may well be. It would seem, though, that some of the reporting arrangements cause increased levels of stress, as well as other problems.

A substantial number of respondents viewed one of the court’s important roles as generation of revenue. Surely it is not the goal of a justice system to produce revenue. Yet substantial numbers of the respondents said it was. Almost even numbers agreed and disagreed with the statement that “It is the responsibility of the courts to raise revenue for cities through fines and fees” (Figure 6). Thirty-one percent agreed and 34% disagreed, while the rest neither agreed nor disagreed. Similarly, 31% agreed that one of the purposes of municipal courts is to “generate revenue,” while 36% disagreed and the rest neither agreed nor disagreed (Figure 7). It would not be surprising that *municipalities* themselves viewed the genera-

FIGURE 5: PROBLEMS CAUSED BY CURRENT ADMINISTRATIVE STRUCTURE

Has your current administrative structure caused you to:	
Experience stress	26%
Experience conflict with a person in the executive branch of government	13%
Undermine the authority of the court	12%
Minimize your position of court administrator/court clerk	12%
Experience hopelessness	11%
Lose control over how the court either prepares or spends its budget	11%
Be threatened for your job/position	9%
Be unable to use the court’s training money in the manner you thought it should be	7%
Change how a case should be decided	5%
Change how a case was decided	5%
Be unable to supervise or discipline court staff	5%
Not to file a case that should have been filed	3%
Hire someone you did not think was the best candidate	2%
File a case that should not have been filed	2%
Not send a disposition to the Dept. of Revenue	2%
Be directed to violate the judicial code of conduct	2%
Release information to the public that was closed information	1%
Not release information to the public that could have been released	1%

tion of revenue from the issuance of traffic citations and court fines to be of some importance. It is perhaps more of a surprise to find that a substantial percentage of municipal *court officials* view it that way.

Education of those working in the courts appears to be needed, as the respondents did not uniformly show a clear understanding of the court’s role. Several questions in the survey were designed to determine the extent to which court administrators and clerks correctly perceived the court’s role and function. Questions were developed based on the Core Competency Curriculum Guidelines developed by the National Association for Court Management⁴ and the Trial Court Performance Standards,⁵ each of which summarizes the basic purposes and roles of the trial courts.

4. See *Core Competency Curriculum Guidelines: What Court Leaders Need to Know and Be Able to Do*, 18 CT. MANAGER No. 2 (2003).

5. See Pamela Casey, *Defining Optimal Trial Court Performance: The*

Trial Court Performance Standards, Winter 1998 COURT REVIEW, at 24, available at <http://aja.ncsc.dni.us/courtrv/cr35-4/CR35-4Casey.pdf> (last visited October 9, 2004).

In the list of questions used (Figures 7 and 8), all but one of the responsibilities or purposes listed *are* generally considered valid. Only the generation of revenue is not a purpose of the courts at all. While there was general understanding of many of these court responsibilities, one would not have expected such high numbers in the “neither agree nor disagree” column for several of the items. Significantly, judicial independence was one of those. While 49% said it was the responsibility of the court to “be an independent check on other branches of government,” 20% disagreed and 33% neither agreed nor disagreed. If we can’t convince those who work in our courts that this is an important aspect of courts in our system of government, we should not expect to do better with the public at large. Education of those who work in the courts, as well as the public and those who work in other branches of government, is needed.

Missouri’s municipal courts have dedicated, hard-working,

and service-oriented court administrators and clerks who are doing the best they can under the circumstances. I do not mean for this article to imply, directly or indirectly, anything else. These are good people trying to do the best they can to do their jobs and to accomplish the goals of their courts.

Some of the comments received reflect this quite well:

- “My judges and prosecutors all have a good working relationship.”
- “My court is in super order. We all respect each other and trust each other.”
- Structure is wonderful! No problems with my individual court.”
- “My court is so small, there is no one else to answer to but the city clerk.”
- “Equal treatment for all is our goal. Administration does not influence the judicial process.”
- “As a small municipal court, we try to carry out justice in a

FIGURE 6: VIEWS OF MUNICIPAL COURT OFFICIALS ON COURT’S PURPOSES

The purposes of municipal courts are to:	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
Do justice	63%	33%	3%	0%	1%
Guarantee liberty	38%	38%	19%	3%	2%
Enhance social order	27%	34%	27%	9%	4%
Maintain rule of law	60%	34%	4%	0%	1%
Generate revenue	10%	21%	33%	23%	13%
Resolve disputes	26%	47%	12%	12%	2%
Provide equal protection	46%	42%	10%	3%	1%
Ensure due process	56%	38%	4%	2%	0%
Rehabilitate persons convicted of crimes	8%	25%	39%	20%	9%
Deter criminal behavior	24%	46%	18%	11%	2%
Separate some convicted people from society	14%	28%	31%	18%	8%

FIGURE 7: VIEWS OF MUNICIPAL COURT OFFICIALS ON COURT’S RESPONSIBILITIES

It is the responsibility of the courts to:	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
Make impartial decisions	68%	26%	3%	2%	1%
Ensure fairness under the law	61%	37%	2%	0%	1%
Defend constitutional rights and freedoms	58%	33%	7%	2%	1%
Provide equal justice for rich and poor	62%	34%	3%	0%	1%
Be an independent check on other branches of government	23%	26%	33%	15%	4%
Raise revenue for cities through fines and fees	10%	21%	35%	20%	14%
Protect civil rights	41%	41%	12%	4%	1%
Protect individual rights	46%	46%	5%	3%	0%
Dispense punishment for crimes	46%	43%	10%	4%	1%
Resist political pressure	53%	32%	10%	4%	1%
Advance social and economic justice	22%	31%	38%	9%	1%

FIGURE 8: VIEWS OF MUNICIPAL COURT OFFICIALS ON OTHER QUESTIONS

The purposes of municipal courts are to:	Strongly Agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree	Total
Because judges and court administrators/clerks are appointed/elected to make independent decisions, it is necessary for courts to maintain an administrative structure that is separate from the executive and legislative branches of government.	87 52%	63 38%	14 8%	2 1%	1 1%	167 100%
Judges should not interfere with agreements reached between prosecution and defense attorneys about charges that will be dismissed or modified when a defendant enters a guilty plea	11 6%	39 22%	40 22%	71 40%	18 10%	179 100%
Judges must be vigilant in protecting the administration boundaries of the court. For example, judges of the court should not allow someone in the Executive Branch of government to influence the court's impartial judging of cases.	109 59%	61 33%	9 5%	4 2%	1 1%	184 100%
The Code of Judicial Conduct applies to the judge and to the municipal court staff.	114 61%	59 31%	7 4%	0 0%	8 4%	188 100%

fair process to all parties in our court. I feel very strongly about that.”

- “I work for an excellent judge. He is honest, fair, and follows the letter of the law. Therefore, I have no concerns.”

The views expressed here are necessarily tentative and preliminary. More work needs to be done to analyze the data from this survey, to consider its meaning, and to review options for improvement. Nonetheless, despite the best efforts and work by the judges and staff of the Missouri municipal courts, problems do exist. At least in part, they appear to result in many places from the structural issues involved in setting up a part-time court. No doubt they also result from a failure to think through the ramifications of structure and the need for courts at all levels of an effective justice system truly to be independent. In addition, better training and education of court staff—with clear direction from higher-ups within the court system itself—certainly would help.



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FUTURE AJA CONFERENCES

2005 Midyear Meeting
Sanibel Island, Florida
May 12-14

Sundial Beach Resort
\$125 single/double

2005 Annual Conference
Anchorage, Alaska
September 18-23

Hotel Captain Cook
\$135 single/double

2006 Midyear Meeting
Coeur d'Alene, Idaho
May 18-20

Coeur d'Alene Resort
\$130 deluxe room;
\$160 premier room

2006 Annual Meeting
New Orleans, Louisiana

Hotel Monteleone
\$169 single/double

2007 Midyear Meeting
Newport, Rhode Island

2007 Annual Conference
Vancouver, British Columbia