

## **CHAPTER XII**

### **COURTS**

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#### **INTRODUCTION**

Municipal Courts are created by state law and provide one of the most important contact points between the general populace and the government which represents them. Here, the citizen sees the law in action. For many, the municipal court may be the only legal tribunal that they observe or in which they may be a participant. Therefore, it is essential for them to leave court with the perception of having received fair and just treatment, regardless of the extent of or the nature of their participation.

The municipal court is a criminal court of limited jurisdiction which is empowered by statute to hear and dispose of misdemeanor offenses, traffic and parking violations, and municipal ordinance violations. Additionally, the court conducts preliminary hearings for felonies charged within the corporate limits of the municipality. Most cases heard in municipal courts involve misdemeanor and traffic offenses which, when considering the issue of seriousness and severity of punishment in comparison to felonies, are minor offenses. However, for the citizen charged with a less severe crime, such as a misdemeanor, defending the charge in court may result in serious consequences in the event of a conviction. These consequences may include fines, jail confinement, loss of job or employability, and damage to reputation within the community. Thus, the municipal court proceeding may become a focal point in the life of a citizen. Municipal courts are, in effect, a mirror of society and how society provides a tribunal of justice for its people. Municipal courts reflect the integrity of the municipal government, and, consequently, should be of major importance to the governing authorities.

The dispensation of justice is the sole function of the court. Because the municipal judge is the head of the judicial department and on whose shoulders rests the judicial credibility of the municipality, great care should be taken in his appointment. The governing authorities should sift the candidates for municipal judge through a very fine mesh and select the best qualified for the position. Qualifications, experience, judicial temperament, general reputation within the legal profession and community, and, above all, integrity should be dominating factors in selecting an attorney-at-law for the municipal judge. Although the municipal judge derives the position through appointment by the governing authorities, the governing authorities must adopt a policy of strict non-interference with the court proceedings.

The physical surroundings of municipal court, including the courtroom and appropriate furnishings therein, the judge's chamber, the municipal court clerk's office and equipment, witness rooms, and attorney/client conference rooms are the responsibility of the municipality. The dramatic increase in case loads over the last decade has resulted in many municipal courtrooms becoming acutely overcrowded and some facilities are presently inadequate to deal with these increased volumes. All citizens, whether they are defendants, witnesses, or observers

in municipal court have the right to participate in the proceeding in an environment which is dignified, uncrowded, and safe. No matter how competent the judge, the perception of justice may be unnecessarily marred by a courtroom setting which is unreasonably crowded or inappropriately equipped to deal with the work of the court. The judicial environment and physical facilities of municipal court should be adequate to accommodate the significant numbers of citizens who pass through.

## ESTABLISHMENT AND JURISDICTION OF MUNICIPAL COURTS

Mississippi statutory law provides that a municipal court be established in all municipalities of this State.<sup>1</sup>

Jurisdiction refers to the authority of the court to hear and finally adjudicate certain types of cases. Municipal court is a criminal court of limited jurisdiction with the authority to adjudicate misdemeanors, traffic and parking offenses, and city ordinance violations. Municipal court also has jurisdiction over felony cases to the extent that preliminary hearings are conducted and upon a finding of probable cause, the defendant is bound over to the grand jury of the county for further proceedings. The territorial jurisdiction of the court extends to the boundaries of the municipality. Punishment authority includes the imposition of fines up to \$1,000.00 and jail confinement up to six (6) months in duration, or both, for each violation of state misdemeanor laws. By statute, all offenses under the penal laws of the state which are misdemeanors, along with the penalty provided for the violation of the particular misdemeanor, are made without any further action of the governing authorities. Similarly, criminal offenses against the municipality in whose corporate limits the offenses may have been committed are treated as though such offenses were made offenses against the municipality by separate ordinance in each case.<sup>2</sup>

When the offense charged is a violation of a municipal ordinance, the jurisdiction punishment of municipal court is limited to fines not exceeding \$1,000 or imprisonment not exceeding ninety (90) days, or both.<sup>3</sup> During judicial proceedings, should it become necessary to prove the existence of any municipal ordinance, a copy of the ordinance duly certified by the clerk of the municipality or the ordinance book in which the ordinance is entered, may be introduced into evidence, and is *prima facie* evidence of the existence of such ordinance, and that the ordinance was adopted and published in the manner provided by law.<sup>4</sup>

Mississippi law provides that in any county where there is no county court or family court as of July 1, 1979, there may be created a youth court division of the municipal court in any city, if the governing authorities of the city adopt a resolution to that effect. In the event a youth court division of the municipal court is created, its costs will be paid from any funds available to the

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<sup>1</sup>*Code*, § 21-23-1.

<sup>2</sup>*Ibid.*, § 21-13-19; 21-23-7.

<sup>3</sup>*Ibid.*, § 21-13-1.

<sup>4</sup>*Ibid.*, § 21-13-17.

municipality for the purpose, excluding state and county funds.<sup>5</sup>

#### APPOINTMENT OF THE MUNICIPAL JUDGE

The governing authorities of the municipality have the duty of selecting and appointing the municipal judge. This appointment is made at the time provided for the appointment of other officers of the municipality. In order to be statutorily qualified, the municipal judge must be a qualified elector of the county in which the municipality is located and be an attorney-at-law. The municipal judge shall receive a salary to be paid by the municipality and the amount of the salary shall be fixed by the governing authorities of the municipality.<sup>6</sup>

By statute,<sup>7</sup> the mayor or mayor pro tempore of a small municipality is allowed to serve as a municipal judge. Although this statute is not unconstitutional under the sections of the state constitution dealing with separation of powers, the Mississippi Supreme Court has held that there exists an unavoidable conflict of interest in the holding of the dual offices of mayor and municipal judge, and the statute authorizing a mayor or mayor pro tempore to serve as a municipal judge will have no future application because it is contrary to the proper functioning of the judiciary.<sup>8</sup>

#### POWERS AND DUTIES OF THE MUNICIPAL JUDGE

As mandated by law, the municipal judge shall hold court in a public building designated by the governing authorities of the municipality and may hold court every day except Sundays and legal holidays if the business of the municipality requires. The municipal judge may hold court outside the boundaries of the municipality but not more than within a sixty-mile radius of the municipality to handle preliminary matters and criminal matters such as initial appearances and felony preliminary hearings. The municipal judge hears and determines all cases charging violations of the municipal ordinances and state misdemeanor laws made offenses against the municipality and sets punishment for offenders as prescribed by law. The municipal judge is both the fact finder and law giver as all cases are heard by the judge alone, without a jury. Municipal court is not a court of record because cases are adjudicated without a record of testimony. All criminal proceedings are brought into municipal court by the filing of a sworn affidavit. The sworn complaint must state the essential elements of the offense charged and cite the specific statute or ordinance which makes the alleged conduct a violation. The complaint is not required to conclude with a general averment that the offense is against the peace and dignity of the state or in violation of the ordinances of the municipality.

The municipal judge may sit as a committing court in all felonies allegedly committed within the

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<sup>5</sup>Ibid., § 43-21-107.

<sup>6</sup>Ibid., § 21-23-3.

<sup>7</sup>Ibid., § 21-23-5.

<sup>8</sup>In Re Grant, 631 So. 2d 758 (1994).

municipality with the power to bind over the accused to the grand jury of the county or to appear before the proper court having jurisdiction over the case. When dealing with felony bind-overs, the municipal judge has the responsibility to set the amount of bail or refuse bail and commit the accused to jail when the case is not bailable. Additionally, the municipal judge is a conservator of the peace within his municipality. The municipal judge is empowered to conduct preliminary hearings in all violations of the criminal laws of the state within the municipality, and the individuals arrested for a violation of law within the municipality may be brought before him for an initial appearance.

Where the objects of justice would be more likely met through an alternative to the imposition or payment of fine and/or incarceration, the municipal judge has the discretion to sentence convicted offenders to work on a public service project where the court has established, by written guidelines filed with the clerk for public record, such a program of public service. The public service project shall provide for reasonable supervision of the offender and the work is to be commensurate with the fine and/or incarceration which would have been ordinarily imposed. The program of public service may be utilized in the implementation of the provisions of Section 99-19-20, and public service work may be supervised by persons other than the sheriff.

The municipal judge is vested with authority to take oaths, affidavits, and acknowledgments; to issue orders, subpoenas, summons, citations, warrants for arrest and search (upon a finding of probable cause), and other process under seal of the court to any county or municipality to be executed by the lawful authority of the county or the municipality of the respondent. The municipal judge has the authority to enforce obedience to such process. The absence of a seal does not invalidate the process. Municipal judges may also solemnize marriages.

When a person is charged with an offense in municipal court which is punishable by confinement, the municipal judge, after being satisfied that the person is an indigent person who is unable to employ an attorney-at-law, may, in the discretion of the court, appoint an attorney-at-law. This attorney, who must be a member of the Mississippi Bar and reside in the county, shall represent the indigent person before the municipal court. Compensation for the appointed attorney-at-law must be approved, allowed by the municipal judge, and paid by the municipality. The maximum compensation shall not exceed \$200.00 for any one case. In their discretion, the municipal governing authorities may appoint one or more public defenders who are licensed attorneys-at-law. The public defender(s) receives a salary which is determined by the governing authorities.

The municipal judge is empowered to suspend the sentence and to suspend the execution of the sentence or any part of the sentence on whatever terms he may impose. The suspension of imposition or execution of a sentence may not be revoked after a period of two (2) years. The municipal judge is authorized to establish and operate a probation program, dispute resolution program, and other practices or procedures which are appropriate to the judiciary and designed to aid in the administration of justice. These programs which are established by the court must be filed with written policies and procedures with the clerk of the court.

Municipal judges are granted the power to expunge some misdemeanor convictions. The municipal judge in his sound discretion, may order the record of conviction of a person of any

and all misdemeanors in that municipal court expunged where upon prior notice to the municipal prosecuting attorney and upon a showing in open court of rehabilitation, good conduct for a period of two (2) years since the last conviction in any courts and that the best interest of society would be served by doing so. When the record has been expunged, the affected person thereafter legally stands as though he had never been convicted of the misdemeanor(s) and may lawfully so respond to any query of prior convictions. In addition, the municipal judge may expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed, or the charges were dropped, or there was no disposition of the case.

The municipal judge in his sound judgement and discretion may take pleas of *nolo contendere* (no contest) to any charge in municipal court. When the plea of *nolo contendere* is made and is duly accepted by the municipal judge, the municipal judge shall convict the defendant of the offense charged and sentence the defendant in accordance with law. When a plea of *nolo contendere* is made, the judgement of the court will reflect that the plea was made and accepted by the court. Appeals may be made from a conviction on a plea of *nolo contendere* as in other cases.

The municipal judge has the discretion of issuing a citation instead of an arrest warrant. A citation is merely an order to the defendant to appear in court to answer the charge made against him without the requirement of bail. Should the defendant not appear in court as ordered, the municipal judge may issue an arrest warrant and require bail. Upon direction of the municipal judge, the clerk of the court or deputy clerk may issue citations.

The municipal judge has the power to make rules for the administration of the business of the court. Should the municipal judge order such rules of administration, the rules will be in writing and filed with the clerk of the court.

The municipal judge has the responsibility of maintaining dignified and orderly court proceedings and ensuring that the orders of the court are properly followed and executed. To aid him in these important duties, the Legislature has endowed him with sufficient contempt of court powers. Should contempt of court power be necessary, the municipal judge may impose a fine of not more than \$1,000 or six (6) months imprisonment, or both, as punishment. The municipal judge also has the power to impose reasonable costs of court as specified by state law. However, no filing fee or similar cost may be imposed for the bringing of an action in municipal court.

In the event the municipal judge is prohibited from presiding over a case by the Canons of Judicial Ethics and provided that venue and jurisdiction are proper in the justice court, the municipal judge shall not dismiss the criminal case but may transfer the case to the justice court of the county. When a case is transferred, the municipal judge must provide the municipal court clerk a written order to transmit the affidavit or complaint and all other records and evidence in the court's possession to the justice court by certified mail or to instruct the arresting officer to deliver the documents and records to the justice court. When the municipal judge orders a transfer of a case to justice court, no court costs will be charged.<sup>9</sup>

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<sup>9</sup>Code, § 21-23-7.

The municipal judge is authorized, in his discretion, to impose intermittent sentences for misdemeanor convictions. The municipal judge may sentence a person so convicted to: (a) a period of time in jail to be served either on weekends only; (b) other periods of time during the week when the offender may not be engaged in gainful employment, or (c) a specified number of days in jail with a provision for the release of such offender for the purpose of engaging in gainful employment at such times as the offender is actually gainfully employed, whether self-employed or otherwise. The municipal judge, in his discretion, may sentence any convicted offender to split periods of incarceration. Additionally, the court is not required to order any offender to serve a sentence of imprisonment all in one period but may suspend the sentence from time to time.<sup>10</sup>

The Attorney General of the State of Mississippi has rendered several opinions regarding the powers and duties of the municipal judge. Municipal courts have jurisdiction to try defendants who have been charged with criminal violations of municipal ordinances, including municipal zoning ordinances.<sup>11</sup> Mississippi law places an affirmative duty upon the municipal court judge to conduct preliminary hearings where the crime occurs within the municipality; however, in the event the municipal judge is precluded by judicial canon or other recognized rule from conducting the preliminary hearing, the justice court judge of the county in which the crime occurred, acting as a conservator of the peace, would conduct the preliminary hearing.<sup>12</sup> Fees for appointed attorneys representing indigent defendants before the municipal court may not be imposed on the indigent defendants but the cost must be borne by the municipality.<sup>13</sup> A municipal court may suspend sentences on such conditions as it deems advisable, and may establish and operate probation programs, including the use of alternative sentencing programs which are administered by private companies.<sup>14</sup> The municipal court has authority to enforce its orders through contempt charges. An indirect contempt of court charge may be brought by the municipal prosecuting attorney. Due process including proper notice and hearing, must be provided to any individual charged with indirect contempt charges.<sup>15</sup> When tickets made by patrolmen, sheriffs or constables charging violations of state law are issued within a municipality, these tickets should be returned to justice court for disposition.<sup>16</sup> Because Mississippi law (*Code*, § 21-23-7) provides that the municipal judge has jurisdiction “to hear and determine, without a jury and without a record of testimony, all cases charging violations of the municipal ordinances and state misdemeanor laws,” municipal court judges may hear false

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<sup>10</sup>Ibid., § 21-23-20.

<sup>11</sup>Via, May 16, 1990, A.G. Op. #90-0329.

<sup>12</sup>McMillian, Aug. 29, 1990, A.G. Op. #90-0636.

<sup>13</sup>Moore, Oct. 26, 1990, A.G. Op. #90-0153.

<sup>14</sup>Maggio, June 26, 1996, A.G. Op. #98-0340.

<sup>15</sup>Gilfoy, October 11, 1996, A.G. Op. #96-0686.

<sup>16</sup>Brame, June 24, 1992, A.G. Op.#92-0451.

pretense or bad checks cases.<sup>17</sup> The imposition of a \$0.50 assessment on those convicted of misdemeanor offenses to fund undercover drug investigations is not an “item of court cost.”<sup>18</sup>

The municipal judge has the judicial duty of setting the amount of bail for persons charged with offenses in municipal court and may approve the bond or recognizance therefore. In some instances, the municipal judge may not be available and has not previously provided a bail schedule or otherwise provided for the setting of bail. In this situation, it is lawful for any officer or officers designated by the municipal judge to take bond, cash, property, or recognizance, with or without sureties, in an amount to be determined by the officer, of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00), payable to the municipality and conditioned for the appearance of the person on the return day and time of the writ before the court before whom the warrant is returnable, or in cases of arrest without a warrant, on the day and time set by the court or officer for arraignment, and there remain from day-to-day and term-to-term until discharged. Any and all bonds are to be promptly returned to the court, along with any cash deposited, and be filled and proceeded on by the court in a case of forfeiture. Approval of bonds or recognizances may be accomplished by the chief of the municipal police or a police officer or officers designated by order of the municipal judge.

Should a defendant, prosecutor, or witness fail to comply with the terms of his bond or recognizance, the municipal judge may, at any time after default is made, enter *judgement nisi*<sup>19</sup> against the obligor and his sureties in the bond or recognizance, and may issue a *scire facias*<sup>20</sup>, which would be returnable to a day and time in the future sufficient to allow five (5) days service of process. When the return of the service of the *scire facias* is accomplished or upon the return of two (2) writs of *scire facias* by a law officer of the municipality or county where the bonds or recognizance were entered into “not found,” judgement may be absolute, unless a sufficient showing to the contrary be made to the court at the return time of the *scire facias* and the judgement may be entered on the judgement roll of any county by filing an abstract for execution as in other judgements or in case of willful refusal to pay the amount in default. The defaulting party may be cited for contempt of court and punished according to law for the default.<sup>21</sup>

#### THE MUNICIPAL JUDGE PRO TEMPORE

The municipal judge pro tempore is a temporary substitute for the municipal judge when the municipal judge is unable to perform his duties because of sickness, conflict of interest, absence,

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<sup>17</sup>Gorrell, Mar. 3, 1993, A.G. Op.#93-0086.

<sup>18</sup>Gregory, Mar. 2, 1994, A.G. Op.#94-0098.

<sup>19</sup>A judgement that will take effect unless the person against whom it is issued comes to court to show cause why it should not take effect.

<sup>20</sup>A judge’s command to a person to come to court and explain why a record in that person’s possession should not be wiped out.

<sup>21</sup>Code, § 21-23-8.

or similar reasons. The governing authorities in any municipality where a municipal judge is appointed have the power and authority to appoint a municipal judge pro tempore. The municipal judge pro tempore has the same powers and qualifications for the office of municipal judge as the municipal judge. The municipal judge pro tempore shall perform all the duties of the municipal judge in the absence of the municipal judge. When a municipal judge pro tempore is not appointed, is absent, or for any reason is unable to serve, any justice court judge of the county or any municipal judge of another municipality may serve in his place with the same power and authority upon designation by the municipal judge.<sup>22</sup>

#### THE MUNICIPAL PROSECUTING ATTORNEY

The municipal prosecuting attorney, a member of the executive branch of government, is the municipal official who represents the interests of the municipality in all proceedings before the municipal court. The municipal prosecuting attorney is appointed by the governing authorities of the municipality at the time provided for the appointment of other municipal officers. The municipal prosecuting attorney shall receive a salary which is to be fixed and paid by the governing authorities of the municipality. Should the municipal prosecuting attorney have a conflict of interest which arises in any proceeding before the municipal court or any other reason requires that he recuse himself, then the mayor of the municipality may appoint a special prosecuting attorney for that particular proceeding. The special prosecuting attorney is compensated for his services in the same manner as for appointed attorneys-at-law for indigent persons.<sup>23</sup>

#### THE EXECUTIVE OFFICER OF MUNICIPAL COURT

The executive officer of municipal court is the marshal or chief of police of the municipality. His duties include attending the proceedings of municipal court in person or by duly appointed deputies. The executive officer is under the direction of the municipal judge. An *ex officio* deputy marshal may be any police officer of the municipality. It is the duty of the marshal or chief of police to execute all process by himself or by his deputies and perform other duties which may be required of him by the municipal judge in the line of his duty.<sup>24</sup>

#### THE CLERK OF THE MUNICIPAL COURT

The clerk of the municipal court is the clerk of the municipality (city clerk), unless the governing authorities otherwise elect. The duties of the clerk are many and varied. The clerk must attend the sittings of the court in person or by properly appointed deputies. The clerk is under the direction of the municipal judge. As authorized by law, the governing authorities may authorize the municipal judge to appoint other municipal employees as deputy court clerks to assist the

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<sup>22</sup>Ibid., § 21-23-9.

<sup>23</sup>Op. cit., Note 6.

<sup>24</sup>Code, § 21-23-13.

clerk of the court in the conduct of the responsibilities of the court, or the governing authorities may appoint deputy clerks of the court. The appointment of deputy clerks of the court and/or the authorization to appoint them will be entered in the minutes of the municipality. The clerk of the court or a deputy clerk of the court may be a police officer of the municipality. The training of court personnel is the responsibility of the governing authorities of the municipality.

Among the duties of the clerk of the court is the requirement to keep and maintain permanent dockets upon which all cases shall be entered. The dockets must contain the style of the case and the nature of the charge against the defendant, and the names of witnesses for the prosecution and the defense. A minute record is also required to be maintained by the clerk of the court in which all court orders and judgements are entered. The same record may serve as both the docket record and the minute record. The clerk of the court is responsible for the issue of all process from the court, except arrest warrants or process for the seizure of persons and property. Also, the clerk of the court has the duty of administering the collection of all fines, penalties, fees, and costs which are imposed by the municipal court and deposit all collections with the municipal treasurer. The responsibilities of the municipal court clerk includes the purchase of dockets, minute records, and other supplies for the municipal court; the account must be approved by the municipal judge. The clerk of the court and deputy clerks of the court have the authority to take acknowledgments, administer any oaths required by law to be taken by any person, and take affidavits which may charge any crime against the municipality or the state.

Should the municipal judge be unavailable, persons charged with the commission of misdemeanor violations within the municipality may be brought before the clerk of the court for initial appearances. As required by the Mississippi Uniform Criminal Rules of Circuit Court Practice, this can occur when the clerk of the court has satisfactorily completed a course of training and education on the subject of initial appearances (conducted by the Mississippi Judicial College of the University of Mississippi Law Center) and when the municipal judge has established written guidelines and procedures for the clerk of the court to discharge this duty.<sup>25</sup>

Mississippi law requires every individual appointed as the clerk of the municipal court to attend and complete a comprehensive course of training and education conducted or approved by the Mississippi Judicial College of the University of Mississippi Law Center. Beginning with the first training seminar conducted after the clerk is appointed, the clerk is required to attend. The course consists of at least twelve (12) hours of training per year. A certificate of completion is furnished to the clerks of municipal court who satisfactorily complete the course, and each certificate is to be made a permanent record of the minutes of the board of aldermen or city council in the municipality from which the municipal clerk is appointed. Should the person appointed as clerk of the municipal court fail to file the above certificate of completion within the first year of appointment, such person is not then allowed to carry out any of the duties of the office of clerk of the municipal court and shall not be entitled to compensation for the period of time during which the certificate remains unfiled.<sup>26</sup>

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<sup>25</sup>Ibid., § 21-23-11.

<sup>26</sup>Ibid., § 21-23-12.

## DISPOSITION OF MOTOR VEHICLE AND TRAFFIC OFFENSES

Mississippi law provides that traffic violations under Title 63 of the *Mississippi Code* are misdemeanors. Persons convicted of traffic violations for which penalties are not otherwise provided shall be punished by a fine of not more than \$100.00 or by imprisonment for not more than ten (10) days; for a second such conviction within one (1) year thereafter, the offender shall be punished by a fine of not more than \$200.00 or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; and upon a third or subsequent conviction within one (1) year after the first conviction, the offender shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than 6 months or by both such fine and imprisonment.<sup>27</sup> As stated above, violations of duly passed municipal ordinances provide punishment for fines up to \$1,000.00 or imprisonment not exceeding ninety (90) days, or both.

It is the responsibility of the clerk of the municipal court to keep and maintain a full record of the proceedings of every case in which a person is charged with any violation of law regulating the operation of vehicles on the highways, streets, or roads of the state. Unless otherwise provided by law, within forty-five (45) days after the conviction of a person upon a charge of violating any law regulating the operation of vehicles on the highways, streets, or roads of the state, the clerk of the municipal court in which such conviction was had shall prepare and immediately forward to the Department of Public Safety an abstract of the record of the court covering the case in which the person was convicted. The abstract must be certified by the person so authorized to prepare it to be true and correct. The abstract must be made on the form approved by the Department of Public Safety and include the name and address of the party charged, the registration number of the vehicle involved, and if the fine was satisfied by prepayment or appearance bond forfeiture, and the amount of the fine or forfeiture. The failure by refusal or neglect of any judicial officer to comply with any of the above stated requirements is misconduct in office and are grounds for removal.<sup>28</sup>

All clerks of the municipal court are responsible for overseeing the administration of the Uniform Traffic Ticket Law. State law provides that all traffic tickets be printed in the original and at least two (2) copies and such other copies as may be prescribed by the State Auditor. All traffic tickets must be uniform as prescribed by the State Auditor and the Attorney General, except for violations of the Mississippi Implied Consent Law which are required to be separate and uniform in form throughout all jurisdictions in the State of Mississippi. The State Auditor and the Attorney General may alter the form and content of traffic tickets to meet the varying jurisdictions of the different law enforcement agencies.

All traffic tickets are to be bound in book form, be consecutively numbered, and be accounted for by the officer issuing the ticket book. For municipalities, the traffic ticket book is issued to each municipal police officer by the clerk of the municipal court. The clerk of the municipal court is responsible for keeping a record of all traffic ticket books issued and to whom issued and

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<sup>27</sup>Ibid., § 63-9-11.

<sup>28</sup>Ibid., § 63-9-17.

accounting for all books printed and issued.

The original traffic ticket is delivered by the police officer issuing the traffic ticket to the clerk of the municipal court and there retained in the records of the court and the number noted on the docket. The officer issuing the traffic ticket must give the accused a copy of the traffic ticket. The clerk of the municipal court shall file a copy with the State Auditor within forty-five (45) days after judgement is rendered showing the amount of the fine and cost or in cases where no judgement has been rendered, within one hundred twenty (120) days after issuance of the ticket. All copies must be retained for at least two (2) years. Clerks of municipal courts are mandatorily required to comply with these provisions and failure to so comply is a misdemeanor which is punishable by a fine of not less than Ten Dollar (\$10.00) nor more than One Hundred Dollars (\$100.00).<sup>29</sup>

In all cases involving any violations of traffic or motor vehicle laws in municipal court, where the person has been issued a traffic ticket and desires to waive a trial and not appear in court to defend the charge, in the discretion of the court, the amount of the fine may be paid in advance to the clerk of the municipal court. In this event, when the fine is paid in advance, the individual cited must be notified by language plainly printed on the traffic ticket of their right to a trial and the consequences of the voluntary advance payment of the fine. In cases in which formal charges have been made and the individual who has charges has been notified to appear in municipal court on a certain date and time, the clerk of the municipal court is authorized to accept a cash appearance bond not to exceed the amount of the fine, conditioned upon the appearance of the charged individual at the certain date and time in municipal court. In the event of default where the individual does not appear in municipal court at the certain date and time, the cash bond may be forfeited in payment of any judgement in the case in an amount not to exceed the amount of the bond. In these types of forfeiture cases, the judgement is final without the necessity of *judgement nisi* and the issuance of the writ of *scire facias*. After notice of their rights when an individual issued a citation pays a fine in advance, this constitutes a waiver of formal charge, arraignment, and trial. In these cases and in cases of default on appearance bonds, the action is tantamount to an entry of a plea of *nolo contendere* by such individual and the court may, upon the advance payment of the fine or the default on the appearance bond, convict the individual of the offense charged on the traffic ticket or formal charges without further appearance by the individual so charged. The conviction is reported to the Commissioner of Public Safety as required by law. It is not necessary to enter these types of traffic ticket cases in the municipal court docket. However, the above forfeiture provisions in non-appearance cases do not apply to charges which require mandatory imprisonment upon conviction or to repeat offenders where a sentence of imprisonment is likely to be imposed.<sup>30</sup> In addition to the reporting requirements relating to traffic violations, the clerk of the municipal court has reporting requirements for non-traffic misdemeanors to the Mississippi Justice Information Center.<sup>31</sup>

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<sup>29</sup>Ibid., § 63-9-21.

<sup>30</sup>Ibid., § 21-23-17.

<sup>31</sup>Ibid., § 45-27-3.

When an individual is convicted of a misdemeanor and/or for whom an arrest warrant has been issued for a misdemeanor involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, fraud, or false pretenses, the clerk of the municipal court must report this information to the Mississippi Justice Information Center.<sup>32</sup> Also, the clerk of the court must supply<sup>33</sup> certain information to the Center relating to arrest warrants and promptly report all cases where records of convictions of criminals are ordered expunged by the municipal court.<sup>34</sup>

## DISPOSITION OF PARKING VIOLATIONS

Mississippi law does not make it necessary to name any person in a traffic ticket issued for a violation relating to the parking of vehicles. A traffic ticket attached to the unlawfully parked vehicle is sufficient to require that the operator who unlawfully parked the vehicle appear in municipal court at the time stated in the traffic ticket. Should the name of the operator of an unlawfully parked vehicle be unknown, the owner of record of the unlawfully parked vehicle is, as a matter of law, presumed to be the operator of the vehicle and may be charged with the parking violation. In the event the operator or owner of the unlawfully parked vehicle fails to appear in court in response to the traffic ticket, the owner or operator shall not be arrested, except on affidavit and issuance of an arrest warrant. It is not necessary for the clerk of the municipal court to enter parking violation cases on the municipal court docket nor to enter a final judgement in the minute book of the court, unless an arrest warrant has been issued.<sup>35</sup>

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<sup>32</sup>Ibid., § 45-27-7.

<sup>33</sup>Ibid., § 45-27-9(4).

<sup>34</sup>Ibid., § 45-27-9(10).

<sup>35</sup>Ibid., § 21-23-19.

