



## **POSITION PAPER ON MUNICIPAL PROSECUTORS**

Recent criticisms of the municipal court system in Missouri have revolved around what has been termed in a Post-Dispatch editorial as a "rampant conflict of interest": the practice of attorneys serving dual roles as municipal prosecutors and defense attorneys.

As ministers of justice, Missouri's state prosecutors recognize the inherent conflict of operating in dual roles. As a profession, we can, and must, do better.

We believe that municipal prosecutors should be held to the same standard as state prosecutors and should not be allowed to represent defendants in municipal or state court while also serving as municipal prosecutors.

At best, it results in an appearance of impropriety. At worst, it results in real conflicts of interest. State prosecutors take seriously our role as stewards of the criminal justice system, and we will speak in favor of instilling confidence in the system at all levels. The truth is that most members of the public do not differentiate between municipal prosecutors and state prosecutors. Perception is reality. The negative connotations associated with municipal prosecutors who practice as defense attorneys bleeds over into the perception of the public with respect to the criminal justice system as a whole.

While most people do not distinguish state courts from municipal courts, the majority of the public's contact with the justice system is through municipal courts. In order to protect the integrity of the profession, Missouri's prosecutors believe that prosecutors on every level should be held to the same standard.

Indeed, it is a crime for a state prosecutor to represent a criminal defendant.<sup>1</sup> The rules should be no different for a prosecutor who happens to prosecute in municipal court as opposed to state court. For example, many municipal courts handle first-time offenses as ordinance violations which duplicate state crimes. So, the Cole County Prosecuting Attorney may prosecute all first-time DWI cases that occur in the unincorporated portions of Cole County; while the Jefferson City Municipal Prosecuting Attorney prosecutes the exact first-time offense if it occurs within the city limits of Jefferson City. Yet, the Jefferson City Municipal Prosecutor (who is a part-time elected official) is allowed to practice criminal defense. This makes no sense.

Granted, municipal cases are viewed as quasi-criminal for some purposes, but that characterization does not change the reality of what occurs in municipal courts:

- Like counties, municipalities are political subdivisions of the state.
- Most "quasi-criminal" municipal ordinances are identical to the misdemeanor statutes in Missouri's criminal code.
- The state is barred by double jeopardy from bringing a subsequent prosecution of a state law violation for conduct that has been adjudicated through a municipal ordinance

---

<sup>1</sup> Section 56.360, RSMo.

prosecution.

- A defendant can be arrested for a municipal ordinance violation.
- A defendant can be held prior to trial for a municipal ordinance violation. (The circumstances that must exist to hold a defendant are the same as the circumstances to set a bond on a misdemeanor.)
- A defendant facing jail time is entitled to appointed counsel if he or she cannot afford an attorney.
- Findings of guilt for ordinance violations such as DWI, domestic assault and stealing can be used as sentence enhancements in subsequent state prosecutions.

When all these things are true, the only real question is why our system would continue to allow municipal prosecutors to act under a different set of rules than those to which state prosecutors are held.

Unlike state courts, municipal court operations are funded by fines from municipal ordinances. The state court system is funded by state general revenue with respect to the judiciary and public defender and county general revenue with respect to the prosecutors. Fines for criminal offenses in state court are dedicated solely to the school system. The problem with the current fiscal structure of municipal courts is that the profit motive conflicts to some degree with the ideals of public safety. While eliminating the funding stream to municipalities completely may not be financially feasible, putting the municipal prosecutor function in the hands of prosecutors who have no potential conflict of interest, who are well trained in prosecutorial ethics, and who are driven by the public safety motive is surely warranted.

Accountability and access are also important to regaining the public trust. To our knowledge, there is no single, comprehensive list of Missouri's municipal prosecutors. There is also no required training for municipal prosecutors. While our organization routinely trains many full-time municipal prosecutors from larger jurisdictions on issues such as DWI and domestic violence, the majority of municipal prosecutors are difficult to reach.

For all of these reasons, we suggest Supreme Court Rule 37.04 be revised to include the following, or substantially similar, language:

37.04. Supervision of Courts Hearing Ordinance Violations

The presiding judge of the circuit shall have general administrative authority over the judges and court personnel of all divisions of the circuit court hearing and determining ordinance violations within the circuit. The judges of all such divisions shall be subject to the rules of the circuit court that are not inconsistent with this Rule 37. **It shall be the duty of the court clerk of any division of the circuit court hearing and determining ordinance violations within the circuit to notify the office of state courts**

**administrator of the name of any person appointed or elected to be the prosecuting attorney of a municipality within 30 days of appointment or election, as well as whether the municipal prosecuting attorney is full-time or part-time. The Office of State Courts Administrator shall transmit such information to the Missouri Office of Prosecution Services.**

**No municipal prosecutor or assistant municipal prosecutor shall, during the term of office for which he or she shall have been elected or appointed, represent any party other than the state of Missouri or any of its political subdivisions in any criminal or municipal ordinance violation case or proceeding; provided, that nothing in this rule shall be deemed to preclude the officers specified in this section from engaging in the civil practice of law.**

This approach also will promote uniformity among the municipal courts. For example, according to data provided by the Office of State Courts Administrator, there are 601 municipal courts in the state of Missouri, yet only 119 of these courts have municipal prosecutors with Originating Agency Identifier (ORI) numbers. These are the identification numbers assigned by the FBI to criminal justice agencies so that criminal histories can accurately identify which specific criminal justice agency took which specific actions. Without an ORI, an individual's criminal history is either incomplete or inaccurate. Currently, for the remainder of municipal prosecutors without ORIs in Missouri, their actions are either not reported, or are being incorrectly reported as the action of the State prosecutor serving in the same county as the municipal prosecutor.

On the other hand, state prosecutors' offices routinely and daily handle issues relating to warrants, outstanding restitution, fines, and bonds. State prosecutors have the infrastructure, including technology and trained staff, to handle these issues.

Municipalities can easily contract with local prosecutors to perform these services. In fact, section 50.332 specifically envisions and encourages this practice:

*50.332. In all counties of the first, second, third, and fourth classes, and in any county with a charter form of government and with more than two hundred thousand but fewer than three hundred fifty thousand inhabitants, each county officer may, subject to the approval of the governing body of the county, contract with the governing body of any municipality located within such county, either in whole or in part, to perform the same type of duties for such municipality as such county officer is performing for the county. Any compensation paid by a municipality for services rendered pursuant to this section shall be paid directly to the county, or county officer, or both, as provided in the provisions of the contract, and any compensation allowed*

*any county officer under any such contract may be retained by such officer in addition to all other compensation provided by law.*

It's long been said, "no one can serve two masters." We urge the Court to apply that common sense declaration to prosecutors in Missouri's municipal courts.