

Misdemeanor Probation Reform

A Judge's Perspective

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This class is a discussion about Misdemeanor Probation Reform; however, the real discussion is about how you view your Municipal Court and if you understand how it functions in today's world. We would not be here today if there were not major changes that have occurred in recent years by way of House Bill 310 and Federal and State Court decisions that have had an impact on the way our Courts function and operate.

I have had the privilege of serving in several cities as their Municipal Court Judge over the last 36 years. I served for 24 years as a Judge in the City of Dublin a city of 16,000, and as city attorney in my hometown of Dudley, a town of 500. The other cities range in population size from 500 - 3000. I have seen both sides of city government — from the Bench and from the City Council's perspective.

In the past, many of our Mayors and City Council members simply viewed the Municipal Courts as an extension of the police department, when they are in fact, Courts. Federal and State Courts in their recent decisions have emphasized the liability that our cities may incur if we do not treat them as such. In this paper, I am not going to try to cover every detail of the Probation Reform, for that I refer you to the excellent summary by Dale Allen. Rusi Patel and Alison Earles have also prepared an excellent checklist for Municipal Court Best Practices. I have enclosed part of this checklist with this paper with their permission. Now I am going to try to comment on some specific points from the Judge's perspective.

The Probation Contract— Have you read it?

Most of the time, the City Council 's function is to simply approve what the Judge has negotiated with the Probation Provider. Under House Bill 310 the City or County government contracts with the provider and the Judge approves the terms. One of the most important issues is how the money is collected and disbursed. Certainly, restitution is primary; but then how is the money collected and then divided? Some contracts spell out that when a certain dollar amount is collected per month that the money is disbursed evenly to both the city and the provider. If only \$ 44 dollars is collected in a month, and the probation fee is \$35 and the victim assistance fee is \$9, then all the money goes to fees. If the contract specifies an even split of moneys received then each gets half. Watch for hidden fees, sometime these are listed as picture fees, assessment fees, processing fees, etc. In some cases, the Judge places the Defendant on pay-only probation. This means that the Defendant has to only pay the fine, and there are no additional conditions to satisfy. The probation provider can only collect three months of fees. It is important when monitoring these contracts to make sure the fees cut off at the appropriate time. Another area of concern may be monitoring the Community Service providers for the court. There are uniform contract standards spelled out in the Georgia code, these will be a guideline for your city attorney.

Communication between the Judge and the Clerk /Police Department.

Let us start with the basics —the Defendant is in jail. What is the first step? Regardless of whether this is an arrest for a misdemeanor or on a probation warrant, the Clerk or Chief needs to advise the Judge that the city has someone in Jail. Each of my clerks in my cities have a standing order to advise me when someone is in jail and can't make bail. This is to comply with the law within 48 hours without a warrant or 72 hours if with a warrant. When they call we set up a hearing at the Jail that afternoon. Remember we are being transparent and also protecting the city from a law suit. The Judge needs to do a first appearance on the Defendant or have an arrangement with the county Magistrate Judge to do this. If bond is appropriate then let's get the Defendant out of the County Jail (it costs money) and set up a court date. If the Defendant is in on a probation warrant then the sooner he sees the Judge the sooner we can get the matter resolved and get him/ her back to work. Don't let the lack of communication cost your city money in jail cost a medical bill or a law suit.

Recording and Protecting the Record

All proceedings in our Courts are important and the record is to be preserved. A simple digital recorder and software system for less than \$100 can solve your problem. Remember we want the city to look good if the higher Courts come to review our case. It is important that each Defendant is given his/her rights as defined by the Constitution and Federal Courts, each of these waiver forms are important when a review is undertaken.

Public Defender to be provided.

State and Federal law say that we can't operate our Courts if we don't provide the opportunity for a public defender. This can be accomplished in several different ways. In each of the small towns where I hold Court I read the rights to the Defendant and ask if he/she wants to talk to a Public Defender. In the past, I have had them to fill out a financial affidavit. Recent discussion has suggested that if the Judge approves the Public Defender, then the Defendant has been then declared indigent. That decision would impact the Judge's ability to fine or sentence the Defendant. Now I just allow the Defendant to use the Public Defender for purposes of this hearing. When requested I simply continue the case until the next hearing date and arrange for the contract Public Defender to appear and meet the Defendant before Court.

Sentencing Defendants and Probation Revocation Hearings

As we have previously discussed it is important at every critical stage in a court case that the Defendant be advised of his /her rights, that they be advised of the right to a Public Defender and that the waiver forms be signed and in the record. Now that that is out of the way — the Judge can do what he wants with the case---- right????

The recent Federal and State law cases point out that the Judge has to ask the Defendant certain questions during the sentencing phase of a case and even more so when the Defendant has been brought back for a probation revocation hearing. After all the Defendant was given an opportunity to pay a fine and do certain things — now we have to find out why he didn't do as requested: was it willful failure or simply because he/ she couldn't perform the task or pay the fine.

The Court must take into account the ability of the Defendant to pay a fine and fees, or to perform a task such as community service. If the Defendant is unable to pay is this a "significant financial hardship",

does the Defendant have a developmental disability, is he/ she disabled or below the federal poverty guidelines.

As you can see the Judge's role can be difficult at this point— we must weigh the cost to the city against the punishment for the Defendant and protect everyone's rights. The Courts must look at the cost to the city of the community service— who will supervise the Defendant, does the city need insurance, any use of power tools, etc., what is the liability to the city. Together the Judge, the City, the Police Department and the Probation Provider can work together to accomplish these goals.

Respectfully submitted,

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Attachments: Portion of Self -Assessment of Municipal Court Best Practices (GMA)
Exhibit "A"