

MAYOR'S COURT HANDBOOK

2015 Edition



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for the
Louisiana Municipal Association

UPDATED
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I. INTRODUCTION

The Louisiana judicial system is basically a three-level court structure, composed of

- (1) the appellate courts, which provide a system of judicial review of cases arising in the lower courts;
- (2) the district courts, which are courts of general criminal and civil jurisdiction, and to which most cases in the state are first brought; and
- (3) the courts of limited jurisdiction, which are authorized by statute to exercise only a very narrow jurisdiction over specific types of cases. The courts of limited jurisdiction include parish courts, city courts, municipal courts, justice of the peace courts, and, the subject of this manual, mayor's courts.

The purpose of this manual is to review information that is available--relevant statutes, constitutional law, cases, opinions from the Attorney General's office, articles, and books--as regards the authority and proper functioning of a mayor's court. It is hoped that this review will provide a useful resource tool for those people who work with this somewhat enigmatic tool of justice--the mayor's court.

Unless otherwise noted in this handbook, "Code" refers to the Code of Criminal Procedure and "Article" refers to an article in the Code.

II. HISTORY AND OVERVIEW

Mayor's courts are established in all municipalities governed by the Lawrason Act, Louisiana's master plan for municipal government, with certain exceptions. Originally passed in 1898, the Lawrason Act is a general legislative charter for all municipalities created after July 29, 1898. The act set up the form of government, the powers, and the duties of municipal corporations and officers. Already existing municipalities (in 1898) could also choose to come under the act by popular vote of its citizens.

The Lawrason Act requires a mayor's court in all municipalities except that prior to 1974, a city court was required in wards containing cities of more than 5,000 inhabitants, where a city judge had to be elected.¹ According to the attorney general, the authority to establish a city court was repealed by the constitution in 1974 and no new city courts can be created.²

While Article V, Section 20 provides that mayor's courts existing on the effective date of the constitution (January 1, 1974) are continued, subject to change by law, Section 15 of that Article authorizes the legislature, by law, to abolish or merge mayor's courts and to establish trial courts of limited jurisdiction with parishwide territorial jurisdiction. In that regard, the attorney general has rendered opinions that a previously existing mayor's court that was deactivated due to lack of funds may be reactivated (Richwood, Pioneer)³. However, a municipality established after January 1, 1974 cannot create a mayor's court (St. Gabriel).⁴ The legislature statutorily created two mayor's courts in 1999, in one instance recreating a court that was abolished statutorily by a pre-1974 law (New Ilano) and in the other, establishing a new mayor's court (Forest).⁵ In recent years, the legislature statutorily created a mayor's court in Heflin⁶ (2003), St. Gabriel⁷ (2004), Clarks⁸ (2006), Central^{8a} (2008), Ida^{8b} (2009), and Hosston^{8c} (2010).

Despite the limitations of mayor's court, it is, in fact, a legally constituted court with a serious responsibility to provide justice to those who come before it, just as is any other court in the state and country. The difference is that mayor's court personnel "have greater opportunities to tailor justice to the individual" because of "their knowledge of the individuals and the community in general."¹¹ This "close acquaintanceship may also promote a flexibility, informality, and resistance to bureaucracy that may enable the court to act swiftly and effectively."¹² However, the "informality" of mayor's court, that may add to its effectiveness in some respects, may endanger the court's dependability in upholding constitutional guarantees in some instances.

Similar courts also exist in Ohio where, after an almost three-year study of the courts, it was recommended in 2000 that mayor's courts (335 of them) be replaced, despite state supreme court mandated legal training for mayors and lawyer/magistrates being appointed by some mayors to preside in court. The report cited the "apparent conflict of interest when a mayor, the executive officer of a city, decides guilt and levies fines that are in turn used to support any portion of city government", referring to DePiero v. City of Macedonia, 180 F3d 770, Fed App. 6th Cir. 1999, a federal circuit court of appeal case, which "found that a constitutional problem is created in

jurisdictions where mayors control budgets and law enforcement, and also serve a judicial function by presiding over a mayor's court and deciding cases there."¹⁴

The United States Supreme Court, in Tumey v. Ohio, 273 U.S. 510 (1927), disqualified a mayor presiding over a mayor's court as he received a salary supplement for performing judicial duties funded from the fines assessed and the fines were deposited to the general treasury for village improvements and repairs. The court stated that “[e]very procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.” Similarly, in Ward v. Monroeville, 409 U. S. 57 (1972), the court found that the accused was denied a trial before a disinterested and impartial judicial officer where he was compelled to stand trial before the mayor, who was responsible for village finances and whose court, through fines, forfeitures, costs, and fees, provided a substantial portion of village funds. A statutory provision for the disqualification of interested or biased judges did not accord the accused sufficient safeguard, and it was of no constitutional relevance that the accused could later be tried de novo in another court, as he was entitled to an impartial judge in the first instance.

In the following chapters, we will review what is known and unknown about these issues -- what mayor's courts don't do, may do , and, and must do, in order to function fairly and effectively.

FOOTNOTES

¹ R.S. 13:1872

² A.G.O. 89-263; A.G.O. 77-170

³ A.G.O. 00-228; A.G.O. 94-610

⁴ A.G.O. 96-141

⁵ R.S. 33:448; R.S. 33:447

⁶ R.S. 33:449

⁷ R.S. 33:450

⁸ R.S. 33:451

^{8a} R.S. 33:453

^{8b} R.S. 33:441.32

^{8c} R.S. 33:454

⁹ R.S. 33:362(A)(2)(b)

¹⁰ R.S. 13:1896

¹¹ Rural Courts: The Effect of Space and Distance on the Administration of Justice, A publication of the National Center for State Courts, p. 4 (1977)

¹² Id.

¹³ State Court Organization 2004; Bureau of Justice Statistics, U.S. Department of Justice; various state statutes.

¹⁴ A Changing Landscape, final report of Ohio Courts Futures Commission, May 2000.

III. PROBLEMS OF INTERPRETATION

Although the Louisiana Constitution expressly authorizes the continued existence and functioning of mayor's courts and jurisdiction is vested in mayor's courts in R.S. 33:441, state law provides little guidance for the day to day functioning of these courts.

Such guidance may be gleaned from the Code of Criminal Procedure. According to Article 2, "the provisions of this Code are intended to provide for the just determination of criminal proceedings." Yet, according to Article 15, the code applies to only district, city, parish, juvenile, and family courts. In Article 931, the definitions of "court" and "city court" expressly exclude the mayor's court, but the mayor of a mayor's court is included in the definition of "magistrate." The Fifth Circuit Court of Appeal has held that a mayor's court is not required to "comport with the Louisiana Code of Criminal Procedure."¹ Similarly, "courts" as defined in Article 116 of the Children's Code specifically excludes a judge of a mayor's court.

R.S. 14:7 defines "crime" as "that conduct which is defined as criminal in this Code, or in other acts of the legislature, or in the constitution of this state." According to the Reporter's Comment under the statute, municipal ordinances are clearly excluded from the definition. However, in Article 933, a "misdemeanor" is defined to include the violation of an ordinance. Finally, the Reporter's Comment under Article 931 notes that mayor's courts are "tribunals with very limited criminal jurisdiction." Thus, Article 2 seems pertinent to the workings of mayor's court after all, as it explains that,

"The provisions of this Code are intended to provide for the just determination of criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable delay."

Article 3 continues:

"Where no procedure is specifically prescribed by this Code or by statute, the court may proceed in a manner consistent with the spirit of the provisions of this Code and other applicable statutory and constitutional provisions."

Thus it would seem that we may apply common sense to analogize proper conduct of the mayor's court by looking to the "spirit" of the Code. However, we must use great care in such analogizing as the only powers and jurisdiction belonging to courts are those "conferred upon them by the constitution and statutes of this state, except as their statutory jurisdiction and powers are restricted, enlarged, or modified by the provisions of this Code."² We must also remember that constitutional mandates do apply to mayor's court.³

The many problems of interpretation should be kept in mind as we attempt to piece together the elements of a properly functioning mayor's court.

FOOTNOTES

¹ City of Kenner v. Marquis, 715 So. 2d 85 (La. App. 5 1998)

² C.Cr.P. Art. 16

³ City of Kenner v. Marquis, Id.

IV. JUSTIFICATION AND JURISDICTIONAL LIMITS

JUSTIFICATION

Justification for the existence and functioning of mayor's court comes from three sources:

1. The Louisiana Constitution, Article V Section 20, which declares that mayors' courts in existence on the effective date of the constitution (January 1, 1974) may continue, subject to legislative action;
2. R.S. 33:441, which vests mayor's courts with limited jurisdiction; and
3. The United States Supreme Court has ruled that a trial before a nonlawyer judge in which the accused was found guilty of D.W.I. and sentenced to a 30-day imprisonment, was not a denial of due process since a trial de novo before a lawyer judge was available.¹ The reasoning, however, was based on the assumption that the nonlawyer judges recognize their obligation to inform all convicted defendants of their unconditional right to a trial de novo and of the filing period. This holding was followed in Broussard v. Town of Delcambre, (458 So.2d 1003, La. App. 3rd Cir. 1984).

JURISDICTION

Generally: Mayor's courts are vested with jurisdiction over violations of municipal ordinances² and may impose fines, imprisonment or both as authorized in such ordinances.³ "Mayors' courts are courts which have jurisdiction to conduct trials, determine guilt, and impose sentences including fines and imprisonment for breach of municipal ordinances." according to the Louisiana Supreme Court.⁴ The jurisdiction of the mayor's court is concurrent with courts of record which have such jurisdiction.⁵

The jurisdiction of the mayor's court is limited to violations of municipal ordinances occurring within the municipality's corporate limits. Prosecution of violations occurring in areas which are later judicially determined to not be within the corporate limits may subject the municipality to civil liability.^{5a}

Writs: The Code fails to expressly authorize mayor's court presiding officers to issue writs. However, the Louisiana Supreme Court has held that presiding officers of mayor's courts may issue needful writs in aid of their jurisdiction, including the appointment of an attorney for an indigent defendant.⁶ According to the court, courts and judges have inherent power as well as authority to issue writs, regardless of the lack of specific statutes on the subject, because of the express authorization of mayor's courts in the Louisiana Constitution.⁷

Peace Bonds: A mayor's court presiding officer may issue peace bonds since the statute states that a "magistrate may order a peace bond",⁸ and the definition of "magistrate" in the Code includes a mayor's court judge (Art. 931). Thus, if the presiding officer is satisfied that a peace bond applicant has just cause to fear a threatened offense, he may order the subject of the complaint to give a peace bond. Articles 26 through 33 apply. The peace bond is set at a certain amount of money in favor of the municipality, which will be forfeited by the defendant if he fails to abide by the order to refrain from certain activities.

Traffic Violations: According to statute, a municipality can adopt traffic ordinances which are not inconsistent with state regulations.⁹ The penalty provided in the ordinance must be within the parameters of the penalty in state law.¹⁰ Since the mayor's court handles breaches of ordinances, this authority includes violations of traffic ordinances. (However, note D.W.I. restrictions under Exceptions to Jurisdiction.)

If a municipality has adopted the Highway Regulatory Act (Chapter 1 of Title 32), it must establish a procedure by which the alleged violator may promise, in writing, to appear in court to answer the charge, which must be accepted in place of posting a bond or depositing a driver's license. (R.S. 32:57.1(C)) The municipality must also establish a procedure for the alleged violator to plead guilty or nolo contendere and pay the fine by mail by such credit cards as it may designate. [However, the procedure shall not limit such payments to payment by credit card.]

Under R.S. 32:57 (E) and (F), the above procedures above do not apply:

- (1) To any citation alleging the operator of a motor vehicle was:
 - (a) Operating under the influence of alcohol or controlled substances.
 - (b) Exceeding the speed limit by 15 miles per hour or more.
 - (c) Exceeding the speed limit in a school zone.
 - (d) Driving with a suspended license.
 - (e) Drag racing.
 - (f) Failing to maintain compulsory security.
- (2) When the operator is involved in an accident in which a person is injured.
- (3) When the operator is alleged to have committed the same offense twice in an hour.

Under R.S. 32:266, all fines or penalties collected by or on behalf of a local law enforcement body for citations issued for exceeding the posted speed limit by less than 10 miles per hour on an interstate highway must be forwarded to the state treasurer for credit to the Louisiana Highway Safety Fund.

If a municipal police department engages in traffic enforcement, guidelines must be established for the operation of seat belt checkpoints and proof of compulsory motor vehicle liability security checkpoints, in accordance with R.S. 32:295.4.¹¹

Probable Cause Determinations: Article 230.2 requires that a law enforcement officer who makes an arrest without a warrant to "promptly" complete an affidavit of probable cause supporting the arrest and submit it to a magistrate. A person arrested without a warrant and remaining in custody is entitled to a determination of probable cause for the arrest within 48 hours of the arrest. This determination is not an adversary hearing, may be made without the defendant being present, and may be made upon affidavit and other written evidence. If a probable cause determination is not made within 48 hours after the arrest, the arrested person must be released on his own recognizance.

The Attorney General has affirmed the presiding officer of mayor's courts, as a magistrate, may make this determination.¹²

Arrest Warrants: A mayor's court presiding officer has authority to issue arrest warrants under Article 202, which gives any "magistrate" the power to issue warrants of arrest and Article 931 which includes the mayor of mayor's court in the definition of "magistrate." The issuance of an arrest warrant is discretionary with the presiding officer of the court.¹³

Further, there is no statutory restriction limiting the authority of the mayor to issue an arrest warrant for an offense occurring outside of the municipality nor to an offense other than a municipal offense, except that the mayor has no jurisdiction over juveniles.

Summons: A summons, which differs from an arrest warrant in that no actual restraint of the person occurs, may be issued by a mayor's court presiding officer, once again due to his designation as a "magistrate." A summons commands a person to appear before the court at a certain time.¹⁴ The magistrate may issue a summons instead of an arrest warrant "if he has reasonable ground to believe that the person against whom the complaint is made will appear upon a summons..."¹⁵

Bail: Mayor's court magistrates are expressly authorized to fix bail in criminal cases within their jurisdiction.¹⁶ However, the amount of bail may not exceed \$100 for each offense, except in the mayor's court of Kenner where the amount may not exceed \$2,500 per offense.¹⁷ Authority to fix a bail schedule is less clear. City, parish, and district courts are given such authority in Article 341, but again mayor's courts are not included.¹⁸ However, the Attorney General's office issued an opinion in 1973 stating that the reason given for setting up such a schedule, listed in the comment under Article 319 (predecessor to Article 341)--to facilitate the prompt fixing of bail, providing for the quick release of persons arrested late at night or on a weekend, who would otherwise have to remain in jail until the judge became available to fix bail --would also apply to mayor's court. According to the opinion, authority for a bail schedule in mayor's court comes from the prior provisions of R.S. 33:401 and R.S. 33:402(2), which stated that the mayor and aldermen have responsibility for the management of municipal property and finances.¹⁹ A bail schedule lists the various offenses and the bail required for each.

Subpoena of Witnesses: The article giving courts authority to issue subpoenas for the compulsory attendance of witnesses at trials when requested to do so by the state or defendant does not mention mayor's courts²⁰ and since the statute uses the word "court", mayor's court is excluded by definition (Art. 931). However, the comment under the statute notes that this authority to subpoena witnesses is inherent, due to constitutional guarantees of the right to compel the attendance of witnesses... "An accused is entitled to confront and cross-examine witnesses against him, to compel the attendance of witnesses..."²¹

EXCEPTIONS TO JURISDICTION

Title 14 Violations: Mayor's courts have no jurisdiction over violations of Title 14 of the Louisiana Revised Statutes (Criminal Code).^{21a}

D.W.I. Cases: Mayor's courts have no jurisdiction over violations relative to prosecutions on charges of driving while intoxicated as provided by local ordinance or as provided for by R.S. 14:98.²²

Injunctions: The issue before the Louisiana Supreme Court in City of Harahan v. Olson²³ was whether a mayor's court is authorized by the constitution and statute to issue injunctions in order to prevent violations of municipal ordinances. The court determined that such authority was not given to mayor's courts. Citing R.S. 33:441, the court stated that, "Its provisions, we think, clearly contemplate enforcement of the city ordinances only through criminal proceedings."

Home Incarceration: According to the Attorney General, a mayor's court is not authorized to suspend a sentence and order a defendant to comply with home incarceration in lieu of a sentence.²⁴

Juvenile Cases: According to an Attorney General's opinion, special juvenile courts, district courts, parish courts, and city courts have exclusive jurisdiction over juveniles who violate municipal ordinances. Mayor's courts have no juvenile jurisdiction.²⁵ Article 116 of the Children's Code specifically excludes mayors court from the definition of "court" when used in that code.

Worthless Checks: A mayor's court does not have jurisdiction over the enforcement, collection, and/or prosecution of worthless checks issued in violation of R.S. 14:71.^{25a}

Felonies: According to R.S. 33:441, a mayor's court has jurisdiction only over the violations of ordinances, which, according to Article 933, are included in the definition of "misdemeanors." Also, according to R.S. 14:143, a political subdivision may not pass an ordinance which defines as an offense conduct that is already defined and punishable as a felony under state law. In 1997, the Louisiana Supreme Court interpreted R.S. 14:143 to preempt and preclude any ordinance which defined as an offense any action defined as a relative felony under state law, that is "conduct that may

be considered a misdemeanor or a felony offense, depending upon the number of prior convictions of the same offense." The court ruled that in such instances, the state had preempted the authority of local government to enact ordinances prohibiting the same conduct.²⁶ The legislature, in 2001, amended R.S. 14:143, to provide specific authority for ordinances which prohibit conduct defined as a misdemeanor in the relative felony crimes of criminal trespass, theft when the misappropriation or taking amounts to less than a value of \$300, theft of animals when the misappropriation or taking amounts to less than a value of \$300, unauthorized use of "access card" as theft, theft of domesticated fish from fish farm, theft of crawfish, first offense of theft of utility service, theft of goods when the misappropriation or taking amounts to less than a value of \$300, theft of timber, theft of an alligator when the misappropriation or taking amounts to less than a value of \$300, illegal possession of stolen things when the value of the stolen things is less than \$300, prostitution, child desertion, unauthorized interception of cable television services, improper telephone communications, possession of marijuana, possession of drug paraphernalia, and domestic abuse battery, as provided by, and containing the same elements as, state law. Even so, under the reasoning in the opinion of the supreme court, prosecuting such prohibited conduct by ordinance in mayor's court negates the opportunity for enhanced penalties under state law, as mayor's court is not a court of record.

REMAINING JURISDICTIONAL ISSUES

Search Warrants: Article 161 gives a "judge" the power to issue search warrants. Since "judge" is defined in the Code as a "judge of the court," and the definition of a "court" excludes mayor's court,²⁷ a mayor's court presiding officer does not qualify as a judge empowered to issue a search warrant.²⁸

Contempt of Court: The Attorney General's opinion has expressed the view that "a mayor's court has an inherent power to punish for contempt those persons who ignore lawful summons issued by authority of the municipality."²⁹ Another view might be that the Louisiana Constitution does indeed vest the mayor's court with inherent powers; but the last sentence of Article V Section 2 of the constitution says that "The power to punish for contempt of court shall be limited by law." In Article 17 of the Code, a "court is given the power to punish for contempt." Yet, the definition of court in the Code excludes mayor's court and the contempt statutes fail to include mayor's court expressly. One solution would be to adopt an ordinance covering contempt in mayor's court.

Civil Proceedings:

Animal Hearings: In an appeal from the 24th Judicial District affirming a judgment of the Kenner Mayor's Court which declared a pit bull dog to be dangerous, fierce and vicious and ordered to be destroyed, the 5th Circuit Court of Appeal, affirmed the judgment concluding that the district court properly conducted a *de novo* hearing and that the proceeding in the mayor's court was a civil proceeding and the proper standard of proof was the preponderance of the evidence. The legislature created an animal hearing officer in the Kenner Mayor's Court and authorized the officer to declare

any animal vicious, dangerous, or to determine the disposition of the animal, including humane euthanasia, if warranted, in R.S. 33:441.1(C).³⁰

Utility accounts: The mayor's court in the town of Westlake has jurisdiction, concurrent with the city court and district court, over suits by the town, water district, sewerage district, or any public utility operated by a political subdivision to enforce the collection of an open account regarding property located within the town.^{30a}

Other: The 3rd Circuit Court of Appeal, in an appeal from the 15th Judicial District Court which affirmed, without holding a trial *de novo*, the judgment of the Broussard Mayor's Court suspending the occupational license of a men's club, determined that the proceeding was civil, not criminal, and subject to ordinary appeal. The court noted the absence of a trial transcript in the mayor's court and that lower courts treated the proceeding as criminal in nature. Noting that neither party questioned whether the proceeding was criminal or civil, the court found the matter to be a civil proceeding and that a defendant in a civil proceeding in mayor's court is entitled to a trial *de novo* in district court. The case was remanded to the district court for a trial *de novo*.³¹

The 2nd Circuit Court of Appeal, in an appeal from the 6th Judicial District Court which denied a motion to annul the judgment of district court of an appeal from the mayor's court of the Town of St. Joseph which found the accused guilty of violating local ordinance by placing a mobile home on property in the town without first obtaining a permit to do so. The court determined that the proceeding was a criminal matter.^{31a}

FOOTNOTES

¹ North v. Russell, 427 U.S. 328, 49 L.Ed.2d 534, 96 S.Ct. 2709 (1976)

² R.S. 33:441

³ R.S. 33:362(A)(2)(b)

⁴ Sledge v. McGlathery, 324 So.2d 354 (La. 1976)

⁵ A.G.O. 97-315

^{5a} Roberson v. Town of Pollock, 915 So. 2d 426 (La. App. 3 Cir. 11/9/05); writ denied 926 So. 2d 550.

⁶ Id.

⁷ La. Const. Art. V, §2; La. Const. Art. V, §20

⁸ C.Cr.P. Art. 26

⁹ R.S. 32:41

¹⁰ A.G.O. 00-197

¹¹ R.S. 32:295.4

¹² A.G.O. 92-710

¹³ A.G.O. 98-235

¹⁴ C.Cr.P. Art. 208

¹⁵ C.Cr.P. Art. 209

¹⁶ C.Cr.P. Art. 333

- ¹⁷ R.S. 15:81
- ¹⁸ C.Cr.P. Art. 341
- ¹⁹ A.G.O. (Oct. 10, 1973); prior provisions of R.S. 33:401, 402(2); R.S. 33:361
- ²⁰ C.Cr.P. Art. 731
- ²¹ La. Const. Art. I, §16
- ^{21a} A.G.O. 01-119
- ²² R.S. 13:1894.1(B); R.S. 14:98; 01 A.G.O. 116
- ²³ City of Harahan v. Olson, 250 La. 999, 200 So.2d 874 (La. 1967)
- ²⁴ A.G.O. 92-444
- ²⁵ A.G.O. 96-116; Ch. C. Art. 302
- ^{25a} A.G.O. 08-0103
- ²⁶ City of Baton Rouge v. Knox, 697 So. 2d 262 (La. 1997)
- ²⁷ C.Cr.P. Art. 931
- ²⁸ A.G.O. 81-1257
- ²⁹ A.G.O. 98-235
- ³⁰ City of Kenner v. Parker, 918 So. 2d 479 (La. App. 5 Cir. 11/29/05)
- ^{30a} R.S. 33:441.13 (Act 333 of 2012)
- ³¹ City of Broussard v. Watkins, 869 So 2d. 962 (La. App. 3 Cir 3/31/04)
- ^{31a} Town of St. Joseph v. Webb, 87 So.3d 963 (La. App. 2 Cir. 2012)

V. THE MAYOR

Areas of Authority: The mayor is the presiding officer of the mayor's court and therefore is authorized to perform certain functions.

Under R.S. 33:441, the mayor may,

- (1) Try all breaches of ordinances.
- (2) Impose fines or imprisonment or both.
- (3) Impose court costs of not more than \$30 per offense (except where a specific different amount is authorized by statute).
- (4) Suspend in whole or in part the fine or imprisonment, or both, imposed and place the defendant on unsupervised or supervised probation with such conditions as the mayor may fix and, at any time during the probation, modify, add, or discharge. (The probation is for a period the mayor specifies up to one year.)
- (5) Terminate or revoke probation at any time.
- (6) At termination, set the conviction aside and dismiss the prosecution.
- (7) Suspend, in whole or in part, the sentence and place the defendant on unsupervised probation upon such conditions as the mayor may fix. (The suspension and probation may be for six months or less as the mayor specifies, but the probationary period imposed can not exceed the maximum penalty of imprisonment that may be imposed for violation of the ordinance.)
- (8) Request that the board of aldermen use its discretion in appointing one or more attorneys to serve as court magistrate when necessary or at the mayor's convenience.¹
- (9) Request that the board of aldermen use its discretion in appointing one or more attorneys to serve as prosecutor at the mayor's pleasure.^{1a}
- (10) Authorize that a portion of the court costs assessed be deposited into a special account and transmitted to the Louisiana Chiefs of Police to be used for law enforcement education and training as required by state law.^{1b}

R.S. 33:442 also allows him to hold court at any time.

Pursuant to R.S. 33:1236(21)(g), the mayor's court for the city of Westwego may enforce municipal ordinances which require that community services be performed by persons who allow weeds, grass, or other noxious growths to accumulate on their property thereby allowing the property to degrade to a deplorable condition which endangers the health and safety of humans and pets.

Finally, by virtue of R.S. 33:441(C)(1), the mayor has the power of a committing magistrate, thus leading to other statutes outlining the power of magistrates. These powers include the authority to issue certain writs, peace bonds, arrest warrants, and summonses, to set bail and appoint an

attorney for an indigent defendant, and to make determinations of probable cause when a person is arrested without a warrant.

The 3rd Circuit Court of Appeal, in affirming the dismissal of a civil action against the mayor of a mayor's court who convicted the defendant which judgment was reversed in district court, stated that R.S. 33:441 "entrusts the mayor with both judicial and prosecutorial powers... The mayor does not have to appoint a separate prosecutor but may try the case himself." citing Attorney General Opinion 93-541.²

However, the Attorney General, in AGO 06-0075, determined that absent express written authority in a municipal ordinance, the presiding officer of the mayor's court, be it the mayor or a magistrate, may not reduce a moving violation (i.e. a speeding citation) to a nonmoving violation (i.e. driving without a valid inspection sticker) or any other charge.^{2a}

A mayor may delegate certain duties to the chief of police including: nolle prosequi authority³, preparation of the court docket, handling all traffic citation record retention, and collecting citation payments to be turned over to the clerk. ³

Immunity: The presiding officer of mayor's court is entitled to judicial immunity for his official acts as the presiding officer as a judge⁴ *and to prosecutorial immunity for his official acts as a prosecutor* ².

Liability: Laws imposing liability on a master for the civil offense or quasi-offense of his servant do not extend or apply to and do not impose any liability upon a municipality for any such offense of its mayor's court.⁵

Duties: The mayor must

- (1) "keep a regular docket, on which he shall enter the causes arising under the ordinances and to be tried by him,"⁶ (A "docket" is a formal record of brief notes of "all the proceedings and filing in a court case." "Docket" may also refer to a "schedule of pending cases.")⁷

and to

- (2) keep a perfect record of all the cases tried in the court.⁸

Thus, a mayor should not only set up a schedule of cases coming before the court, but also keep a formal record of the development of each case, from beginning to end. Forms to aid in keeping these records are included in the chapter on form samples. Case records are also discussed in the chapter on records and court costs.

Salary: The question of whether the mayor is entitled to additional compensation for his duties in mayor's court has been considered by the Attorney General's office in at least two issued

opinions. In both instances, the view was that the mayor's duties as presiding officer exist as a basic function of the office of mayor and therefore entitle him to no additional compensation.⁹ An additional basis given for this view is the possibility that the mayor would not be able to remain impartial in trying cases if his salary is too closely connected to his role as presiding officer of the mayor's court--as if, for instance, the mayor's additional compensation was derived from court costs imposed upon persons convicted of violations:

"the case of Ward v. Village of Monroeville, Ohio, 93 S. Ct. 80 (1972) presents the view that the accused would be denied the right to have an impartial and unbiased judicial officer if said officer may be prejudiced by the financial concerns of the municipality or has a substantial pecuniary interest in reaching a conclusion against the accused."¹⁰

Recusation: Recusation is the process by which a judge is removed (or removes himself) in a particular case because of prejudice or conflict of interest. The Code does not authorize this process for mayor's court. However, in an Attorney General's opinion, the view is expressed that "since the limited criminal jurisdiction exercised by the mayor's court carries with it, of necessity, constitutional protections for the defendant, ... recusal of the magistrate must be available to the defendant and to the magistrate himself, when certain conditions are met."¹¹

The basis for recusal of the judge are listed in Article 671 but are generalized in Paragraph (A)(1) of the statute, which states the judge shall be recused when he,

"Is biased, prejudiced, or personally interested in the cause to such an extent that he would be unable to conduct a fair and impartial trial;"

In such an instance, the mayor pro tempore or a magistrate (appointed by the aldermen at the mayor's request) could hear the case instead of the mayor.¹² The Attorney General's opinion suggests specific guidelines to follow. Articles 671 through 674 outline the proper procedure when recusation is necessary.

According to Canon 3(C) of the Code of Judicial Conduct, "(A) judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself."

Nolle Prosequi; Voiding Traffic Violations: A nolle prosequi, or decision not to prosecute is principally an exercise of the prosecutorial power and within the prosecutor's discretion.¹³ The Louisiana Supreme Court has stated that absent a law to the contrary, the prosecutor may dismiss for any reason or for no reason at all.¹⁴ The power to dismiss citations is secondarily an exercise of judicial power which allows a magistrate to dismiss only if a legal defect exists in the proceedings

or after trial for legally insufficient evidence.¹⁵ In this regard, if a magistrate is appointed to preside over mayor's court, the mayor no longer has authority to preside over the court nor to dismiss citations.¹⁶

In line with this reasoning, a police chief may not void a traffic citation once issued. "Once the citation has been deposited," (in the court) "the chief of police may not cancel a traffic citation by writing "void" across the ticket, signing his name to certify the voiding and informing the defendants that the ticket has been disposed of."¹⁷

Remission of Fines, Forfeitures, and Sentences: The Attorney General has opined that absent the defendant's use of an authorized procedural vehicle seeking review of the sentence, a mayor may not engage in the remission of a fine, forfeiture, or sentence which is final.¹⁸

Supervisory Jurisdiction of Supreme Court: Under rules adopted by the Louisiana Supreme Court pertaining to the Judiciary Commission, the term "judge" includes "a mayor who performs judicial functions."¹⁹ It also includes a magistrate of the mayor's court.^{19, 20}

The **Judiciary Commission**, upon receipt of a complaint, investigation, and hearing, may recommend that the Louisiana Supreme Court censure or suspend a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. The Supreme Court may also disqualify a judge from exercising any judicial function during pendency of proceedings in the Supreme Court. (Article V, Section 25(C) of the Constitution)

Code of Governmental Ethics: Pursuant to R.S. 42:1167 of the Code of Governmental Ethics, all judges as defined in the Code of Judicial Conduct are governed exclusively by that Code.

Code of Judicial Conduct: Under the Code of Judicial Conduct, anyone, whether or not a lawyer, who is an officer of a court performing judicial functions is a judge. Pertinent excerpts follow:

CANON 1 - A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

COMMENTARY TO CANON 1

The word “shall” is intended to impose binding obligations, the violation of which can result in disciplinary action.

When “should” is used, the text is intended to instruct judges concerning appropriate judicial conduct. The use of should is an acknowledgment that the conduct regulated in these Canons may impose in the judge more discretion, and/or may involve the conduct of others. Nonetheless, a clear violation of any Canon in which should is used, a clear abuse of discretion by the judge in conforming his or her conduct to any such Canons, or a clear abuse of discretion by the judge in regulating the conduct of those persons whose actions are subject to the judge's direction and control, may also result in judicial discipline.

CANON 2 -A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

As used in this Code, "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

B. A judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Letters of recommendation may be written only on private stationery which does not contain any official designation of the judge's court, but the judge may use his or her title. A judge shall not initiate the communication of information in any court or disciplinary proceeding, but may provide such information for the record in response to a formal request by a court or disciplinary agency official.

C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race, religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization"

shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

CANON 3 - A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the abilities of all litigants, including self-represented litigants, to be fairly heard, provided, however, that in so doing, a judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person.

COMMENTARY TO CANON 3A(4)

Steps judges may consider in facilitating the right of self-represented litigants to be heard, and which (they might find) are consistent with these principles include, but are not limited to:

(1) making referrals to any resources available to assist the litigant in preparation of the case;

(2) providing brief information about the proceeding and evidentiary and foundational requirements;

(3) asking neutral questions to elicit or clarify information;

(4) attempting to make legal concepts understandable by minimizing use of legal jargon; and

(5) explaining the basis for a ruling.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(6) Except as permitted by law, a judge shall not permit private or ex parte interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. Where circumstances require, ex parte communications are authorized for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication. A judge shall not knowingly accept in any case briefs, documents or written communications intended or calculated to influence his or her action unless the contents are promptly made known to all parties.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not, while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(9) Except as herein provided a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto at least during sessions of court or recesses between sessions.

A trial judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record for the court or for counsel, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

(10) A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

B. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. Acts of a judge in the discharge of disciplinary responsibilities, as set forth above, are part of the judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

(4) A judge shall not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid appointments which tend to create the appearance of impropriety. A judge shall not approve the compensation of appointees beyond the fair value of services rendered. *A judge shall avoid nepotism. No spouse or member of the immediate family of a judge shall be employed in the court to which that judge was elected. "Immediate family" means a judge's children, parents, brothers and sisters; the children and parents of a judge's spouse; the spouses of a judge's children; and all step relationships to the same degree.*

The provisions of this Subsection shall not prohibit the continued employment of any employee of a court employed by such court on or before December 31, 1990; nor shall such provisions be construed to hinder, alter, or in any way affect promotional advancements for any such employee. *The provisions of this Subsection pertaining to nepotism shall not apply to mayors or justices of the peace.*

C. Recusation. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. In all other instances, a judge should not recuse himself or herself.

Committee on Judicial Ethics - This committee is created by the supreme court to interpret the Canons of Judicial Conduct and to provide a forum to receive inquiries from members of the judiciary related to the interpretation of the canons. The committee is limited to the issuance of advisory opinions on its own motion or in response to inquiries from any judge insofar as these canons may affect the judge. The committee acts upon all inquiries as promptly as the nature of the case requires.

Code of Professionalism in the Courts: (Section 11 of Part G of the Rules of the Supreme Court of Louisiana) - Judges:

- (1) Will be courteous, respectful, and civil to lawyers, parties, and witnesses.
- (2) Will maintain control of the proceedings, recognizing that judges have both the obligations and authority to insure that all litigation proceedings are conducted in a civil manner.

(3) Will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

(4) Will be punctual in convening all hearings, meetings, and conferences, and if delayed, will notify counsel, if possible.

(5) Will be considerate of time schedules of lawyers, parties, and witnesses in scheduling all hearings, meetings, and conferences.

(6) Will make all reasonable efforts to decide promptly all matters presented for decision.

(7) Will give the issue in controversy deliberate impartial, and studied analysis and consideration.

(8) While endeavoring to resolve disputes efficiently, will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

(9) Will recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, will allow lawyers to present proper arguments and to make a complete and accurate record.

(10) Will not impugn the integrity or professionalism of any lawyer on the basis of clients whom or the cause which a lawyer represents.

(11) Will do best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

(12) Will not adopt procedures that needlessly increase litigation expense.

(13) Will bring to lawyer's attention uncivil conduct to be observed.

(14) Will be courteous, respectful, and civil in opinions ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.

(15) Will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge in all written and oral communications.

(16) Will endeavor to work with other judges in an effort to foster a spirit of cooperation in the mutual goal of enhancing the administration of justice.

Suggested Guidelines:

- (1) Conduct the court in a fair, dignified, and orderly manner.
- (2) Make certain that the matter is within the jurisdiction of the court.
- (3) Always act in good faith.
- (4) Check the statutes and ordinances to be certain of your authority.
- (5) Never issue a warrant unless a valid complaint or affidavit is on file.
- (6) Make sure that sentences imposed are within the maximum provided for.
- (7) Hold court at a time when working people can attend.
- (8) Give reasons for your decision.
- (9) Prior to beginning court, give a brief explanation of the nature and purpose of the particular session including the rights of the individuals involved.
- (10) Adopt formal court rules covering important aspects of the court's functions.
- (11) Increase the efficiency of the court by division of sessions. Establish fixed times for motions, conferences, pleas, and routine matters.
- (12) Maintain records for ready and accurate reference.
- (13) Acquire an ample library for the court.
- (14) Communicate with and involve other public and private agencies in dealing with offenses about which the agencies have a specific knowledge and experience.
- (15) Don't forget your common sense.

FOOTNOTES

- ¹ R.S. 33:441(B)(1) and R.S. 33:441.15
- ^{1a} R.S. 33:441(B)(2)
- ^{1b} R.S. 33:441(A)(1)
- ² Corley v. Village of Florien, 889 So. 2d 364, (La. App. 3 Cir. 2004)
- ^{2a} A.G.O. 06-75
- ³ A.G.O. 97-461
- ⁴ R.S. 33:441(C)(2)
- ⁵ R.S. 42:1441.3 (E) and (F)
- ⁶ R.S. 33:442
- ⁷ Black's Law Dictionary (8th ed. 2004)
- ⁸ R.S. 33:442
- ⁹ A.G.O. 77-1543
- ¹⁰ A.G.O. 97-118
- ¹¹ A.G.O. 81-1257
- ¹² A.G.O. 10/1/70
- ¹³ A.G.O. 02-0068
- ¹⁴ City of Lake Charles v. Anderson, 182 So. 2d 70, 248 La. 787 (La. 1966)
- ¹⁵ Id.; A.G.O. 02-68
- ¹⁶ Id.; A.G.O. 02-68; A.G.O. 02-26
- ¹⁷ A.G.O. 98-426; A.G.O. 93-313

¹⁸ A.G.O. 96-392

¹⁹ Rule XXIII, Section 2(b), Louisiana Supreme Court.

²⁰ A.G.O. 04-0070

VI. OTHER COURT OFFICIALS

Magistrate: R.S. 33:441 allows the board of aldermen to appoint one or more court magistrates to serve at the pleasure of the mayor, if the mayor requests such an appointment. The board may use its discretion in choosing an attorney who will serve in the place of the mayor or at the mayor's convenience.

As clarified by an opinion from the Attorney General's office, the statute "does not state that the board of aldermen must confirm the mayor's nominee; rather the statute allows the board to nominate the court magistrate."¹ Additionally, there are statutes which provide for the appointment and duties of magistrates for the villages of Albany², Evergreen³, Hessmer⁴, Jean Lafitte⁵, and Maurice⁶; the towns of Addis⁷, Berwick⁸, Broussard⁹, Cottonport¹⁰, Delcambre¹¹, Erath¹², Ferriday¹³, Gramercy¹⁴, Iowa¹⁵, Jena¹⁶, Jonesboro¹⁷, Jonesville¹⁸, Lockport¹⁹, Loreauville²⁰, Lutcher²¹, Mansura²², Patterson²³, Simmesport²⁴, Walker²⁵, Welch²⁶, Westlake²⁷, White Castle²⁸, and Youngsville²⁹; and the cities of Central³⁰, DeQuincy³¹, Gretna³², Harahan³³, Kenner³⁴, New Roads³⁵, and Westwego^{35a}.

While law requires the prior review and approval of the Judicial Council to create any new magistrate, this does not apply to mayor's courts.³⁶

When the magistrate is presiding over the court, he has the same authority as the mayor would have if he were presiding and he is subject to the Code of Judicial Conduct and the Judiciary Commission³⁷. However, he does not have authority to appoint a court reporter.³⁸ The magistrate's salary is fixed and paid by the board of aldermen.

When a magistrate is appointed to preside over the court, the mayor has no powers to dismiss citations.^{38a}

According to the Attorney General, a justice of the peace may be appointed as a magistrate for the mayor's court. However the justice of the peace must be an attorney and appointed as provided by law.³⁹ Further, absent other qualifications, a magistrate is not a "judge" who is authorized to perform marriage ceremonies.^{39a} Further, a city magistrate acting as a prosecutor in mayor's court or supervising a mayor's court prosecutor may be prohibited as holding incompatible offices.^{39b}

Mayor Pro-Tempore: If either (1) the mayor is unable to preside in mayor's court by reason of physical or mental disability, as determined by a licensed physician, (2) the office of mayor is vacant, or (3) the mayor gives written consent to do so, the mayor pro-tempore is authorized to hold mayor's court. Otherwise, the mayor pro tempore may not preside over mayor's court.⁴⁰ In addition, no alderman, other than in the above instance, can serve as court magistrate.⁴¹

Chief of Police/Marshal: The chief of police (or marshal) is the only other official expressly designated as a mayor's court official. According to statute, "(T)he marshal shall attend the (mayor's)

court and serve its process and act as its executive officer.⁴² The marshal is "the chief of police" and "shall have general responsibility for law enforcement in the municipality."⁴³ "The marshal is charged with the enforcement of all ordinances within the municipality and all applicable state laws. He shall perform all other duties required of him by ordinance."⁴⁴ Further, under R.S. 33:404(9), requests to the chief for outstanding warrants, unpaid fines, or unperformed community service files are within the power granted to the mayor.⁴⁵ Since a bailiff for mayor's court is not mentioned, it may be that the marshal may fill this role as well.

Of particular significance may be the view of the Attorney General's office that the chief of police has discretion over whether a charge should be referred to district court or mayor's court.⁴⁶ The mayor cannot issue an order that all violations of municipal ordinances be referred to mayor's court.⁴⁷

However, a chief of police cannot assign all of his authority and job duties to the mayor.⁴⁸

Clerk of Court: R.S. 13:1884 authorizes the judge of a city court to appoint a clerk, but there is no express authorization for a mayor's court judge to do so. Even so, a mayor's court should have a clerk who, in addition to those duties delegated by the mayor, should be responsible for processing and maintaining all documents filed with the mayor's court, maintaining the docket of the court, administering the traffic violations bureau, collecting and distributing to the proper sources all fines and costs imposed by the court, and submitting abstracts of the court record and other information required by the office of motor vehicles.⁴⁹

The Lawrason Act requires that at the first regular meeting of the board of alderman succeeding each regular municipal election, the mayor, subject to confirmation by the board, must appoint a clerk and "all other necessary officers."⁵⁰ The mayor may delegate the performance of administrative duties and therefore may prescribe that the clerk or another officer or employee shall act as clerk of the mayor's court.⁵¹ In any event, the responsibility for court records (regardless of who keeps them) is that of the mayor since it is he who must keep a "regular docket" and a "perfect record."⁵²

Prosecuting Attorney and Public Defender: R.S. 33:441(B)(2) allows the board of aldermen to appoint one or more attorneys designated as prosecutors to serve at the pleasure of the mayor, if the mayor requests such an appointment. However, no express direction is given to mayor's court concerning the presence of these officials. The Attorney General has opined that where the mayor has delegated prosecutorial authority, that prosecutor has the sole authority, as prosecutor, to nolle prosequi matters in mayor's court.^{52a} Further the prosecutor has authority to reduce a moving violation to a nonmoving violation.^{52b}

Recently, the Attorney General has opined that the mayor may appoint a prosecutor for the mayor's court without board approval, provided the compensation of the prosecutor has been budgeted.⁵³

The Louisiana Supreme Court has authorized the mayor's court to appoint a public defender when necessary for the protection of the accused's constitutional rights.⁵⁴ The appointment of counsel for an indigent defendant is discussed in detail in the chapter on constitutional requirements.

The Attorney General, while suggesting referral of the question concerning possible conflict of interest within the judiciary to the Louisiana State Bar Association, has expressed concern over whether a city attorney or public defender can contemporaneously be the magistrate of a mayor's court.⁵⁵

However, the Third Circuit Court of Appeal, in Corley v. Village of Florien, 889 So. 2d 364, decided December 8, 2004, in dicta, stated that R.S. 33:441 entrusts the mayor with both judicial and prosecutorial powers. The mayor does not have to appoint a separate prosecutor but may try to case himself.

Bailiff: The bailiff, again, not mentioned specifically in relation to mayor's court but a customary official in the courtroom, "who maintains order during court proceedings."⁵⁶

Animal Hearing Officer: In Kenner, the mayor's court has an office of animal hearing officer. Upon request of the mayor, the city council is to appoint an animal hearing officer for the court. The officer serves at the pleasure, discretion, and direction of the council for a period of twelve months and may be reappointed. He must have the same qualifications for office as magistrate. The magistrate may also be appointed as the animal hearing officer. The salary of the officer is set by council, however, if the magistrate is appointed, no additional compensation is to be paid. The officer may engage in the practice of law and in any other business, occupation, or employment not inconsistent with the expeditious, proper, and impartial performance of his duties. Any questions regarding the propriety of other business, occupation, or employment by the officer is determined by the council. The officer has criminal jurisdiction over violations of ordinances relating to crimes involving nuisance and vicious or dangerous animals. Additionally, the officer may declare any animal vicious, dangerous, or determine the disposition of the animal, including humane euthanasia, if warranted.⁵⁷

FOOTNOTES

¹ A.G.O. 79-1187

² R.S. 33:441.22

³ R.S. 33:441.30 and R.S. 33:452

⁴ R.S. 33:441.23

⁵ R.S. 33:441.2

⁶ R.S. 33:441.5

⁷ R.S. 33:441.16

⁸ R.S. 33:445

⁹ R.S. 33:441.26

¹⁰ R.S. 33:441.8

- 11 R.S. 33:441.3
- 12 R.S. 33:441.9
- 13 R.S. 33:441.14
- 14 R.S. 33:441.29
- 15 R.S. 33:441.11
- 16 R.S. 33:441.25
- 17 R.S. 33:441.19
- 18 R.S. 33:441.4
- 19 R.S. 33:441.10
- 20 R.S. 33:441.21
- 21 R.S. 33:441.28
- 22 R.S. 33:441.7
- 23 R.S. 33:446
- 24 R.S. 33:441.18
- 25 R.S. 33:441.6
- 26 R.S. 33:441.12
- 27 R.S. 33:441.13
- 28 R.S. 33:441.17
- 29 R.S. 33:441.24
- 30 R.S. 33:441.31
- 31 R.S. 33:441.15
- 32 R.S. 33:441.20
- 33 R.S. 33:443
- 34 R.S. 33:441.1
- 35 R.S. 33:441.27
- 35a R.S. 33:444
- 36 R.S. 13:61
- 37 A.G.O. 04-0070
- 38 A.G.O. 88-33
- 38a A.G.O. 02-68
- 39 A.G.O. 04-0242; A.G.O. 97-94
- 39a A.G.O. 06-0219
- 39b A.G.O. 97-357
- 40 R.S. 33:405(A))
- 41 A.G.O. 85-330
- 42 R.S. 33:442
- 43 R.S. 33:423
- 44 Id.
- 45 A.G.O. 96-392
- 46 A.G.O. 02-0026
- 47 A.G.O. 02-26; A.G.O. 81-1312
- 48 A.G.O. 00-51

⁴⁹ Rule 11, Ohio Rules of Court- Mayor's Court Education and Procedure Rules, Ohio Supreme Court.

⁵⁰ R.S. 33:386

⁵¹ R.S. 33:404(A)(2)

⁵² R.S. 33:442

^{52a} A.G.O. 91-542

^{52b} A.G.O. 11-0129

⁵³ A.G.O. 07-0216

⁵⁴ Sledge v. McGlathery, 324 So.2d 354 (La. 1976)

⁵⁵ A.G.O. 95-235; A.G.O. 78-1121

⁵⁶ Black's Law Dictionary (8th ed. 2004)

⁵⁷ R.S. 33:441.1(C)

VII. COURT FACILITIES AND EQUIPMENT

Louisiana law has no specific description of appropriate furnishings and equipment for mayor's court. However, the "Mayor's Court Education and Procedure Rules" of the Ohio Supreme Court¹ provide some guidance:

A. In order to maintain an appropriate and dignified atmosphere and to serve the public properly, the court should be located in a municipal building or other facility that is readily accessible to the public. The facility should be clean, properly maintained, well-lighted, adequately heated and ventilated, and have adequate seating capacity so that litigants and other members of the public are not required to stand in hallways and areas adjacent to the room in which court is conducted.

B.(1) The room should have an elevated bench or a separate table from which the mayor presides that is flanked by the United States and Louisiana flags. Adequate shelving or other storage facility should be provided near the bench or table for necessary legal reference materials, such as the municipality's ordinances, state statutes and constitution, the federal constitution, and the rules of court.

(2) All participants must be able to hear and be heard. If the room acoustics are unsatisfactory, an efficient public address system should be provided. A blackboard or other demonstrative aid should be available. Unnecessary material or equipment should not be stored in the room in which court is conducted.

(3) Desks, tables, and chairs should be provided for all court personnel regularly present during a court session. Tables and chairs for all parties and counsel and a lectern should be provided. Tables should be situated to allow all participants to hear. If the tables are not situated to allow private exchanges between a party and counsel, a separate consultation room should be provided.

(4) Fines should be collected by court personnel in a room separate from the room in which court is conducted. If it is not possible to collect fines in a separate room, a separate area of the room in which court is conducted, away from the bench or table from which the mayor presides, should be designated as the area in which fines are collected.

(5) Security necessary for the protection of the mayor, court personnel, and the public should be provided.

FOOTNOTES

¹ Rule 11, Ohio Rules of Court- Mayor's Court Education and Procedure Rules, Ohio Supreme Court.

VIII. APPEARANCE AND CONDUCT IN COURT¹

- (1) The mayor and court personnel should wear clothing appropriate to demonstrate the dignity of the office and of the proceeding.
- (2) All persons appearing before a court should wear respectful clothing.
- (3) Litigants and other members of the public should refrain from talking during the proceeding, except when addressing the mayor, testifying, or conferring with counsel.
- (4) All persons participating in the proceeding should refrain from using foul or abusive language.
- (5) Smoking, eating, and other activities that detract from the proceeding should be prohibited in the room in which court is conducted.
- (6) The mayor and court personnel should act in an appropriate and dignified manner when addressing parties, counsel, witnesses, and members of the public appearing in the court. First names and nicknames should not be used.
- (7) Court personnel should treat all persons appearing before the court in a fair and impartial manner.
- (8) Court personnel should refrain from offering legal advice or suggesting to a defendant or counsel the manner in which a particular case may be decided.

FOOTNOTES

¹ Rule 11, Ohio Rules of Court- Mayor's Court Education and Procedure Rules, Ohio Supreme Court.

IX. RECORDS AND COURT COSTS

RECORDS

The mayor is required to keep a regular docket of cases to be tried by him. In addition, "He shall keep a perfect record of all cases tried."¹ Thus, all documents, information, and notes from each case must be organized and filed. As these records are public, they must be preserved by the mayor for at least three years from the date on which the public record was made.²

Under the Code, the minutes of the court are to be kept and transcribed by the clerk (Article 910) and include the following: court's rules (Article 18); either that the defendant was represented by counsel or that he was informed by the court of the defendant's right to counsel, including the right to court-appointed counsel, and that the defendant waived that right (Article 514); the arraignment and the defendant's plea (Article 551); the plea must be immediately entered in the court's minutes, however the failure to enter a plea in the minutes does not affect the validity of any proceeding in the case (Article 553(A)); the order appointing a judge ad hoc (Article 675(D)); the dismissal of a prosecution by the district attorney (Article 691); the sentence (Article 871(A)); in the case of concurrent sentences, the date from the which the sentences are to run concurrently (Article 883); and motion for an appeal (Article 914(A)).

It is unclear what records must be sent to the district court in the event of an appeal, since the trial there is de novo. R.S. 13:1897 speaks of a transcript being required, and the statute is addressed to parish, city, or municipal courts. While a mayor's court is designated a municipal court in the Lawrason Act, the meaning of "transcript" in the statute is not clear. However, the history of the statute notes that prior to 1974 the statute read, in part, that, "In cases where the appeal is on a trial de novo, the transcript shall consist of the affidavit, the information, or the indictment, as the case may be." Whether that is still the intended definition is not apparent.

As part of an effort to unify efforts in dealing with traffic violations, the mayor's court is to work with the Department of Public Safety and Corrections, providing records of violations.³

Under R.S. 32:393, the court is to keep a full report of every case in which a person is charged with violation of any ordinance lawfully established for regulating the operation of motor vehicles on highways. Further, if the person is convicted and sentenced thereupon, or his bail is forfeited as a result of a final judgment of forfeiture, or other final disposition be made, an abstract of the report, except for parking convictions, is to be sent by the court to the Department of Public Safety and Corrections not later than 30 days after the date of the person's conviction and sentencing thereupon, forfeiture of his bail and final judgment of forfeiture, or the final disposition of his case. This report shall not be a court record. The conviction must be reported to the department regardless of whether Article 894 of the Code is invoked.

The abstracts are to be made on forms prepared by the department and may include all necessary information as to the parties to the case, the nature of the offense, the date of hearing, the plea, the judgment, the amount of the fine or forfeiture, as the case may be, or the final disposition. When the nature of the offense is specified as speeding, the abstract shall also include a statement of the miles per hour in excess of the speed limit that the person charged was alleged to have been traveling. Every abstract must be certified by the judge or the clerk of the court as a true abstract of the records of the court.

COURT COSTS

General: The mayor is authorized to assess court costs, not to exceed \$30 for each offense.⁴ However, in the city of DeQuincy, the mayor may impose court costs not to exceed \$50 for each offense.⁵

Further, state law specifically authorizes additional costs for certain mayor's courts.

(1) In Sterlington, an additional amount up to \$10 for each offense may be imposed, which amount shall be allocated to the town's police department. (R.S. 33:447.9)

(2) In Clinton, an additional amount up to \$15 for each offense may be imposed, which amount shall be allocated to the town's police department to be used to defray its operational expenses. (R.S. 33:447.3)

(3) In **Anacoco**, Benton, Blanchard, Brusly, Delcambre, Elton, Erath, Golden Meadow, Greenwood, Jean Lafitte, Kinder, Oak Grove, Port Barre, Richwood, Simmesport, Vinton, and White Castle, an additional amount up to \$20 for each offense may be imposed. (R.S. 33:447.2, R.S. 33:447.5, R.S. 33:447.4, **and R.S. 33:447.13-Act 367**)

(4) In Lockport, an additional amount of up to \$40 for each offense may be imposed, which shall be allocated to the town for the purchase, repair, and replacement of law enforcement equipment and technological upgrades for the town and the town's police department. (R.S. 33:447.10)

(5) In DeQuincy, Iowa, Vinton, and Westlake, the mayor may impose additional court costs not to exceed \$20 for each offense, as defined by ordinance, on any defendant convicted of a violation of a municipal ordinance or traffic violation, provided that 50% of the additional court cost is remitted to the Fourteenth Judicial District's Indigent Defender Fund. (R.S. 33:447.11)

(6) In Mansura, an additional amount of up to \$85 for each offense, as defined by ordinance, may be imposed. (R.S. 33:447.12)

(7) In New Llano, the mayor may impose additional court costs not to exceed \$40 for each offense, as defined by ordinance, on any defendant convicted of a violation of a municipal ordinance, provided that \$10 of any such additional court costs collected shall be remitted to the Thirtieth Judicial District's Indigent Defender's Fund. (R.S. 33:448(D)-Act 382)

(8) In Rosepine, the mayor may impose additional court costs not to exceed \$30 for each offense, as defined by ordinance, on any defendant convicted of a violation of a municipal ordinance. (R.S. 33:447.13-Act 365)

(9) In Oberlin, the municipal judge may assess additional court costs not to exceed \$50 and, except as otherwise provided by law, the proceeds shall be deposited in a special account and used to defray the operational expenses of the Oberlin Police Department. (R.S. 13:2116 - Act 79)

In addition, certain municipalities are authorized to adopt ordinances setting maximum court costs.

(1) In Basile, if authorized by ordinance, an additional amount up to \$75 for each offense may be imposed. (R.S. 33:447.8)

(2) In Gramercy and Litcher, if authorized by ordinance, an additional amount up to \$23 for each offense may be imposed. (R.S. 33:447.7 and R.S. 33:447.6)

Of the costs assessed by the mayor, he may authorize that a portion of such costs assessed be deposited into a special account and transmitted to the Louisiana Association of Chiefs of Police to be used for law enforcement education and training as required by state law.⁶

These costs may be imposed by the court even though municipal ordinance may provide for a smaller or no amount as "(T)he board of aldermen may not legally limit the mayor's authority to impose cost."⁷ These costs are to be imposed only on defendants who have been convicted of violating an ordinance and are in addition to the fine or penalty imposed as a result of and as a punishment for the offense. Except when the imposition of a cost is mandated by law, the mayor has the discretion to impose costs on a case by case basis.⁸

A question often presented for an official opinion regards the proper handling of these court costs. According to the Attorney General, "Absent an ordinance to the contrary fines and court costs imposed by the mayor's court shall be paid into the town's treasury."⁹ Thus, "funds derived from the cost of court in the mayor's court ... may not be expended at the discretion of the mayor."¹⁰ Also it is "illegal to give the arresting officer any part of the court costs of Mayor's Court."¹¹ And finally, "the arresting officer, clerk, and (Mayor) Judge of Mayor's Court may not divide costs of court collected as compensation or their fee for services performed in Mayor's Court."¹²

Law requires submission of any proposed new law providing for a new court cost or fee or increase in an existing court cost or fee to the Judicial Council for review and recommendation to the legislature. However this requirement does not apply to mayor's court.¹³

Failure to Honor Promise to Appear: R.S. 32:57.1(B) provides that whenever a person who has failed to honor his written promise to appear in a traffic citation summons does make an appearance and pays the appropriate fine, an additional fine of \$12.50 is to be paid to the mayor's court. Further, each person seeking renewal or reissuance or a suspended license must pay to the office of the prosecuting authority an additional \$25 fee to defray the administrative cost incurred by that office.¹⁴

In addition, R.S. 32:57.1(D) authorizes the court to impose an additional penalty up to the amount of the fine for the original violation if the person fails to pay the fine by mail prior to adjudication and fails to appear at the time and date on the citation. The Attorney General has opined that a mayor's court may properly impose a fine on individuals who do not appear for court as scheduled for traffic violations in an amount not to exceed the amount of the fine for the original violation.¹⁵ [An exception exists when the fine is paid by certified mail and the postmark indicates that the payment was mailed on or before the date indicated on the citation.] This penalty also does not apply:

- (1) To any citation alleging the operator of a motor vehicle was:
 - (a) Operating under the influence of alcohol or controlled substances.
 - (b) Exceeding the speed limit by 15 miles per hour or more.
 - (c) Exceeding the speed limit in a school zone.
 - (d) Driving with a suspended license.
 - (e) Drag racing.
 - (f) Failing to maintain compulsory security.
- (2) When the operator is involved in an accident in which a person is injured.
- (3) When the operator is alleged to have committed the same offense twice in an hour.

Traffic Violations/Fee: R.S. 32:393 provides that for each conviction or forfeiture of bail involving a violation of an ordinance for regulating the operation of motor vehicles on highways, a fee of two dollars is to be added to be retained by the court to cover the cost of preparing and submitting the abstract of the conviction or forfeiture to the Department of Public Safety and Corrections.

Bench Warrant: Under Article 887 (H), a reasonable cost may be assessed persons convicted of an ordinance violation to cover the costs expended by the sheriff, marshal, constable, or municipal police to serve a bench warrant. An itemized statement of expenses is to be prepared and submitted for review and assessment by the court at sentencing. The cost is to be paid to the sheriff, marshal, constable, or municipal police as reimbursement.

Witness Fees: Except in the mayor's courts of Welsh, Vinton, and Mansfield, which are discussed below, each law enforcement officer who is required to be a witness in a case in his official capacity during any time when he is not otherwise required to report to work or perform his official duties, unless the officer is compensated by his employer for his appearance as a witness under the federal Fair Labor Standards Act, is to be paid \$50 for each day per case, not to exceed \$150 per day. Application is to be made to the governing authority of the municipality having the mayor's court and payment is to be forwarded to the law enforcement officer's employer. The employer is responsible for calculating and withholding all deductions for taxes, remitting the amounts to the appropriate taxing authority, and, within 30 days after receipt of the funds, transferring the net amount to the officer. The fees are to be paid from court costs assessed and collected in individual cases in which there is a plea of guilty or a conviction, provided that the cost assessed for any one person shall not exceed \$50. The judge may adjust the schedule of costs from time to time as the needs of the fund requires, up to \$50 per person who pleads guilty or is convicted.¹⁶

However, in Welsh, witness fees in the amount of \$25 per case per day is paid, up to \$75 per day, for off-duty law enforcement officers subpoenaed to testify in a case before the mayor's court is specifically authorized in R.S. 15:254.6, even if the case does not go to trial.¹⁷ This fee is to be paid from court costs assessed and collected in individual cases in which there is a plea of guilty or a conviction, in accordance with a schedule of costs adopted by the court. The cost may be adjusted by the mayor's court from time to time. The costs so collected are to be placed in a special fund maintained and administered by the town clerk. The court may adjust the schedule of costs from time to time as the need for funds may require. In addition, any unexpended and unencumbered funds remaining in the witness fee account at the end of each calendar year may be transferred to the town's general fund for the purpose of paying for infrastructure improvements and equipment.¹⁸

Also, in Vinton, any law enforcement officer subpoenaed to testify in mayor's court when off-duty is to be paid \$25 per case per day, up to \$75 per day. This fee is to be paid from court costs assessed and collected in individual cases in which there is a plea of guilty or a conviction, in accordance with a schedule of costs adopted by the court. The cost may be adjusted by the mayor's court from time to time. The costs so collected are to be placed in a special fund maintained and administered by the town clerk. The court may adjust the schedule of costs from time to time as the need for funds may require. Further, all unexpended and unencumbered funds remaining in the witness fee account at the end of each calendar year may be transferred by the clerk to the town's general fund for the purpose of paying for infrastructure improvements and equipment.¹⁹

Finally, in Mansfield, each law enforcement officer who, because of his official connections with any criminal case being tried in the mayor's court, as the arresting officer or in some other official capacity, is required to be present as a witness in the case during any time when he is otherwise not required to report to work or perform the duties of his office shall be paid a sum not to exceed \$25 per day for each day per case. No officer shall be allowed more than \$75 in any one day, regardless of the number of cases for which he is required to be present. Further, the costs

assessed and collected in an individual case shall not exceed \$25. The city may adopt an ordinance which provides that on January first of each year, the amount of money in the witness fee fund for the court which exceeds \$30,000 shall be transferred to the general fund to be used solely for purchasing equipment for the city's police department. [The balance of \$30,000 required to be kept in the witness fee fund means \$30,000 in unexpended and unencumbered funds, and under no circumstances shall the balance in the witness fee fund be reduced below that amount as a result of a transfer made under this provision.]²⁰

The city of Kenner may adopt an ordinance which provides that on July first of each year, the amount of money in the witness fee fund for the mayor's court which exceeds \$50,000 be transferred to the city's general fund to be used solely for purchasing equipment for the police department.²¹

Crime Stoppers Organizations: Article 895.4 provides that the chief of police may certify one or more organizations as certified crime stoppers organizations for the court. In order to be so certified, the organization:

- (1) Must be incorporated as a not-for-profit corporation.
- (2) Must be qualified by the United States Internal Revenue Service as a not-for-profit corporation for the purposes of the United States Internal Revenue Code.
- (3) Must be incorporated for the purpose of accepting funds raised under the Article and for expending those funds for the purposes set forth this Article.
- (4) Must be incorporated for the purpose of accepting funds from sources other than the Article, including donations, and for expending those funds for any lawful purpose, including the purposes set forth in the Article.
- (5) Must be incorporated for the purpose of forwarding to the appropriate law enforcement agency any and all information concerning criminal activity which the organization receives from any source.
- (6) Must establish and follow written standard operating procedures, directives, and policies.
- (7) Should enter into a written agreement or memorandum of understanding with the police department with which the organization has a relationship to define the procedures which should be used in the relationship and the duties and responsibilities of each of the parties to the relationship.
- (8) Should not have voting members of the board of directors of the organization who are active law enforcement officers, or representatives or employees of the criminal justice system, or government employees or officials.
- (9) Must establish procedures for determining fair rewards, for the payment of those rewards, and for protecting the anonymity of the persons who provide information and receive awards.
- (10) Must pay rewards for information which leads to the arrest of a suspect, or the filing of criminal charges, by indictment or bill of information, against a suspect. The

payment of a reward by the organization should not require a criminal conviction of a suspect.

- (11) Must maintain statistical data as to:
 - (a) The number and the amounts of rewards that are paid by the organization.
 - (b) The results which are obtained through the use of the information which was provided to law enforcement agencies by the organization, including the number and nature of the criminal charges which were filed, the type and the value of any controlled dangerous substances which were seized, and the type and the value of any stolen property which was recovered.

The chief is to use the following guidelines in certifying organizations:

- (1) The length of time the organization has existed.
- (2) The relationship of the board of directors of the organization to the community which will be served by the organization.
- (3) The demonstrated ability of the organization to raise funds for crime stoppers purposes.
- (4) The demonstrated ability of the organization to use the funds which it raises to obtain information which leads to arrests or indictments, or both, for violations of criminal laws or ordinances.

If more than one organization is certified, the chief is to determine how the funds raised through the court for this purpose is to be allocated using the above guidelines. If an organization is a certified crime stoppers organization for the purpose of obtaining information about a specific type of criminal activity, the chief may determine that only funds which are raised from convictions for violations of that specific type of criminal activity are to be allocated to that organization.

Whenever a defendant in a criminal or traffic matter is convicted of any criminal offense or of any traffic offense for which the chief has certified one or more organizations as certified crime stoppers organizations, the court shall assess an additional two dollars as cost of court for each offense for which the defendant is convicted. The court shall not suspend the payment of this cost.

The court is to pay the proceeds from the additional cost to the certified crime stoppers organization each month. If the chief has certified more than one organization, the court is to distribute the proceeds from the additional cost between or among those certified crime stoppers organizations in accordance with the determination of the allocation of those funds by the chief.

Fee for Mobility-Impaired Parking Violations: In addition to all fines, fees, and costs, a \$25 fee may be imposed for each violation of mobility-impaired parking restrictions established by ordinance pursuant to R.S. 40:1745 which must be used exclusively to fund the enforcement of the handicapped parking restrictions.²²

State costs

Crime Victims Reparations Fund: Under R.S. 46:1816(D), a cost of \$7.50 must be collected for each violation of a municipal ordinance, except traffic violations, which results in a conviction. This cost must be paid by the defendant and can not be suspended or waived unless the defendant is indigent, all other court costs are suspended or waived, or restitution is ordered. These costs are to be remitted to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice on or before the first of each month.

Indigent Defender Fund: R.S. 15:144 and R.S. 15:146 establish a judicial district indigent defender board and direct certain courts of original jurisdiction in the state to assess an additional court cost for each conviction of a violation and to remit these fees to the indigent defender fund. Excepted from the foregoing provisions are mayor's courts in municipalities having a population of less than 5,000. Although R.S. 33:441 authorizes the mayor court cost not to exceed \$30 per offense, the opinion of the Attorney General's office is that for mayor's courts subject to the assessment and remittance authorized in R.S. 15:144 and R.S. 15:146, this assessment is an additional cost, beyond the \$30 limit.

Law Enforcement Officer Training: Under R.S. 46:1816(E), a person convicted of an ordinance must be assessed an additional \$2.00 as special costs. The costs, less 2% withheld for administrative costs, are to be paid to the Louisiana Commission of Law Enforcement and Administration of Criminal Justice to be used to train law enforcement officers as directed by the Peace Officer Standards and Training Council. The costs are to be remitted to the Commission on or before the first day of each month. Monies that are remitted and deposited in the Crime Victims Reparation Fund can be used to provide assistance to local law enforcement agencies.

Litter Violations: Under R.S. 56:70.3, an additional fine of \$5.00 is to be imposed on each person convicted of violating a litter ordinance. The costs are to be paid to the state treasurer upon collection for credit to the Louisiana Help Our Wildlife Fund.

Trial Court Management Information System: Article 887(F) requires an additional \$1.00 assessment as special cost to each person convicted of an ordinance in a court in a municipality of 2,000 or less. Otherwise, an additional \$3.00 cost is assessed. The costs are to be paid to the state treasury on or before the tenth of each month and credited to the Trial Court Case Management Information Fund. The funds are to be used to prepare a master plan for developing a trial court case management system and its criminal disposition component.

Traumatic Head and Spinal Cord Injuries Services: R.S. 46:2633 requires that a cost of \$5.00 be assessed as special cost for each reckless driving or speeding offense, which results in conviction. This cost is to be remitted to the state treasurer within 30 days after collection and used for programs designed to provide service to Louisiana Citizens disabled by traumatic head and spinal

cord injuries. If payment arrangements for other fines, fees, cost, and punishments are made to provide an offender the opportunity to make restitution over an extended period of time, the fee is to be collected in priority after costs of court.

Disability Affairs Trust Fund: R.S. 46:2583 requires that a fee of \$25.00 be imposed for each violation of a mobility-impaired parking ordinance. The fee is to be remitted to the state treasurer within 30 days after collection and used solely for the operation of the Governor's Office of Disability Affairs and any program designed to provide services to Louisiana citizens with disabilities.

Other local costs

Florida Parishes Juvenile Justice Commission: R.S. 15:1094.7 requires each mayor's court located in either Livingston, St. Helena, St. Tammany, Tangipahoa, or Washington parish to levy as special cost not to exceed \$5.00 for each conviction of a violation of municipal ordinance, including any traffic violation. Authorizes the court to deduct a like amount from any fine imposed instead of assessing the special cost. The amount collected must be remitted by the tenth of each month to the Florida Parishes Juvenile Justice Commission to be used for the expense of its operation.

Northwest Louisiana Juvenile Center Authority: R.S. 15:1097.6 requires each mayor's court located in either Bienville, Claiborne, DeSoto, Natchitoches, Red River, Sabine, or Webster parish to levy as special cost \$7.50 for each conviction of a violation of municipal ordinance,

including any traffic offense. Authorizes the court to deduct a like amount from any fine imposed instead of assessing the special cost. The amount collected must be remitted by the tenth of the month to the Northwest Louisiana Juvenile Center Authority to be used for its operation.

North Louisiana Criminalistics Laboratory Commission: R.S. 40:2264 requires each mayor's court located in a parish that is a part of the North Louisiana Criminalistics Laboratory Commission to assess a special cost of \$10.00 for each conviction of a violation of municipal traffic ordinance, other than operating a vehicle with an expired inspection sticker, an expired driver's license, or without a driver's license upon one's person. The amount collected must be remitted to the North Louisiana Criminalistics Laboratory Commission on the first day of each month to be used for the necessary expenses of the commission and of the laboratory.

Criminalistics Laboratory Commission: R.S. 40:2266.1 requires each mayor's court located within a parish which is part of a criminalistics laboratory commission and in a municipality of more than four thousand in population to assess a special cost of \$10.00 for each conviction of a violation of a municipal traffic ordinance. The amount collected must be remitted to the criminalistics laboratory commission on the first day of each month to be used for the necessary

operating expenses of the commission and of the laboratory. Such mayor's court located in a municipality with a population of 4,000 or less, may, but is not required to assess this cost.

Criminalistics Laboratory Commissions Additional Fees: R.S. 40:40:2266.1. provides that in all criminal cases, other than traffic offenses, prosecuted in any mayor's court sitting within a parish which is a part of the Acadiana Criminalistics Laboratory Commission, the North Louisiana Criminalistics Laboratory Commission, the Southeast Louisiana Regional Criminalistics Laboratory Commission, and any other criminalistics laboratory commission or of a sheriff's criminalistics laboratory established by legislative act, there shall be assessed, in addition to and separate from other costs, against every defendant who is convicted after trial, or who enters a plea of guilty or of nolo contendere, or who forfeits his bond, a fee of \$50. In addition, a fee not to exceed \$1,000, as reimbursement to the commission if laboratory personnel performed a scientific test of any evidence seized pursuant to the investigation or prosecution of a violation shall be assessed. In addition, each commission may establish a schedule stating the estimated cost of performing the test which shall be used by the court in determining the amount of the fees; which form no part of any court fund; and shall be remitted to the applicable criminalistics laboratory commission on the first day of each month.

Central Louisiana Juvenile Detention Center Authority: R.S. 15:1105.6 requires that in the parishes of Avoyelles, Catahoula, Concordia, Grant, LaSalle, Vernon, and Winn, in all misdemeanor prosecutions, including traffic offenses, under municipal ordinance, in any mayor's court, special costs in the amount of \$7.50 be levied against every defendant who is convicted after trial or who enters a plea of guilty or nolo contendere or who forfeits bond. However, in lieu of imposing the special costs, the court may direct that a like amount be deducted from any fine imposed prior to disposition of the fine in accordance with other laws, but in either event any amounts so collected shall be remitted, by the tenth of the month following the month in which collected, by the proper officer of the court to the board of the Authority to be used for the expenses of its operations.

Feliciania Juvenile Justice District: In addition to all fines, fees, and costs, a \$5 cost shall be assessed in all prosecutions, including traffic offenses, in any mayor's court, against every defendant who is convicted after trial or who enters a plea of guilty or nolo contendere or who forfeits bond to be collected by the magistrate of the mayor's court and placed in a special account to be used exclusively for the funding of the juvenile detention facility of the Feliciania Juvenile Justice District (the 20th Judicial District, which includes the parishes of East Feliciania and West Feliciania.)

Ware Youth Center Authority: R.S. 15:1097.6 requires that in the parishes of DeSoto, Natchitoches, Red River, Sabine, and Webster, in all misdemeanor prosecutions, including traffic offenses, under municipal ordinance, in any mayor's court, special costs in the amount of \$7.50 be levied against every defendant who is convicted after trial or who enters a plea of guilty or nolo contendere or who forfeits bond. However, in lieu of imposing the special costs, the court may direct

that a like amount be deducted from any fine imposed prior to disposition of the fine in accordance with other laws, but in either event any amounts so collected shall be remitted, by the tenth of the month following the month in which collected, by the proper officer of the court to the board of the Authority to be used for the expenses of its operations.

Twenty-Fourth Judicial District: R.S. 13:967 provides that in the 24th Judicial District, the judges en banc shall establish a special cost to be assessed in all cases, except parking, in an amount not to exceed the amount authorized in R.S. 13:996.63, to be transmitted to the district court and deposited in a special account in the parish treasury to be used for the payment of court reporter fees for transcripts in indigent defense cases.

General Statewide Costs According to Violation: The following is a listing of general and special court costs authorized by ordinance and required by law based on the type of offense involved.

<u>OFFENSES</u>	<u>COSTS</u>	<u>TOTAL</u>
Municipal ordinance, other than traffic violations	\$30 - general	
	50 - law enforcement witness fee (maximum)	
	2 - law enforcement training	
	1 - trial court management system (\$3 if more than 2,000 population)	
	<u>7.50</u> - crime victims reparation fund	
	\$90.50	\$ 90.50
Traffic violations, other than speeding or reckless operation	\$30 - general	
	50 - law enforcement witness fee (maximum)	
	2 - preparation/submission of abstract to state (except parking violations)	
	2 - law enforcement training	
	<u>1</u> - trial court management system (\$3 if more than 2,000 population)	
	\$85	\$ 85.00
Speeding or reckless operation	\$30 - general	
	50 - law enforcement witness fee (maximum)	
	2 - preparation/submission of abstract to state	
	2 - law enforcement training	
	1 - trial court management system (\$3 if more than 2,000 population)	
	<u>5</u> - traumatic head and spinal cord injuries	
\$90	\$ 90.00	

Litter violation	\$30	- general	
	50	- law enforcement witness fee (maximum)	
	2	- law enforcement training	
	1	- trial court management system (\$3 if more than 2,000 population)	
	5	- "La. Help Our Wildlife Fund"	
	<u>7.50</u>	- crime victims reparation fund	
	\$95.50		\$ 95.50
Mobility-impaired parking violation	\$30	- general	
	50	- law enforcement witness fee (maximum)	
	2	- law enforcement training	
	1	- trial court management system (\$3 if more than 2,000 population)	
	25	- "Disability Affairs Trust Fund"	
	<u>25</u>	- handicapped parking enforcement program (local)	
	\$133		\$133.00

Suspension of Court Costs: Article 887 authorizes the magistrate of a mayor's court to suspend court costs other than the costs provided in R.S. 46:1816(D) for the Crime Victims Reparations Fund and for training local law enforcement officers, and in Article 895.4 for crime stoppers organizations.²³

FOOTNOTES

- ¹ R.S. 33:442
- ² R.S. 44:36
- ³ R.S. 32:1441; R.S. 32:393; A.G.O. 02-360
- ⁴ R.S. 33:441(A)
- ⁵ R.S. 33:447.1
- ⁶ R.S. 33:441(A)(1)
- ⁷ A.G.O. 97-118
- ⁸ A.G.O. 95-392; A.G.O. 93-38
- ⁹ A.G.O. 78-1484
- ¹⁰ A.G.O. 79-772
- ¹¹ A.G.O. 77-1543
- ¹² A.G.O. 77-1548
- ¹³ R.S. 13:61; R.S. 13:62
- ¹⁴ R.S. 32:57.2

- ¹⁵ A.G.O 08-0005; 02-0322
- ¹⁶ R.S. 15:255(E)
- ¹⁷ A.G.O. 95-392
- ¹⁸ R.S. 15:254.6
- ¹⁹ R.S. 15:254.8
- ²⁰ R.S. 15:255(E)(1) and(2) and (L)
- ²¹ R.S. 15:255(N)
- ²² R.S. 40:1742.1
- ²³ C.Cr.P. Art. 887(A); 895.4

X. CONSTITUTIONAL REQUIREMENTS/RIGHTS OF THE ACCUSED

The Fourteenth Amendment of the United States Constitution declares that no state shall "deprive any person of life, liberty, or property without due process of law."

"Due process" may be defined as "the legal requirement that citizens be treated fairly and justly by government officials," and that "accused persons in criminal cases must be given certain rights as protections in keeping with the adversarial nature of the proceedings."¹ This means that a person accused of an offense can be arrested, prosecuted, tried, and punished only according to legally established procedures.

The list of "due process" guarantees found in the United States Constitution are repeated in our own Louisiana Constitution as well, and provide the basis for courtroom procedures necessary in every court, including a mayor's court. These requirements are based on the premise that,

"... freedom is so valuable that efforts must be made to prevent erroneous decisions that would result in an innocent person's being deprived of it."²

The constitutional guarantees, as pertinent to a mayor's court as to the supreme court, are as follows.³

1. The accused is entitled to a speedy and public trial.⁴

There is no hard and fast rule to determine whether the speedy trial requirement has been met. Instead, it depends on the facts of each case, including length of delay, cause or motivation, and prejudicial results.

2. The accused is entitled to an impartial trial (not favoring one outcome over another.)⁵

The right to a jury trial has been interpreted to apply only where imprisonment for more than six months may result.⁶ As mayor's court may imprison for only up to sixty days, a jury is not required. Thus, in mayor's court, the mayor must meet the requirement of impartiality.

Since the presiding officer of a mayor's court is also the mayor and chief administrator of the municipality, a question has arisen as to the mayor's ability to serve as an impartial judge when fines resulting from convictions go into the treasury of the municipality. In Ward v. Village of Monroeville, Ohio (1972), the U.S. Supreme Court held that the accused would be denied the right to have an impartial and unbiased judicial officer if the officer may be prejudiced by financial concerns of the municipality or has a substantial pecuniary interest in reaching a conclusion about the accused.⁷ In that case, a major part of the village's income came from the fines and fees imposed by the mayor in his mayor's court.

According to the Attorney General,

"... the overriding consideration is whether under the individual circumstances an accused may be expected to have an impartial hearing on the alleged violation with the financial concerns of the community being no factor in the determination of guilt or innocence."⁸

Two questions are pertinent:

- "1. Is a substantial part of the community's income derived from fines, forfeitures, fees and costs imposed by the Mayor's court?
2. Is the Mayor's power and responsibility in financial matters great enough to warrant an inference that he cannot be considered an impartial judge and might be tempted to maintain the high level of income contribution from this source?"⁹

The factors determining the answers to these questions may differ from one municipality to another; therefore, the questions must be considered carefully by each municipality.

3. The accused must see, hear, and have the opportunity to question witnesses.¹⁰
4. The court must do all within its power to bring the witnesses into the court for the accused.¹¹

This is recognized in the court's inherent power to subpoena witnesses.

5. The accused must be furnished a lawyer if he is unable to secure one.¹²

At each stage of the proceedings, the accused is entitled to assistance of counsel of his choice or an attorney appointed by the court if he is indigent and charged with an offense punishable by imprisonment.

The Louisiana Supreme Court has recognized the authority of mayor's courts to appoint counsel for indigent defendants.¹³ According to the Code, if an accused appears for arraignment for an offense punishable by imprisonment and does not have counsel, the court must inform him, before he enters a plea, that he is entitled to a court appointed attorney if he is indigent. Even if the defendant is facing only a suspended jail sentence, he must be provided counsel if unable to afford one.¹⁴ "When a defendant states under oath that he desires counsel but is indigent, and the court finds the statement of indigency to be true, before the defendant pleads... , the court shall provide counsel ..."¹⁵

"The judge should make a reasonable inquiry as to whether or not the accused is in fact without sufficient money or property with which to employ an attorney. To this end, he may question the accused about his income, assets, resources, and his liabilities such as caring for his

family and consider these factors along with the problem of securing representation... A person does not have to be absolutely destitute before he is entitled to appointed counsel. If his means are limited, the usual course is to give him the benefit of the doubt."¹⁶

Waiver of Counsel: The court has no right to appoint counsel for the accused against his will, but the record must show, or there must be evidence to show, that the accused was offered counsel but intelligently and understandably rejected the counsel.¹⁷

Compensation of the appointed counsel is discussed in the chapter on court costs.

6. No person may be put twice in jeopardy of life or limb for the same offense, except when he, himself, applies for a new trial.¹⁸ (If the court declares a person innocent of a crime, he cannot be tried again for the same crime. If he is convicted by a court, another court within the same jurisdiction may not try him again for that offense.)

This problem has come up in regard to mayor's courts in instances where the state has attempted to prosecute a person for an offense considered a felony by state law but merely a misdemeanor by municipal ordinance, under which the person has already been convicted. As discussed earlier (in Exceptions to Jurisdiction), a statute generally prohibits municipalities from adopting ordinances which define as offensive conduct behavior already described as a felony by state law.¹⁹

7. The accused must be informed of what he has been accused.

A person must be fully advised at the time of his arrest or detention of the reason for his arrest or detention, in addition to other information.²⁰ At arraignment, he is clearly notified of the charge against him.²¹

8. No person may be compelled to give evidence against himself in a criminal case.²²

"As part of the adversary system, it is up to the government to prove the charges."²³

9. No confession may be used against any person accused of a crime, unless freely and voluntarily made.

This requirement is closely related to the constitutional protections involved in a guilty plea, to be discussed in detail under the chapter on judicial steps. Basically, it is important to remember that a confession must not be accepted into evidence unless there is a careful determination that it was made voluntarily.

10. Excessive bail may not be required, nor excessive fine be imposed, nor cruel, excessive, or unusual punishment be inflicted.²⁴

Every accused in mayor's court must be released on bail, and the bail shall not be excessive.²⁵ Bail may not exceed \$100 for each offense, except in Kenner.²⁶ Also inability of the accused to make bail because of lack of financial resources does not render bail constitutionally excessive. However, if an accused is "financially unable to furnish bail except in a limited amount, the court should consider the advisability of setting bail in that amount in order that the accused may not be denied his freedom solely on the ground of insufficient financial means."

11. No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review.

No person is to be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based. However, this right may be intelligently waived.²⁷

A person convicted in mayor's court has the right to a trial de novo in district court upon appeal.²⁸ A defendant may appeal from a guilty plea.²⁹ A motion for an appeal may be made orally in open court or by filing a written motion with the clerk and must be made within thirty days after the rendition of judgment or ruling from which the appeal is being taken or thirty days from the ruling on a motion to reconsider sentence; if a motion is filed within thirty days following imposition of sentence on such longer period set by the court, whichever is later. The motion must be entered into the minutes of the court.³⁰

A person found guilty of violating an ordinance should be informed of his right to appeal at the time judgment is rendered.

12. Due process requires that every fact necessary to constitute the offense charged be proved beyond a reasonable doubt.

Amendment V of the United States Constitution provides in part that "No person shall ... be deprived of life, liberty, or property, without due process of law... ." The United States Supreme Court has held that this provision requires that every factual element of an offense for which a person is charged must be established beyond a reasonable doubt³¹ and, through the Fourteenth Amendment, applies to state prosecutions.³² The Louisiana Constitution also provides that "(N)o person shall be deprived of life, liberty, or property, except by due process of law."³³ That provision has been similarly interpreted to require that every essential element of the offense charged be proved beyond a reasonable doubt.³⁴

FOOTNOTES

¹ George F. Cole, The American System of Criminal Justice (34th ed. 1983), p. 76

- ² Id.
- ³ U.S. Const. Amends. V, VI, VII, VIII, XIV; La. Const. Art. I, §§ 2, 3, 13, 15, 16, 18, 19, 20, 22
- ⁴ La. Const. Art. I, §16
- ⁵ Id.
- ⁶ The American System of Criminal Justice, p. 107
- ⁷ Ward v. Village of Monroeville, Ohio, 407 U.S. 57 (1972)
- ⁸ A.G.O. (Nov. 22, 1972)
- ⁹ Id.
- ¹⁰ La. Const. Art. I, §16
- ¹¹ Id.
- ¹² La. Const. Art. I, §13
- ¹³ Sledge v. McGlathery, 324 So.2d 354 (La. 1976)
- ¹⁴ Alabama v. Shelton, No. 01-1214, United States Supreme Court, Decided May 20, 2002.
- ¹⁵ C.Cr.P. Art. 513
- ¹⁶ Arkansas Local Court Judges' Manual, p. 237
- ¹⁷ Id. p. 239; State v. Castillo, 595 So.2d 717 (La. App. 5 Cir. 1992)
- ¹⁸ La. Const. Art. I, §15
- ¹⁹ R.S. 14:143
- ²⁰ La. Const. Art. I, §13
- ²¹ C.Cr.P. Art. 551
- ²² La. Const. Art. I, §16
- ²³ The American System of Criminal Justice, p. 81
- ²⁴ La. Const. Art. I, §§ 18 and 20
- ²⁵ La. Const. Art. I, §18; R.S. 15:81
- ²⁶ R.S. 15:81
- ²⁷ La. Const. Art. I, §19
- ²⁸ R.S. 13:1896
- ²⁹ State v. Fontenot, 535 So.2d 433 (La. App. 3rd Cir. 1988)
- ³⁰ C.Cr.P. Art. 914
- ³¹ In re Winship, 397 U.S. 358, 25 L.Ed.2d 368, 90 S.Ct. 1068 (1970)
- ³² Mullaney v. Wilbur, 421 U.S. 684, 44 L.Ed.2d 508, 95 S.Ct. 1881 (1975)
- ³³ La. Const. Art. I, §2
- ³⁴ State v. Searle, 339 So.2d 1194 (La. 1976)

XI. COURT RULES

According to the Code of Criminal Procedure,

"a court may adopt rules for the conduct of criminal proceedings before it, not in conflict with provisions of this Code or of other laws ... The rules shall be entered on the minutes of the court, and a copy shall be furnished on request to any attorney licensed to practice law in the state."¹

Although here, once again, mayor's courts are not mentioned, the Official Revision Comment seems to include courts of all types. According to the Comment,

"Rules of court usually cover matters that, either because of their detailed nature or of necessary local variations, are not stated in the law... In many rural areas, mimeographed copies of local court rules governing criminal proceedings may be adequate."²

FOOTNOTES

¹ C.Cr.P. Art. 18

² Id., Official Revision Comment, C.Cr.P. Art. 18

(See Appendix A - Sample Court Rules)

XII. JUDICIAL STEPS

OPEN MEETINGS LAW

The Open Meetings Law, R.S. 42:11 through R.S. 42:28, does not apply to judicial proceedings according to R.S. 42:17(B).

INSTITUTING PROSECUTION

Citations: R.S. 33:423 authorizes the marshal to issue citations for breaches of municipal ordinances. A citation is an order to appear before a judge on a given date to defend against a stated charge, and is usually used for minor violations to avoid the taking of the suspect into immediate physical custody.¹

With respect to traffic citations, the law enforcement officer issuing the citation must deposit the original citation of a copy with a court having jurisdiction of the alleged offense. The citation should be deposited to allow the mayor's court to properly carry out its functions and duties. While no specific period of time has been designated within which to deposit citations in state law, the deposits should be made within a time sufficient and reasonable for the mayor to perform his duties.²

Affidavit: According to the Code, "a prosecution for violation of an ordinance...shall be instituted by affidavit..."³ which is "a written accusation of crime made under oath and signed by the affiant. It must be filed in open court in a court having jurisdiction to try the offense or in the office of the clerk thereof."⁴ Thus, an affidavit is a formal accusation which sets the judicial process in motion.

Citing to a portion of the Official Revision Comment under Code Article 382, "(G)reat informality in instituting prosecutions will apparently prevail in case within the limited jurisdiction of mayor courts... However, the prosecutions should be instituted by affidavit, meeting the minimal requirements for instituting a prosecution for violation of a city ordinance.", the 5th Circuit Court of Appeal has determined that mayor's courts are not required to provide an affidavit for the prosecution of an ordinance so long if it complies with the Constitution that the accused be informed of the nature and cause of the accusation against him.^{4a}

According to the Official Revision Comment, any person who is qualified to administer an oath can take the oath of the affiant.⁵ Under R.S. 35:407, the chief of police may designate and appoint officers in his department as ex officio notaries public, *within his jurisdictional limits*, to administer oaths and execute affidavits, acknowledgments, *traffic tickets*, and other documents, all limited to matters within the official functions of the police department in enforcing *state law or municipal ordinance*.

The Attorney General has concluded that a charge or affidavit which alleges a violation of state law (Title 14) can be amended, preferably by the prosecutor, to a violation of the appropriate ordinance and then prosecuted in mayor's court.⁶

Information: In the mayor's court of Kenner, prosecution may be instituted by affidavit or information. An information is a written accusation of crime made by the prosecuting attorney and must be filed in open court or in the office of the clerk. Further, the clerk may use an electronic signature, stamp, or other such facsimile of the signature of the prosecuting attorney to bills of information.⁷

Time Limitation: Under Article 572, no person can be prosecuted, tried, or punished for an offense, unless prosecution is instituted within the following periods of time after the offense has been committed:

- (1) Two years, if punishable by a fine or imprisonment, or both.
- (2) Six months, if punishable only by fine.

This period does not run while the defendant flees from the state, is outside the state, or is absent from his usual place of abode within the state for the purpose of avoiding detection, apprehension, or prosecution, according to Article 575. Further, R.S. 9:5625 requires that enforcement of any zoning restriction, building restriction, or subdivision regulation be started within five years from the first act constituting the violation.

BRINGING IN THE ACCUSED

Summons: When a complaint is made of a misdemeanor and the person making the complaint has signed an affidavit and the magistrate has probable cause to believe that an offense has been committed by the accused, the magistrate may issue a summons commanding the accused to appear before the court at a set time.⁸ The magistrate may choose to issue a summons rather than a warrant of arrest when he has good reason to think that the accused will indeed appear at the set time.⁹

Warrant of Arrest: This is handled in the same manner as a summons except that the arrest warrant authorizes the actual taking of the accused into custody at that point. When a person is arrested or detained in connection with an offense, he must be advised fully why he was arrested and that he has a right to remain silent, a right to avoid self-incrimination, a right to assistance of counsel, and if indigent, a right to court appointed counsel.¹⁰

BOOKING

The arresting peace officer books the person by entering certain information in a book used for that purpose, and which is always to be open for public inspection. After booking, the person is either put in jail or released on bail.¹¹ If he is put in jail, he must be brought before a magistrate for the appointment of counsel promptly, or at least within 72 hours, excluding Saturdays, Sundays, and legal holidays or be released.¹²

BAIL

Under R.S. 15:81(A), "(A)t the earliest practicable time after arrest of a person imprisoned or detained for violation of any ordinance ..., an order admitting to bail shall be made. Upon execution of the bond in due form and with proper surety, the arrested person shall be released pending trial."

Mayors are expressly authorized to fix bail in criminal cases within their jurisdiction.¹³ The purpose of bail is to allow for the release of the accused person while he is awaiting trial.

In setting the amount of bail, the mayor should consider various factors listed in the Code, including,

- "(1) The seriousness of the offense charged.
- (2) The weight of the evidence against the defendant.
- (3) The previous criminal record of the defendant.
- (4) The ability of the defendant to give bail.
- (5) The danger of defendant's release to any other person in the community.
- (6) The defendant's voluntary participation in a pretrial drug testing program.
- (7) The absence or presence of any controlled dangerous substance in the defendant's blood at the time of arrest.
- (8) Whether the defendant is currently out on bond on a previous felony arrest for which he is awaiting institution of prosecution, arraignment, trial, or sentencing.
- (9) Any other circumstances affecting the probability of defendant's appearance.
- (10) The type or form of bail."¹⁴

The amount should be such as to insure that the defendant will return for trial but may not exceed \$100 for each offense, except in the mayor's court of Kenner where the amount may not exceed \$2,500.¹⁵ In situations in which the offense is minor and the accused has ties to the community, the mayor may choose to release him on his own recognizance, dispensing with bail entirely.¹⁶

Bail Order: A bail order, fixing bail, must be in writing, set the type and a single amount of bail, for each charge, designate the officer authorized to accept the bail, and be signed by the mayor.¹⁷

Bail Schedule: A bail schedule facilitates the prompt fixing of bail, providing an alternative to holding arrested persons until the judge arrives to set bail. Thus, the arrested person can post bail and gain release no matter what the time or day of the week. If a bail schedule has been established, a person who has been charged with an offense can either give bail according to the schedule or demand a special order fixing type or form of bail and amount of bail.¹⁸

(A defendant must also be released on bail after being convicted, but before being sentenced, and after sentence and until final judgment. In doing so, the mayor must consider whether the release will pose a danger to any other person or the community in determining the amount of bail (according to Article 332)).

Bail Type: According to Article 312, when the court fixes the amount of bail, a secured bail undertaking may be satisfied by a commercial surety, a cash deposit, or with the court's approval, by a secured personal surety or a bond secured by the property of the defendant, or by any combination thereof.¹⁹ When the court elects to release the defendant on an unsecured personal surety or a bail without surety, that election shall be expressed in the bail order.²⁰

Appearance Bond Fee: Under R.S. 33:2334, an \$15 fee is allowed for each appearance bond taken by a municipal chief of police when required to do so, unless suspended by the judge. This fee is refunded to the individual who paid the fee if the defendant is acquitted.

This fee is payable to the municipal general fund to be appropriated as follows: \$13 to the chief of police for law enforcement purposes and \$2 to be sent quarterly to the Louisiana Association of Chiefs of Police to be used for law enforcement education and training and for members of the association.

ARRAIGNMENT

The arraignment is the court proceeding in which the accused is clearly notified of the charges against him, after which he is asked to enter a plea.²¹

Pleas: According to the Code, there are four kinds of pleas:

1. guilty,
2. not guilty,
3. not guilty by reason of insanity, and
4. nolo contendere, which means that the accused does not admit guilt but will not contest the charge. The result is still a conviction and the person will be sentenced accordingly.²²

If the plea is not guilty, the matter is assigned for trial.

If the plea is guilty or nolo contendere, however, the judge must proceed with caution to insure that fundamental rights of the accused are being protected.

In Boykin v. Alabama (1969), the United States Supreme Court considered a situation involving the voluntariness of the defendant's plea. Although the defendant had not even contested the voluntariness of his guilty plea (but was appealing on other grounds), the court reversed a lower court decision on the basis of that issue, saying that,

"Since a plea of guilty is more than an admission of conduct and is a conviction, and since ignorance, incomprehension, coercion, terror, inducements, and subtle or blatant threats might be a perfect cover-up of unconstitutionality ... the record must show or there must be an allegation and evidence which show, that the accused was offered counsel, but intelligently and understandingly rejected the offer.²³

According to the Code, when the defendant is not represented by an attorney, the judge must not accept a plea of guilty or nolo contendere until:

(1) When no sentence of imprisonment will be imposed, he has determined that the plea is voluntary and is made with an understanding of the nature of the charge and of the right to be represented by counsel.

(2) If the judge determines that a sentence of imprisonment will be imposed, he has first addressed the defendant personally in open court, making sure that he is aware of,

- (a) the nature of the charge to which the plea is offered, the mandatory minimum penalty, if any, and the maximum penalty,
- (b) his right to be represented by an attorney during every stage of the proceeding, and, if financially unable to employ counsel, that one will be appointed to represent him,
- (c) his right to plead not guilty and have a trial, to confront and cross-examine witnesses at his trial, and the right not be compelled to incriminate himself, and
- (d) if he pleads guilty or nolo contendere, there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives his right to a trial in the mayor's court.²⁴

The judge must also determine, by addressing the defendant personally in open court, that the defendant acted voluntarily and not as a result of threats or promises (except for a plea agreement). The judge must also ask the defendant whether his plea of guilty or nolo contendere resulted from discussions with the government's attorney or his own attorney.²⁵

Under Article 551.1, except for prosecutions involving the alleged consumption of alcohol or controlled dangerous substances, at arraignment and upon verified motion of the railroad employer of an employee-defendant, the employer must be substituted as defendant. The motion must state the defendant is its employee, and at the time of violation, was in the employ of the employer, and was performing his duties and functions in the course and scope of his employment which caused the violation, in accordance with the rules and regulations of the employer. Upon timely filing of the motion, the employer must be substituted as defendant, the employee dismissed as a defendant, the charges against the employee erased from the record, with the employer being the sole defendant and responsible for the violation.

Under Article 558, a defendant, with the consent of the prosecutor, may plead guilty of a lesser offense which is included in the offense charged. The lesser included offense must be of the same generic class and not require proof of an element not found in the offense charged.²⁶ However Article 558 does not prohibit a defendant from entering a plea of guilty to an offense nonresponsive to the original charge when the plea is accepted by the prosecutor. Further the prosecutor is not required to file new charges, but need only amend the original charge.²⁷ According to the Attorney General, the magistrate of the court may not reduce a moving violation to a nonmoving violation, as that is the authority of the prosecuting attorney. Further, an administrative fee may not be charged for changing a moving violation to a nonmoving violation.^{27a}

SUBPOENA OF WITNESSES

The defendant in a misdemeanor case (thus, a case before a mayor's court) is entitled to summon six witnesses at the expense of the "parish" according to the Code.²⁸ It is not apparent who should bear the expense of witnesses in mayor's court, because of the problem of applying the rules from this code to mayor's court. The article further states that a defendant has the right to compulsory process of additional witnesses, but the expense for these is borne by him,²⁹ unless the defendant is indigent, in which case, additional witnesses may be called at the expense of the "parish" after the defendant has proved that the testimony is relevant and that he cannot go safely to trial without it.³⁰

TRIAL

Time Limitation: Under Article 578, no trial shall commence after one year from the date the prosecution was instituted (affidavit was filed). According to Article 579, the period will start again if (1) the defendant, at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state or (2) the defendant fails to appear at any proceeding after actual notice, proof of which appears of record.

Witnesses: A witness must be sworn in before being permitted to testify.³¹ He must declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his

conscience and impress upon his mind with a duty to do so."³² The trial begins at the time the first witness is sworn.³³

The mayor of the mayor's court may use his discretion, or heed the request of the municipality or the defendant, in excluding the witnesses from the courtroom so that they cannot see or hear the proceedings.³⁴ However, the court may not exclude the victim of the offense upon motion of the prosecution. However, if the victim is to be excused he must give his testimony before the exclusion and the court shall prohibit the prosecution from recalling the victim as a witness in the prosecution and in rebuttal. The victim is not allowed to sit at the counsel table.³⁵

Presence of Defendant: If the court permits and the counsel consents to proceed, the defendant may be absent during arraignment, pleading, and the trial--according to the Code.³⁶ "A plea of not guilty of a misdemeanor may always be entered through counsel and in the absence of the defendant."³⁷ However, the defendant must be present during sentencing unless the court has excused him.³⁸ In addition, the defendant must be present before any contempt ruling may be made.³⁹

Judgment: A nonjury trial concludes when the evidence from both sides has been heard, and the judge pronounces judgment.⁴⁰

SENTENCING

The sentence is the penalty imposed on the defendant by the court after a guilty plea or a judgment of guilty. "Sentence shall be pronounced orally in open court and recorded in the minutes of the court."⁴¹ By statute, a mayor of a mayor's court judge may sentence a convicted offender either to pay a fine or to be jailed or both as set forth in the ordinance violated. (Ordinances may not provide for a fine greater than \$500, imprisonment not more than 60 days, or both, for each violation.⁴² Imposition of a fine based on multiple days of ordinance violation is invalid when the complaint alleges that the accused violated the ordinance on a specific day.^{42a}

Fines: A fine upon conviction is imposed in addition to the court costs charged upon conviction (discussed earlier in the chapter on records and court costs).

Fine Schedule: According to the Attorney General, the power given to the mayor and board of aldermen to pass ordinances and enforce the same by fine is "broad enough to permit passage of a schedule of fines to be paid upon a guilty plea for violation of a traffic ordinance."⁴³

Disposition of Fines: Absent an ordinance to the contrary, fines and court costs imposed by the mayor's court shall be paid into the town treasury's general account.⁴⁴ Also "monies collected from fines and forfeitures" may not be dispensed "to individual law enforcement officers as a commission on traffic citations issued by them."⁴⁵

Under R.S. 32:266, all fines or penalties collected by or on behalf of a local law enforcement body for citations issued for exceeding the posted speed limit by less than 10 miles per hour on an interstate highway must be forwarded to the state treasurer for credit to the Louisiana Highway Safety Fund.

However, proceeds from drug asset forfeiture distributed by the district court to the municipal police department must be kept separate from the municipality's general fund and in the complete control of the police department.⁴⁶ Under R.S. 40:2616(B)(3)(a), such funds are to be used in drug law enforcement.

Also, the mayor may authorize that a portion of court costs assessed be deposited into a special account and transmitted to the Louisiana Association of Chiefs of Police to be used for law enforcement education and training as required by Louisiana law.^{46a}

Mayor's Discretion in Fine Assessment: A 1977 Attorney General's opinion states that since R.S. 33:441 provides that a mayor may impose fines, the mayor may exercise discretion in assessing fines, providing the penalty for violation of the ordinance is not mandatory.⁴⁷

Reconsideration of Sentence: The Code provides that the defendant may file a motion to reconsider sentence at any time following commencement or execution of sentence. The court may grant the motion and amend the sentence, even following completion of the sentence, to impose a lesser sentence which could have lawfully been imposed.⁴⁸

Suspension of Sentence: The mayor may suspend the imposition or the execution of the whole or any part of the sentence and place the defendant on unsupervised probation upon such conditions as the mayor may fix. The suspension of sentence and probation shall be for a period of six months or such shorter period as the mayor may specify.⁴⁹ The mayor may also suspend the execution in whole or in part of a fine or imprisonment, or both, imposed for violation of a municipal ordinance and place the defendant on unsupervised or supervised probation with such conditions as the mayor may fix, and, at any time during the probation, modify, add, or discharge for up to one year.⁵⁰

Fines Collected in District Court: Fines collected by district courts for "violations of municipal ordinances shall be divided between the office of the district attorney (12%), the sheriff's general fund (12%), and the remainder going to the municipality's treasury."⁵¹ In addition, the fines collected by district court for violations of R.S. 14:98 (D.W.I.) that occurred within the limits of a municipality "shall be distributed and disbursed by said court to the governing authority of the municipality."⁵² Any forfeiture or penalty collected by the district court in a case appealed from a mayor's court is distributed and disbursed to the municipality.⁵³

Traffic Violation/Failure to Appear: When a person is arrested for a traffic violation and released on the written promise that he will appear before the mayor at a later date, but then fails to honor that promise, the mayor must immediately forward notice of the failure to the Department of Public Safety and Corrections. Unless the original charge is disposed of, the department will inform the person that his license has been suspended, that he must pay a \$50 fee, no matter how the original charge is resolved, and that his license will not be renewed or reissued until the original court certifies that he has appeared and/or has paid the fine. R.S. 32:57(D) authorizes the imposition of an additional penalty when the offender fails to appear at the time, date, and place indicated on the citation in an amount not to exceed the amount of the fine for the original violation. Once the person appears in the court and/or pays the fine, the court once again must notify the department.⁵⁴

As discussed earlier, upon conviction or other final disposition of a traffic violation (parking violations excepted), whether of the Highway Regulatory Act adopted by ordinance or of another municipal ordinance established to regulate the operation of motor vehicles on highways, the mayor's court is required to send an abstract of such actions to the Department of Public Safety and Corrections on forms prepared by the department. Under R.S. 32:393, the abstract must be sent within 30 days.⁵⁵

Probation: The mayor may place the defendant on unsupervised probation upon such conditions as the he may fix. The probation must be for a period of six months or such shorter period as the mayor may specify. However, the probationary period cannot exceed the maximum penalty of imprisonment that may be imposed for violation of a particular ordinance.⁵⁶ The mayor may also place the defendant on unsupervised or supervised probation with such conditions as the mayor may fix and, at any time during the probation, modify, add, or discharge. The mayor sets the probation period up to one year. He may terminate or revoke the probation at any time. At the termination of the probation, he may set the conviction aside and dismiss the prosecution.⁵⁷

APPEALS

At the time of sentencing, the mayor should advise the defendant of his right to appeal and of the time limit for filing the appeal. He may make his motion for an appeal either by making it orally in court or by filing a written motion with the clerk. Such a motion must be made within **30** days after the date of the judgment from which the appeal is taken or the court rules on a motion to reconsider sentence, if one is filed, and is entered into the minutes of the court.⁵⁸ The court is not required to issue any form to allow a person to appeal nor is the court required to complete any such form. The appeal becomes legally effective when the motion for appeal is made orally in open court or when the written motion is filed with the clerk of court.⁵⁹ If the appeal is filed with the district court, that court must provide notice to the mayor's court. Further, the date on which the appeal is set for hearing shall be not less than 15 days after the notice is mailed by the district court. The notice is to include the date, time, and location of the hearing.⁶⁰

The mayor's court cannot require the payment of a fine or penalty by a defendant or the forfeiture of any right or property he may possess while an appeal is pending.⁶¹

A defendant is entitled to an appeal from a guilty plea and conviction.⁶² An appeal from mayor's court, whether the proceeding is criminal or civil in nature, is tried de novo (as if never tried before) in district court.⁶³ The mayor's court record of a case filed on appeal should include a certified copy of the ordinance which was the basis of the mayor's court proceeding and request that the court take judicial notice of it. However, the court may take judicial notice of the ordinance without such a request.⁶⁴

Under the Louisiana Supreme Court's interpretation of R.S. 13:1896, the district court is also limited by the penalty imposed by the mayor's court in that it cannot impose a harsher sentence, although it has discretion to impose a more lenient sentence. In addition, court costs may be assessed and retained by the district court.⁶⁵

In the case of State v. Stanley, the defendant was convicted in mayor's court and retried and convicted in district court. He then appealed to the Louisiana Supreme Court claiming political prejudice existing against the defendant in the mayor's court. The court held that any alleged political prejudice existing against the defendant in mayor's court was irrelevant since the entire case was tried de novo in district court.⁶⁶

Any forfeiture or penalties collected by the district court on appeal from a conviction of a municipal ordinance must be distributed and disbursed to the municipality according to R.S. 13:1896.

Under Article 61, subject to supervision by the Attorney General, a district attorney has "entire charge and control of every criminal prosecution instituted or pending in his district, and determines who, when, and how he shall prosecute. A district attorney exercises concurrent jurisdiction with other prosecutors with the parish for violation of a municipal ordinance. However, the district attorney may legally decide not to prosecute, as he has broad discretionary power in both the institution and the handling of all criminal prosecutions."⁶⁷

PAYMENT OF FINES, FEES, AND FORFEITURES

R.S. 15:571.11(O) authorizes the executive officers of any court in the state to accept payment for all fines, forfeitures, penalties, and costs by means of credit card, electronic fund transfer, money order, bank check, teller's check, cashier's check, traveler's check, electronic fund transfer terminal, electronic financial terminal, automated banking device, or similar device or terminal. The statute further requires that any executive officer of the court who accepts payments by credit card collect a fee for processing the payments in an amount that is reasonably related to the expense incurred in processing the payment by credit card, not to exceed five percent of the amount of taxes and any

penalties or interest being paid. The fee shall be in addition to the amount of fines, forfeitures, penalties, or costs imposed.

COLLECTION OF FINES

According to the Attorney General, if no appeal is pending, the mayor's court can collect unpaid fines through the procedure outlined in Article 886, which provides that in the event of nonpayment of a fine, or a fine and costs, within 60 days after the sentence is imposed, the court may sign a judgment against the defendant in a sum equal to the fine plus judicial interest to begin 60 days after the sentence is imposed, plus all cost of the proceeding and subsequent proceedings necessary to enforce the judgement in either civil or criminal court in the same manner as a money judgment in a civil case.⁶⁸

PEACE BONDS

The mayor of a mayor's court, as a magistrate, may order a peace bond.⁶⁹ An applicant for a peace bond must file an affidavit charging that the defendant has threatened or is about to commit a specified breach of the peace. The mayor may examine under oath the complainant and any witnesses produced.⁷⁰ If he is satisfied that there is just cause to fear that the defendant is about to commit the threatened offense, he shall issue a summons ordering the defendant to appear before him at a specified time and date. He may issue a warrant of arrest when imminent and serious harm is threatened.⁷¹

When a defendant appears before the mayor, a contradictory hearing to determine the validity of the complaint shall be held immediately either in chambers or in open court. If he determines that there is just cause to fear that the defendant is about to commit the threatened offense, he may order the defendant to give a peace bond. Otherwise, he must discharge the defendant.⁷²

The applicant for a peace bond shall pay as advanced court costs \$15 for each defendant summoned to a hearing, unless the applicant is seeking protection from domestic abuse, dating violence, stalking, or sexual assault, then the applicant can not be required to prepay or be cast with court costs or cost of service or subpoena for the issuance of a bond. If the mayor discharges the defendant, the costs shall be paid by the applicant. If the mayor orders the defendant to give a peace bond, the costs shall be paid instead by the defendant. However, the court may assess those costs, or any part thereof, against any party, as it may consider equitable. Costs may be waived for an indigent applicant or pauper.⁷³

The peace bond shall be for a specified period, not to exceed six months, and its condition shall be that the defendant will not commit the threatened or any related breach of the peace. The bond shall be for a sum fixed by the mayor. If the bond is for the purpose of preventing domestic abuse or dating violence, the mayor must cause to have prepared a Uniform Abuse Prevention Order, sign the order, and forward it to the clerk of court for filing all without delay. The peace bond

obligation shall run in favor of the municipality. The proceeds shall be disposed of in the manner provided by law. The types of security for a peace bond shall be governed by the bail bond rules, as far as applicable.⁷⁴

If the defendant fails to give the peace bond required, he shall be committed to jail. The defendant may be discharged by the committing or some other magistrate upon giving bond as ordered. The mayor may revoke or modify his order for a peace bond.⁷⁵

When the mayor determines that a breach of peace in violation of a peace bond has been committed, he shall order a forfeiture of the bond and send notice of the forfeiture by certified mail to the defendant and to his surety. If neither the defendant nor his surety appears within 15 days to contest the forfeiture, the order shall become final and executory.⁷⁶

A peace bond is automatically discharged at the end of 30 days from the expiration of the period specified therein, unless a proceeding to declare a forfeiture has been brought within that time.⁷⁷

FOOTNOTES

¹ Black's Law Dictionary (8th ed. 2004)

² A.G.O. 98-212

³ C.Cr.P. Art. 382

⁴ C.Cr.P. Art. 385

^{4a} City of Kenner v. Marquis, 715 So. 2d 85 (La. App. 5 Cir. 6/4/98)

⁵ Id., Official Revision Comment, C.Cr.P. Art. 385

⁷ R.S. 33:441.1

⁶ A.G.O. 01-119

⁸ C.Cr.P. Arts. 208, 209, 202

⁹ C.Cr.P. Art. 209

¹⁰ La. Const. Art. I, §13

¹¹ C.Cr.P. Art. 228

¹² C.Cr.P. Art. 230.1

¹³ C.Cr.P. Art. 333

¹⁴ C.Cr.P. Art. 334

¹⁵ R.S. 15:81

¹⁶ The American System of Criminal Justice, p. 85

¹⁷ C.Cr.P. Art. 338

¹⁸ C.Cr.P. Art. 341

¹⁹ C.Cr.P. Art. 312(C)

²⁰ C.Cr.P. Art. 312(D)

²¹ C.Cr.P. Art. 551

²² C.Cr.P. Art. 552

- ²³ Boykin v. State of Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)
- ²⁴ C.Cr.P. Art. 556
- ²⁵ Federal Rules Crim. Proc. Rule 11
- ²⁶ State v. Price, 461 So. 2d 503 (La. App. 3 Cir. 1984)
- ²⁷ State v. Cook, 372 So. 2d 1202 (La. 1979)
- ^{27a} A.G.O. 11-0129
- ²⁸ C.Cr.P. Art. 738
- ²⁹ Id.
- ³⁰ C.Cr.P. Art. 739
- ³¹ C.Cr.P. Art. 776
- ³² C.Cr.P. Art. 14
- ³³ C.Cr.P. Art. 761
- ³⁴ C.Cr.P. Art. 764; C.Ev.Art. 615
- ³⁵ C.Ev.Art. 615
- ³⁶ C.Cr.P. Art. 833
- ³⁷ C.Cr.P. Art. 833
- ³⁸ C.Cr.P. Art. 835
- ³⁹ A.G.O. 97-50
- ⁴⁰ C.Cr.P. Art. 765
- ⁴¹ C.Cr.P. Art. 871
- ⁴² R.S. 33:362(A)(2)(b)
- ^{42a} Town of St. Joseph v Webb, 87 So.3d (La. App. 2nd Cir, 2012)
- ⁴³ A.G.O. 82-447
- ⁴⁴ A.G.O. 07-0163; A.G.O. 78-1484
- ⁴⁵ A.G.O. 85-610
- ⁴⁶ A.G.O. 94-170
- ^{46a} R.S. 33:441(A)(1)
- ⁴⁷ 77 A.G.O. 283
- ⁴⁸ C.Cr.P. Art. 881.1
- ⁴⁹ R.S. 33:441(A)(3)
- ⁵⁰ R.S. 33:441(A)(2)
- ⁵¹ R.S. 15:571.11(A)(2)
- ⁵² R.S. 13:1894.1; 98 A.G.O. 117; 98 A.G.O. 157
- ⁵³ R.S. 13:1896
- ⁵⁴ R.S. 32:57.1
- ⁵⁵ A.G.O. 00-60
- ⁵⁶ R.S. 33:441(A)(3)
- ⁵⁷ R.S. 33:441(A)(2)
- ⁵⁸ C.Cr.P. Art. 914; C.Cr.P. Art. 881.1; R.S. 13:1896
- ⁵⁹ A.G.O. 99-294
- ⁶⁰ R.S. 13:1896(A)(3)
- ⁶¹ A.G.O. 99-294

- ⁶² R.S. 13:1896; State v. Fontenot, 535 So. 2d 433 (La. App. 3rd Cir. 1988)
- ⁶³ R.S. 13:1896; City of Broussard v. Watkins, 869 So. 2d 962 (La. App. 3rd Cir. 2004)
- ⁶⁴ C.Ev. Art. 202
- ⁶⁵ Town of St. Joseph v Webb, 87 So.3d (La. App. 2nd Cir, 2012); City of Baton Rouge v. Norman, 290 So. 2d 865(La. 1975); State v. Badeaux, 309 So. 2d 337 (La. 1977)
- ⁶⁶ State v. Stanley, 207 La. 1082, 22 So.2d 657 (La.1945)
- ⁶⁷ State v. Kibodeaux, 435 So. 2d 1128 (La. App. 1st Cir. 1983) (93 A.G.O. 541)
- ⁶⁸ A.G.O. 99-294
- ⁶⁹ R.S. 33:441; C.Cr.P. Arts. 26 and 931
- ⁷⁰ C.Cr.P. Art. 27
- ⁷¹ C.Cr.P. Art. 28
- ⁷² C.Cr.P. Art. 29
- ⁷³ Id.
- ⁷⁴ C.Cr.P. Art. 30
- ⁷⁵ C.Cr.P. Art. 31
- ⁷⁶ C.Cr.P. Art. 32
- ⁷⁷ C.Cr.P. Art. 33

XIII. SAMPLE PROCEDURE

Opening Court: The opening ceremony can affect the entire courtroom proceeding as the tone set at the beginning will likely carry through. The effort should be to impress those involved in the proceeding that what is to follow is of sufficient dignity to command their attention and respect.

The mayor should be preceded into the courtroom by the bailiff or clerk who should rap a gavel and request that everyone rise. After the mayor has entered and as he is standing at the bench, the clerk or bailiff may open court by saying something like this:

The Mayor's Court of the Municipality of _____ is now in session, Mayor _____ presiding.

At the end of this statement, the mayor sits and the bailiff or clerk announces that all may be seated.

Statement by Mayor: The mayor should make a statement explaining the procedure followed in the court. Individuals called before the court should be made aware of their rights and what to do when their names are called.

Sample Opening Statement:

"You are here to be arraigned on certain charges that have been filed against you - in other words, to plead guilty or not guilty to each charge.

There are certain things with which you should be aware and know about today's proceedings.

First. You have a right to know the nature of the charges against you and the possible penalty.

1. If you have any questions as to the nature of the charge against you, you may ask me when you are called before the bench.
2. Except as specifically limited by municipal ordinance, this court may impose a fine up to \$500, a jail sentence up to 60 days, or both, for any and each offense plus any cost required by state law. This court is not obligated to set your fine according to any predetermined fine schedule. Also court cost of \$30 may be imposed for each offense.

Second. How you plead is your decision and is to be voluntary and of your free will.

Third. This court is not obligated to follow any promise or agreement that may have been made for your plea of guilty.

REGARDING YOUR PLEA:

IF YOU PLEAD "NOT GUILTY":

1. You will be assigned a trial date - there will be no trial on these charges today.
2. At your trial:
 - a. You have the right to be represented by an attorney or to represent yourself. If you desire to have an attorney but believe that you cannot afford an attorney, you are to advise me of this in order that you may be questioned as to your ability to pay for an attorney. If this court determines, based on your answers to the questions, that you cannot afford to pay for an attorney, an attorney will be appointed to represent you.
 - b. You have the right to have witnesses on your behalf and to cross-examine or question witnesses. If you desire to have witnesses present at trial on your behalf, you may request this court to subpoena or order them to be present.
 - c. You have the right against self-incrimination. In other words, you can not be required to testify. However, if you do decide to make a statement or testify, you will be placed under oath and you may be questioned.
3. If you are found guilty you will be required to pay the fine, including court costs, in cash, or begin the jail sentences imposed.
4. If you are found guilty at trial, you have the right to appeal this matter to the district court within thirty days after the judgment is rendered.

IF YOU PLEAD "GUILTY":

1. This matter will end. In other words, by pleading "guilty" you are admitting that you did violate the municipal ordinance charged and you are waiving or giving up your right to have witnesses, your right to cross-examine witnesses, your right to counsel, your right against self-incrimination, and your right to a trial in this court.
2. You are required to pay the fine, including court costs, or the jail sentence imposed, immediately."

Taking the Plea: Careful consideration of the constitutional rights of the accused must be a part of the taking of a plea; therefore, a discussion like the following may be useful:

1. Are you _____, defendant in this case?
2. Are you represented by counsel? You have the right to counsel. Do you wish the court to appoint counsel for you?
3. Read the charges to the defendant.
4. Do you understand the charges?
5. Do you understand your rights as a defendant in this court? (To confront witnesses - no self-incrimination)
6. Do you understand what a plea of "guilty" means? "not guilty"? "nolo contendere"? (If you plead guilty, you give up your right to a trial in this court.)
7. Do you wish to have additional time to obtain counsel?
8. The penalty for the charge against you is _____. Do you understand this?
9. Are you ready to plead? Did anyone threaten you or make promises to you to influence your plea?
10. How do you plead?
11. (If "guilty") Do you wish to make any statement or explanation concerning the charge against you prior to sentencing?
12. (If "not guilty") Continue with trial procedure.

Trial Procedure: If the defendant pleads "not guilty" he must be allowed to refute the charges against him. As there is no jury trial in mayor's court, this trial is before the mayor.

Witnesses: The witnesses may be sworn all at the same time or as each assumes the stand. A suggested oath is as follows:

"Do you solemnly swear or affirm that the testimony you are about to give before this court is the truth, the whole truth, and nothing but the truth?"

January 2015

Presentation of Case: The evidence against the accused is heard first, followed by the defense. The mayor then considers the evidence and renders judgment, advising the defendant (if convicted) of his right to appeal and of the required filing time.

Closing Court: After all the cases scheduled for the session are disposed of, the court is adjourned. The mayor should announce from the bench that,

"We will now stand adjourned until _____."

APPENDIX A. SAMPLE COURT RULES

COURT RULES

FOR THE MAYOR'S COURT

OF THE MUNICIPALITY OF _____

ORDER

IT IS HEREBY ORDERED that effective _____, 201____, the following Rules shall be the rules of practice and procedure of the Mayor's Court of the Municipality of _____, to remain in full force and effect except as they may be subsequently amended or repealed.

MAYOR

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COURT RULES

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Rule No. 1. CONSTRUCTION OF RULES

A. These Rules are intended to govern interaction between the Court, attorneys, and litigants and to ensure the administration of justice in an efficient and effective manner.

B. The term "Mayor", when used in these Rules, includes a presiding magistrate.

Rule No. 2. THE MAYOR'S CHAMBERS

The privacy of the Judge's Chambers shall be respected at all times.

Rule No. 3. DAYS AND HOURS OF COURT; ORDER OF BUSINESS.

A. Days of Court. Court shall be held on the _____ of each month and at other times designated by the Mayor.

B. Hours of Court. Court shall commence at _____ m. or at other times designated by the Mayor.

C. Regular Order of Business. The regular order of business each court session shall be as follows:

- (1) Arraignments
- (2) Assignments for Trial
- (3) Trials
- (4) Bond Forfeitures
- (5) Adjournment

Rule No. 4. COURT OFFICIALS

A. The Clerk and the Bailiff shall be in attendance at all times while the Court is in session.

B. The Marshal or one of his deputies shall serve as Bailiff during all proceedings. The Bailiff shall direct all persons in the courtroom when they are to rise, in accordance with the directions of the Court.

Rule No. 5. OPENING OF COURT

Immediately before the scheduled court time, the Bailiff shall direct all other court officers and spectators to their seats. As the Mayor enters the courtroom, the Bailiff shall require all present to arise and remain standing. When the Mayor has been seated upon the bench, the Bailiff shall say: "The Mayor's Court of the Municipality of _____ is now in session, Mayor _____ presiding. No smoking allowed. You may be seated."

Rule No. 6. APPROACHING THE BENCH

No person shall approach the Mayor's bench while Court is in session, or while the Mayor is seated upon the bench, except by permission of the Court.

Rule No. 7. PROPER ATTIRE

All persons shall be properly attired while in the courtroom when Court is in session.

Rule No. 8. CONDUCT OF PERSONS IN ATTENDANCE

A. Every person entering the courtroom while Court is in session shall immediately be seated and conduct himself in a quiet and orderly manner.

B. All persons attending a Court session shall remain in the spectator area, except Court personnel, members of the bar, and participants in the Court proceedings.

C. No person shall be permitted to remain standing in the courtroom during a session of Court, unless he is engaged in the trial of a case or is a court officer in attendance upon such session.

D. Smoking is prohibited while Court is in session.

E. No person may engage in any conduct that would be disruptive to the business of the Court, including the following:

(1) Using tobacco in any form at any time.

(2) Reading newspapers while Court is in session.

(3) Displaying any political advertisement of any nature.

F. Attorneys, as officers of the court, must help to maintain the dignity of the Court.

G. No one may wear a hat or be barefoot in the courtroom. Witnesses and spectators must appear neat and clean, within the limits of propriety. The Court will make allowances for those who must appear in work clothes and for those whose attire is dictated by their religion.

H. Broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of Court or recesses between sessions is prohibited.

I. The use of electronic transmitters, receivers, or entertainment devices such as cellular telephones, beepers, computer disc players, etc. are prohibited in the courtroom.

Rule No. 9. ATTORNEY'S CONDUCT DURING HEARINGS

A. Any attorney who tenders himself or herself before the Court and represents that he or she is duly authorized to practice law, but who has been declared ineligible, suspended, or disbarred from practice before the courts of this State, shall be subject to contempt proceedings.

B. No one may represent a party in any proceeding except counsel of record, unless allowed to do so by law.

C. Attorney's Behavior During Trial.

(1) Attorneys, during trial, shall not exhibit familiarity with the defendant, witnesses, or opposing counsel, and the use of first names shall be avoided.

(2) Attorneys shall rise and remain standing while addressing the Court. Attorneys shall address all remarks, objections, and comments to the Mayor, never to opposing counsel. All statements and communications by an attorney to the Court shall be clearly and audibly made from the attorney's chair.

(3) Attorneys shall not appear to engage the Court in conversation in a confidential manner.

(4) Unless directed otherwise by the judge, all judgments, orders, decrees, or other documents shall be handed to the clerk, who shall hand them to the judge.

Rule 10. DEFENDANTS

The defendant shall stand, with his attorney, if represented by one, before the bench during the arraignment or when entering a plea, as well as at the time of the passing of sentence.

Rule No. 11. WITNESSES

- A. Witnesses. Witnesses shall be treated with courtesy and respect.
- B. Swearing-in of Witnesses. Witnesses shall be sworn near the bench.
- C. Examination of Witnesses.
 - (1) Attorneys shall refrain from harassing or badgering a witness purposely.
 - (2) Attorneys may not approach the witness in the witness chair without first obtaining the Court's permission.
 - (3) When an attorney completes his examination of a witness, he shall so indicate to the opposing counsel.

Rule No. 12. EXHIBITS

Exhibits to be offered shall first be handed to the Clerk, numbered by him consecutively, and offered before they are submitted to opposing counsel. They shall then be admitted or excluded, and thereafter may be referred to by number.

Rule No. 13. ASSIGNMENTS

A. The Docket. Assignments of cases for trial shall be made by the Mayor. The Clerk shall maintain an Assignment Docket showing Title, Docket Number, Date and Time of Assignment and Attorney or Attorneys of Record.

B. Motion for Assignments. All assignments shall be made by motion in open court. Motions for reassignments shall be by oral motion, in open court.

Rule No. 14. COURTROOM SECURITY

The chief of police or a police officer designated by the chief shall provide security for the courtroom, chamber, offices, and hallways.

Rule No. 15. MAYOR'S DISCRETION

The Mayor may, in the interest of justice and upon notice to all parties, permit deviations from these rules in a particular proceeding.

APPENDIX B. SAMPLE FORMS

DOCKET SHEET

NO. _____

STATE OF LOUISIANA

MUNICIPALITY OF _____

PARISH OF _____

VERSUS

MAYOR'S COURT

File opened _____, 201__

CLERK

CHARGE: _____

BOND: Amount - \$ _____ Cash _____ Property _____

ARRAIGNED: _____, 201__.

PLEA: _____

Witnesses for Municipality:

DATE OF TRIAL: _____

TIME OF TRIAL: _____

COUNSEL FOR ACCUSED: _____

THE COURT FINDS THE ACCUSED:

Witnesses for Accused:

SENTENCE: _____

MAYOR

COMPLAINT

NO. _____

STATE OF LOUISIANA

MUNICIPALITY OF _____

PARISH OF _____

VERSUS

MAYOR'S COURT

File opened _____, 201__

CLERK

BEFORE ME, the undersigned authority, personally came and appeared _____, AFFIANT, who being first duly sworn, deposed and says that, on or about the _____ day of _____, 201__, at about _____ o'clock _____.M., within the jurisdiction of this Court, then and there being _____, ACCUSED, did violate Section _____ of the Code of Ordinances, of the Municipality of _____, relative to

by _____

all against the peace and dignity of the same.

January 2015

WHEREUPON, AFFIANT charges the ACCUSED with having committed a violation of said Section, and prays that the ACCUSED may be arrested and dealt with according to law.

AFFIANT

Sworn to and subscribed before me this _____ day of _____, 201____.

Authorized Officer

January 2015

ARREST WARRANT

NO. _____

STATE OF LOUISIANA

MUNICIPALITY OF _____

PARISH OF _____

VERSUS

MAYOR'S COURT

TO THE CHIEF OF POLICE OR OTHER OFFICER, GREETINGS:

Whereas, complaint has been made on the oath of _____
that on the _____ day of _____, 201____, within the jurisdiction of this Court,
_____ (the accused) did then and there commit

as per complaint filed.

You are hereby commanded to arrest the body of the accused and bring the accused with this
warrant before me, to answer to said complaint; and should the accused not be found within ten days
from the date hereof you will not fail to endorse hereon what you have done in the premises.

WITNESS my hand, _____, 201_____.

MAYOR

January 2015

ORDER FIXING APPEARANCE BOND

NO. _____

STATE OF LOUISIANA

MUNICIPALITY OF _____

PARISH OF _____

VERSUS

MAYOR'S COURT

TO THE CHIEF OF POLICE OF THE MUNICIPALITY OF _____

You are hereby authorized to release _____
accused of violating Section _____ of the Code of Ordinances of the Municipality of
_____ upon a good and solvent bond conditioned as the law
directs in the sum of _____ Dollars, and returnable in this Court on the
_____ day of _____, 201____.

MAYOR

APPEARANCE BOND

NO. _____ STATE OF LOUISIANA
MUNICIPALITY OF _____ PARISH OF _____
VERSUS MAYOR'S COURT

KNOW ALL MEN BY THESE PRESENTS, That _____
_____, as Principal, and
_____, as Surety, are held
and firmly bound unto THE MUNICIPALITY of _____ in
the full, true and just sum of _____ Dollars,
for the payment of which we do hereby expressly and firmly bind ourselves, our heirs, and legal
representatives individually and in solido, by these presents; dated the _____ day of
_____, 201_____.

The condition of this obligation is that: Whereas, the above named Principal has been
arrested, charged with violating Section _____ of the Code of Ordinances of the
Municipality, and an Order has been issued granting the release of said accused, upon furnishing an
appearance bond in the aforesaid amount.

Now; if the said Principal shall well and truly appear in person in and before this Court on
the _____ day of _____, 201_____, there to answer said charge and there
continue from day to day, and from term to term, and not depart thence without leave of Court, then
this Bond to be null and void, otherwise to remain in full force and effect.

January 2015

WITNESSES:

PRINCIPAL

Address _____

Telephone No. _____

SURETY

Address _____

Telephone No. _____

Approved and accepted, this _____ day of _____, 201____.

Authorized Officer

NOTICE TO APPEAR

MUNICIPALITY OF _____ MISDEMEANOR NO. _____

VERSUS _____ TRAFFIC NO. _____

_____ DATE: _____

THIS IS AN IMPORTANT DOCUMENT: READ IT CAREFULLY AND FOLLOW THE CHECKED () AND CIRCLED INSTRUCTIONS BELOW. THIS IS THE ONLY NOTICE YOU WILL RECEIVE. ALWAYS BRING IT WITH YOU TO COURT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN ISSUANCE OF A WARRANT FOR YOUR ARREST AND/OR PUNISHMENT FOR CONTEMPT OF COURT.

1. _____ Your case is fixed for (ARRAIGNMENT) (TRIAL) (SENTENCING) (HEARING) on _____, 201____, at _____M.

You are ordered to return to the Court on that date and time bringing with you this notice and _____.

- a. If you wish to have WITNESSES SUBPOENAED to be present at your trial, you must furnish their name(s) and address(es) in writing to the Clerk in the Municipal Hall at least ten (10) days before your trial.
- b. Any request for CONTINUANCE of trial must be filed in writing with the Clerk at least ten (10) days before your trial.
- c. If you are retaining an attorney, notify him immediately of your court date.

2. _____ If you retain an attorney, NOTIFY THE COURT OF YOUR LAWYER'S NAME at least ten (10) days before your trial.

3. _____ PAYMENT OF YOUR FINE IS DEFERRED UNTIL _____, 201____. Total amount due on or before that date is \$ _____.

- a. MAILING INSTRUCTIONS: Your personal appearance is waived upon receipt of a check or money order for this amount POSTMARKED on or before your payment deferred date. Mail your payment WITH this notice to (ADDRESS). NO TEMPORARY CHECKS OR CASH ACCEPTED.

January 2015

- b. TO PAY IN PERSON: Appear in the Municipal Hall, (LOCATION) between the hours of (BUSINESS HOURS).

4. _____

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS NOTICE AND I AGREE TO INFORM THE COURT OF ANY CHANGE IN EITHER MY PHONE NUMBER OR MY ADDRESS PENDING FINAL DISPOSITION OF THIS PROCEEDING.

Attorney's signature

Defendant's signature

Attorney's Office address

Defendant's Home address

Phone

Phone

Mayor/Clerk's Initials

Place of Employment

Phone

January 2015

ARRAIGNMENTS

MUNICIPALITY OF _____

MAYOR'S COURT

_____, 201____

Docket
Number

Defendant

Present (X)

Plea

Trial Date and Time

<u>Docket Number</u>	<u>Defendant</u>	<u>Present (X)</u>	<u>Plea</u>	<u>Trial Date and Time</u>

January 2015

SUBPOENA

NO. _____ STATE OF LOUISIANA
MUNICIPALITY OF _____ PARISH OF _____
VERSUS MAYOR'S COURT

To _____

YOU ARE HEREBY COMMANDED to appear in the Municipal Hall, Mayor's Court, at _____, _____, Louisiana, on the _____ day of _____, 201____ at _____ o'clock _____.M., to there remain until discharged, to testify to the truth, to the best of your knowledge, in the captioned matter on the part of the Municipality, and herein you are not to fall under penalty of the law.

BY ORDER OF THE COURT:

DATE: _____

MAYOR

SERVED PERSONAL AT ABOVE ADDRESS, OR _____
SERVED DOMICILIARY BY HANDING TO _____
A RESIDENT OF ABOVE ADDRESS

UNABLE TO SERVE BECAUSE _____

DATE SERVICE OR NON-SERVICE COMPLETED _____

BY _____ MUNICIPALITY

OTHER

January 2015

BENCH WARRANT

NO. _____

STATE OF LOUISIANA

MUNICIPALITY OF _____

PARISH OF _____

VERSUS

MAYOR'S COURT

TO THE CHIEF OF POLICE OR OTHER OFFICER, GREETINGS:

YOU ARE HEREBY COMMANDED, That you arrest the body of

_____ and to cause this person to be booked, so that this person shall come before this Court to answer to the charge of contempt for failure to appear as ordered and to answer the charge(s) of _____

_____ and let the said person be admitted to bail which is hereby set in the amount of \$100.00. And how you shall have executed this warrant you make due return unto our said Court as the law directs.

_____, Louisiana, this _____ day of _____, 201____.

MAYOR

January 2015

APPLICATION FOR PEACE BOND

MUNICIPALITY OF _____

MAYOR'S COURT

FILED _____, 201 _____

MAYOR

The undersigned hereby applies to the Court to place
_____ under a peace bond on the ground stated
in the affidavit which is filed herewith and made part hereof.

Signature of Applicant

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF _____

MUNICIPALITY OF _____

BEFORE ME, the undersigned authority, personally came and appeared

who being first duly sworn, deposed and says:

Affiant

Sworn to and subscribed before me this _____ day of _____, 201 _____.

Authorized Officer

PEACE BOND

MAYOR'S COURT

BY _____

IN FAVOR OF THE
MUNICIPALITY OF _____

PARISH OF _____

STATE OF LOUISIANA

The undersigned, _____, who resides at _____, as Principal, having been ordered to give a peace bond by Mayor of this Court on the _____ day of _____, 201____, in the sum of _____ (\$_____) Dollars, and _____, who resides at _____, as Surety, hereby undertake that for a period of _____ months the above named Principal will not commit any breach of the peace and particularly _____

and if Principal fails to perform any of these conditions the Principal and Surety bind themselves in solido to pay to the Municipality the sum of _____ (\$_____) Dollars.

Principal

Surety

Entered before and taken by the Mayor of Mayor's Court, _____, Louisiana, _____, 201____.

MAYOR

JUDGMENT FORFEITING PEACE BOND

NO. _____

STATE OF LOUISIANA

MUNICIPALITY OF _____

PARISH OF _____

VERSUS

MAYOR'S COURT

The Court having determined that _____ has committed a breach of peace in violation of the conditions of the peace bond given by _____, on the _____ day of _____, 201____, and signed by _____ as Surety, and the law and evidence being in favor thereof,

IT IS ORDERED, ADJUDGED AND DECREED that the peace bond be and the same is hereby declared forfeited, and that accordingly, there be a judgment in favor of the Municipality and against the Principal and against the Surety, in the just and full sum of \$_____, the amount of said bond, together with legal interest from this date until paid and all costs of this proceeding.

Thus done, rendered, and signed in open court on the _____ day of _____, 201_____.

MAYOR

January 2015

CERTIFICATE OF NOTICE

I hereby certify that a true and correct copy of the above and foregoing judgment has been sent by certified United States mail by me to the judgment debtors named in said judgment addressed to each of them at the address given by each of them on the said bond, on this _____ day of _____, 201____.

CLERK