

Law School for Non-lawyers: What Does Your Municipal Court Do?

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The contents of this presentation reflect the view of the presenter, not of CML.



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"We judge decisions, not people."

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SOURCES OF YOUR COURT'S AUTHORITY

Colorado Constitution Article XX,

Colorado State statute Title 13 – Article 10

Home Rule or Statutory City

Of 271 total municipalities in Colorado, 172 are statutory municipalities while the remaining 100 are Home rule municipalities.

City Charter, City Ordinance



State law that impacts even home rule municipal courts:

- * Municipal Court Rules of Procedure
- * C.R.S. 13, Article 10 Municipal Courts
- * C.R.S. §13-10-113 Fines and penalties.

(1) (a) Except as provided in paragraph (b) of this subsection (1), **any person convicted of violating a municipal ordinance in a municipal court of record may be incarcerated for a period not to exceed one year or fined an amount not to exceed two thousand six hundred fifty dollars, or both.**



C.R.S. §13-10-113 Fines and penalties.

(1) (a) Except as provided in paragraph (b) of this subsection (1), **any person convicted of violating a municipal ordinance in a municipal court which is not of record may be incarcerated for a period not to exceed ninety days or fined an amount not to exceed three hundred dollars, or both.**



Many jurisdictions with courts of record have adopted fines and penalties below the maximum allowed under C.R.S. §13-10-113 [1 year jail, \$2,650 fine]

Home Rule question: Does a Home Rule jurisdiction need authority from the Colorado Legislature to adopt its own sentencing maximums?

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Maximums in your jurisdiction?

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ABOUT YOUR JUDGE

So, who is that man (or woman) in black
and
what's with that hammer anyway?

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About your Judge

C.R.S. §13-10-105 establishes:

qualifications

length of term (two years)

grounds for removal

etc..etc.

most of which may be superseded by municipal charter!



About your Judge

Some municipalities require residency by charter or ordinance; most do not.

For "courts of record" must be a lawyer under state law.

Court not of record, judge does not have to be a lawyer unless required by charter or ordinance.



See C.R.S. §13-10-105

Appointment – Usually by City Council or "municipal governing body"

Retention – 2-year term
Annual contract review?
Bi-annual review?
Voter retention?

Scope of Duties – Supervises Court Administrator?
Department Head?

Terms of employment – Outside employment not allowed? Allowed? Limited subject?



Regulation of Municipal Judges

See C.R.S. §13-10-101 et seq.

1. Municipal Judges are not regulated by the Colorado Commission on Judicial Discipline.

The Commission has jurisdiction over the conduct of Judges of County and District Courts, Judges of the Court of Appeals, and Justices of the Supreme Court only. It has no jurisdiction regarding the conduct of magistrates, court staff, lawyers, law enforcement officers, the Department of Corrections, municipal judges, administrative law judges, or the federal judiciary. <http://www.coloradojudicialdiscipline.com/>

2. Colorado Code of Judicial Conduct does not automatically apply to municipal court judges.

The Code may apply per terms of Judge's employment contract.



TYPES OF CASES COMING BEFORE MUNICIPAL COURT

Types of cases handled by your jurisdiction typically set by ordinance.

Usually include: Traffic

Often include:

- Code enforcement (animals, property issues)
- Criminal code including assault, theft, disorderly conduct, MJ

May include:

- Expanded criminal matters such as domestic violence, prostitution

May include: Specialty matters: tax appeal and review, zoning



Categorization of offenses defined by statutory or ordinance definition adopted by city council.

“Misdemeanor” “petty offense” “criminal traffic offense” “traffic infraction”

Traffic – non-jailable infractions versus jailable criminal traffic offenses

Defaults in non-criminal traffic cases by ordinance



Model Traffic Code

Even though most municipalities statewide enforce the Model Traffic Code, this code is often adopted as a local ordinance with local modifications such as eliminating minimum fines, classification of offenses, and similar conditions.

See for example No Proof of Insurance fines.



CASE LIFE-CYCLE (prior to trial)

Where does case originate? Police, Code Enforcement, Administrative appeal

Required elements for Summons and Complaint Municipal Court Rule 204 (b)(4)

Amendments timing, limitations

Arraignment Function - What is it? What is being accomplished?

Why do it?

Advisements How made. Contents. Padilla immigration advisement.

Requirement that juveniles be accompanied by parent or guardian.
(Where is authority/mandate?)

Enter Plea



CASE LIFE-CYCLE (prior to trial) Cont.

Pre-trial Conference with City Attorney. After a Defendant pleads "not guilty", for most charges the City attorney will allow the Court to set a Pre-Trial Conference with an aim toward disposition. Pre-trial Conferences are discretionary with the City Attorney.

"Final Pre-Trial Status Conference." The Court on its own authority also sets a "Final Pre-Trial Status Conference" at least ten days before trial to give Defendant an opportunity to be ready for trial and to speak with City Attorney prior to trial to discuss resolution in lieu of trial.

Certificate of Trial Readiness. After a Defendant has had a chance to meet in a Pre-trial Conference with the City Attorney, or if the case is being set for trial without a pre-trial conference with City Attorney, Court Clerks generally ask Defendants to sign a Certificate of Trial Readiness. This reinforces the communication to the Defendant that the next stop is trial and that the Defendant has certain obligations in connection with that trial.

While this is not necessarily a legally operative document, the Court can certainly make reference to this document in the event a Defendant shows up on the trial date and claims not to be ready to move forward.



Trials

Most trials are bench trials with judge finding facts and making rulings of law.

Majority of defendants are pro se and represent themselves.

Municipality represented by City Attorney prosecutor.

Court's duty to unrepresented defendant is to make sure process does not become an impediment to a fair trial.



Right to Jury Trial

Minimum standard: *Roalstad v. City of Lafayette*, 2015 WL 5895396 (Colo. App, October 8, 2015)

Right to jury trial in municipal Court where state "counterpart" statute creates that right irrespective of municipality's classification of offense.

Municipality may expand by ordinance scope of right to jury trial.

Arvada Sec. 58-41 (b) Right to jury trial. "Any defendant charged with a misdemeanor ordinance violation, petty offense, or a misdemeanor traffic offense shall have a right to a trial by jury . . .".

Process for Jury Request - Municipal Court Rule 223

In writing within 21 days, including fee or request for waiver. Timeliness of request strictly construed.

Amendment adding jury eligible charge resets time to request



Right to Jury Trial

Maximum number of jurors – 6 Municipal Court Rule 223

Number of jurors given by law if you do not make a specific request - 3

Verdict: Jury verdict must be unanimous to convict or to acquit.



BENCH TRIAL PROCESS:

Court gives overview of entire process to pro se defendant, including explaining what is evidence in the record and what is not, exhibits, stipulations, and judicial notice.

Opening statement by City Attorney

Opening Statement by defendant [unless waived or reserved until case in chief]

City calls witnesses – Direct exam, Cross exam, re-direct, re-cross if needed

City Rests

Defendant makes opening if reserved

Defendant calls witness - Direct exam, Cross exam, re-direct, re-cross if needed

Defendant rests



BENCH TRIAL PROCESS (cont.):

Rebuttal Witnesses for City: Direct exam, Cross exam, re-direct, re-cross if needed

Closing Argument by City Attorney

Closing by Defendant

Rebuttal by City Attorney

Judge makes findings as to jurisdiction, elements of offense, renders verdict

If Guilty, Court allows statements in aggravation by City and statement in mitigation by Defendant.

Judge Reviews criminal or driving history, imposes sentence.



SENTENCING GOALS AND LIMITATIONS



THE QUIZ – Jailable or not Jailable?

<p>6. a. Failing to license or vaccinate your dog.</p> <p>b. Letting your roommate's dog run outdoors off the property off-lead.</p>	<p>Sec. 14-31. - Rabies vaccination required; Sec. 14-7. - Penalty; Sec. 14-43. - Tag required</p> <p>Sec. 14-54. - Running at large.</p>
<p>7. Consuming alcohol in public.</p>	<p>Sec. 6-4. - On public property; Sec. 6-5. - Penalty for violations</p>
<p>8. Stealing a 12-cent piece of candy from Walgreens.</p>	<p>Sec. 62-34. - Theft</p>
<p>9. Careless driving.</p>	<p>Model Traffic Code 1402(1); Sec. 58-41. - Classification of violations;</p>
<p>10. Leaving nasty voicemail messages on your ex-girlfriend's cell phone.</p>	<p>Sec. 62-32(b)(4). - Assault and harassment</p>



Restitution (may be part of sentence)

Usually permitted; not mandatory

Victim's rights
Defendant's rights

Limitations on Court's ability to collect

State law authority to enter judgment



JUVENILE ISSUES



Juvenile Issues

Age: Minimum age to come to court: 10 years old

Sentencing Limitations:

[Arvada] Sec. 1-5. - General penalty; continuing violations.

(a) Except as otherwise provided in this Code or in any ordinance whenever, in any provision of this Code or of any other ordinance of the city, the doing of any act is required, prohibited, or declared to be unlawful, **any person, who at the time of commission of the offense was at least ten years of age, but not yet 18 years of age, and who is convicted of a violation of any such provision shall, for each offense, be fined not more than \$2,650.00 or shall be sentenced to detention not to exceed ten days, or shall be both so fined and detained.**

Legislature pre-empts:

Limitations on sentencing - C.R.S. §13-10-113 (5) Juveniles may not be sentenced to juvenile detention facility for violating municipal ordinance, but may be sentenced to **up to 48 hours** for contempt or for violating probation.



Juvenile Issues

Juveniles not eligible for Court-appointed lawyer since there is no possibility of jail per C.R.S. §13-10-113 (5).

If juvenile has not hired an attorney on his/her own, juvenile will have to represent herself at trial.



Alternative Sentencing

Juveniles and Others

- Community Service Equivalents
- Moral Reconciliation Therapy
- Healthy Relationships
- Judge Mentor Program

Restorative Justice programs

Problem Solving Courts - Mental Health Court, Recovery Court, Veterans Court



Another extremely valuable and effective resource:

Probation



OTHER COURT PROCESSES AND ISSUES



New developments:

HB16-1309 – In-custody Defendant's first appearance on jailable offense entitled to counsel.

HB16-1311 – No bench warrant for defendant who fails to appear in connection with money owed to Court



Review hearings (post-conviction) come before Court to address why Defendant has not completed sentence ordered by Court.

These hearings require a lot of focus, energy and attention by the Judge.

Motivational interviewing.

Judge may push Defendant to take action.

Sentence may be modified unless it was a condition of a charge reduction by City Attorney.

Deferred Judgment may be revoked (must give notice and hearing) and case set for sentencing.

Contempt issues, advisements, rights, and consequences

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Reasons given by Defendants for committing offense, for missing Court, or not paying fines or completing sentences:

No time for court stuff:

I was busy playing basketball [too busy]

Bought motor home [spent all my money on something else]

Even though I was out of work I couldn't do Community Service because I didn't have not enough time

Working three jobs

I was in rehab, I was in jail, I was out of town

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Death, illness, and other matters:

My sister is depressed,

Sister-in-law died, Girlfriend has degenerative disc issues

Grandma died, Mom died,

My mom is 92 years old and on oxygen,

mom is in and out of a mental institution,

Dad has kidney disease, I have testicular cancer,

I am pregnant and on bed rest, I had a baby, child in hospital,

I am all better and didn't need the drug evaluation after all

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"It's a Money Thing":

Supporting my son by paying rent
Owe fines to County Court, I paid them instead of you
Lost my Job

Physics and Other Natural Phenomena:

Tailwind pushed my car 30 mph over the speed limit
Gravity made my car go over the speed limit
Speedometer is broken
My GPS didn't work (couldn't find the class)

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Other Compelling Reasons:

I am in a support dog custody battle
I was "hey mistered" by police

Best Excuse Ever:

I couldn't help shoplifting that Broncos blanket from Target,
I had "Broncos fever"

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