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December 14, 2018

The Honorable Gloria C. Reno
Presiding Judge
St. Louis County Circuit Court
105 South Central Avenue
Clayton, MO 63105

Re. Show-Me Courts Municipal Division Implementation

Hand-Delivered.

Dear Judge Reno:

Howard Paperner and I represent several cities in St. Louis County, and we are writing to request that you rescind the St. Louis County Circuit Court's administrative orders regarding the mandatory implementation of the Show-Me Courts case management system in the circuit's municipal divisions. As a practical matter, the Show-Me Courts roll-out has been a disaster for county's municipal divisions and the cities that provide for their operation. Of greater concern is that the mandatory extension of the program to Missouri's municipal divisions may well be unlawful.

You have already received a letter authored by Judge Kevin Kelly dated November 9, 2018. The problems noted in that letter exist in the cities that we represent, and they are only going to multiply as the deadlines approach for the remaining municipal groups. By itself, this chaos and expense justifies an immediate suspension of the implementation orders.

But in addition to the roll-out problems, the mandatory extension of Show-Me Courts to the municipal divisions may well be illegal. Our review of the Missouri statutes pertaining to the Court Automation Committee, the Missouri Supreme Court Operating Rules, the decision and directive of the Court Automation Committee, the administrative orders of this Court, and germane Missouri case law suggests that this is the case.

Missouri Statutes

As shown below, the germane Missouri statutes appear to establish a court automation system that is mandatory for circuit and associate circuit courts but permissive for municipal divisions. If this is true, then the mandatory extension of the

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program would violate those statutes.

As you are aware, Section 476.055 RSMo. establishes the “Statewide Court Automation Fund”. Moneys for the fund are collected pursuant to Section 488.027 RSMo. That section provides that costs are to be assessed “in all civil cases filed in the circuit courts . . . and in all criminal cases including violations of any municipal or county ordinance heard by an associate circuit judge or any violations of criminal or traffic laws of this state, including an infraction.” *Sec. 476.055.5 RSMo.*

It seems clear that the \$7.00 court automation fee is to be imposed only in civil cases, criminal cases, and municipal ordinance violation cases heard by an associate circuit court judge. There is no mandate to impose the fee on municipal ordinance violations heard in the municipal divisions of the state’s circuit courts.

This bifurcation of court automation costs, and by statutory reference, automation authority, is made even more plain by Sections 476.055 and 476.056 RSMo. Section 476.055 charges the Court Automation Committee (“CAC”) to “implement a plan for a statewide court automation system”, this mandate is limited to circuit courts, as demonstrated by the prohibition that the committee cannot “require *any circuit court* to change any operating system . . . unless the committee provides all necessary funds and equipment necessary to effect the required changes.” *Sec. 476.055.5 RSMo.* And the limitation of court automation to the state’s circuit courts is further reinforced by Section 476.056, which grants *cities and counties* the authority to automate their municipal divisions: “Any city [or] county *may* provide for automation of its municipal court . . . in the manner provided by this section”, which requires adopting an ordinance imposing the court automation fee and entering into an automation agreement with the State Courts Administrator. *Sec. 476.056.1 RSMo.*

In sum, these statutes make clear that the decision to automate the municipal court divisions in Missouri lies with the legislative bodies of the local governments that have established and are operating those divisions.

Missouri Supreme Court Operating Rules

While we have not analyzed whether the Missouri Supreme Court could legally promulgate a rule requiring automation of the municipal divisions in light of these statutes, we have examined the Court’s rules and have not discovered any such directive.

Operating Rule 1.01 grants the court automation committee almost plenary power to implement statewide court automation, but that rule acknowledges the limitations on the committee by referencing Section 476.055 RSMo. and by restricting the committee’s

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authority to “automation as funded by the legislatively approved automation fee”. In that the statute makes automation in the municipal divisions permissive, and funds that automation only through the sponsoring local government, Operating Rule 1.01 does not authorize the CAC to mandate court automation for those divisions. And the rest of Operating Rule 1 does not appear to include any such mandate.

On its face, Operating Rule 21 includes the automation fee as part of the costs to be collected by *some* municipal courts, but the schedules referenced by the rule pertain only to municipal divisions that have already automated, having been approved by their local governments to do so under Section 476.056 RSMo. Neither Operating Rule 21 nor its court costs schedules require the automation of all the state’s municipal divisions.

Our review of the Supreme Court’s remaining operating rules failed to disclose any automation directive for municipal divisions. Thus, even if the Missouri Supreme Court could legally contravene the automation structure and process established by Sections 476.055 and 476.056 RSMo., the Court does not appear to have done so.

The Court Automation Committee and Presiding Judge Orders

Without any statutory or Supreme Court directive to impose Show-Me Courts on the state’s municipal divisions, the authority of the CAC would seem limited to the circuit courts and those municipal divisions that had been approved to participate by their local government sponsors. But the committee seems to have assumed that its authority extended to mandatory participation by the municipal divisions.

The minutes of the CAC’s July 14, 2017 meeting show that despite the apparent lack of concrete authority, the committee decided that it “may be appropriate to consider implementing SMC to municipal divisions”. The minutes further reflect a conclusion, without supporting analysis or explanation, that “[t]he only way to have a ‘statewide court automation system’ is to have all divisions participating”, including municipal divisions. According to the minutes:

A motion was made that the MCA Committee adopt a policy that the MCA Committee’s plan for implementation of a statewide court automation system includes all divisions of the circuit court, including the municipal divisions. Motion was approved by a voice vote.

Minutes, pp. 7-8. A copy of the committee’s meeting minutes is attached.

With all respect to the merits of court automation being extended to the state’s municipal divisions, and with respect and appreciation for the dedication and diligence of

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the committee, we do not believe that the CAC had the legal authority to reach this conclusion, which served as the basis for this Court's mandated implementation in St. Louis County's municipal divisions.

Indeed, then-St. Louis County Circuit Court Presiding Judge, the Honorable Douglas Beach, relied on the committee's decision in ordering Show-Me Courts implementation in all St. Louis County municipal divisions by July 19, 2019, and your order of October 18, 2018 established staggered implementation deadlines for implementation of discrete groups of municipal divisions. These administrative orders carry with them the imprimatur of judicial mandate.

Missouri Case Law

We feel compelled to raise this question for several reasons. From a practical perspective, the burden placed on our cities' municipal divisions and staffs by the forced implementation of Show-Me Courts has led to confusion, uncertainty, delays in court operations, and additional costs. The clerks of the municipal divisions do not know if or when implementation can be effected, and everyone involved with the municipal divisions fear the possibility of some type of sanction or consequence should their court not meet the mandated deadline. But there are also legal implications.

First is what amounts to a usurpation of our clients' clearly established legislative authority by the CAC. Without contrary and supervening legal authority, our clients have the patent right under Section 476.056 RSMo. to determine for themselves whether and when to join in the statewide court automation effort. Neither the CAC nor this Court appears to have any authority to mandate that cities pass legislation to impose the court automation fee or contract for Show-Me Courts implementation. The CAC's actions appear not only in excess of its lawful authority; they appear to violate the separation of powers provision found in Article II, Section 1 of the Missouri Constitution.

Second is the liability risk created by the collection of an automation fee that is not authorized by Missouri law. As noted by the Missouri Court of Appeals as recently as Tuesday of this week, no item is taxable as a court cost unless a statute specifically so provides:

At common law costs as such in a criminal case were unknown. As a consequence it is the rule as well in criminal as in civil cases that the recovery and allowance of costs rests entirely on statutory provisions [and] no right to or liability for costs exists in the absence of statutory authorization. Such statutes are penal in their nature, and are to be strictly construed.

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State of Missouri v. Wright, Slip. Op. WD81666, p. 4-5 (W.D.Mo. Dec. 11, 2019), citing State v. D.S., 606 S.W.2d 653, 654 (Mo. banc 1980) and other germane cases.

Here, the noted statutes do not require municipal implementation of the court automation fee. But if a municipality imposes the fee pursuant to judicial fiat, the municipality, and the judge of its municipal division, are at risk of being named as defendants in an action—and more likely a class action—for the recovery of unauthorized court costs. Moreover, in such a case the municipal judge may lack immunity from suit, because collection would be an administrative act rather than an official judicial act. See Goodwin v. Circuit Court of St. Louis County, 729 F.2d 541, 549 (8th Cir. 1984). This type of lawsuit is happening now in our cities¹, and this will afford litigants yet another opportunity to attack the integrity of municipal courts at the cost of conducting the business of government.

Conclusion

As attorneys for municipal clients immediately affected by the mandate handed down by the CAC and this Court, we implore you take action. If we are wrong in this assessment, we would appreciate being corrected. If the CAC or the Court desires to seek an amendment from the Missouri legislature or a clarification from the Missouri Supreme Court, we are happy to help in the effort. If the CAC or the Court desires the scope of your collective authority to be determined through litigation, we will participate. But regardless of the path taken, we implore you to rescind the Court's implementation orders until such time as this question can be resolved.

Sincerely,



Paul Martin, MBE#34428



Howard Paperner, MBE#23488

¹ See, e.g., Green v. City of Maryland Heights, St. Louis County Cause No. 17SL-CC02837.