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The Municipal Court

The 1973 Regular Session of the Alabama Legislature proposed a Constitutional Amendment to restructure the state court system. The proposal was submitted to the electorate on December 18, 1973, and was ratified on December 27, 1973. The new Judicial Article became Amendment 328 to the Alabama Constitution. The 1975 Regular Session of the Alabama Legislature adopted Act 1205 to implement the new Judicial Article. This implementation legislation is found in Title 12 of the Alabama Code of 1975.

Major Constitutional Provisions

The Constitutional Amendment carried an effective date of December 27, 1977. Prior to this date, municipalities were required to decide whether to abolish their municipal courts and go under the newly formed district court system or to retain their municipal courts operating under procedures found in Chapter 14 of Title 12 of the Code. Section 6.21(c) of Amendment 328, Alabama Constitution, 1901. On December 27, 1977, most municipalities in Alabama established new municipal courts which, for the first time, had constitutional status. Section 6.01(a) of Amendment 328, Alabama Constitution, 1901.

Section 6.065 of Amendment 328 further provided that, after the effective date, all municipal judges were required to be licensed attorneys, the jurisdiction of municipal courts was limited to cases arising under municipal ordinances, municipal judges could serve more than one municipality at the same time, and municipalities could abolish or re-establish their municipal courts at any time in the future.

The District Court

Section 12-12-1(a) of the Alabama Code establishes the district court system. Section 12-12-32 provides that the district courts shall have exclusive jurisdiction to hold preliminary hearings for felonies; municipal courts have no felony jurisdiction.

District courts have exclusive jurisdiction over prosecutions for violations of a domestic violation protection order except those issued by a municipal court. Section 13A-6-142, Code of Alabama 1975.

Section 6.05 of Amendment 328 and Section 12-12-1 of the Code state that, if a municipality elects to go into the district court system, the district court is required to sit in all municipalities with a population of 1,000 or more which has no municipal court.

Section 12-14-18 states that when a municipal court is abolished as provided for by law, the court costs, fines and forfeitures collected by the district court clerk as a result of enforcement of ordinances of the municipality shall be remitted as follows: 90 percent of the fines and forfeitures and 10 percent of the costs exclusive of earmarked funds shall be paid to the municipality with the balance going to the state. For example, a fine of $100 with $10 costs would be payable as follows: $90 in fines and $1 in costs to the city and $10 in fines and $9 in costs to the state. Salaries of judges and court employees and other incidental costs will be paid by the state.

Section 12-14-7 requires the district court to take judicial notice of the ordinances of the municipality in which it sits.

Establishment of Municipal Courts

Section 12-14-1(a) of the Code of Alabama provides that on and after December 27, 1977, the municipal courts of this state will operate pursuant to the requirements set forth in Chapter 14 of Title 12, Code of Alabama 1975, unless a municipality adopts an ordinance abolishing its municipal court.

Section 12-14-17 provides that the municipal governing body of any municipality having a municipal court may at any time, by ordinance, abolish its municipal court. The jurisdiction of the now-abolished court will be transferred to the district court under the following conditions and effective dates:

a. Municipalities of 5,000 or less inhabitants—90 days after adoption of the ordinance abolishing the municipal court;

b. Municipalities of 5,001-50,000 population—12 months after adoption of the ordinance abolishing the municipal court; and

c. Municipalities of 50,000 or more population—two years after adoption of the ordinance abolishing the municipal court.

Section 12-14-19 states that any municipality which abolishes its municipal court may re-establish the court via ordinance, by following certain procedures set forth in the statute. The section further requires municipalities of 5,000 or less in population to give 90 days' notice of the re-establishment of its municipal court. Cities of 5,001 – 50,000 inhabitants are required to give 12 months' notice, and cities of 50,000 or more inhabitants must give five years' notice.

Section 12-14-2 requires a municipality to provide appropriate facilities and necessary support personnel for the municipal court. A municipality may provide probation services, clerks and municipal employees designated as magistrates. Pursuant to Section 12-14-50 of the Code of Alabama 1975, a municipal judge has the authority to supervise all court employees generally and pursuant to Rule 18 of the Alabama Rules of Judicial Administration, the municipal court clerk, not the city clerk, has the authority to supervise all court magistrates and other court personnel regarding administrative matters. AGO 2005-0098.

The Municipal Prosecutor

Pursuant to Section 12-14-2, Code of Alabama 1975, municipalities are required to furnish prosecutorial services in municipal courts and in appeals from such judgments and orders.

A duty rests upon the prosecuting attorney to prosecute in his county or district, on behalf of the people, all public offenses. Where a statute so provides, the prosecuting attorney must initiate proceedings for the prosecution of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed. But, as a general rule, if a prosecutor has possible cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring rests entirely in his discretion. In other words, the duty to prosecute is not absolute, but qualified, requiring of the prosecuting attorney only the exercise of a sound discretion, which permits him to refrain from prosecuting whenever he, in good faith and without corrupt motives or influences, thinks that a prosecution would not serve the best interests of the state, or that, under the circumstances, a conviction could not be had, or that the guilt of the accused is doubtful or not capable of adequate proof. 63A Am.Jur.2d Prosecuting Attorneys § 24 (1984).

Great care must be exercised by the courts not to usurp the functions of other departments of government. Section 43, Alabama Constitution, 1901. No branch of the government is so responsible for the autonomy of the several governmental units and branches as the judiciary. Accordingly, the Alabama Supreme Court has held that courts cannot and will not interfere with the discretion vested in other units or branches of government. *Finch v. State,* 124 So.2d 825 (Ala. 1960).

The municipal prosecutor must receive proper notice of a trial setting. The prosecution did not receive proper notice that a trial would occur and, thus, the prosecution's right to procedural due process was violated. It is generally understood that an opportunity for a hearing before a competent and impartial tribunal upon proper notice is one of the essential elements of procedural due process. The record did not indicate that the prosecution received notice that the trial court intended to conduct a trial on same date as a hearing on a motion for reconsideration, at which it would consider evidence pertaining to charges pending against the defendant, and the prosecutor was unaware that the matter was set for trial. *State v. Smith*, 23 So.3d 1172 (Ala.Crim.App. 2009).

A prosecutor is not subject to judicial supervision in determining what charges to bring and how to draft accusatory pleadings; he is protected from judicial oversight by the doctrine of separation of powers. *Piggly Wiggly No. 208, Inc. v. Dutton,* 601 So.2d 907 (Ala. 1992).

Expungement of Municipal Court Conviction

In certain circumstances, a person charged with a misdemeanor offense, traffic violation, or municipal ordinance violation in a municipal court may petition to have the records relating to that charge expunged. This petition will be filed in the circuit court of the county where the charges were filed, not in the municipal court. Section 15-27-1, Code of Alabama 1975. If the charge was brought by the municipal prosecutor, then the municipal prosecutor will have the opportunity to file an objection to the petition for expungement. Act 2025-427.

Indigent Defense

Section 12-14-9 requires all municipalities which retain municipal courts to provide indigent defense services as otherwise provided for by law. Chapter 12 of Title 15 of the Code is devoted entirely to the subject of indigent defense. Section 15-12-1 defines the terms "indigent defendant," "appointed counsel," "public defender" and "indigent defense system." Section 1512-2 allows a municipal governing body to select its system of indigent defense – a defender system, an appointed system, or a combination system. The indigent defense system selected is supervised by the presiding circuit judge.

Section 15-12-5 requires a municipal judge to inquire into the indigency of a defendant and to see that the defendant is properly represented. This section further sets the criteria for determining indigency.

A criminal defense attorney has a duty under the Sixth Amendment to inform a noncitizen client of the adverse immigration consequences of a guilty plea. A defendant's claim that his counsel provided ineffective assistance by failing to advise him that his guilty plea could result in deportation was subject to the "Strickland" ineffective assistance test, not only to the extent that he alleged affirmative bad advice, but also to the extent that he alleged omissions by counsel. *Padilla v. Kentucky*, 559 U.S. 356 (2010).

Section 12-19-250 requires the collection of $16 on every case tried by a municipal court. Section 12-19-251.1 of the Code requires the court clerk to pay the receipts from this court cost into the general fund of the municipality. The governing body of the municipality shall use and expend as much of those funds as is necessary to defray the costs of providing representation for indigent defendants in municipal court. The remainder of the funds collected shall be paid into the state treasury.

Probation Services

Section 12-14-13 provides that municipal courts may suspend execution of sentences and place defendants on probation for varying times not to exceed two years. A municipality may provide probation services in municipal court. Section 12-14-2, Code of Alabama. A municipality may enter into a contract with a private probation service to fulfill the needs of the municipal court. The municipal judge should carefully scrutinize the private probation service to make certain the probation fees are proper. Furthermore, the judge may assess a supervision fee upon each probationer as a condition of probation. This fee, however, cannot exceed the probationer's ability to pay. AGO 1998-0043. A municipal judge may authorize municipal probationers to pay restitution directly to the probation officers if the council has a contract with a private probation company and if the company agrees to be liable for the funds collected. AGO 2001-0257. A municipality may contract on a contingency fee basis with a private collection agency for the collection of delinquent court fines and costs. Municipal judges may impose an additional fine on individuals whose guilt has not yet been determined to help defray the costs of the contract, as long as the total fine does not exceed the statutory maximum in municipal court. *Wilkins v. Dan Haggerty & Associates, Inc.*, 672 So.2d 507 (Ala. 1995). Note: Municipalities considering entering into these arrangements should read this case in full.

Municipal Court Judges

Section 12-14-3 provides that a municipal court shall have the number of judges and shall hold court at the times and places specified by the municipal governing body.

Section 12-14-30 provides that municipal court judges shall be appointed by a majority vote of the members of the municipal governing body. The term of office for a full-time judge shall be four years and the term for a part-time judge shall be two years. If the municipality has more than one judge, the mayor shall designate a presiding judge who will have such additional powers and duties and be entitled to receive additional compensation as provided by ordinance.

Each judge must be a qualified elector of the state and licensed to practice law in this state. A judge must not be otherwise employed by the municipality during the term of office. Each municipal judge, before assuming office, shall take and sign the oath required by the Alabama Constitution and file a copy as set out in Section 12-14-30. No full-time municipal judge shall, while serving as judge, engage in the practice of law or receive any compensation for judicial service except the salary and allowance as authorized by the municipality.

Section 12-14-33 requires that the salary of the judge shall be fixed from time to time by the municipal governing body. However, a municipal governing body may not diminish the salary of a judge during the term of office. If a general raise is given to most or all employees of a municipality, the raise must be applied proportionately to the judge's salary. The municipal governing body may provide for retirement of municipal judges with such conditions, retirement benefits, and pensions for them and their dependents as it may prescribe.

The municipal judge is tasked with the general authority to supervise all municipal court employees. A municipality may provide for the appointment of court personnel by ordinance. If state law or the municipal ordinance does not address the appointing authority for court personnel, the mayor is the appointing authority. The magistrates are considered the chief officers of the municipal court administrative agency under the supervision of the judge. In 2018, the Attorney General's Office issued an opinion stating a city employee may not serve in a supervisory position in the municipal court system, nor may a single person serve as both city clerk and municipal court clerk. AGO 2018-0033. Where the mayor is not the appointing authority, the mayor may temporarily remove the court clerk/magistrate, for good cause, and then must report such removal and the reasons therefore to the council at its next regular meeting, at which point the council may sustain the act of removal by the mayor by a majority vote of those elected to the council. AGO 2009-0103.

Section 12-14-34 states that in the absence from the city, death, disability, or disqualification of a municipal judge, for any reason, the mayor of the municipality has the authority to designate a person, licensed to practice law in the state and a qualified elector of the state, not otherwise employed in any capacity by the municipality, to serve as acting municipal judge with all of the power and authority of a duly appointed municipal judge. No acting judge may serve for more than 30 successive days or a total of 60 days in any calendar year with certain exceptions.

Powers and Duties of the Court

Section 12-14-1 provides that, effective December 27, 1977, municipal court jurisdiction shall be limited to cases tried for violation of municipal ordinances or state offenses adopted as municipal ordinance violations. The municipal court does not have jurisdiction to hold preliminary hearings, and it cannot sit as an ex officio county court and try strictly state cases. All cases in municipal courts will be tried by a judge without a jury. Section 12-14-6, Code of Alabama 1975.

The municipal court has jurisdiction over traffic offenses committed by persons 16 years of age or older, including offenses committed on waterways within the municipality's jurisdiction. The juvenile court has jurisdiction over traffic violations committed by people under 16 years of age. A traffic citation or summons issued to a person under 16 years of age is sufficient to invoke the jurisdiction of the juvenile court. AGO 2001-027.

Section 12-14-5 states: "Municipal judges shall admit to bail any person charged with violation of any municipal ordinance by requiring an appearance bond, with good security, to be approved by the respective municipal judges or their designees, in an amount not to exceed $1,000, and may, in their discretion, admit to bail such person on a personal recognizance bond ..."

Section 12-14-12 authorizes municipal ordinances to impose penalties of fines, imprisonment and hard labor or one or more such penalties for violation of ordinances. The judgment may stipulate that, if the fines and costs are not paid within the time prescribed, the defendant shall work out the amount of the judgment under the direction of the municipal authority, allowing not less than $10 for each day of service.

Section 11-45-9, Code of Alabama 1975, states that fines shall not exceed $500 and that no sentence of imprisonment or hard labor shall exceed six months. However, there are exceptions. One is made for adopting DUI offenses found in Section 32-5A-191, Code of Alabama 1975, where such fine shall not exceed $5,000 and such sentence of imprisonment or hard labor shall not exceed one year.

Another exception is found in Section 11-45-9(d), Code of Alabama 1975, which provides that the maximum fine for every person either convicted of violating any of a list of enumerated misdemeanor offenses adopted as a municipal ordinance violation or adjudicated as a youthful offender shall be $1,000. The offenses covered by this provision are:

- Criminal mischief in the second or third degree (§§13A-7-22 and 13A-7-23)
- Theft of property in the third degree (§13A-8-5)
- Theft of lost property in the third degree (§13A-8-9)
- Theft of services in the third degree (§13A-8-10.3)
- Receiving stolen property in the third degree (§13A-8-19)
- Tampering with availability of gas, electricity or water (§13A-8-23)
- Possession of traffic sign; notification, destruction, defacement, etc., of traffic sign or traffic control device, defacement of public building or property (§13A-8-71 and §13A-8-72)
- Offenses against intellectual property (§13A-8-102)
- Theft by fraudulent leasing or rental, (§13A-8-140 through §13A-8-144)
- Identity Theft (§13A-8-192)
- Charitable fraud in the third degree (§13A-9-75)
- Illegal possession of food stamps (§13A-9-91)

The penalty imposed upon a corporation that violates a municipal ordinance shall consist of the fine only, plus costs of court. Section 11-45-9(e), Code of Alabama 1975.

Section 11-45-9(f), Code of Alabama 1975, provides that the enforcement of a Class A misdemeanor, including a domestic violence offense, the fine may not exceed five thousand dollars ($5,000) and the sentence of imprisonment may not exceed one year.

Section 12-14-11 states that, upon conviction, the court may, upon showing of inability to make immediate payment of fines and costs, accept defendant's bond with or without surety and with waiver of exemption as to personally payable within 90 days upon nonpayment of which execution may issue as upon judgments and state court.

Section 12-14-10 gives a municipal court the authority to continue cases to permit the payment of fines and costs; remit fines, costs and fees; impose intermittent sentences; establish work release programs; suspend driving privileges for such time and under such conditions as provided by law; and order hearings to determine competency to stand trial.

Further, the court may enter an order authorizing defendant to drive under conditions set forth in the order.

Section 12-14-13 provides that municipal courts may suspend execution of sentences and place defendants on probation for varying times not to exceed two years.

Section 11-45-9 provides that the penalty to be imposed upon a corporation shall consist of only the fine and costs. Section 12-14-15 allows the mayor to remit fines and commute sentences imposed by municipal judges. However, the mayor may not remit fines and costs due to the state. AGO 1995-0022.

Section 12-14-14 makes enactment of an ordinance necessary to establish court costs, which may not exceed $10. This section requires municipalities to assess an additional court cost of $12. Section 32-5-313 sets out an additional penalty to be collected upon conviction of a traffic infraction.

Section 12-19-180 assesses a criminal history processing fee of $30 upon every person convicted of a crime in municipal, district or circuit court, except traffic offenses not involving alcohol or controlled substances. Ten dollars of the fee is deposited into the Public Safety Automated Fingerprint Identification System Fund; $5 is deposited into the Court Automation Fund; $10 goes to the Criminal Justice Information System Automation Fund; and $5 goes to the Department of Forensic Sciences Forensic Services Fund.

Section 32-6-18 assesses an additional penalty of $50 on any person found guilty of driving a motor vehicle with a revoked, suspended or cancelled driver's license. This penalty is sent to the State Comptroller, who will distribute the money as follows: $25 to the Traffic Safety Trust Fund and $25 to the Peace Officers Standards and Training Commission Fund. If the court fails to assess this fee, the clerk shall automatically assess it upon conviction.

Act 2012-535, codified in Sections 12-19-310 through 12-19-315, Code of Alabama 1975, added an additional docket fee of $40 and in traffic cases (not including parking violations) an additional docket fee of $26. The fee is distributed according to the Act with the first $10 of each fee in municipal court to be retained by the presiding judge or the municipal court clerk for operation of the municipal court. Act 2012-535 also provides that, in addition to all other charges, costs, taxes, or fees levied by law on bail bonds, additional fees shall be imposed on every bail bond in all courts of this state. The fee shall not be assessed in traffic cases, except for enumerated serious traffic offenses. Where multiple charges arise out of the same incident, the bond fee pursuant to this section shall only be assessed on one charge. Where the charge is negotiating a worthless negotiable instrument, the fee shall not be assessed more than three times per year per person. These fees may not be waived or remitted by the court unless all docket fees associated with the case are waived or remitted.

Section 11-47-7.1 authorizes a municipal governing body to assess an additional court cost equal to the amount charged in district court for similar offenses. These funds must be used for the purchase of land for, and the construction, equipment, operation and maintenance of, the municipal jail or other correctional facilities or juvenile detention center or for a court complex. These costs cannot be waived unless all other costs are waived. Court costs assessed under this section may be used to defray the expense of housing municipal prisoners in municipal jails. AGO 1995-0179.

Section 12-14-31 gives a municipal judge the authority to administer oaths, compel the attendance of witnesses, compel the production of books and papers and punish by fine, not exceeding $50 and/or imprisonment not exceeding five days, any person found and judged to be in contempt of court. The section further states that the municipal judge and the district court will both have the jurisdiction to issue writs and other process and to approve and declare bonds forfeited. The municipal judge shall designate any other municipal officers who shall be authorized to approve appearance and appeal bonds.

Section 14-6-22 states that, "the court shall require a convicted defendant in a misdemeanor case to pay housing, maintenance and medical costs associated with his or her incarceration in a county or city jail..." Such costs shall not exceed $20 for each day that the defendant is incarcerated plus actual medical expenses incurred on behalf of the defendant. Such costs shall be taxed as costs of court and shall be in addition to any and all other costs of court.

At the time of sentencing, a defendant may petition the court for remission of the payment of these costs or any portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his or her immediate family, the court may remit all or part of the amount due in such cases.

The court may allow costs to be paid in a specified period of time or in specified installments. If this permission is not included in the order, the costs shall be payable immediately.

Sections 15-26-1 through 15-26-6 authorize the use of audio-visual communications systems at any criminal pre-trial, bench trial, or post-trial proceeding to allow the judge or magistrate to see and converse simultaneously with the defendant, his or her counsel or any other person. The audio-visual communication device must also operate so that the defendant and

his or her counsel, if any, can communicate privately. If any party objects to the use of the audio-visual communications system, an in-person hearing shall be held. Section 15-26-1(b), Code of Alabama 1975.

Section 11-103-1, Code of Alabama 1975, authorizes a municipal governing body to contract for the acceptance of credit cards to pay debts to the municipality, "including, but not limited to, taxes, license and registration fees, fines, and penalties." Presumably, if the council authorizes the court to accept credit card payments and enters into an agreement with a credit card company, those convicted in municipal court would be permitted to pay their fines and costs by credit card.

Court Costs and Fees

Municipalities in Alabama have authority to establish punishments for violations of municipal ordinances, not exceeding $500 and six months in jail. The fine and prison term for DUI offenses may be in excess of the above amounts. See, Section 32-5A-191, Code of Alabama 1975. Municipal court costs cannot exceed $10 per case. See, Sections 11-45-1, 11-45-9, and 12-14-14, Code of Alabama 1975. Section 12-14-14 requires municipalities to assess an additional court cost of $12. Of this amount, $5 is remitted to the state general fund; $5 is remitted to the municipal general fund where the court is located; and $2 is remitted to the Alabama Peace Officers Annuity and Benefit Fund. In addition, in all violations of municipal ordinances involving traffic offenses, there shall be assessed and collected as other costs and charges $8.50 to be disbursed to the State Driver's Fund. Section 32-5-313, Code of Alabama 1975, sets out an additional penalty to be collected upon conviction of a traffic infraction.

Section 12-19-172(d) provides that in addition to the fees now authorized by law, an additional fee of thirty dollars ($30) shall be assessed in municipal courts upon conviction of a municipal ordinance violation, excluding parking violations. The fees shall be distributed as follows: Nine dollars ($9) to the Fair Trial Tax Fund; two dollars ($2) to the municipal general fund; three dollars ($3) to the Advanced Technology and Data Exchange Fund; and sixteen dollars ($16) to the State General Fund. These fees shall be collected by the court clerk and remitted monthly in accordance with Rule 4 of the Alabama Rules of Judicial Administration. The two dollars ($2) which is distributed to the municipal general fund shall be used only for equipment, training, and certification of municipal court officials and employees and the fees shall not supplant existing funds designated by municipalities for equipment, education, and training of court personnel. Also, Section 12-19-180, Code of Alabama 1975, levies, in addition to all other costs, a criminal history processing fine of $30 upon each person convicted in municipal court, except for traffic cases which do not involve driving under the influence of alcohol or controlled substances and conservation cases and juvenile cases. Ten dollars of this fine is deposited into the state treasury to the credit of the Public Safety Automated Fingerprint Identification System Fund created in the state treasury and $5 is deposited into the Court Automation Fund, $10 to the Criminal Justice Information System Automation Fund and $5 to the Department of Forensic Sciences Forensic Services Fund.

In Section 12-19-310(b)(2), the municipal court can assess an additional $10 docket fee which shall be used exclusively for the operation of the municipal court.

Additional court costs and fees are authorized in Section 11-47-7.1, Code of Alabama 1975. This act authorizes the council to assess in addition to any court costs and fees now existing, individually or jointly by contract with one or more municipalities in the county, additional court costs and fees up to an amount not to exceed the court costs and fees in the district court of the county for a similar case on each case hereafter filed in any municipal court of the municipality or municipalities. The cost or fee shall not be waived by any court unless all other costs, fees, assessments, fines or charges associated with the case are waived. The costs and fees when collected shall be paid into a special municipal fund designated as the "corrections fund." The affected governing body shall allocate the funds exclusively for the operation and maintenance of the municipal jail or jails, other correctional facilities, if any, any juvenile detention center or any court complex. Additionally, any costs associated with the use of the state judicial information system approved for the Unified Judicial System by the Administrative Office of Courts may be paid from correction fund monies authorized in Section 11-47-7.1. Section 12-14-114, Code of Alabama 1975.

Notwithstanding any other provision of law, in municipal court, the maximum fine for every person either convicted for violating any misdemeanor adopted as a municipal ordinance violation or adjudicated as a youthful offender shall be one thousand dollars ($1,000). Section 11-45-9(d), Code of Alabama 1975. The offenses covered by this provision are: criminal mischief in the second and third degree (Sections 13A-7-22 and 13A-7-23); theft of property in the third degree (Section 13A-8-5); theft of lost property in the third degree (Section13A-8-9); theft of services in the third degree (Section 13A-810.3); theft of receiving stolen property in the third degree (Section 13A-8-19); tampering with availability of gas, electricity or water (Section 13A-8-23); intentionally knocking down, removing, defacing or altering a traffic sign (Section13A-8-72); identity theft (Section 13A-8-192); charitable fraud in the third degree (Section 13A-9-75); and illegal possession of food stamps (Section 13A-9-91).

Continuing Cases When Parties are Absent Due to Military Service

Act 2026-569 requires that a court case be continued when certain people are not able to attend court due to their service in the United States military or the National Guard. Section 12-1-25, Code of Alabama 1975.

In criminal cases, a continuance is appropriate when the absent person is the defendant, the defendant's attorney, the victim of the alleged criminal act or the victim's representative, the prosecutor, or a material and necessary witness. Section 12-1-26, Code of Alabama 1975.

In civil cases, a continuance is appropriate when any party, any party's counsel of record, or any material and necessary witness is absent due to military or National Guard service.

Limitations on Traffic Fees

On July 1, 2022, Section 11-40-26, Code of Alabama 1975, became effective to limit the amount of money a municipality may retain from fines and penalties generated from traffic tickets. Pursuant to Section 11-40-26, only ten (10) percent of a municipality's general operating budget may come from fines and penalties retained by a municipality from traffic tickets. Any remaining amount in excess of the 10 percent threshold shall be transferred to the Department of Finance for allocation, in equal amounts, to the Crime Victim's Compensation Fund (Section 15-23-16, Code of Alabama 1975) and the Fair Trial Tax Fund (Section 12-19-251, Code of Alabama 1975). Class 1 municipalities are excluded from this section. Section 1140-26(b), Code of Alabama 1975.

Warrants

The authority of a municipal judge to issue arrest and search warrants is somewhat broader than the power of the court to try cases. Municipal judges are authorized to issue arrest and search warrants for municipal ordinance violations returnable to the municipal court and for violations of state law which occurred within the corporate limits and police jurisdiction of the municipality returnable to any state court. Section 12-14-32, Code of Alabama 1975.

Warrants issued for state crimes must be returned to a state court. However, in *Palmer v. State*, 426 So.2d 950 (Ala. Crim. App. 1983), a search warrant that was properly issued and served was improperly returned to the municipal judge who issued the warrant. The Alabama Court of Criminal Appeals held that this did not invalidate the warrant because the return was merely a ministerial act and the case could be transferred to the proper state court. See also, *Merton v. State*, 500 So.2d 1301 (Ala. Crim. App. 1986).

In *Hicks v. State*, 437 So.2d 1344 (Ala. Crim. App. 1982), a municipal judge in Birmingham issued a search warrant directed to the chief of police or any police officer of the City of Birmingham. The search was conducted solely by municipal police officers without the assistance of the sheriff or any of his deputies. The defendant challenged his conviction, arguing that because there is no code section specifically authorizing municipal police officers to execute warrants, the warrant was invalid.

The Court of Criminal Appeals disagreed. The court cited Section 12-14-4, Code of Alabama 1975, which states, "The sheriffs of the counties and law enforcement officers of the municipalities of the state of Alabama shall obey the municipal judge in faithfully executing warrants and processes committed to them for service."

The Alabama Supreme Court affirmed. *Ex parte Hicks*, 437 So.2d 1346 (Ala. 1983). The court stated that city courts have territorial jurisdiction over the city and police jurisdictions. The court held that Sections 12-14-32 and 12-14-4 do not violate constitutional provisions which establish the jurisdiction of a municipal court. Instead, these sections merely authorize the exercise of territorial jurisdiction in the execution of warrants. Therefore, the court ruled that municipal judges have the authority to issue warrants for felony violations within the municipality.

In an opinion dated November 18, 1980, to Hon. Grady Rose, Sheriff of Lawrence County, the Attorney General opined that municipal judges may issue search warrants for the seizure of evidence from any person or place in the county. Section 12-14-31 gives municipal judges powers which are co-extensive with the district court for the issuance of warrants and other process. Since district courts have county-wide jurisdiction, the Attorney General opined that for the issuance of warrants, municipal courts retain a similar countywide jurisdiction.

However, in *State v. Brown*, 591 So.2d 113 (Ala. Crim. App. 1991), the Alabama Court of Criminal Appeals held that municipal judges do not have the jurisdiction to issue search warrants for violations of state law outside the police jurisdiction. The judge may still issue warrants for both ordinance violations and state violations but only within the police jurisdiction and the municipal limits.

The power of municipal magistrates is probably even more limited. Rule 18, Alabama Rules of Judicial Administration, states that municipal magistrates may issue arrest warrants for municipal ordinance violations. Because Section 12-14-32 specifically says that the municipal judge has the power to issue warrants returnable to state court, it seems that only the municipal judge and not the magistrate has this authority.

Pre-Trial Diversion Programs

During the 2013 legislative session, the legislature passed two acts related to pre-trial diversion programs. These acts, Act 2013-353 and 2013-361, provide enabling authority for the creation of pre-trial diversion programs in state as well as municipal courts in Alabama.

Act 2013-353, codified in Sections 12-14-90 through 12-14-92 Code of Alabama 1975, authorizes the governing body of any municipality to establish a discretionary pretrial diversion program and sets basic operating standards for the program.

The governing body of any municipality may establish or abolish a pretrial diversion program for that municipality and may provide for the assessment and collection of fees for the administration of such program. Any pretrial diversion program established pursuant to this article must be under the supervision of the presiding judge for the municipality pursuant to any rules and regulations established by the municipal governing body. The presiding judge, with approval of the municipal governing body and the municipal prosecutor, may contract with any agency, person, or business entity for any service necessary to accomplish the purpose of this article. The presiding municipal judge, acting in consultation with the municipal prosecutor, is given the authority to establish all rules and terms necessary for the implementation of a pretrial diversion program. Section 12-14-90, Code of Alabama 1975.

A person charged with a criminal offense under the jurisdiction of the municipal court in a municipality that has established a pretrial diversion program may apply to the court for admittance to the program. Upon receipt of the application and recommendation of the municipal prosecutor, the judge shall determine whether to grant the individual admittance to the program. Upon admittance to the program, the individual shall be required to enter a plea of guilty at which time the case shall be placed in an administrative docket until the offender has completed all requirements of the pretrial diversion program. Imposition of the sentence is deferred until the offender either completes the pretrial diversion program or is terminated from the program. In the event the offender does not satisfactorily complete the program, the court shall impose an appropriate sentence in the same manner as with any guilty plea. Upon successful completion of the program, the court shall dismiss the case pursuant to the rules established by the municipality. Section 12-14-91, Code of Alabama 1975.

A holder of a commercial driver's license, an operator of a commercial motor vehicle, or a commercial driver learner permit holder who is charged with a violation of a traffic law in Alabama shall not be eligible for a pretrial diversion program. Section 12-14-91(f), Code of Alabama 1975.

Absent wantonness, gross negligence, or intentional misconduct, the municipality, or its officers or employees, shall have no liability, criminal or civil, for the conduct of any offender while participating in a pretrial diversion or of any service provider or its agents that are contracted to or who provide services to the pretrial diversion program. Further, the municipality, or its officers or employees, shall have no liability, criminal or civil, for any injury or harm to the offender while the offender is a participant in any pretrial diversion program administered pursuant to this article. The municipal prosecutor may require written agreed upon waivers of liability as a prerequisite for admittance into the pretrial diversion program. Section 12-1491, Code of Alabama 1975.

If, on May 24, 2013, a municipal pretrial diversion program, or an equivalent, had been established by local law, the municipal governing body of the municipality governed by the local law may choose to come under the provisions of this article or continue under the provisions of the local law. Section 12-14-92, Code of Alabama 1975. Act 2013 -361 specifically provides for the creation of a pre-trial diversion database. This provision has been codified as Section 12-17-226.17, Code of Alabama 1975.

Pursuant to Section 12-17-226.17, every "existing or newly created pretrial diversion program" must collect and upload certain data regarding individuals who are admitted into the pretrial diversion program.

Section 12-17-226.17 also requires that the municipality pay a one-time fee of $7.00 per offender for the creation, maintenance, and administration of the pretrial diversion offender database. This should be remitted to the Office of Prosecution Services in Montgomery within 30 days of entry of an applicant into the Pretrial Diversion Program. This fee may be passed on to the offender and is the only fee required.

The purpose of the database is to allow prosecutors and courts the ability to determine whether an offender has previously been admitted into another pretrial diversion program. This information is critical to help prosecutors and judges make informed decisions about whether an offender should be admitted into a pretrial diversion program. The Pretrial Diversion Database can be accessed at *https://www.opspretrial.alabama.gov/*.

Appeals

Section 12-14-70, Code of Alabama 1975, as amended, allows a defendant to appeal in any case, within 14 days from the entry of judgment, by filing a notice of appeal and giving bond, with or without surety approved, by the court or the clerk in the amount of not more than twice the amount of the fine, or $1,000 where no fine is stipulated, and costs as fixed by

the court. A municipal court may waive the appearance bond upon a satisfactory showing that the defendant is indigent or otherwise unable to provide a surety bond. If the appeal bond is waived, a defendant sentenced to imprisonment shall not be released from custody but may obtain release at any time by filing a bond approved by the municipal court. If the defendant is not released, the prosecutor shall notify the circuit clerk, and the case shall be set for trial at the earliest practical time.

The rule requiring a defendant to reserve a particular issue on appeal is not to be applied to appeals from a municipal court or a district court judgment to the circuit court for a trial de novo. A defendant is not required to file a motion to withdraw his guilty plea before he can proceed to the circuit court for a trial de novo. Application of the rule would limit the statutory authority of the circuit court to conduct a de novo review, and, thus, would affect the jurisdiction of the circuit court. *Ex parte Sorsby*, 12 So.3d 139 (Ala. 2007). A defendant who escapes after conviction, but before sentencing, and is later returned to custody before filing a notice of appeal, would not have his or her appeal automatically dismissed, but the defendant may forfeit his statutory right to appeal his convictions. *Dubose v. State*, 47 So.3d 831 (Ala.Crim.App. 2009).

When an appeal has been taken, the municipality shall, within 15 days, file the notice and other documents in the court to which the appeal is taken. If the municipality fails to meet this deadline, the municipality shall be deemed to have abandoned the prosecution. The defendant shall be discharged and the bond shall be automatically terminated.

Upon receipt of payment of fines and costs upon appeals, the clerk of the circuit court shall, within 30 days, pay 90 percent of the fines and forfeitures and 10 percent of the costs to the treasurer of the municipality. Other provisions relating to the appeals process are set out in Section 12-14-70, as amended.

Reports by Municipal Courts

Section 12-14-16, Code of Alabama 1975, requires municipalities to report on the proceedings of their municipal courts as required by law or rule. Section 12-1-19, Code of Alabama 1975, requires court clerks to file monthly reports of a form approved by the Chief Examiner of Public Accounts showing by totals the amount of fines and fees accrued by the municipality. Reports shall be furnished to the State Comptroller, county commission, and the office of the clerk. Commencing January 1, 2023, any clerk responsible for preparing the monthly report shall file the report electronically. Section 12-14-112, Code of Alabama 1975.

The personnel designated by the judge or judges of the municipal court for the accounting of uniform traffic tickets or complaints and magistrates shall be considered as officials of the municipal court administrative agency. Such officials shall be vested with judicial power reasonably incident to the accomplishment of the purposes and responsibilities of the administrative agency. Section 12-14-50, Code of Alabama 1975.

Section 12-14-111, Code of Alabama 1975, requires the Administrative Office of Courts to annually collect the following data from each municipal court:

1. The total court cases for the fiscal year, established by the court management system.
2. The total amount of municipal revenue collected by the municipal court and the amount dispersed to each receiving entity.
3. The total expenditures by the municipal court, including annual salaries for the judge or judges, court clerk, and magistrate or magistrates.
4. The total annual operating budget for the municipal court.
5. The total annual operating budget for the municipality.

No later than December 1 of each year, the municipal court clerk shall provide and certify the data required to the Administrative Office of Courts. Section 12-14-111, Code of Alabama 1975. No later than six (6) months after the end of each fiscal year, the Administrative Office of Courts shall submit to the Legislature, the Attorney General, and the Governor, a written report summarizing the data and an aggregation of the monthly reports required by Section 12-1-19, collected from municipal courts. The report, as well as individual municipal data and a list of any municipal court that failed to respond within sixty (60) days of the due date, shall be made available on the Administrative Office of Court's website. Section 1214-111(c), Code of Alabama 1975.

Any municipal court that fails to submit the data required in this article within sixty (60) days of the due date shall forfeit any fees and costs collected by the court that would otherwise remain with the municipal court or municipality until the data is submitted. Any forfeited fees and costs shall be transferred to the state Comptroller for distribution to the Administrative Office of Courts. Section 12-14-113, Code of Alabama 1975. Any municipal court that fails to submit the data required by this article within sixty (60) days of the due date, at the request of the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Attorney General, or the Governor, shall be subject to a financial audit under generally accepted government auditing standards of municipal records related to revenue collected through fines and fees. The audit shall be performed by the Department of Examiners of Public Accounts or by an independent certified public accountant selected by

the municipality. Section 12-14-113(b), Code of Alabama 1975. The municipality may use revenue from fines and fees to pay the costs of compiling and reporting data. Section 12-14-113(c), Code of Alabama 1975.

Section 12-14-114, Code of Alabama 1975, requires that by January 1, 2025, all municipal courts shall use one of the following:

a. The state judicial information system approved for the Unified Judicial System by the Administrative Office of Courts.

b. A court information system in which the court software provider is properly integrated with the state judicial information system for reporting purposes. The court information system shall conform to adequate technical parameters for reporting case management and financial information data to the Administrative Office of Courts. Data shall be accepted by the Administrative Office of Courts at no cost to a municipality.

Any costs associated with the use of the state judicial information system approved for the Unified Judicial System by the Administrative Office of Courts may be paid from correction fund monies authorized in Section 11-47-7.1. The Administrative Office of Courts shall provide training and resources to municipal courts, including municipal judges, court clerks, and magistrates, on the use of the state judicial information system approved for the Unified Judicial System. Section 12-14-114, Code of Alabama 1975.

Warrant Clerks

Within the District Court Magistrates' Agency, provision has been made for a class of magistrates to issue warrants to be called warrant clerks. These warrant clerks are expressly authorized to issue arrest warrants and if licensed to practice law, search warrants returnable to the appropriate district or circuit court. See, Section 12-17-251 of the Code and Rule 18-I(A)(2) of the Alabama Rules of Judicial Administration.

These warrant clerks are appointed by the Administrative Director of Courts and, although a part of the District Court Magistrates' Agency, may be municipal officers or employees of the municipal court. The Alabama Supreme Court has, by rule, provided that the city clerk of all municipalities of more than 1,000 in population may be appointed as a warrant clerk by the Administrative Director of Courts. Rule 18-I(A)(1)(d), Alabama Rules of Judicial Administration. Warrants issued by these warrant clerks are returnable only to state courts.

Municipal Court Magistrates

Section 6.01(b) of Amendment 328 to the Alabama Constitution provides for the creation of judicial officers with authority to issue warrants. In effect, the Constitutional provision mandated legislation granting these officers the powers and responsibilities necessary to carry out this function.

The state Legislature fulfilled this mandate by enacting provisions now codified at Sections 12-14-50 through 12-14-52 of the Code. These sections provide for the creation of two separate magistrate agencies — one for the district court and one for the municipal court.

Section 12-14-51(b) of the Code of Alabama 1975 states that the Supreme Court of Alabama may provide for the appointment of magistrates by class or position. The Court has exercised this power by adopting Rule 18 of the Alabama Rules of Judicial Administration.

Judicial Rule of Administration 18-I(B)(1) states that the following individuals shall serve as magistrates for the municipal court:

- All clerks of municipal courts;
- Any person within the office of the municipal court clerk so designated by the Administrative Director of Courts upon recommendation of the clerk of the municipal court; and
- Any person designated by the Administrative Director of Courts upon the recommendation of the municipal judge.

Appointments of all municipal court magistrates are made by the Administrative Director of Courts in Montgomery. Inquiries or nominations should be directed to the Administrative Office of Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741. The AOC has a toll-free telephone number: 1-800-392-8077. The fax number is (334) 242-2099.

Magistrates Must be "Neutral and Detached"

Prior to submitting nominations to the Administrative Director of Courts for appointment as a magistrate, the person making the recommendation should ensure that the nominee is "neutral and detached" from the law enforcement function.

As early as 1948, the United States Supreme Court determined that persons issuing warrants must be sufficiently removed from law enforcement activities to ensure that warrants issued meet constitutional standards. In that 1948 decision, the court held that a warrant may not be issued by a police officer or a government law enforcement agent. *Johnston v. U. S.*, 333 U.S. 10 (1948).

In 1958, the U. S. Supreme Court again ruled that a finding of probable cause must be determined by someone other than a law enforcement officer engaged "in the often competitive enterprise of ferreting out crime." *Giordenello v. U.S.,* 357 U.S. 480, 486 (1958). Again, the U.S. Supreme Court reiterated its position in 1963 when it held in another case:

> "The arrest warrant procedure must insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police to assess the weight and credibility of the information which the complaining officer adduces as probable cause." *Wong Sun v. U S.*, 371 U.S. 471 (1963).

The question arose again in 1972 when arrest warrants issued by a municipal court clerk came under attack. In *Shadwich v. Tampa,* 407 U.S. 345 (1972), the Court held that magistrates issuing warrants must be "severed from and disengaged from activities of law enforcement in order to be neutral and detached." In establishing a standard for determining neutrality, the court determined that "whatever else neutrality and detachment might entail, it is clear that it requires severance and disengagement from activities of law enforcement." In finding the Tampa magistrate competent to issue warrants, the court looked to:

- The possibility of affiliation with prosecution and police;
- Assignment to police; and
- Connection with law enforcement activities.

This appears to be the test of "neutrality and detachment." These elements appear to lend themselves to inquiries regarding employment, duties, source of compensation and administrative and supervisory control of candidates for the position of magistrate.

In some instances, the only person available to issue warrants and perform the other duties required of a magistrate are related to law enforcement activities. However, attention should be called to a case arising out of New Hampshire in which the U. S. Supreme Court rejected the argument by the state that the practicalities of the situation in question in New Hampshire justified the issuance of warrants by a state officer closely associated with the prosecution. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

These cases should be reviewed before submitting recommendations to the Administrative Office of Courts for appointment as municipal court magistrates. For more information on this subject, see the article entitled "Magistrates and the Duty of Impartiality" elsewhere in this publication.

Powers and Duties of Municipal Court Magistrates

Section 12-14-50, Code of Alabama 1975, provides that magistrates shall operate under the supervision of the municipal court and are empowered to provide expeditious service in connection with the administrative adjudication of ordinance violations and the issuance of arrest warrants. The Legislature specifically prohibited municipal magistrates from issuing search warrants.

Rule of Judicial Administration 18-I(B)(2) specifically provides that the power of magistrates shall be limited to:

1. Issuance of arrest warrants for municipal ordinance violations;
2. Setting bail in accordance with the discretionary bail schedule and approving property, cash, and professional surety bonds upon a municipal judge's approval;
3. Releasing defendants charged with municipal ordinance violations on their personal recognizance;
4. Receiving pleas of guilt in municipal ordinance cases where a schedule of fines has been prescribed pursuant to Rule 20, Alabama Rules of Judicial Administration;
5. Accountability to the municipal court for each Uniform Traffic Ticket and Complaint ("UTTC") issued, moneys received as the result of the issuance of UTTCs, and records of UTTC offenses;
6. Accepting and screening affidavits of substantial hardship upon a municipal judge's approval and, if authorized by court order, assigning attorneys to represent indigents on a rotating basis from a list approved by the court;
7. Conducting arraignments and setting nonguilty pleas for trial, upon a municipal judge's approval;
8. Opening court and calling the docket, upon a municipal judge's approval;
9. Granting continuances in municipal ordinance violation cases, upon a municipal judge's approval;
10. Dismissing violations based on no driver's license, pursuant to § 32-6-9, Ala. Code 1975, where the defendant shows proof that he or she had a valid driver's license at the time the citation was written;

11. Dismissing mandatory liability insurance violations pursuant to § 32-7A-20, Ala. Code 1975, where the defendant has produced satisfactory evidence that at the time of the citation the motor vehicle was covered by a liability insurance policy in accordance with § 32-7A-4, Ala. Code 1975;
12. Dismissing equipment violations where a municipal ordinance allows and where the law enforcement officer signs the UTTC verifying that the equipment has been replaced; and
13. Accepting payment for municipal parking tickets pursuant to Rule 19(B), Alabama Rules of Judicial Administration, and rendering administrative decisions regarding such tickets, in the event a dispute arises.

Also, pursuant to Rule 20(A), Alabama Rules of Judicial Administration, the Supreme Court has suggested a fine schedule for certain traffic infractions with the proviso that a municipality may, by ordinance, expand this schedule to include other minor ordinance violations. Rule 20(C), Alabama Rules of Judicial Administration.

Arrest warrants issued by municipal court magistrates are returnable only to the municipal court.

Summons and Complaint

Section 11-45-9.1, Code of Alabama 1975, allows municipalities, by ordinance, to authorize any "law enforcement officer", in lieu of a custodial arrest, to issue a summons and complaint to any person charged with violating any municipal ordinance, misdemeanor or violation, except those listed below, within the corporate limits or the police jurisdiction of the municipality. Section 11-45-9.1 enumerates a specific procedure which must be followed in order to adopt such an ordinance.

A municipality may not authorize a law enforcement officer to issue a summons and complaint in lieu of arrest under the following circumstances:

The individual is charged with committing a crime involving violence, threat of violence, or domestic violence as defined under Article 7 of Chapter 6, Title 13A.

The individual is charged with the use or possession of alcohol or a controlled substance and, in the opinion of the law enforcement officer, a risk to public safety. This does not apply to any municipality who has an ordinance that was in effect on May 1, 2022, that allowed a citation in lieu of arrest for the use or possession of alcohol or a controlled substance.

1. A victim of the crime is a minor.
2. The individual is charged with a violation of Section 32-5A-191
3. The individual is charged with a crime that would require restitution to the victim.
4. The individual is charged with identity theft, as provided under Section 13A-8-192.
5. The individual is charged with the crime of theft of property in the fourth degree, as defined under Section 13A-8-5.
6. The individual is charged with fleeing or attempting to elude a law enforcement officer under Section 13A-10-52.
7. The individual is charged with a crime involving cruelty to or abuse of an animal, including a violation of 13A-11-241.
8. The individual is charged with a violation of carrying a pistol without a permit, as provided under Section 13A-11-73.
9. The individual is charged with a crime that is sexual in nature. Section 11-45-9.1(a)(2), Code of Alabama 1975.

When a individual is charged with an offense subject to the summons and complaint procedure, the defendant may elect to appear before the municipal court or the district court magistrate, depending on whether the municipal court has been abolished and enter a plea of guilt and pay the fine and court costs.

Alternatively, the defendant may post bail and, upon a plea of not guilty, will be tried as provided by law. When a person wishes to be heard in court, the court clerk or magistrate shall receive and issue receipts for cash bail, enter the time of their appearance on the court docket and notify the arresting officer and witnesses to be present.

If the defendant fails to appear as specified in the summons and complaint, the judge or magistrate having jurisdiction of the offense may issue a warrant for his or her arrest. Any person who willfully violates a written promise or bond to appear pursuant to Section 11-45-9.1, Code of Alabama 1975, is guilty of the separate misdemeanor offense of failure to appear.

If a defendant fails to appear on a parking ticket, a municipal judge may issue a supplemental summons advising that the defendant will be subject to arrest for contempt for again failing to appear. If the defendant fails to appear on the supplemental summons the municipal judge may issue a warrant for the arrest of the defendant, and if found in contempt, the defendant may be fined and placed in jail for up to five days. If the defendant appears and a fine is imposed, but the defendant fails to pay, a municipal judge may issue a warrant. The municipal judge may place the defendant in jail until the fine is paid (or no longer than one day for each $15 of the fine), he may order the defendant's employer to withhold payments from wages to pay fines, or he may reduce the fine. A municipality may bring a civil action to recover a fine on an adjudicated ticket

subject to the twenty-year statute of limitations for an action on a judgment. A municipality may not impose a late fee. AGO 2007-0103. The remedies available to the municipal court for the failure to appear or pay the fine on a parking ticket, are equally available to the district court in municipalities without municipal courts, except that contempt may be punished by the district judge with a fine of up to $100 and a jail sentence of up to five days. AGO 2010-0077.

Selected Attorney General's Opinions and Court Decisions on Municipal Courts

- The requirement that municipal courts try cases without a jury is constitutional. *Holderfield v. Birmingham*, 380 So.2d 990 (Ala. Crim. App. 1979).
- A majority vote of the members of the municipal governing body is required to appoint a municipal judge. *Murphy v. Mobile,* 504 So.2d 243 (Ala. 1987).
- The term of a municipal judge is not automatically renewed. The municipal judge merely holds office until the governing body can appoint a new judge. *Prichard v. Smith*, 477 So.2d 375 (Ala. 1985).
- Municipal court prosecutors may represent criminal defendants in other courts. AGO to F.D. Gray, November 14, 1977.
- A full-time district attorney may not serve as a municipal judge. AGO 1984-0286 (to Ronald Thompson, May 24, 1984).
- The brother of a councilmember may be appointed as defense attorney in municipal court. AGO 1985-0124 (to Ernest McCall, December 10, 1984).
- An attorney for an incorporated utility board may be appointed municipal judge if no municipal funds are given to the utility board. Members of a law firm cannot serve as city attorney and municipal judge if earnings of either position become firm, rather than individual, revenues. AGO 1988-0381.
- Municipal judges file their oaths of office with the secretary of state, the Administrative Office of Courts and the municipal clerk. Municipal court magistrates file their oaths with the probate judge if the municipality is located in one county, and with the secretary of state if the municipality is located in more than one county. AGO 1988-0397.
- A municipal court clerk may issue failure to appear warrants in cases which have been on the docket for a year or more. AGO 1979-0051 (to Mrs. Betty Ayers, February 5, 1979).
- The municipal judge does not take orders from the mayor. AGO to Herman Smith, March 28, 1973.
- A person who is sentenced by the municipal judge but fails to pay the assessed fine within the time allowed by the court may be required to work out the fine at hard labor, provided the term of hard labor and any sentence rendered in addition to the fine do not exceed the maximum hard labor sentence. AGO to Phillip Green, August 2, 1976.
- The mayor may not dismiss cases in municipal court. AGO dated August 8, 1974.
- The mayor may not order the dismissal of an ordinance violation before trial. Following conviction, however, the mayor may remit municipal fines and costs, commute sentences, and grant probation. AGO to Arthur Lee Taylor, June 17, 1977.
- A municipal judge may be included in a municipality's health insurance plan AGO to Johnny Mott, January 19, 1978.
- A municipal judge may serve as judge of more than one municipality. AGO to J.H. Summerlin, November 23, 1977.
- An assistant district attorney may serve as municipal judge only if he or she has no contact as assistant district attorney with defendants in municipal court where he or she sits as a judge. AGO 1980-0131 (to Fitzhugh A. Burttram, December 14, 1979); AGO 1985-0084 (to John C. Jay, November 20, 1984).
- A municipal resolution which precludes the municipal judge from receiving a general increase in compensation paid to other municipal employees is invalid. AGO 1980-0220 (to James S. Garrett, February 13, 1980).
- A municipal council may not establish a work release program. The municipal judge may do so, however. AGO 1980-0323 (to John Hodnett, Jr., April 8, 1980).
- A councilmember has no authority to parole municipal prisoners. AGO 1982-0157 (to Frankie Fields Smith, January 26, 1982).
- A municipal judge cannot be fired before the expiration of his or her term. AGO 1982-0214 (to William J. Underwood, February 24, 1982).
- A district attorney may prosecute criminal cases in municipal courts in his or her district, but is under no obligation to do so. AGO 1982-0454 (to Roy L. Johnson, July 16, 1982).

- A police officer may not act as prosecutor in municipal court. AGO 1983-0336 (to H.A. Alexander, May 30, 1983).
- The municipal judge's term begins at the time of appointment. The term does not expire until a successor is named. AGO 1984-0065 (to Hugh H. Williamson, November 17, 1983).
- Section 14-6-22, Code of Alabama 1975, requiring a court to assess costs of incarceration against non-indigent misdemeanor violators, applies to municipal courts. AGO 1984-1064 (to Guy Gunter, III, February 17, 1984).
- Municipal courts may issue warrants for failure to appear pursuant to Section 15-11-5 of the Code. The judge may consider the failure to appear when setting bond. AGO 1985-0146 (to George C. Simpson, January 3, 1985).
- Municipal court records as to the name of the defendant, the charge and the fine are public. However, the court may reasonably limit access. AGO 1987-0303.
- Once an order of the municipal court is appealed to the circuit court, the municipal court loses jurisdiction and cannot modify its order. AGO 1988-0098.
- Municipal prisoners housed in the county jail may be placed on work release by a municipal parole board pursuant to Section 15-22-70 of the Code, or by the municipal judge pursuant to Section 12-14-20. AGO 1986-0232.
- The municipal court does not have the power to condemn unclaimed weapons possessed by the police department. The municipality must follow the procedure set out in Section 11-47-116, Code of Alabama 1975. AGO 1991-0036.
- Municipal court judges and magistrates have no jurisdiction to conduct initial appearance hearings for individuals charged with felonies. AGO 1991-0329.
- A municipal magistrate may authenticate the municipal code. *Ex parte Dothan*, 607 So.2d 1283 (Ala. 1992).
- A new complaint is not necessary to confer jurisdiction on the circuit court when a DUI conviction is appealed from municipal court. *Ex parte Rainbow City*, 623 So.2d 347 (Ala. 1993).
- Municipal courts must appoint interpreters to assist non-English-speaking defendants who cannot understand the charges against them. AGO 1993-0273.
- A municipal clerk/magistrate may issue arrest warrants for municipal probation violators. *Fletcher v. State*, 621 So.2d 1010 (Ala. Crim. App. 1993).
- The district attorney is responsible for the prosecution of municipal ordinance cases when the municipal court has been abolished and its cases have been transferred to the district court. AGO 1994-0028.
- On appeal from municipal court to circuit court, if the municipal court clerk fails to timely transmit the record to the clerk of the circuit court, the municipality is deemed to have abandoned the prosecution. *Ex parte Fort Payne*, 639 So.2d 1347 (Ala. 1994).
- A municipal court judge may dismiss the charges against a defendant without prejudice conditioned on the payment of court costs. AGO 1992-0257.
- A municipal court magistrate may subpoena telephone records to corroborate a complainant's testimony in order to find probable cause to issue an arrest warrant in a telephone harassment case. AGO 1995-0038.
- A municipal court may not conditionally sentence an indigent prisoner who was not appointed an attorney to imprisonment for being unable to pay a fine and court costs. *Williams v. Phenix City,* 659 So.2d 1004 (Ala. Crim. App. 1995).
- No crime victim's assessment is authorized for municipal ordinance violations, regardless of the court of conviction. AGO 1996-0097.
- Section 15-23-60, et seq., Code of Alabama 1975, (the Crime Victims Rights Act) does not apply in municipal courts. AGO 1996-0104.
- A circuit court may impose a harsher sentence on appeal than was imposed by the municipal court. *Holden v. Florence,* 665 So.2d 1004 (Ala. Crim. App. 1995).
- Administrative costs collected in municipal court pursuant to Acts 93-323, 95-733 and 95-784 should be deposited into the municipal general fund. AGO 1996-0196.
- A municipality may not refund past violators fines and costs paid for parking violations when the municipal council lowers the fine due for the violation. AGO 1996-0127.

- In *Daugherty v. Silverhill*, 672 So.2d 813 (Ala. Crim. App. 1995), the Alabama Court of Criminal Appeals held that where a municipality has abolished its court and the district court is acting as the municipal court, the district court may take judicial notice of that municipality's ordinances.
- Final forfeiture cases which are not docketed as separate cases are not subject to the Fair Trial Tax or the Cost Assessment Fee. The DNA database fee must be collected in bond forfeiture proceedings whether or not the case is separately docketed. When a final forfeiture on a cash bond is entered, the clerk should determine which court costs and fees are applicable under the circumstances. Court costs should be collected in a bond forfeiture proceeding at the time the bond is forfeited, resulting in a final disposition of the case. Court costs are to be assessed in addition to the forfeited bond. AGO 1996-0219.
- The United States Supreme Court has held that the Sixth Amendment right to trial by jury does not apply to defendants charged with petty offenses, such as those carrying a maximum sentence of six months or less. *Lewis v. United States*, 518 U.S. 322 (U.S. 1996).
- For purposes of Section 11-47-7.1, Code of Alabama 1975, the authorized uses of the increase in court costs would include expenses such as salaries, office machines and repairs. AGO 1996-0236.
- Pursuant to Section 11-47-7.1, Code of Alabama 1975, a municipality may increase its court costs to an amount not exceeding court costs in district court for similar cases. These funds may be appropriated to a county to pay for housing municipal prisoners. AGO 1996-0243.
- In *Miller v. Dothan*, 675 So.2d 509 (Ala. Crim. App. 1995), the Alabama Court of Criminal Appeals held that probation could not be extended where more than two years had passed from the date of the conviction of a misdemeanor offense.
- In *Cox v. Atmore*, 677 So.2d 818 (Ala. Civ. App. 1996), the Alabama Court of Civil Appeals held that because the defendant filed a motion arguing that his failure to file a timely appeal from a municipal court order was due to ineffective assistance of counsel, the court must hold an evidentiary hearing on the matter before dismissing the motion.
- In *Deming v. Mobile*, 677 So.2d 1233 (Ala. Crim. App. 1995), the Alabama Court of Criminal Appeals held that the defendant's conviction for driving with a revoked license was improper because the trial court failed to submit the issue of guilt to the jury.
- The DNA database fee in Section 36-18-32(h), Code of Alabama 1975, is assessed upon each type of bond forfeiture proceeding when the final bond forfeiture is entered. AGO 1997-0012.
- On an appeal from a municipal court conviction, the Alabama Court of Criminal Appeals remanded the case back to the circuit court because there was no evidence that the defendant waived his right to a jury trial. *Lucas v. Tuscaloosa*, 680 So.2d 1027 (Ala. Crim. App. 1996).
- Every alcohol or drug abuse education program used in a court referral program must be certified by the Administrative Office of Courts and by the Alabama Department of Mental Health and Retardation or the Joint Commission on Accreditation of Health-Care Organizations. AGO 1997-0030.
- There is no specific authority for a municipal court to impose fees for the issuance and service of witness subpoenas or for the issuance of warrants. AGO 1997-0049.
- Where an offense may constitute both a state violation and a municipal ordinance violation, if the defendant is charged with violating the state law, the violation must be tried in district court. AGO 1997-0051.
- In *Ex parte Gilham*, 684 So.2d 164 (Ala. Crim. App. 1995), the Alabama Court of Criminal Appeals held that a circuit court judge did not have the authority to deny a defendant release on bond pending an appeal from a municipal court conviction.
- Section 11-47-7.1, Code of Alabama 1975, authorizes a municipality to assess and collect fees for witness subpoenas and for issuance of alias warrants. Funds collected from these sources must be spent as set out in Section 11-47-7.1. AGO 1997-0086.
- Section 14-6-22(d), Code of Alabama 1975, directs the clerk of a sentencing court to pay the costs of incarceration directly to the county or city in whose jail the defendant was incarcerated. AGO 1997-0096.
- The Sixth Amendment right to counsel does not extend to indigent defendants who do not receive jail time. *Jowers v. Selma*, 688 So.2d 278 (Ala. Crim. App. 1996).

- A defendant is entitled to a trial by jury in circuit court on an appeal from a municipal court ruling. *Thomas v. Montgomery,* 690 So.2d 546 (Ala. Crim. App. 1997).
- Additional $50 penalty on unlicensed drivers provided by Act 97-494 does not apply in municipal courts. AGO 1997-0246.
- Court-ordered settlement funds can be used only for the purposes set out in the court's order and do not revert to the general fund at the end of the year. AGO 1997-0289.
- Amendment 530, Alabama Constitution, 1901, authorizes the Macon County Commission to assess additional court costs only in circuit and district courts in the County. It does not apply to municipal courts. AGO 1997-0293.
- In *Parker v. Tuscaloosa*, 698 So.2d 1171 (Ala. Crim. App. 1997), the Alabama Court of Criminal Appeals held that defendants have no right to appeal their convictions in municipal court directly to the Court of Criminal Appeals. The court also held that the municipal court did not have to provide a court reporter to create a transcript that could be used in a direct appeal to the Court of Criminal Appeals.
- DUI defendants must be punished as set out in Section 32-5A-191, Code of Alabama 1975. A municipal court does not have jurisdiction over a fourth DUI offense. AGO 1998-0015.
- A municipal judge may not require cash-only bail with regard to an initial arrest for a misdemeanor offense, an appearance bond on a continuance or on an appeal bond. The judge may, however, require a cash bond on a failure to appear warrant, if the judge deems it necessary and appropriate. AGO 1998-0026.
- A municipality may enter into a contract with a private probation service to fulfill the needs of the municipal court. Furthermore, the judge may assess a supervision fee upon each probationer as a condition of probation. This fee, however, cannot exceed the probationer's ability to pay. AGO 1998-0043.
- In *Coughlin v. Birmingham*, 701 So.2d 830 (Ala. Crim. App. 1997), the Alabama Court of Criminal Appeals held that the handwritten word "fury" written in the margin of a defendant's appeal form from municipal court was sufficient to notify the circuit court that he was demanding a jury trial.
- Act 97-473, establishing the offense of unauthorized handicapped parking does not preempt municipal handicapped parking ordinances. Persons charged with the violation of a municipal handicapped parking ordinance which does not adopt the penalty provisions of Act 97-473 do not have to appear in court. AGO 1998-0061.
- A municipality may use funds from the correction fund (Section 11-47-7.1 of the Code) to reimburse the general fund for the purchase of a computer system, if the computer is to be used exclusively by the municipal court. AGO 1998-0076.
- Municipal courts have the power to administratively adjudicate violations defined in Section 28-11-13 of the Code, which concerns juvenile possession of tobacco, if the municipality has adopted the offense as a municipal ordinance violation. Appeals from municipal court are to the appropriate circuit court. Only law enforcement officials may issue citations pursuant to Section 28-11-14. AGO 1998-0102.
- A municipal judge may order the taking of a blood sample from a defendant, even if circumstances require taking the defendant outside the jurisdiction to be tested. AGO 1998-0109.
- Municipal court referral officers are appointed by the Administrative Office of Courts. Because drug-testing is ordered by the courts and not the referral officer, there is no conflict of interest when court referral programs recoup the costs of drug testing from tested defendants. AGO 1998-0167.
- The Alabama Supreme Court held in Ex parte McLeod, 725 So.2d 271 (Ala. 1998), that a trial judge does not have a duty to reveal that a party before the court contributed money to the judge's campaign, since contributions are a matter of public record.
- In *Fort Payne v. Bouldin*, 717 So.2d 883 (Ala. Civ. App. 1998), the Alabama Court of Criminal Appeals held that a municipality did not have the authority to appeal from a municipal court decision dismissing its criminal charges against a defendant.
- Correction Fund revenues collected pursuant to Section 11-47-7.1, Code of Alabama 1975, cannot be used by a municipality to build or construct a police facility with or without a court complex. AGO 1999-0012.
- Municipal court records must be retained and/or disposed of in accordance with the records retention schedule in Rule 31, Alabama Rules of Judicial Administration. AGO 1999-0035.

- Municipal courts have no jurisdiction over juveniles except traffic offenses, other than DUI, committed by 16 and 17 year olds, and municipal curfew violations. AGO 1999-0147.
- The additional court costs imposed by Act 99-252 are applicable to traffic offenses prosecuted in municipal courts in Autauga County. AGO 2000-0046. Note: This act applies only in Autauga County.
- A district court does not have the authority to enter into a contract with a private probationary corporation. Note: This opinion states that a municipality itself does have the authority, although nothing authorizes a court to do so. AGO 1999-0117.
- The criminal history processing fee found in Section 12-19-180(a) is a "court cost" as that phrase is used in Section 1219-150 and may be assessed against the defendant if a criminal case (except a non-DUI traffic, conservation or juvenile case) is dismissed upon payment of the docket fee and the other court costs by order of the judge. AGO 1999-0287.
- Notice of a final order of bond forfeiture should be served pursuant to Rules 77(d) and 5(b) of the Alabama Rules of Civil Procedure. AGO 1999-0276.
- The city council appoints the municipal judge. AGO 1999-0067.
- The Code does not authorize municipal judges to appoint interpreters to accompany deaf defendants to court-ordered referral rehabilitative or probationary programs. AGO 1999-0103.
- Upon abolishment of its municipal court, a municipality with a population of 1,000 or more may be required to maintain a separate facility for the district court at a location within the corporate limits of the city other than the district court presently provided. When the district attorney requests the assistance of the municipality in prosecuting municipal ordinance violations in district court, the district attorney should pay the city a sum agreed upon for these services. Provided the city and county commission contractually agree, sessions of the municipal court may be held in a county facility, and "Corrections Fund" monies may be spent by the municipality in furtherance of that contract. AGO 2000-0015.
- In *Williams v. Montgomery*, 739 So.2d 515 (Ala. Civ. App. 1999), the Alabama Court of Civil Appeals held that the city's bail policy, under which only cash bail or complete payment of outstanding fines would be available under capias warrants did not violate the constitutional provision that secured to incarcerated defendants the right to nonexcessive bail before conviction.
- In *Benson v. Sheffield*, 737 So.2d 1059, the Alabama Court of Criminal Appeals ruled that a defendant did not have the Sixth Amendment right to counsel in a municipal prosecution where the sentence did not include actual imprisonment and where there were no conditions that resulted in the defendant's imprisonment before he was placed on probation.
- The Alabama Court of Criminal Appeals held in *Ex parte Montgomery*, 721 So.2d 261 (Ala. Crim. App. 1998), that the 30-day period during which a circuit court may reinstate a dismissed appeal from a municipal court is jurisdictional. At the end of that period, the judgment of the lower court becomes final.
- Judicial Inquiry Commission Synopsis 99-74: Due to the appearance of impropriety, after an appointment by the city council of a part-time judge, the judge may not continue to represent city council members in a lawsuit filed against them by the mayor. See, Canon 2A of Judicial Rules and Section 12-14-30(d), Alabama Code 1975.
- All felony charges and misdemeanors or municipal ordinance violations, which are lesser-included offenses within a felony charge or arise from the same incident as a felony charge, are to be prosecuted in circuit court. See, Rule 2.2 of the Alabama Rules of Criminal Procedure. AGO 2000-0124.
- Corrections fund monies may be used to remodel the city hall auditorium, where the municipal court is located, even though there may be an incidental benefit to the municipality when the remodeled facility is used for city council meetings. AGO 2000-0124.
- Corrections fund monies may be used to repair, remodel and renovate a city's court complex. AGO 2000-0136.
- The plain language of Section 15-13-190, Code of Alabama 1975, provides that the maximum length of time a defendant may be held without being released on bond is 12 hours from the time of the arrest. A defendant held for more that 12 hours without seeing a judicial officer must be released on bail set at the minimum amount provided in the bail schedule of the Supreme Court. If a defendant is unable to post the minimum amount of bail as set forth in the bail schedule, then he or she must remain in jail until bail is posted or is subsequently released by a judge or magistrate in accordance with the Alabama Rules of Criminal Procedure. A personal appearance before a judge or magistrate is not mandated by the Act after the 12 hours have elapsed from the time of the defendant's arrest. The Act clearly does not authorize a judge or

magistrate to require a defendant to appear within 12 hours of arrest and also hold him or her an additional 12 hours before releasing him or her on bail. The Legislature must amend the act or establish other legislation to define the meaning of "domestic violence protection order registry" and which entity is responsible for its maintenance. An attempt or threat to commit domestic violence is covered by Section 15-13-190. Since Alabama's Constitution provides that bail is a matter of right for noncapital offenses, a judge or magistrate may not keep a defendant in custody awaiting trial more than 12 hours after arrest even where the defendant is determined to be a threat to others by being at large. A defendant may not be released if he or she refuses to sign the release order promising to comply with the bail provisions. If no appearance is provided before a judge or magistrate, no conditions of release can be set, other than the condition that the defendant post bail to the minimum amount in the Supreme Court's bail schedule. Since the act authorizes only that the judge or magistrate determine conditions of release for the defendant, the defendant is not entitled to confront his or her accusers or cross-examine witnesses. District and municipal court judges should use UJS Form CR-48, "Conditions of Release Domestic Violence Case," to make findings on the record as required by the act. Arrests for domestic violence offenses executed by warrant are not subject to the release procedures of the act. AGO 2000-0034.

- While the municipal courts have the authority to order perpetrators of domestic violence to counseling programs, these statutes do not require that the courts order the perpetrator to such programs. AGO 2001-0051.
- The municipal court has jurisdiction over traffic offenses committed by persons 16 years of age or older, including offenses committed on waterways within the municipality's jurisdiction. The juvenile court has jurisdiction over traffic violations committed by persons under 16 years of age. A traffic citation or summons issued to a person under 16 years of age is sufficient to invoke the jurisdiction of the juvenile court. AGO 2001-0027.
- A full-time assistant district attorney is prohibited by Section 12-17-184(11) of the Code of Alabama from contracting privately with a municipality to provide prosecutorial services in the municipal court. AGO 2001-0082.
- A city which has contracted with the county to provide dispatching services cannot use its municipal court magistrate as the dispatcher because magistrates must maintain neutrality and detachment from law enforcement activities. AGO 2002-0150.
- The district attorney's restitution recovery division has the authority to collect court costs, fines and other enumerated sums on behalf of municipal courts that wish to contract with the district attorney's office for such collection. AGO 2003-0139.
- Corrections fund monies may be used to hire an additional magistrate for a municipal court, but cannot be used to furnish and employ personnel to staff a planned police substation. AGO 2003-0054.
- Unlike circuit courts and district courts, municipal courts are not courts of record and no rule or statutory law requires municipal courts to appoint an official court reporter upon a defendant's request. Ex parte *Burnsed v. Evergreen*, 844 So.2d 526 (Ala. 2001).
- Mandamus is the proper remedy, after jeopardy has attached, for review of a circuit court's dismissal of charges against a defendant due to a city's failure to timely transmit records from municipal court. *Ex parte Tarrant*, 850 So.2d 366 (Ala. Crim. App. 2002).
- When a district attorney refuses to prosecute a felony charge, regardless of whether it was transferred from municipal court to the district attorney or otherwise, the prosecution of that charge is effectively abandoned. As such, a municipal court does not have jurisdiction to hear the case. However, under Section 36-15-14 of the Code of Alabama 1975, the city attorney or other investigating agency may refer the case to the Attorney General, and the Attorney General will review the matter and determine whether or not to prosecute. AGO 2004-0097.
- Where a city has adopted state misdemeanors as municipal ordinance violations, municipal courts have jurisdiction to hear cases charged under Section 13A-9-13.1, Code of Alabama 1975, because negotiating a worthless negotiable instrument is a Class A misdemeanor. AGO 2004-0109.
- Where it is determined that the municipal general fund is currently receiving no more than seven dollars ($7) per case, a city council is authorized to increase court costs distributed to the general fund by ten dollars ($10). AGO 2005-0194. **NOTE:** Pursuant to Sections 12-14-14 and 12-19-172 (d) of the Code of Alabama 1975, the maximum amount a municipal court may distribute per case into a municipality's general fund is seventeen dollars ($17).

- Corrections fund monies may be used to pay the cost of police officers transporting prisoners from the county jail to municipal court and for the magistrate to travel to the jail for 48-hour hearings. Provided however, the governing body must determine that the expenditures are necessary for the operation and maintenance of the jail and court. The determination of the appropriate costs, including mileage rate, per diem, or actual expenses, is in the discretion of the governing body. AGO 2006-0066.
- Acts performed by municipal court clerk/magistrate to ensure that arrest warrants were recalled constituted a judicial function involving the exercise of judgment, and, thus, clerk/magistrate had absolute judicial immunity from negligence and wantonness claims brought by arrestee after she was arrested because one of the arrest warrants had not been put back into the National Crime Information Center computer by a third party. *Ex parte Greensboro*, 948 So.2d 540 (Ala. 2006).
- The funds collected by the clerk of the municipal court for inmate housing, maintenance and medical costs under Section 14-6-22 of the Code of Alabama shall be remitted to the county, and the county may give credit to the city for payment of such funds. Amounts collected and distributed to the county directly by the municipal court clerk in accordance with Section 14-6-22 should be excluded in computing any increase of costs to be assessed against all defendants under Section 11-47-7.1. AGO 2007-0084.
- The Alabama Court of Criminal Appeals does not have jurisdiction to consider an appeal from an action in which a defendant seeks to purge, modify or supplement criminal records. Jurisdiction for such an appeal is proper in the Court of Civil Appeals, rather than the Court of Criminal Appeals. *Ex parte Teasl*ey, 967 So.2d 732 (Ala. Crim. App. 2007).
- Alabama law gives sheriffs and their deputies law enforcement authority over the entirety of their respective counties. This authority is not limited or restricted inside the city limits of a municipality that is located within the sheriff's respective county. A county sheriff is not required to obtain permission or prior approval of a municipal government or police department before it may perform law enforcement operations within the limits of a municipality. If a speed limit is set by state statute or by the Alabama Department of Transportation, a citation could be prosecuted as either a municipal offense (where state offenses are adopted by reference) or a state offense. But if the posted speed limit was set or altered by municipal ordinance, the case would have to be initially prosecuted as a municipal offense. AGO 2008-0063.
- Absent a constitutional amendment, Section 96 of Article IV of the Constitution of Alabama prohibits the Legislature from enacting legislation that would increase court costs, fees, and charges in less than all of the counties in the state. AGO 2008-0096.
- It is the duty of the trial court to take some affirmative action, either by a statement recorded in the record or by written order, to state its reasons for revoking probation, with appropriate reference to the evidence supporting those reasons. The trial court's failure to set forth in the record its reasons for revoking probation will warrant remand. *Gerstenschlager v. State*, 999 So.2d 590 (Ala. Crim. App. 2008).
- A defendant may waive the right to be present in court at any proceeding, including trial, upon meeting one of the following conditions: (1) with consent of the court, by an understanding and voluntary waiver in open court or by a written consent executed by the defendant and by the defendant's attorney of record, filed in the case, or (2) by the defendant's absence from any proceeding, upon the court's finding that such absence was voluntary and constitutes an understanding and voluntary waiver of the right to be present, and that the defendant had notice of the time and place of the proceeding and was informed of the right to be present. *Thompson v. State*, 12 So.3d 723 (Ala. Crim. App. 2008).
- A trial judge did not abuse his discretion in denying a defendant's request for recusal where the defendant did not raise the issue of the trial judge's alleged bias until he had received an adverse judgment, failing therefore to afford the judge an opportunity to recuse himself before he heard the case. *Price v. Clayton*, 18 So.3d 370 (Ala. Civ. App. 2008).
- The prosecution may charge both retained and appointed counsel a reasonable fee for copying discovery materials. With regard to indigency status, the rules of discovery require that the prosecution allow the defendant to inspect and copy documents specified in the rule. The rule does not require that the prosecution provide the copies. AGO 2009-0065.
- The Circuit Court lacked authority to order that the record of a petitioner's Municipal Court conviction for carrying a pistol without a permit, be completely removed and deleted. Even if the court was satisfied that the legislature's terminology defining the offense was misleading in suggesting that the petitioner carried the weapon on his person and not merely in a vehicle, statutes relating to purging, modification, or supplementation of criminal records were directed at making them accurate, not making them disappear. *Ex parte City of Dothan*, 18 So.3d 930 (Ala. 2009).

- In a criminal prosecution for violation of a city ordinance, the pertinent city ordinance is an essential element of the city's case and must be considered by and proven to the jury. When the city does not introduce the ordinance into evidence and it is not considered by the jury, the city has failed to make out its case against the defendant. The defendant challenged his conviction for DUI in violation of a city ordinance that adopted the Alabama Code by reference. Although the city filed the ordinance with the circuit court, the record does not reflect that the city moved to admit the ordinance into evidence
- or that the circuit court admitted the ordinance into evidence (merely showing the ordinance to the court is insufficient). *Cole v. City of Bessemer,* 26 So.3d 488 (Ala.Crim.App.2009).
- The City of Chickasaw may use Corrections Fund monies for the eCite traffic citation system if the city determines the expenditures are necessary for the operation and maintenance of the court. Corrections Fund monies should be contributed or used only to the extent that the court benefits from the use of this citation system. AGO 2011-0079.
- District and municipal courts within Alabama are courts of limited jurisdiction. A district court is without authority to transfer a misdemeanor violation, made by a deputy sheriff or state trooper that cites state law and not a municipal ordinance violation, to a municipal court for subsequent disposition. A district court is authorized to prosecute violations of state law and, in certain instances, municipal law. A district court, however, will not have jurisdiction over a misdemeanor ordinance violation when a municipal court exists and the violation does not involve a felony. AGO 2012-0063.
- Resident failed to state equal protection claim against police officer or city magistrate, stemming from altercation with officer over a blast of loud music from her son's car stereo system and magistrate's refusal to accept resident's criminal complaint against officer, absent allegations defining an identifiable group to which resident and her son belonged. *Waters v. City of Geneva*, 47 F.Supp.3d 1324 (M.D.Ala.2014).
- Section 155 of article VI of the Constitution of Alabama prohibits a person from being appointed as a full-time or part-time municipal judge after the person reaches the age of 70. A person serving as a municipal judge who reaches the age of 70 during his or her term may continue to serve as a municipal judge until the end of that person's term of office or until a successor is appointed. AGO 2014-0002.
- State law does not prohibit the spouse of a police captain from serving as a court clerk and magistrate for the municipal court. If appointed, the magistrate should recuse himself or herself in matters where the police-officer spouse is involved in the matter being presented to the magistrate. AGO 2015-0005.
- When a defendant is arrested without a warrant for an offense committed in the presence of a law enforcement officer and a complaint is issued, the judge or magistrate is not required to issue a warrant. AGO 2016-0008.
- Possession of an "e-cigarette" or electronic cigarette is possession of an alternative nicotine product under section 2811-13(a) of the Code of Alabama. A municipal court has authority to administratively adjudicate a complaint against a person under 19 for possession of an "e-cigarette" under section 28-1 l-13(a) if the municipality has adopted the offense as a municipal ordinance violation. AGO 2016-0031.
- If the Union Springs Municipal Court ("Court") assesses any court costs in a case, then it must assess the additional costs and fees in section 45-6-81(a) of the Code of Alabama. The Court may retain, use, and expend the additional costs and fees in section 45-6-81(a) under the terms designated by the city council. AGO 2016-0038.
- The income tax setoff provisions may be used to collect fines and court costs, but not restitution, assessed by the municipal courts. AGO 2017-0015.
- The City of Decatur may use corrections fund monies to purchase metal detectors, scanning equipment, and to pay officers and other related expenses to secure the Decatur City Hall building which houses the municipal court. AGO 2017-0027.
- A part-time municipal judge is not required to resign or take a leave of absence in order to qualify and run for the office of probate judge. AGO 2018-0013.
- A municipal court's standing order directing the release from custody of a defendant who executes an appearance bond in an amount prescribed in a bail schedule constitutes an "order of release" as contemplated under Rule 7.3 of the Alabama Rules of Criminal Procedure. A standing order setting a bail schedule must contain the four mandatory conditions set out in Rule 7.3(a) and a defendant's release may be revoked for violating such conditions. A defendant released pursuant to a standing order setting a bail schedule may be given notice of the mandatory conditions through a separate document. AGO 2018-0029.
- A municipal employee may not oversee the administrative functions and personnel in municipal court. A city clerk may not also perform the functions of a municipal court clerk. AGO 2018-0033.

- The city manager has the authority to appoint and remove officers and employees, including the deputy city attorney, the public defender, and their assistants. If it determines that special consideration is required to handle a specific case or cases pending in municipal court, the city council may hire outside counsel to assist the deputy city attorney. AGO 2019-0030.
- Funds designated for the operation of the municipal court in the Municipal Judicial Administrative Fund pursuant to section 12-19-310 of the Code of Alabama may be used to pay for the renovation of the court's administrative offices. AGO 2019-0042.
- A violation of section 32-5A-191.4(j) of the Code of Alabama is a traffic offense; thus, the court costs that should be assessed are those imposed for traffic offenses in addition to any fines required to be imposed. AGO 2020-0022.
- Defendant, by filing in municipal court his notice of appeal and request for waiver of appeal bond within the 14-day time period, perfected an appeal. *Ex parte City of Andalusia*, 324 So.3d 872 (Ala.Crim.App.2020).