

# WISCONSIN SUPREME COURT

## Starting a Municipal Court



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# Supreme Court of Wisconsin

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## Starting A Municipal Court

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## Creation of Court

***NOTICE:** it is highly advisable that any municipality considering starting a municipal court contact the Chief Judge and/or District Court Administrator in their Judicial District and contact the Office of Judicial Education (608)266-7816.*

§755.01(1) A municipal court shall become operative and function when the city council, town board or village board adopts an ordinance or bylaw providing for the election of a judge and the operation and maintenance of a court.

§755.01(2) The governing body may abolish a municipal court at the end of any term for which the judge is elected. It may not abolish the court when a joint court agreement is in effect.

### Joint Court

§755.01(4) Two or more cities, towns or villages may enter into an agreement under §66.30 for the joint exercise of power. Any agreement under §66.30 for creation of a municipal court shall be effected only by enactment of identical ordinances by each affected city, town or village.

Electors of each municipality entering into the agreement shall be eligible to vote for the judge of the municipal court so established.

If a municipality enters into an agreement with a municipality that already has a municipal court, the municipalities may provide by ordinance or resolution that the judge for the existing court will serve as judge for the joint court **until the end of the term or until a special election is held under §8.50(4)(fm).**

Each municipality shall adopt an identical ordinance or bylaw under §755.01(1) prior to entering the agreement. The contracting municipalities need not be contiguous and need not all be in the same county.

A certified copy of the ordinance effecting the agreement must be transmitted to The appropriate filing officer under §11.02(3e). The county clerk or board of election commissioners of the county having the largest portion of the population in the jurisdiction served by the judge.

§66.0303 In addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, **unless such statutes specifically exclude action under this section,** any municipality may contract with another municipality for receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law.

ESTABLISHMENT OF A MUNICIPAL COURT FOR THE \_\_\_\_\_ OF \_\_\_\_\_

1. **Court Established**

Pursuant to the authority granted by Chapter 755 of the Wisconsin Statutes there is hereby created and established a Municipal Court to be designated “Municipal Court for the (City) (Town) (Village) of \_\_\_\_\_” said court to become operative and function on \_\_\_\_\_, 20\_\_\_\_.

2. **Jurisdiction**

The Municipal Court shall have jurisdiction over incidents occurring on or after (date of establishment) as provided in Article VII, §14 of the Wisconsin Constitution, §§ 755.045 and 755.05, Wis. Stats., and as otherwise provided by State Law. In addition, it shall have exclusive jurisdiction over actions in which the municipality seeks to impose forfeitures for violations of municipal ordinances, resolutions and by-laws.

The Municipal Judge may issue civil warrants to enforce matters under the jurisdiction of the Municipal Court under §755.045(2), §66.0119 and §66.0119(3), Wis. Stats.

The Municipal Court has jurisdiction over juvenile offenders when it enacts an ordinance under the authority of §938.17(2)(cm), Wis. Stats.

3. **Municipal Judge**

a. *Qualifications.* There is hereby created the office of Municipal Judge of the Municipal Court of the (City) (Town) (Village) of \_\_\_\_\_. The Municipal Judge shall be a resident of the municipality (and shall be licensed to practice law in the State of Wisconsin).

b. *Oath and Bond.* The Judge shall, after election or appointment to fill a vacancy, take and file the official oath as prescribed in §757.02(1), Wis. Stats., and file such oath with the county Clerk of Circuit Court. At the same time, the Judge shall execute and file an indemnity bond with the clerk of the municipality in an amount of \$ \_\_\_\_\_. The Judge shall not act until the oath and bond have been filed as required by §19.01(4)(c), Wis. Stats. and the requirements of §755.03 Wis. Stats., have been complied with.

c. *Salary.* The Municipal Judge shall receive a salary as determined by the (City Council) (Town Board) (Village Board) which shall be in lieu of fees and costs. No salary shall be paid to the Judge for any time during his/her term for which he/she has not executed and filed the official bond and oath. The salary may be increased by the (City Council) (Town Board) (Village Board) before the start of the second or subsequent year of service of the term of the Judge, but shall not be decreased during a term.

## Sample of Municipal Court Creating Ordinance

- d. *Election. Term.* The Municipal Judge shall be elected at large for a term of (two) (three) (four) years at the spring election held (in odd-numbered) (in even-numbered) (every three) years and shall take office on May 1 following the election.

(Mid term vacancies in the office of Municipal Judge shall be filled by special election to be held not less than 55 nor more than 70 days after the order of the (City Council) (Town Board) (Village Board) therefore.)

(Any vacancy occurring in the office of Municipal Judge shall be filled pursuant to state law.)

### 4. **Municipal Court**

*Hours.* The Municipal Court for the (City of) (Town of) (Village of) \_\_\_\_\_ shall be open as determined by order of the Municipal Judge.

*Employees.* The Judge shall in writing appoint such clerks and deputy clerks as are authorized by the (City Council) (Town Board) (Village Board). Their salaries shall be fixed by the (City Council) (Town Board) (Village Board).

*Location.* The Municipal Judge shall keep his/her office and hold court in an adequate facility provided by the municipal governing body. However, the Municipal Judge may issue process and perform ministerial functions at any place in the county.

### 5. **Collection of Forfeitures and Costs**

The Municipal Court shall collect all forfeitures, penalty assessments, fees and taxable costs in any action or proceeding and shall pay over such monies to the (City) (Town) (Village) Treasurer within seven (7) days of collection. At such time, the Municipal Court shall report to the treasurer the title, nature of offenses and total amount of judgments imposed in actions and proceedings in which such monies were collected.

### 6. **Contempt of Court**

The Municipal Judge, after affording an opportunity to the person accused to be heard in defense, may punish for contempt as provided in §800.12, Wis. Stats., and may impose a forfeiture therefore not to exceed fifty dollars (\$50) or upon nonpayment of the forfeiture, penalty assessment under §165.87, Wis. Stats., and jail assessment under §302.46, Wis. Stats., a jail sentence not to exceed seven (7) days.

## Sample of Municipal Court Creating Ordinance

### 7. **Stipulations and Deposits**

*Deposits for Ordinance violations.* The Municipal Judge shall establish and submit to the (City Council) (Town Board) (Village Board) for approval in accordance with §800.03(3), Wis. Stats., a schedule of deposits for violations of (City) (Town) (Village) ordinances, resolutions and bylaws.

*Deposits for Traffic and Boating violations.* The deposit schedule established by the Wisconsin Judicial Conference and the procedures set forth in Chapters 23 and 345, Wis. Stats., shall apply to stipulations and deposits for violations of traffic regulations enacted in accordance with §345.27 and boating regulations enacted in accordance with §30.77, Wis. Stats.

*Stipulations and Deposits in Lieu of Court Appearance.* Persons cited for violations of (City) (Town) (Village) ordinances, resolutions or bylaws or violations of traffic or boating regulations for which a deposit has been established, shall be permitted to make a stipulations of no contest and a deposit in lieu of court appearance as provided in §800.03, §800.04 and §800.09 Wis. Stats.

AN ORDINANCE TO CREATE SECTION \_\_\_\_\_ OF THE  
MUNICIPAL CODE OF THE (City, Town, Village) OF \_\_\_\_\_  
AND THE (City, Town, Village) OF \_\_\_\_\_  
(and the City, Town, Village of additional municipalities if needed)  
PER §66.0301 OF THE WISCONSIN STATUTES

**THE (COMMON COUNCIL) (VILLAGE BOARD) (TOWN BOARD) OF THE  
\_\_\_\_\_ OF \_\_\_\_\_, DO ORDAIN AS FOLLOWS:**

**SECTION 1.**

**1) Municipal Court Created**

Pursuant to the authority granted by Chapter 755 of the Wisconsin Statutes, there is hereby created and established a Joint Municipal Court to be designated “Municipal Court for the (City)(Town)(Village) of \_\_\_\_\_ and the (City) (Town) (Village) of \_\_\_\_\_” said court to become operative and function on \_\_\_\_\_, 20\_\_.

**2) Municipal Judge**

*Qualifications:* The Joint Court shall be under the jurisdiction of and presided over by a Municipal Judge, (who shall be an attorney licensed to practice law in Wisconsin, and) who resides in one of the municipalities that is a party to the agreement forming this joint court.

*Oath and Bond:* The Judge shall, after election or appointment to fill a vacancy, take and file the official oath as prescribed in §757.02(1), Wis. Stats., and at the same time execute and file an official bond in the amount of \$\_\_\_\_\_. The Judge shall not act until the oath and bond have been filed as required by §19.01(4)(c) Wis. Stats., and the requirements of §755.03(2) have been complied with.

*Salary:* The salary of the Municipal Judge shall be fixed by the (Common Council)(Village Board)(Town Board) of the municipalities that are parties to the agreement which shall be in lieu of fees and costs. No salary shall be paid for any time during the term during which such Judge has not executed the official bond or official oath, as required by §755.03, Wis. Stats., and filed pursuant to §19.01(4)(c) Wis. Stats. The municipalities may by separate ordinance allocate funds for the administration of the Municipal Court pursuant to §66.0301 Wis. Stats.

Sample Municipal Court Creating Ordinance for a Joint Municipal Court

**3) Elections**

*Term:* The Municipal Judge shall be elected at large in the spring election (in odd-numbered)(in even-numbered)(every three) years for a term of (two)(three)(four) years commencing on May 1. All candidates for the position of Municipal Judge shall be nominated by nomination papers as provided in §8.10, Wis. Stats., and selection at a primary election if such is held as provided in §8.11, Wis. Stats. The State elections board shall serve as filing officer for the candidates.

*Electors:* Electors in all municipalities that are parties to the agreement shall vote for judge.

**4) Jurisdiction**

The Municipal Court shall have jurisdiction over incidents occurring on or after (date of establishment) as provided in Article VII, §14 of the Wisconsin Constitution, §§755.045 and 755.05, Wis. Stats., and as other provided by State Law. In addition, it shall have exclusive jurisdiction over actions in the municipalities that are parties to the agreement seeking to impose forfeitures for violations of municipal ordinances, resolutions and by-laws.

The Municipal Judge may issue civil warrants to enforce matters under the jurisdiction of the Municipal Court under §755.045(2), §66.0119, Wis. Stats.

The Municipal Court has jurisdiction over juvenile offenders when a municipality that is party to the agreement enacts an ordinance under the authority of §938.17(2)(cm), Wis. Stats.

**5) Municipal Court**

*Hours:* The Municipal court shall be open at such location and at such times as determined by the governing bodies of the municipalities that are parties to the agreement and the Municipal Judge.

*Employees:* The Judge shall, in writing, appoint such clerks and deputy clerks are authorized and funded by the (City Council)(Town Board)(Village Board) of the municipalities that are parties to the agreement.

**6) Collection of Forfeitures and Costs**

The Municipal Judge may impose punishment and sentences as provided by Chapters 800 and 938 Wis. Stats., and as provided in the ordinances of the municipalities that are parties to the agreement. All forfeitures, fees, assessments, surcharges and costs shall be paid to the treasurer of the Municipality within which the case arose within 7 days after receipt of the money by the Municipal Court. At the time of the payment, the Municipal Court shall report to the treasurer the title of the action, the nature of the offenses and total amount of judgments imposed in actions and proceedings in which such monies were collected.

**7) Contempt of Court**

The Municipal Judge, after affording an opportunity to the person accused to be heard in defense, may impose a sanction authorized under §800.12 Wis. Stats. and may impose a forfeiture therefore not to exceed fifty dollars (\$50) or upon nonpayment of the forfeiture and the assessments thereon, a jail sentence not to exceed seven (7) days.

**8) Abolition**

The Municipal court hereby established shall not be abolished with the §755.01(4) agreement is in effect.

**SECTION 2**

All ordinances or parts of ordinances contravening or inconsistent with the provisions of this ordinance be and are hereby repealed.

**SECTION 3**

This ordinance shall take effect and be in full force and effect from and after its passage by the municipalities that are parties to the agreement and publication as required by law.

## Assessments/Surcharges/Court Costs

### Penalty Surcharge

§757.05

(1)(a) Whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of ...municipal or county ordinances involving nonmoving traffic violations or safety belt use violations..., there shall be imposed in addition a penalty surcharge ....

(1)(c) If a fine or forfeiture is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit such amount to the treasurer of the county, city, town or village, and that treasurer shall make payment to the state treasurer as provided in §66.0114(1)(b)

§66.0114(1)(b)

Actions for violation of ordinances. (b) Local ordinances,...., may contain a provision for stipulation of guilt or no contest of any or all violations under those ordinances, and may designate the manner in which the stipulation is to be made and fix the penalty to be paid. When a person charged with a violation for which stipulation of guilt or no contest is authorized makes a timely stipulation and pays the required penalty and pays the penalty assessment imposed by §165.87, the jail assessment imposed by §302.46(1), the crime laboratories and drug law enforcement assessment imposed by s. 165.755 and any applicable domestic abuse assessment imposed by §973.055(1) to the designated official, the person need not appear in court ....

### Jail Surcharge

§302.46

(1)(a) If a court imposes a forfeiture for a violation of "a municipal or county ordinance except for a violation of ...municipal or county ordinances involving nonmoving traffic violations or safety belt use violations ..., the court, in addition, shall impose a jail assessment in an amount of 1% of the fine or forfeiture imposed or \$10 whichever is greater....

(1)(c) If a fine or forfeiture is imposed by a municipal court, after a determination by the court of the amount due for the jail assessment, the court shall collect and transmit the jail assessment to the county treasurer under §800.10(2)....

## Assessments/Surcharges/Court Costs

### Crime lab and drug enforcement surcharge

- §165.755 enforcement (1)(a) A court shall impose a crime laboratories and drug law assessment of \$8 if the court ...imposes a forfeiture...for a violation of a municipal ...ordinance
- (1)(b) A court may not impose the [above] assessment...for a violation of a state law or municipal or county ordinance involving a nonmoving traffic violation or a safety belt use violation

### Ordinance violations

- §800.02 Form of citation, complaint, summons and warrant in municipal ordinance violation cases
- §800.02 (1) An action in municipal court for violation of a municipal ordinance, or violation of a resolution or bylaw if the resolution or bylaw is authorized by statute, is a civil action and the forfeiture or penalty imposed by any ordinance of the municipality may be collected in an action in the name of the municipality
- §800.03 (1) If a person is issued a citation in a case specified in §800.02(1), the person may make a plea of no contest and deposit....
- (3) The amount of deposit shall be set my the municipal judge, but shall not be effective until approved by the governing body of the municipality. The amount shall not exceed the maximum penalty for the offense, **including any penalty surcharge that would be applicable under §165.87, any jail surcharge that would be applicable under §302.46(1), any crime laboratories and drug law enforcement surcharge that would be applicable under s. 165.755 and any domestic abuse surcharge that would be applicable under §973.055(1), plus court costs....**

### Court costs

- §814.65 Court costs on municipal citations may be anywhere between \$15.00 and \$28.00. Five dollars of the court costs go to the state, the rest remains with the municipality

**COSTS TO MUNICIPALITY**

§814.67                   Municipality must pay witness fees for prosecution witnesses and interpreter fees. \$5 per day witness fee, \$10 per half-day interpreter fee minimum, .20 per mile travel

§755.18                   Municipality must pay the cost of required education of municipal judges. Fee for seminar year May 2006 to May 2007 is \$550.00. Municipality pays the cost of the judge attending the educational program i.e., room, food, travel. There is no registration fee at seminars.

## Residency Requirements

### Article VII

Sec. 10 No person shall be eligible to the office of judge who shall not, at the time of election or appointment, be a qualified elector within the jurisdiction for which chosen

§8.28(1) Any individual who believes that an individual holding or elected to state or local office is not a resident or inhabitant of this state or of the jurisdiction or district in which he or she serves, whenever such qualification is required by the constitution of this state or by any applicable law, may file a verified complaint with the attorney general alleging such facts as may cause him or her to believe that the individual is not qualified to hold office because of failure to meet a residency requirement

§60.30(2)(a) **Towns** -- Only an elector of the town may hold a town office

§61.19 **Villages** -- No person not a resident elector...shall be elected to any office therein

§62.09(2)(a) **Cities** -- No person shall be elected by the people ...who is not at the time of election a citizen of the United States...and an elector of the city

§62.53 Residency requirement for public officials in 1st class cities. Any public official may not serve more than 180 days after confirmation unless he or she resides within boundaries of the 1st class city by which employed

## **Illness/Absence/Permanent Vacancy**

§17.245 [I]f a city, village or town enacts an ordinance or bylaw creating a municipal court under §755.01 before the December 1 preceding the spring election the office of municipal judge for that court shall be considered vacant and a temporary appointment may be made by the city, village or town governing body pending the election of the initial elected occupant of the office

§800.06(1) Temporary vacancy If any municipal judge is to be temporarily absent or is sick or disabled...the municipal judge may be written order, filed in the court and with the approval of the chief judge of the judicial administrative district, do one of the following:

(a) If the MJ is from the 1st judicial administrative district, designate another municipal judge **from any municipality within the state** to perform his or her duties for a period not to exceed 30 days

(b) If the MJ is from a judicial administrative district other than the 1st, designate another municipal judge **within the same judicial administrative district** to perform duties for a period not to exceed 30 days.

§800.06(3) Permanent Vacancy Notwithstanding §751.03(2), if there is a permanent vacancy, the chief judge of the district may designate another municipal judge to perform his/her duties **until the municipal governing body fills the vacancy by temporary appointment under §8.50(4)(fm).**

In the 1st district, may be a municipal judge from any municipality within the state

In other districts, the Chief Judge can designate a municipal judge from any municipality within same judicial administrative district.

By Chief Judges rule, the Chief Judge will not appoint for longer than 90 days absent extraordinary circumstances.

§8.50(4)(fm) Permanent vacancy in office of MJ may be filled by temporary appointment of municipal governing body. Office shall then be permanently filled by special election, held concurrently with next spring election following occurrence of the vacancy, except that vacancy occurring during period after Dec. 1 and on or before date of spring election shall be filled at the 2nd succeeding spring election.

§751.03(2)(b) If MJ incompetent, unable to act, fails to act, Chief Judge to assign another MJ, former MJ or former Circuit Judge to serve until incompetency, inability or failure ceases, until MJ term expires or until vacancy permanently filled. No interim appointment to last longer than 90 days absent extraordinary

circumstances.

## **Municipal Judge Education Fee**

As required by §755.18 Wis. Stats, municipalities bear the full cost of Municipal Judge Education. The annual fee covers the following services provided by the Municipal Judge Education section of the Office of Judicial Education.

### **Seminars**

We generally produce four municipal judge seminars each year. Seminars are two days in length and are located around the state in order to make it as easy as possible for all judges to find one convenient for them. Judges must attend at least one seminar a year, and may attend all of them. Major costs associated with each seminar, paid for by judicial education, include a luncheon for all attendees, room, board and travel expenses for all faculty, binders and copying, snacks and coffee breaks and, in some cases, meeting room fees. Attendance averages 80.

We also produce one clerk seminar each year, attended by approximately 180 clerks. The costs are the same except that because it became prohibitively expensive, we no longer provide a lunch at our expense.

Approximately every two years we participate in a faculty development seminar with the rest of the Office of Judicial Education. The office brings in a professional trainer and invites potential circuit and municipal judge faculty members to an intensive two-day training session. Municipal Judge Education pays for the lodging and lunch of our Municipal Judge invitees and pays 1/2 the honorarium and travel expenses of the trainer.

### **Committees**

There are five committees that assist the office of Judicial Education. All members of the committees take time away from their regular jobs, without compensation, to serve in an advisory capacity to this office. Costs of their travel, food and lodging (if any) is paid for by this office.

Education Committee: Composed of the statutory minimum -- two lawyer judges, two non-lawyer judges and a Municipal Judges Association designee, this committee assists the office in designing the Trial, Special Topic and Traffic seminars, grants or denies approval of alternative credit, makes recommendations for uniform policies and procedures in municipal court, and holds non-compliance hearings. The committee meets approximately 5 times a year for a lunch/afternoon meeting, and once a year in November for an evening and a day to analyze the past year's seminars and make general recommendations for the next year. The November meeting includes continuing, oncoming and retiring members of the committee.

Orientation Faculty Committee: Composed of four judges, this committee plans the Municipal Judge Orientation for new judges only and the Municipal Judge Institute. They are the faculty for the one-day Orientation, and along with others, serve as faculty for the Institute as well. They meet twice a year, once to review the past seminar and make suggestions for the next one,

and once to finalize the upcoming seminar.

Benchbook Committee: Composed of 10 judges, this committee updates the Municipal Judge Benchbook on an annual basis. Each member is responsible for at least one chapter of the Benchbook. The committee meets for two days in January and reviews all chapters, forms and related materials.

New Laws/New Cases Committee: Composed of 2 judges and one Court Commissioner, this committee is responsible for preparing the materials to be used at each seminar to present a 90 minutes presentation which updates the attendees regarding any new legislative or caselaw changes.

Clerk Committee: Composed of four Municipal Court Clerks, this committee meets twice a year. One meeting is a planning meeting for the Municipal Court Clerk Seminar and is held in April or May. The second meeting is to review the seminar and make general recommendations for the following year, and to update the Municipal Court Clerk Procedures Manual. This meeting is held just prior to the Benchbook Committee meeting.

### **Publications:**

We produce and mail on an annual basis the following publications

- A Municipal Judges Benchbook update
- A Municipal Court Clerk Procedures manual update
- A Municipal Court Directory (Published in June)

We also produce and distribute a periodic newsletter entitled "Muni View," and serve as a legal resource for the judges.

The Municipal Judge Education section of the Office of Judicial Education consists of two persons whose salary and benefits are paid by the Municipal Judge Education Fee. They are: Karla J. Baumgartner, a half-time employee of judicial education funded by the municipal fee as municipal judge education coordinator, and Carol Koschel, Municipal Judge Education Program Assistant, a three-quarter time employee of Municipal Judge Education.

Out of the Municipal Judge education fee, as ongoing costs, we pay rent to the state for our space, pay for our telephones, pay a fee for the services of the fiscal office and the information technology staff, pay for our use of a copier and fax machine and buy our own paper and office supplies. On major items, we buy our own computers and printers and share the cost with the rest of the Office of Judicial Education for training tools such as the overhead project and video camera, and for all office equipment such as the copier, fax machine and telephones.

## ANSWERS TO COMMONLY ASKED QUESTIONS

- §755.02 1. All Municipal Judge Terms begin on the May 1 following election. The term may be 2, 3 or 4 years.
- §8.50(4)(fm) 2. Municipal Judges appointed prior to December 1 must run for election the following spring. Municipal Judges appointed after December 1 and before the spring election must run in the 2nd succeeding spring election.
3. In 2006, a citation to circuit court for a municipal ordinance violation is \$99 to \$107 more than a citation to municipal court. The forfeiture amount the municipality receives is the same regardless of where the citation is filed.
4. Without a municipal court, the municipality pays the Circuit Court five dollars for each municipal ordinance violation heard
5. Municipal Judges are governed by the Code of Judicial Conduct.
- §755.04 6. The Judge's salary must be fixed in lieu of fees and costs. It may not be decreased during a term
- SCR 62.02 7. A Judge is required to wear a black robe when on the bench.
- §800.03(3) 8. Bond for municipal ordinance violations is set by the Municipal Judge. Bond for traffic and boating citations is set by the Judicial Conference.
9. The Municipal Judge may add a crime prevention fee to the forfeiture
10. The Municipal Judge appoints his or her clerk
11. The Municipal Judge is part of the Judicial system and as such is a separate and autonomous branch of government. The Municipal Judge is answerable only to the electorate.
- §755.01(5) 12. The municipal judge is required to appoint a GAL for any defendant the Court has reason to believe is mentally incompetent.

# MUNICIPAL COURT STATISTICS

As of **May 2006**, there are

## **Courts**

246 Courts

38 courts are joint courts serving from 2 to 15 municipalities

## **Judges**

248 Judge seats, 7 Reserve judges, 3 Milwaukee Court Commissioners

There are 3 judges in the city of Milwaukee

The three Milwaukee judges are full-time judges as is the Madison judge

Municipal judge term is fixed by ordinance anywhere from two to four years

45 sitting judges are women, 201 are men. In addition, 6 of the 7 reserve judges are men

119 sitting judges are attorneys . 6 or the 7 reserve judges are attorneys

## **Clerks**

There are 305 Municipal Court clerks

## **Cases**

In 2004, Municipal Courts processed over 540,000 tickets