

everything they can to insure that they live up to the definition of “impartiality” in the Code of Judicial Ethics which calls upon judges to be unbiased and to keep an open mind when “... considering issues that may come before the judge.” I know after 27 years on the bench it is very easy when defendants are ill-kempt, surly, and/or rude to momentarily forget about “impartiality” and use ones considerable judicial power to show them who is boss. But when this temptation arises I would recommend that you consider the perceptive words of Earl Warren, the former Chief Justice of the Supreme Court, “You sit up there, and you see the whole gamut of human nature. Even if the case being heard involves only a little fellow and \$50, it involves justice. That’s what is important.” The little folks whom he is referring to are of course the clientele of your courts.

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TAKING BLOOD IN AN OWI CASE WITHOUT THE DEFENDANT’S CONSENT BY TODD MEURER, DANE COUNTY COURT COMMISSIONER

Many communities in Wisconsin use blood as the primary test in OWI cases. If a defendant refuses to submit to the blood test, some law enforcement agencies will issue a notice of Intent to Revoke under the implied consent law AND will force the defendant to submit to a blood withdrawal. This blood draw has been done without a warrant and without the defendant’s consent. The U.S. Supreme Court recently issued an

opinion on drawing blood without a warrant and without consent in OWI cases. Below is the summary of this case as it appears in New Laws and Cases.

Does The Dissipation Of Alcohol In The Bloodstream Provide An Exigency In Every OWI Case To Justify Taking Blood Without A Warrant?

Missouri v. McNeely, 133 S. Ct. 832, (2013)

McNeely was stopped by a Missouri police officer at 2:08 am for exceeding the speed limit and repeatedly crossing the centerline. He displayed all the usual signs of intoxication, including the usual acknowledgment that he had consumed “a couple of beers.” He was placed under arrest for OWI and was taken to a nearby hospital for blood testing. He refused. The officer then directed the lab technician to take a blood sample. It tested 0.154. McNeely did not consent to the blood withdrawal and the officer did not first obtain a search warrant authorizing the blood withdrawal.

McNeely moved to suppress the results of the blood test arguing that taking his blood without consent and without a warrant violated the Fourth Amendment. The trial court agreed. The Missouri Supreme Court also agreed. The U.S. Supreme Court considered the following question: Does the natural metabolization of alcohol in the bloodstream present a per se exigency that justifies an exception to the Fourth Amendment’s warrant requirement for nonconsensual blood testing in all drunk-driving

cases? The U. S. Supreme Court held that in the context of an OWI investigation, the natural dissipation of alcohol does not by itself constitute an exigency in every case sufficient to justify taking blood without consent and without a warrant. This must be determined on the “totality of the circumstances” in each individual case.

The Court did not elaborate on an extensive list of circumstances that needs to be considered by law enforcement. However, the opinion discussed several considerations. The Supreme Court noted that intruding below McNeely’s skin and into his vein was a substantial invasion of bodily integrity and implicated a violation of his most personal and deep rooted expectation of privacy. Other circumstances to be considered include time spent by law enforcement investigating an accident, time spent transporting an injured suspect to a hospital, the procedures and time involved in obtaining a warrant; and the length of time between the driving and the taking of the sample. Further, the governmental interest in combating drunk driving and protecting the public did not justify departing in every OWI case from the warrant requirement.

Bottom Line: Municipal Judges DO NOT have authority to issue a search warrant. Municipal judges are NOT involved in issuing a search warrant. This is the responsibility of the circuit court judges.

If a search warrant is issued and a first offense OWI charge is brought in municipal court, the defendant may file a motion to suppress challenging the sufficiency of the warrant. This motion is heard in municipal court.

If blood is withdrawn without a warrant or consent and a first offense OWI charge is brought in municipal court, the defendant may file a motion to suppress challenging the lawfulness of the blood withdrawal. This motion is heard in municipal court. The issue is whether under the totality of the circumstances there were exigent circumstances justifying the withdrawal of the blood without a warrant.

If the defendant consents to the blood withdrawal, nothing has changed. McNeely only deals with a defendant who refuses to submit to a blood draw.

RESOURCE CENTER ON IMPAIRED DRIVING DEFUNDED

I'm sorry to report that Nina Emerson, Director of the Resource Center for Impaired Driving, has informed me that the State Bureau of Transportation Safety has decided to no longer fund the Resource Center. Funding for the program will end on September 30, 2013.

The Resource Center provides a wide range of alcohol-related data and legal information on impaired driving issues to judges, prosecutors, defense attorneys, law enforcement officers, legislators, educators, and citizens. I

recommend that anyone who hasn't visited the Resource Center on Impaired Driving website do so before September 30, 2013, as there are many resources you may want to take advantage of before they are gone.

www.law.wisc.edu/rcid

This will be a great loss to both municipal and circuit court judges as well as the Office of Judicial Education. Throughout the past 20 years Nina has been instrumental in not only helping us plan seminars that address the serious issue of impaired driving but has also served as a knowledgeable and engaging speaker. She will be greatly missed.

INCREASE IN DRIVER IMPROVEMENT SURCHARGE

The driver improvement surcharge for OWI offenses has been increased from \$365 to \$435 for offenses committed on or after July 2, 2013. This increase was included in the most recent budget bill, 2013 Act 20. Please review the enclosed memorandum from the Director of State Courts' office. Also enclosed is an updated Benchbook Appendix 6 showing the new increase. Feel free to make copies of this memorandum for your court personnel and local law enforcement agencies.

4 YEAR TERM OF OFFICE & CHARTER ORDINANCES

Effective January 1, 2011, all municipal judge terms were statutorily set at 4 years.

755.02 Term. *The judges shall be elected at large for a term of 4 years unless a different term, not exceeding 4 years nor less than 2 years, is provided by charter ordinance enacted under s. 66.0101. The term shall commence on May 1 of the year of the judge's election.*

After January 1, 2011, the only way a municipal judge can have a term of less than 4 years is if the municipality established or establishes a lesser term by the passage of a charter ordinance. The procedure for passage of a charter ordinance is not the same as the procedure for the passage of a non-charter ordinance. The procedure for passing a charter ordinance is set for in Sec. 66.0101 and is set forth below:

66.0101(2)(a) *A city or village may enact a charter ordinance. A charter ordinance shall be designated as a charter ordinance, requires a two-thirds vote of the members-elect of the legislative body of the city or village, and is subject to referendum as provided in this section.*

66.0101(3) *A charter ordinance shall be published as a class 1 notice, under ch. 985 and shall be recorded by the clerk in a permanent book kept for that purpose, with a statement of the manner of its adoption. A certified copy of the charter ordinance shall be filed by the clerk with the secretary of state. The secretary of state shall keep a separate index of all charter ordinances, arranged alphabetically by city and village and summarizing each ordinance, and annually shall*

issue the index of charter ordinances filed during the 12 months prior to July 1.

After this past spring election it became apparent that there are still some municipalities & judges who believe that the judge's term is for less than 4 years in spite of there being no record of a charter ordinance changing the term on file with the Secretary of State's office. For those of you who believe you have terms of less than 4 years, it is important that you consult with your municipal clerks and municipal attorneys to make sure that your term of office has been properly established.

UPCOMING SEMINARS

Traffic Seminar – July 25 & 26, 2013, Radisson, La Crosse

Special Topic Seminar – September 19 & 20, 2013, Kalahari Resort, WI Dells
Tentative Topics – Court Administration, Non-Traffic Ordinances, Allowable Court Fees, How to Run a Trial, Objections & Collecting & Enforcing Judgments

Clerks Seminar – October 10 & 11, 2013, Radisson Paper Valley, Appleton *NOTE: It is now mandatory that each municipal court send at least one court clerk to this seminar at least every other year.*

Trial Seminar - March 20 & 21, 2014, Osthoff Resort, Elkhart Lake *Final Seminar for the 2013/2014 reporting period*

WELCOMES & GOODBYES ON THE CLERK'S ADVISORY COMMITTEE

This year we had to say goodbye to two members of the Municipal Court Clerk's Advisory Committee. This committee assists the Office of Judicial Education plan the annual clerk's seminar and update the *Municipal Court Clerk's Procedures Manual*.

Long time committee member Christine Pecard, from the City of Marinette, retired from the committee to enjoy a little more well-deserved time with her family. Senta Hall, from the Town of Geneva, resigned from the committee after obtaining her degree from the University of Wisconsin-Whitewater and accepting a position as a Town Clerk.

Both Christine and Senta gave so much time, talent and expertise to the committee. Their dedication to all of Wisconsin's municipal court clerks could not have been more evident. They volunteered many hours serving on the committee, serving as faculty for both the New Clerk Orientation, updating the clerks' manual and generally keeping me aware of any issues that the Office of Judicial Education needed to address with municipal court clerks. Carol and I and ALL of the clerks throughout the state will miss them greatly. As much as we will miss Christine & Senta we are at the same time very pleased to have court clerks Dawn Kuzniewicz of the City of Beaver Dam and Jodie Sorenson of the Village of Waunakee

joining the Clerk's Advisory Committee. We couldn't be happier that they have both agreed to serve on this important committee. Welcome Dawn and Jodie!!

NEW JUDGES, NEW COURTS, RESIGNATIONS & RETIREMENTS

District I

The Village of Brown Deer and the City of Glendale merged into a Joint Court that is called the North Shore Municipal Court.

Christopher Lipscomb, formerly the judge in Glendale was elected to serve the new joint court. **David Victor**, previously the judge of Brown Deer, chose not to run for the new joint court.

District II

Richard A. Ginkowski was elected to the Village of Pleasant Prairie replacing **George Easton** who did not seek reelection.

Marlene Engstrom was elected in the Village of Silver Lake replacing her husband, **David Engstrom** who passed away November 29, 2012. David Engstrom served as the Silver Lake Municipal Judge for 25 years and was beloved by the community for his dedication and thoughtfulness on the bench.

District VII

The Village of Cashton court merged with the Hidden Valley Joint Court presided over by Judge **Brian Ekern**. Judge **Rita Byers** retired after serving on the Cashton bench for 34 years!!

The City of Prairie du Chien established a new municipal court. **Daniel M. Key** was appointed to serve as the first municipal judge.

District VIII

Charles W. Klasen was elected to the Town of Grand Chute replacing **James Larson** who was unable to run for another term as Grand Chute now requires their municipal judge to be a licensed attorney. While serving on the bench Judge Larson was awarded the WMJA's Judge of the Year Award.

District X

Matt Delander was elected in the Village of Roberts. He replaces **Peter Close** who did not seek reelection

Jack Harrison was elected in the City of Chetek replacing **Rob Schuler** who resigned last year after he moved outside of the municipality.

The Village of Colfax abolished their municipal court.

MUNICIPAL JUDGE BENCHBOOK NOW ON STATE COURT WEBSITE

The most current edition of the *Wisconsin Municipal Judge Benchbook* is now available online on the state court website. The Benchbook can be found at this link.

<http://wicourts.gov/publications/guides/docs/munibenchbook.pdf>

ANNUAL QUESTIONNAIRE & WISCONSIN MUNICIPAL COURT CASELOAD STATISTICS REPORTS

Usually, this time of year, we send out the annual court questionnaire for municipal judges to complete and return. However, at the request of the Director of State Court's Office, we are reformatting our annual questionnaire to include statistical information that has, in the past, been recorded on the Wisconsin Municipal Court Caseload Statistics Report (Form 9 in the Clerk's Manual) that are filled out quarterly by Municipal Court Clerks.

What this change means is two things. First, the Questionnaire will now be mailed in January rather than during the summer. Second, beginning in January 2014, court clerks will no longer be required to file quarterly statistical reports and instead will just need to report caseload statistics once per year on the annual questionnaire. For the remainder of 2013, clerks should still file these statistics quarterly.

In the past we have not had 100% compliance with the reporting of the caseload statistics nor have we had 100% compliance with return of the annual questionnaires. It will now be more important than ever to make sure this annual questionnaire/statistical report is returned to our office as we will be

required to forward the information to the Director's Office and to the District Court Administrators. Please contact the Office of Judicial Education if you have any questions about this new procedure.

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wicourts.gov/services/judge/edu.htm

Hours: 8 a.m. - 4 p.m.

Monday – Friday

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ENJOY THE SUMMER!

