

CLINICAL LAW OFFICES

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September 3, 2014

Mr. Bill Thompson
Clerk
Supreme Court of Missouri
207 West High Street
Jefferson City, Missouri 65101

Re: Proposal to Amend Rule 37

Dear Mr. Thompson:

The undersigned write to request that the Court adopt an amendment to Supreme Court Rule 37.65(a) and (b) to incorporate the constitutionally mandated language of R.S.Mo. 560.026(1) and R.S.Mo. 560.031(3). This amendment would clarify the obligation of municipal courts to proportion fines to the resources of offenders and the power of the courts to respond in a constitutional manner to non-payment by indigent defendants.

More than forty years ago, the United States Supreme Court held that indigent defendants can not be imprisoned for failure to pay a fine when the failure is due solely to their financial inability to pay on equal protection grounds. *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970); *Tate v. Short*, 401 U.S. 395, 397-98 (1971). The Supreme Court of Missouri likewise held that an indigent defendant who is unable to pay may not be incarcerated as a consequence of his or her poverty. *Hendrix v. Lark*, 482 S.W.2d 427, 431 (Mo. 1972).

In explicit recognition of the above cases, the Missouri Legislature enacted R.S.Mo. 560.026, which requires the court to proportion fines to the burden that payment will impose in view of the financial resources of an individual. Furthermore, R.S.Mo. 560.031 allows courts to enter orders granting the defendant additional time, reducing the amount of the fine or installments, or revoking the fine either wholly or partially so long as the failure to pay was not intentional and there was a good faith effort from the defendant.

Rule 37.01 says that “Rule 37 governs the procedure in all courts of this state having original jurisdiction of ordinance violations and the disposition of any such violation in a violation bureau,” which can mean that all matters of procedure are contained in the Rule. Some of the

statutory language relates to the court's procedures, and we believe that is desirable to have these provisions from sections 560.026 and 560.031 in Rule 37. The absence of this language from Rule 37.65 may leave judges and attorneys in municipal divisions with insufficient guidance concerning the appropriate response to non-payment by an indigent municipal ordinance default.

I. Brief History – Case Law Antecedents to Sections 560.026 and 560.031

In *Williams v. Illinois*, the United States Supreme Court ruled that when aggregate imprisonment exceeds the statutory maximum resulting from involuntary nonpayment's of fines or court costs, it constitutes an impermissible discrimination against indigents. *Williams*, 399 U.S. at 240-41. The Supreme Court noted that the statute in effect raised the statutory ceiling on indigents constituting a violation of the Equal Protection Clause. *Id.* at 244. The Supreme Court expanded the *Williams* doctrine in *Tate v. Short*, to situations where the indigent defendant will not be incarcerated beyond the statutory maximum. *Tate*, 401 U.S. at 397-98. Furthermore, Courts may not limit the punishment to payment of a fine for those with means while converting fines into prison terms for indigent defendants who lack such means without violating the Equal Protection Clause. *Id.* at 399.

In *Hendrix v. Lark*, the Supreme Court of Missouri addressed the issue of dealing with indigent defendants who make a good faith effort to make installment payments but are unable to do so. *Hendrix*, 482 S.W.2d at 431. First, the Court is to conduct a hearing to determine the defendants' ability to pay the fines and costs. *Id.* And if the defendant is found to be unable to immediately pay, he or she is to be released with an opportunity to make reasonable installments fixed by the court in light of his or her ability to pay. *Id.*

II. Missouri Legislative Response to U.S. and Missouri Supreme Court cases

The following statutory amendments constituted a direct response to the Equal Protection requirements announced by the United States Supreme Court and Missouri Supreme Court:

Section 560.026. Imposition of fines (1979)

1. In determining the amount and the method of payment of a fine, the court shall, insofar as practicable, proportion the fine to the burden that payment will impose in view of the financial resources of an individual. The court shall not sentence an offender to pay a fine in any amount which will prevent him from making restitution or reparation to the victim of the offense.

Section 560.031 Response to nonpayment (1979)

3. If it appears that the default in the payment of a fine is excusable under the standards set forth in subsection 2, the court may enter an order allowing the offender additional

time for payment, reducing the amount of the fine or of each installment, or revoking the fine or the unpaid portion in whole or in part.

III. Proposed Amendment to Rule 37.65

We respectfully request the following amendment to incorporate the constitutionally mandated language of R.S.Mo. 560.026 and R.S.Mo. 560.031:

37.65 Fines, Installment or Delayed Payments – Response to Nonpayment

- (a) In determining the amount and the method of payment of a fine, the court shall proportion the fine to the burden that payment will impose in view of the financial resources of an individual. The court shall not sentence an offender to pay a fine in any amount which will prevent him from making restitution or reparation to the victim of the offense.**
- (b) If it appears to the judge imposing judgment or assessing a fine that the defendant does not have at that time the present means to satisfy the fine, the judge may issue an order allowing the defendant additional time for payment, reducing the amount of the fine or of each installment, or revoking the fine or the unpaid portion in whole or in part.**
- (c) When an offender sentenced to pay a fine defaults in the payment of the fine or in any installment, the court upon motion of the prosecuting attorney or upon its own motion may require him to show cause why he should not be imprisoned for nonpayment. The court may issue a warrant of arrest or a summons for his appearance.**
- (d) Following an order to show cause under section c, the court may fine the defendant or imprison the defendant for a period not to exceed 30 days upon a finding that the defendant intentionally refused to obey the sentence of the court. The court may provide in its order that payment or satisfaction of the fine at any time will entitle the offender to his release from such imprisonment or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of the fine.**
- (e) If it appears that the default in the payment of a fine is excusable under the standards set forth in section d, the court shall enter an order allowing the offender additional time for payment, reducing the amount of the fine or of each installment, or revoking the fine or the unpaid portion in whole or in part.**

(Plain text represents existing language while bold text represents the proposed amendment.)

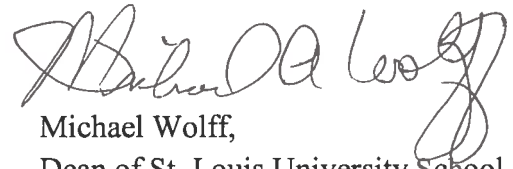
We respectfully request the above amendment in order to protect indigent defendants from being incarcerated for failure to pay a fine in direct violation of their rights under the Equal Protection and Due Process Clause and to ensure that municipal courts have the same arsenal of constitutionally appropriate responses to non-payment.

Thank you for your time and consideration. Please feel free to contact Professor Roediger with any questions regarding our proposal. We will be happy to meet with the Court's committee on criminal instructions and rules regarding this proposal.

Sincerely,



Brendan Roediger,
Professor of Law



Michael Wolff,
Dean of St. Louis University School
of Law



Stephen Hanlon,
Professor of Law



John Ammann,
Professor of Law




Thomas Harvey,
Executive Director
ArchCity Defenders



John McAnnar
Special Projects Director
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Michael-John Voss
Managing Attorney
ArchCity Defenders



Taylor Sander,
Legal Intern

Enc: Rule 37 Amendment

37.65 Fines, Installment or Delayed Payments – Response to Nonpayment

PROPOSED Rule 37.65 as Amended

- (a) In determining the amount and the method of payment of a fine, the court shall proportion the fine to the burden that payment will impose in view of the financial resources of an individual. The court shall not sentence an offender to pay a fine in any amount which will prevent him from making restitution or reparation to the victim of the offense.**
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- (e) If it appears that the default in the payment of a fine is excusable under the standards set forth in section d, the court shall enter an order allowing the offender additional time for payment, reducing the amount of the fine or of each installment, or revoking the fine or the unpaid portion in whole or in part.**