

# State and Municipal Civil Infractions

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## 7.1 Overview

### A. Authority

A district court magistrate has jurisdiction to hear and preside over state and municipal civil infraction admissions; admissions with explanation; and informal hearings. Informal Hearings for state and municipal civil infractions may be conducted without completion of a special training course. [MCL 600.8512, MCL 600.8719, MCL 600.8819]

A district court magistrate may exercise the statutory authority only to the extent expressly authorized by the chief judge, presiding judge or only judge of the district court. [MCL 600.8512(3), MCR 4.401(B)]

In exercising the authority granted, the magistrate may administer oaths, examine witnesses and make findings of fact and conclusions of law. If the defendant is found responsible, the magistrate may impose civil sanctions as provided under MCL 600.8727 and MCL 600.8827.

A Local Administrative Order outlining a magistrate's duties is recommended. This order validates the magistrate's authority to handle traffic, municipal and state civil infractions, as well as other duties. An LAO, filed with the State Court Administrative Office, provides the chief judge, the magistrate, and SCAO administrators and analysts a helpful tool in responding to challenges to a magistrate's authority.

A district court magistrate may only hear and preside over state and municipal non-traffic civil infractions if the Family division of the Circuit Court has entered an agreement with the district court to waive jurisdiction over any or all state or municipal non-traffic civil infractions alleged to have been committed by juveniles. The agreement must specify for which civil infractions jurisdiction have been waived. For a civil infraction waived the district court has jurisdiction over the juvenile in the same manner as if an adult had committed the civil infraction. [MCL 712A.2 and MCL 712A.2(e)(1)]

### B. Definitions

Municipal and state civil infractions are acts or omissions prohibited by law which are not crimes as defined by MCL 750.5 and for which civil sanctions may be ordered. The following definitions are set forth in MCL 600.113.

1. **Civil infraction** means an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered. Civil infraction includes, but is not limited to, the following:

- A violation of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, designated as a civil infraction.
  - A violation of a city, township, or village ordinance substantially corresponding to a provision of Act No. 300 of the Public Acts of 1949, if the ordinance designates the violation as a civil infraction.
  - A violation of an ordinance adopted pursuant to Act No. 235 of the Public Acts of 1969, being sections 257.941 to 257.943 of the Michigan Compiled Laws. [Control of Traffic in Parking Areas]
  - A violation of a city, township, or village ordinance adopting the uniform traffic code promulgated under Act No. 62 of the Public Acts of 1956, being sections 257.951 to 257.954 of the Michigan Compiled Laws, if the uniform traffic code designates the violation as a civil infraction.
  - A violation of an ordinance adopted by the governing board of a state university or college pursuant to Act No. 291 of the Public Acts of 1967, being sections 390.891 to 390.893 of the Michigan Compiled Laws, if the ordinance designates the violation as a civil infraction. [Traffic Ordinances at State Universities and Colleges]
  - A violation of regulations adopted by a county board of commissioners pursuant to Act No. 58 of the Public Acts of 1945, being section 46.201 of the Michigan Compiled Laws. [County Parking Lots]
  - A municipal civil infraction.
  - A state civil infraction.
  - A violation of the pupil transportation act, Act No. 187 of the Public Acts of 1990, being sections 257.1801 to 257.1877 of the Michigan Compiled Laws, designated as a civil infraction.
2. **Civil infraction action** means a civil action in which the defendant is alleged to be responsible for a civil infraction.
3. **Municipal civil infractions** are enacted by political subdivisions of the state. Examples of municipal civil infractions include building, housing, and zoning code violations. **Municipal civil infraction** means a civil infraction involving a violation of an ordinance. Municipal civil infraction includes, but is not limited to, a township municipal civil infraction. Municipal civil infraction does not include a violation described in subdivision (a)(i) to (vi) or (ix) or any act or omission that constitutes a crime under any of the following:

- Article 7 or section 17766a of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7101 to 333.7545 and 333.17766a of the Michigan Compiled Laws.
  - The Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.1 to 750.568 of the Michigan Compiled Laws.
  - Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.
  - The Michigan liquor control code, being sections 436.1101 436.2303 of the Michigan Compiled Laws (formerly sections 436.1 to 436.58 of the Michigan Compiled Laws).
  - Part 801 (marine safety) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.80101 to 324.80199 of the Michigan Compiled Laws.
  - The aeronautics code of the state of Michigan, Act No. 327 of the Public Acts of 1945, being sections 259.1 to 259.208 of the Michigan Compiled Laws.
  - Part 821 (snowmobiles) of Act No. 451 of the Public Acts of 1994, being sections 324.82101 to 324.82159 of the Michigan Compiled Laws.
  - Part 811 (off-road recreation vehicles) of Act No. 451 of the Public Acts of 1994, being sections 324.81101 to 324.81150 of the Michigan Compiled Laws.
  - The railroad code of 1993, Act No. 354 of the Public Acts of 1993, being sections 462.101 to 462.451 of the Michigan Compiled Laws.
  - Any law of this state under which the act or omission is punishable by imprisonment for more than 90 days.
4. **Municipal civil infraction action** means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction. Municipal civil infraction action includes, but is not limited to, a railway municipal civil infraction action.
5. **Trailway municipal civil infraction** means a municipal civil infraction involving the operation of a vehicle on a recreational trailway at a time, in a place, or in a manner prohibited by ordinance and punishable by civil sanctions.

6. **Trailway municipal civil infraction action** means a civil infraction action in which the defendant is alleged to be responsible for a trailway municipal civil infraction.
7. **State civil infractions** are enacted by the state legislature. Examples of state civil infractions are littering, DNR administrative rules, and non-traffic PBT violations.
8. **State civil infraction** means a civil infraction involving either of the following:
  - A violation of state law that is designated by statute as a state civil infraction.
  - A violation of a city, township, village, or county ordinance that is designated by statute as a state civil infraction.
9. **State civil infraction action** means a civil action in which the defendant is alleged to be responsible for a state civil infraction.
10. Except as otherwise provided in MCL 600.113:
  - A civil infraction action involving a traffic or parking violation is governed by Act No. 300 of the Public Acts of 1949.
  - A municipal civil infraction action is governed by chapter 87. [MCL 600.8701 et seq.]
  - A state civil infraction action is governed by chapter 88. [MCL 600.8801 et seq.]

### C. Sources of State and Municipal Civil Infraction Law

In adjudicating a civil infraction case, the magistrate must first make sure that the violation in question is a civil infraction over which he or she has jurisdiction. Next, the magistrate must determine the proper procedural steps to take in processing the case after the officer issues the citation. Ultimately, the magistrate must decide whether the defendant's conduct is in violation of state law or a local ordinance, and impose the proper penalty. In making all of these decisions, the magistrate must consult Michigan's law.

Michigan law should be available in the court's library. Finding Michigan's law can be confusing for the following reasons:

- Both the state Legislature and local governments enact laws so there is no single official compilation of statutes and ordinances that contains all of Michigan's law. An offender may be cited under state or local law, depending on where the offense occurred and what law enforcement agency took action.
- In some cases, one statute may describe an offense, and a second statute may describe the penalty for that offense.

Because Michigan law is not located all in one place, the magistrate must consult multiple sources of law in adjudicating a civil infraction case. The most common sources of law are:

### **1. Michigan Compiled Laws Annotated (MCL)**

A compilation of all the statutes enacted by the Michigan legislature including references to relevant appellate case decisions.

### **2. Local Ordinances**

A type of law enacted by a local unit of government, such as a city or township. They are a major source of traffic law in many parts of Michigan. Some ordinances deal with subjects not addressed by the Michigan Legislature; others are identical to, or substantially similar to, statutes enacted by the Legislature.

Magistrates should familiarize themselves with the applicable local ordinances in their jurisdiction, because no two sets of local ordinances are exactly the same in format, organization, or numbering system. Ordinance compilations may be obtained from local sources such as courts, public libraries, and city, county, village and township clerks' offices.

### **3. Michigan Court Rules**

The Michigan Court Rules are adopted by the Michigan Supreme Court, and set forth procedural requirements for the Michigan courts. The magistrate should consult the following court rules governing traffic adjudication procedures, the powers of the district judge and magistrate, and recordkeeping requirements for magistrates.

- MCR 4.101, which sets out procedures to be followed in civil infraction cases;
- MCR 4.401, which deals with the district judge's control over the magistrate's duties, responsibilities, and decisions;

- MCR 8.125, which addresses electronic filing of citations; and
- MCR 8.205, which imposes recordkeeping and reporting requirements on magistrates.

#### **4. Published Case Decisions**

In published case decisions, the Michigan Supreme Court and Court of Appeals resolve questions not directly addressed by the foregoing statutes, ordinances, and court rules.

Michigan Supreme Court decisions are collected in reporters called the Michigan Reports. Court of Appeals decisions appear in reporters called Michigan Appeals Reports. All Michigan trial courts are required to follow published case decisions by the state's appellate courts.

The Michigan Supreme Court publishes all of its decisions. The Court of Appeals, however, only publishes selected decisions. Michigan's trial courts are only required to follow published decisions by the Court of Appeals. Unpublished Court of Appeals opinions may be considered, but are not binding. [MCR 7.215(C)]

Michigan court decisions are published in a parallel reporter from West Publishing Company, called Northwestern Reporter. When used, the parallel citation always follows the official Michigan Reports or Michigan Appeals Reports citation.

#### **5. Attorney General Opinions**

Occasionally, the Michigan Attorney General issues opinions about legal issues that magistrates might encounter. The courts are not required to follow these opinions, but they typically offer helpful guidance. Attorney General opinions are found in a multi-volume set called Report of the Attorney General. Each volume in the set contains opinions issued during a one or two year period.

## **7.2.1 Commencing Civil Infraction Action**

### **A. Issuing Citation**

#### **1. Authority to Issue**

Municipal and state civil infractions are similar to traffic civil infractions with certain differences. Municipal civil infractions and state civil infractions may be initiated by a law enforcement officer. Municipal civil infractions and municipal civil infraction notices may also be issued by other personnel of a county, city, township, village or regional parks and recreation commission if authorized by ordinance. [MCL 600.8701(a), MCL 600.8801(3)(c)]

#### **2. Service**

Once written, the authorized issuer shall serve a copy of the citation upon the alleged violator and file the citation on paper or electronically with the district court. In a municipal civil infraction action involving the use or occupancy of land or a building or other structure, the officer must either serve a copy of the citation or notice personally on the defendant or post the citation and send a copy of the citation by first class mail to the land owner. [MCL 600.8707, MCR 4.101]

#### **3. Municipal Ordinance Violations Bureau**

If a county, city, village or township has established a municipal ordinance violations bureau, an authorized official may issue and serve a municipal ordinance violation notice instead of a citation. Notices may not be issued for railway municipal civil infractions involving damage to natural resources or facilities or where a vehicle has been impounded. If the defendant does not admit responsibility and pay the prescribed fine and costs at the municipal ordinance violations bureau, a citation may be filed with the district court and a copy of the citation may be served by first class mail to the defendant's last known address. [MCL 600.8707(6)]

### **B. Notice Contents of Citation**

The citation shall contain the name of the plaintiff, the name and address of the defendant, the municipal civil infraction alleged, the place where the defendant shall appear in court, the telephone number of the court, the date and time by which the appearance shall be made, and the additional information required below.

1. Both the municipal and state civil infraction citation shall inform the defendant that he or she may do 1 of the following:
  - admit responsibility by mail, in person, or by representation at or by the time specified for appearance;
  - admit responsibility with explanation by mail by the time specified for appearance or, in person, or by representation; or
  - deny responsibility by doing either of the following:
    - ▶ appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the plaintiff.
    - ▶ appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.

[MCL 600.8709(2), MCL 600.8809(2)]

2. The municipal civil infraction citation shall inform the defendant of all of the following:
  - that if the defendant desires to admit responsibility “with explanation” in person or by representation, the defendant must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for an appearance.
  - that if the defendant desires to deny responsibility, the defendant must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing unless a hearing data is specified on the citation.
  - that a hearing shall be an informal hearing unless a formal hearing is requested by the defendant or the plaintiff political subdivision.
  - that at a formal hearing the defendant must appear in person before a judge with the opportunity of being represented by an attorney.

[MCL 600.8709(3)]

3. The state civil infraction citation shall inform the defendant that if the defendant desires to admit responsibility “with explanation” other than by mail or to have an informal hearing or a formal hearing, the defendant must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing. A hearing date may be specified on the citation. [MCL 600.8809(3)]
4. Both the municipal and state civil infraction citation shall contain a notice in boldfaced type that the failure of the defendant to appear within the time specified in the citation or at the time scheduled for a hearing or appearance is a misdemeanor and will result in entry of a default judgment against the defendant.
  - a. The civil infraction shall state that return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs, return of the citation with an admission of responsibility with explanation, or timely application to the court for a scheduled date and time for an appearance under MCL 600.8709(3)(a) or a hearing under MCL 600.8709(3)(b) constitutes a timely appearance.
  - b. Additionally, the state civil infraction shall state that a failure to appear will result in a refusal by the secretary of state to issue or renew an operator’s or chauffeur’s license for the defendant. Timely application to the court for a hearing, return of the citation with an admission of responsibility with explanation, or return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs constitutes a timely appearance.

[MCL 600.8709(4), MCL 600.8809(4)]

5. Trailway municipal civil infractions shall be designed to allow an authorized local official to indicate that the defendant is required to appear at a formal hearing if either or both of the following apply:
  - the trailway municipal civil infraction caused damage to a natural resource or facility;
  - the authorized local official impounds the vehicle.

[MCL 600.8709(5)(a),(b)]

The court shall schedule the formal hearing if it is designated on the citation. [MCL 600.8717(4)]

### **C. Michigan Uniform Law Citations**

Municipal civil infractions may be issued on a locally developed notice or the state approved notice when there is a municipal civil infraction bureau (Form UC-02 Municipal Civil Infraction Notice of Violation). The court will not receive a copy of this notice. However, if the defendant fails to pay the fine indicated in the notice, the municipal civil infraction bureau will issue a citation against the individual and file it with court (Form UC-03, Uniform Municipal Civil Infraction Citation). If there is no municipal civil infraction bureau, or if a defendant is cited for a violation over which a bureau does not have the authority to enforce (all offenses which require action by the defendant, or involve sanctions, other than payment of a fine) the municipality must use either version of the Michigan Uniform Law Citation, UC-01a or UC-01b.

State civil infractions must be issued on the Michigan Uniform Law Citation, (Form UC-01a or Form UC-01b).

The Michigan Uniform Law Citation (UC-01a) consists of 6 parts: 3 originals (court copies); 1 police copy; 1 misdemeanor copy; and 1 civil infraction copy. The 3 originals allow an office to cite three violations on a single form. For each violation, the office must file an “original” with the court. Each of the originals shows the court the other violations written; however, the other violations will be shaded to indicate that they are not the charge for this particular “original”.

The Michigan Uniform Law Citation (UC-01b) consists of 4 parts: 1 original (court copy), 1 police/enforcement agency/prosecutor copy; 1 misdemeanor copy; and 1 civil infraction copy. The form contains a misdemeanor copy because it is a multiple use form that can be used by a municipality for issuing misdemeanor citations if they have the authority to do so.

Each “original” copy of either version of the citation that is filed with the district court serves as a separate complaint. [MCL 600.8705, MCL 600.8805] The civil infraction copy given to the defendant serves as a summons that brings the defendant under the court's jurisdiction and notifies the individual of all the charges regardless of how many originals are filed with the district court. Filing may be electronic pursuant to MCR 8.125.

### **D. Proceedings for Nonresidents**

When the defendant is not a Michigan resident and the violation is a state civil infraction, special proceedings apply. To guarantee appearance, the citing office may accept a bond not to exceed \$100. If the court is open and a magistrate is available, the nonresident may demand to be taken to the nearest magistrate to answer the civil infraction charge.

[MCL 600.8808]

## **7.2.2 Appearance**

See subchapter 7.3 for procedural checklists.

### **A. Overview**

The plaintiff may request a formal or informal hearing on a municipal civil infraction. This should occur in conjunction with the filing of the citation with the court. The defendant must contact the court within the time specified for response in the citation to avoid default. [MCL 600.8709(4), MCL 600.8809(4)]

The procedure for arranging the appearance date varies from court to court. Some district courts set a specific date for the defendant's appearance; other courts require the defendant to appear on a "walk-in" basis on or before the appearance date specified on the citation. When the appearance date is arranged by telephone, the court may wish to mail to the defendant a notice confirming the appearance.

#### **1. Response to Citation**

All defendants who receive a citation for a civil infraction are required to make an appearance in person, by representation, or by mail. [MCL 600.8715(2); MCL 600.8815(2)] Upon making an appearance the defendant must respond to the citation in one of the following ways:

- Admit responsibility, without explanation;
- Admit responsibility with explanation; or,
- Deny responsibility for the civil infraction.

#### **2. Method of Appearance**

##### **a. In Person**

Appearance in person is made when the defendant personally appears in court to admit responsibility. Appearance by representation is made when a defendant authorizes another person to come before the court and admit responsibility on the defendant's behalf. The defendant's representative need not be a licensed attorney.

Once an appearance date is set, the defendant is required to appear, either in person or by representation. Default will also be entered against defendants who fail to appear at scheduled hearings. [MCL 600.8723, MCL 600.8823, MCR 4.101(B)(3)] Defaults are discussed in 7.2.3, pages 25 through 27. The contact with the court to schedule an appearance date does not itself constitute an appearance. [MCR 4.101(B)(2)]

**b. By Representation**

New magistrates should inform themselves about their courts' practices regarding appearances by representation. A defendant need not give another person written authorization to act on his or her behalf, but the magistrate may ask for written authorization or a written admission of responsibility if the circumstances surrounding the representative appear questionable.

Once an appearance date is set, the defendant is required to appear, either in person or by representation. Default will also be entered against defendants who fail to appear at scheduled hearings. [MCL 600.8723, MCL 600.882, MCR 4.101(B)(3)] Defaults are discussed in 7.2.3, pages 25 through 27. The contact with the court to schedule an appearance date does not itself constitute an appearance. [MCR 4.101(B)(2)]

**c. By Mail**

Appearance by mail is made when the defendant returns the citation to the court with a signed admission of responsibility, and/or full payment of the applicable fines and costs. [MCL 600.8715(2), MCL 600.8815(2)] If payment is not enclosed, the court may order appropriate sanctions as described in MCL 600.8727, MCL 600.8827, and notify the defendant of the amount due and the payment deadline. In any event, the court must comply with the notice requirements in MCL 600.8827(7)].

**3. Type of Response****a. Admission of Responsibility without Explanation**

A district court magistrate may accept an admission of responsibility for a civil infraction without explanation, and order sanctions, if the magistrate is so authorized by the district judge. [MCL 600.8715(2), MCL 600.8815(2), MCR 4.101(D)(1)] If the defendant admits responsibility without explanation, the magistrate finds the defendant responsible for the infraction and imposes the appropriate sanctions. [MCL 600.8727 for municipal civil infractions and MCL 600.8827 for state civil infractions]

**b. Admission of Responsibility with Explanation**

A magistrate may accept a written or verbal admission of responsibility with explanation only as expressly authorized by the district judge. [MCL 600.8715(3)(b), MCL 600.8815(3)(b), MCR 4.101(D)(2)].

Therefore, it is essential that the magistrate obtain the necessary authorization to preside over admissions of responsibility with explanation. When the explanation is offered by representation, the court may require the defendant to offer further explanation and/or appear in court in person.

### **c. Denial of Responsibility**

A case involving a defendant who denies responsibility for a civil infraction may be adjudicated at a formal or informal hearing. Most contested cases are heard and decided at informal hearings. A formal hearing occurs when the defendant expressly requests one, or when one of the parties appeals a decision rendered after an informal hearing. The plaintiff may request a formal hearing on a municipal civil infraction.

The defendant shall request a hearing by contacting the court in person, by mail, by telephone or by representation to obtain a scheduled hearing date. If a hearing date is scheduled by telephone, the court shall send a written notice confirming the hearing date. [MCL 600.8715(5), MCL 600.8815(5)]

## **4. Timeliness of Appearance**

The defendant's appearance must occur within the time specified on the citation. Failure to make a timely appearance will result in entry of a default judgment against the defendant. [MCR 4.101(B)] Noncompliance with the judgment on a state civil infraction will result in eventual suspension of the defendant's license, as well as other possible sanctions. [MCL 257.321a(8), MCL 600.8827(7)] The timeliness of a mail appearance is determined by the postmark date of the defendant's letter.

## **B. Admission of Responsibility with Explanation, Appearance in Person or By Representation**

There are a number of steps to be conducted in an admission of responsibility with explanation in person or by representation. The magistrate must make certain determinations with regard to some of these steps. [MCL 600.8715(3)(b) MCL 600.8815(3)(b), MCR 4.101(D)(2)] See Section 7.3.1 for a procedural checklist. The steps involved in accepting an admission of responsibility with explanation in person or by representation include:

- checking the citation for material defects;
- reading the charges and explaining the responses
- determining whether the defendant has admitted responsibility;
- evaluating defendant's explanation; and,
- entering judgment.

## **1. Material Defects**

### **a. Defined**

The citation must be checked for material defects. A material defect is an error pertaining to a fact that is necessary to prove an element of the offense, or that attacks the essence of the complaint. Courts vary in their opinion as to what constitutes a material defect, and new magistrates should check with their chief judges regarding this issue. Material defects may include:

- No signature on the citation by the citing officer. The absence of a signature is a material defect that makes the entire citation invalid. [MCL 600.8705(3); MCL 600.8805(3)]
- Incorrect identification of the defendant.
- Incomplete identification of the offense.
- Failure to specify the location of the offense.
- Failing to specify the date of the offense, or entering an incorrect date.

### **b. Court Policy**

New magistrates should also ask their chief judges what to do if a citation contains a material defect. The case may be dismissed without prejudice by the judge or magistrate (if the magistrate is authorized to do so), and the citing officer may issue a new citation. A new citation must be served on the defendant. The court should have a clear policy regarding proof of service.

### **c. Discrepancies**

A citation may contain a discrepancy between the officer's written description of the offense and the statute or ordinance section number, or there may be a written description with no section number given. Another possible discrepancy is that the section number might indicate one offense, but the defendant's explanation may contain facts that make you think another offense should be charged.

One approach to this problem would be to schedule an informal hearing in which testimony from both sides can be heard. After hearing testimony from both sides, the magistrate could allow the officer to amend the citation. Another approach would be to dismiss the citation without prejudice and permit the officer to reissue it with appropriate corrections.

Magistrates should not amend a citation themselves without authorization from the citing officer.

## **2. Reading Charges and Explaining Responses**

The magistrate should read the charge(s) from the citation, and ask whether the defendant understands the charge(s). If the defendant does not fully understand, the magistrate must explain further to make the charge(s) clear. Once the defendant or defendant's representative indicates an understanding of the charge(s), the magistrate should explain the possible responses to the charge(s) (admission, admission with explanation, and denial), and again ask the defendant how he or she wishes to respond.

Because defendants are often confused about the difference between an admission with explanation and a denial, the magistrate should make sure that the defendant understands that an admission with explanation will not result in dismissal of the citation; only a denial may lead to this result. If a defendant ends up denying responsibility, the magistrate must schedule a formal or informal hearing. [MCR 4.101(E)(2)]

Some defendants admit responsibility and accept sanctions only to dispose of the matter quickly. There is nothing wrong with this; however, a magistrate should make clear the options that are available.

If multiple offenses are listed on a multi-charge citation, the magistrate should ask if he or she has appeared to respond to the other charges. If the defendant has not appeared on the other charges, the magistrate should explain that a separate response is necessary for each charge. Defendants sometimes assume incorrectly that a single appearance will suffice for each charge on a multi-charge citation.

## **3. Determining Whether Defendant Has Admitted Responsibility**

### **a. Defined**

A defendant's admission of responsibility with explanation consists of an admission of responsibility for the offense charged and an explanation of the circumstances surrounding the offense.

A defendant who responds to a citation with an admission of responsibility with explanation admits committing a civil infraction, but requests that the sanctions should be mitigated because of extenuating circumstances. The court must enter a finding of responsibility, and decide whether the defendant's circumstances warrant mitigation of the sanctions.

The magistrate determines whether the facts the defendant admits are the elements that constitute the charged offense and considers any mitigating circumstances related in the explanation. Upon consideration of the explanation, the magistrate decides whether to accept the defendant's admission, and may impose the appropriate sanctions. The magistrate may mitigate the sanctions against the defendant in light of his or her explanation.

**b. Consulting Law**

In deciding whether the defendant is admitting facts constituting responsibility for an infraction, the magistrate must consult the statute or ordinance that creates the infraction. This statute or ordinance will describe the particular factual elements that comprise the infraction.

**d. Admission to Correspond with Factual Elements**

The facts contained in the defendant's admission of responsibility must correspond with the factual elements described in the statute or ordinance in order to establish that the defendant committed the infraction.

**e. Missing Elements**

If a defendant purports to admit responsibility, yet the facts he or she admits to don't amount to the facts that constitute the offense, the magistrate should inquire further about the missing elements. If further inquiry does not resolve the issue, or if the police officer's testimony is needed, the magistrate should schedule a formal or informal hearing.

**f. Factors which Excuse Responsibility**

In some cases, the defendant's behavior may meet the statutory elements for an infraction, but other circumstances offered in explanation constitute a defense to the infraction that would excuse the defendant entirely from responsibility. The statute governing admissions with explanation, read strictly, does not allow the magistrate to enter a not-responsible judgment or dismiss the citation in such cases. [MCL 600.8715(3), MCL 600.8815(3)]

One possible solution is to again remind the defendant of his or her right to deny responsibility and to request an informal/formal hearing. The magistrate should reach a clear understanding with his or her chief judge about what do to in this situation.

The magistrate should distinguish between explanations that mitigate the defendant's circumstances and justify a reduction in sanctions, and explanations that contest the elements of the offense or otherwise excuse the defendant from responsibility. The latter type of explanation should alert the magistrate to the need for an informal hearing on the issue of the defendant's responsibility

#### **4. Evaluating Defendant's Explanation**

Once the magistrate has determined that the defendant has admitted responsibility for the charged infraction, he or she must decide whether to accept the defendant's explanation, and consider reducing the applicable sanctions. Michigan law does not provide clear guidelines for evaluating a defendant's explanation, or for mitigating the civil sanctions imposed when a defendant is found responsible.

Although magistrates rely on their own experience and sense of justice in evaluating defendants' explanations, each magistrate should have an understanding with the chief judge about the court's policies to reduce sanctions for admissions with explanation.

In evaluating a defendant's explanation, the magistrate may consider the following factors:

##### **a. The Defendant's Credibility**

Magistrates should also be wary of statements that do not appear credible under the circumstances. Claims might justify a mitigation in sanctions if the magistrate is satisfied that they were made truthfully. The magistrate must often rely upon his or her "gut" feeling about the defendant when assessing credibility.

Other factors to consider, however, are the defendant's ability to corroborate his or her explanation with documentation or other credible witnesses, the defendant's current driving record, and whether the defendant's explanation offers good faith reasons for his or her behavior, rather than excuses.

##### **b. Relevance of the Explanation**

The defendant's explanation must also relate to the elements of the charged infraction. Even a credible explanation offered in mitigation of a defendant's behavior will not justify a reduction in sanctions if it is irrelevant to the charged infraction. Some defendants offer "explanations" that do not relate to the facts of the incident, such as:

- Complaints about the citing officer's discourtesy;
- Concerns about the perceived "fairness" of enforcement; or
- Concerns about lost time from work.

These sorts of "explanations" may merely be appeals to sympathy that do not justify mitigated sanctions. The magistrate should give the defendant a reasonable opportunity to "blow off steam." In the case of the discourteous officer, the magistrate might suggest to the defendant that he or she take the complaint to a more appropriate forum, such as the citing officer's supervisor or the jurisdiction's governing board.

## **5. Enter a Judgment**

When the defendant has admitted responsibility for the offense, the magistrate should, after evaluating his or her explanation, enter a judgment that finds him or her responsible for the citation and impose the appropriate sanction. See subchapter 7.2.6, page 41 for details on sanctions. If the magistrate does not mitigate the sanctions, then the usual sanctions are imposed. If, on the other hand, the magistrate finds the defendant's explanation worthy of consideration, he or she may decide how much the defendant's sanctions may be reduced from the recommended fines and costs schedule.

### **a. Refusing Admission**

When, after hearing the defendant's admission and explanation, the magistrate determines that the defendant has denied responsibility, the magistrate should refuse to accept the admission as stated, and have the case scheduled for an informal hearing as if the defendant had denied responsibility.

### **b. Mitigating Sanctions**

The magistrate has no authority to mitigate the sanctions against the defendant by amending the charged offense.

### **c. Assessing Fines and Costs**

The magistrate has no authority to assess a fine or costs without entering an accompanying finding of responsibility.

### **d. Preparing Order**

The magistrate's judgment is entered on SCAO Approved form CIA 02 (Judgment) or by way of a computerized form. The original judgment should be filed with the court, and a copy given to the defendant.

### **C. Admission of Responsibility with Explanation, Appearance by Mail**

When the defendant timely appears by mail, the magistrate may accept the admission with explanation as if the defendant had appeared personally in court. However, if the defendant's mailed explanation is unclear, or if it does not clearly admit responsibility, the magistrate may require the defendant to provide further explanation at a court appearance. [MCL 600.8715(3)(b), MCL 600.8815(3)(b), MCR 4.101(D)(2)]

There are a number of steps to be conducted in an admission of responsibility with explanation by mail. The magistrate must make certain determinations with regard to some of these steps. See Section 7.3.2 for a procedural checklist. The steps involved in accepting an admission of responsibility with explanation by mail include:

- examining the case file;
- checking the citation for material defects
- determining whether the defendant has admitted responsibility;
- evaluating defendant's explanation; and,
- entering judgment.

#### **1. Examining the Case File for Completeness**

##### **a. Contents**

The case file will contain the court copy of the citation (consisting of either paper or an electronic file with data from the citation), and the defendant's letter of explanation, accompanied by the defendant's signed civil infraction copy of the citation. The file might also contain a copy of an incident report.

##### **b. Examine Appearance Date**

In reviewing the case file, the magistrate should first examine the appearance date. If the defendant's letter of explanation is not postmarked by that date, a default judgment of responsibility may be entered. [MCL 600.8727, MCL 600.8827] See subchapter 7.2.C, pages 25 through 27 for defaults and 7.2.8, pages 47 through 51 for noncompliance with judgments.

##### **c. Failure to Respond Timely**

Court practice varies as to whether the magistrate or the court's clerical staff enters a default judgment against a defendant who fails to timely respond to a traffic citation. Court practice also varies as to when a default judgment will be entered.

#### **d. Court Policy for Defaults**

The magistrate is responsible for establishing the policy for entering defaults, in conjunction with the district judge. In courts with automation, defaults are produced automatically after the expiration of the time for response. In such courts, the magistrate should not consider a defendant's untimely letter of explanation if the case file also contains a judgment of default.

### **2. Checking the Citation for Material Defects**

See the discussion on page 14 of this subchapter. After checking for material defects, the magistrate should compare the contents of the mailed explanation with the citation. The magistrate should verify that the letter and the citation refer to the same offense and offender, and to the same time and location. The defendant should sign his or her copy of the citation. If a defendant mails a copy of the citation to the court without signing it, yet provides a letter of explanation, the magistrate should check the chief judge's policy to determine what action to take.

### **3. Determining Whether the Defendant Has Admitted Responsibility**

Once the magistrate has found that the case file is complete, he or she should determine whether:

- the defendant is admitting facts that constitute responsibility for the offense; and,
- the defendant is offering an explanation in mitigation of the civil sanctions.

See pages 15 through 17 of this subchapter for a discussion of principles to follow in making these determinations.

### **4. Evaluating Defendant's Explanation**

Mailed admissions of responsibility with explanation pose special problems not present where the defendant or representative for the defendant appears before the court. Defendants are usually not attorneys; they are not trained or experienced in the legalities of admissions, denials, or admissions with explanation.

A defendant's explanation may be ambiguous, or the written admission with explanation may fall short of the legal requirements for an admission. The defendant may not understand the difference between an admission with explanation and a denial, and may send the court a written defense to the infraction with the expectation that the court will render a decision on responsibility. In these situations, the magistrate does not have the advantage of the defendant's presence in the hearing room to answer clarifying questions.

Where the defendant's admission with explanation is unclear or defective, the magistrate has the following options, depending on the court's time and staff constraints, and the district judge's preferences:

- Mail a notice to appear in court regarding the letter of explanation.
- Mail the defendant a judgment of responsibility, informing him or her of the right to appeal.
- Schedule an informal hearing.
- Send the defendant a letter of non-acceptance of the admission with explanation, advising the defendant to submit a revised response to the citation by a stated time deadline. The letter should also inform the defendant of the particular sanction that may be imposed, and of the consequences of failure to reply within the time deadline.

## **5. Entry of Judgment**

After evaluating a mailed explanation, the magistrate should prepare a judgment to be sent to the defendant.

If the defendant sent payment with his or her mailed explanation, the payment should be applied to the fine and cost upon entry of judgment. If a balance is still owed, the mailed judgment should indicate the balance due. If the payment is too much, the excess amount should be deposited into the court's bond account, and the difference refunded by mail. [Michigan Court Administration Reference Guide, Section 6-05-09, F.4.]

The magistrate should determine the court's policy regarding situations where the defendant includes payment with the mailed explanation, and the explanation results in the scheduling of an appearance or hearing. The court may either: 1) return the check with the notice to appear; or, 2) deposit the payment to the bond account pending the outcome of the hearing.

## **D. Denial of Responsibility**

A case involving a defendant who denies responsibility for a civil infraction may be adjudicated at a formal or informal hearing. Most contested cases are heard and decided at informal hearings. A formal hearing occurs when the defendant expressly requests one, or in the case of a municipal civil infraction the plaintiff requests one on some railway violations, or when one of the parties appeals a decision rendered after an informal hearing.

## **1. Formal Hearing**

A municipal civil infraction hearing shall be an informal hearing unless either the plaintiff or the defendant requests that the hearing be formal. [MCL 600.8715(5)] This is distinguished from state civil infractions where only the defendant may request that the hearing be formal. [MCL 600.8815(5)]

### **a. Required Formal Hearing**

The court shall also schedule a formal hearing in a trailway municipal civil infraction action if either damage to a natural resource or facility occurred and/or an authorized official impounded a vehicle. [MCL 600.8717(4)(b)]

### **b. Timely Request**

A request for a formal hearing must be received by the court at least 10 days before the hearing date. [MCL 600.8717(2), MCL 600.8815(5)] In addition, a party to a municipal civil infraction must give 10 days notice to the other party or parties of the request for a formal hearing. [MCL 600.8715(3)] This is a departure from procedure for traffic and state civil infractions. The court may choose to send notice to all parties of the scheduled formal hearing.

Formal hearings in civil infraction cases must be conducted by the district judge. The judge decides whether to find the defendant responsible for the infraction, applying a preponderance of the evidence standard. Each party may be represented by an attorney, but the defendant is not entitled to appointed counsel at public expense. There is no jury at a formal hearing.

## **2. Informal Hearing**

### **a. Authority to Conduct**

Under MCL 600.8719(1) and MCL 600.8819(1), informal hearings in civil infraction cases may be conducted by a district judge or a district court magistrate. Before conducting an informal hearing, however, the magistrate must be authorized to do so by the district judge. [MCL 600.8512(2)]

**b. Procedural Standards**

An informal hearing is similar to a formal hearing in that no jury is empaneled; also as in a formal hearing, a preponderance of the evidence standard is used to decide whether to find the defendant responsible. The procedural rules applicable to a formal hearing do not pertain to an informal hearing, however. Except with regard to privileged communications (such as the attorney/client or doctor/patient privilege), the magistrate is not bound to follow procedural rules such as the Michigan Rules of Evidence, and no verbatim record is required. Neither party may be represented by an attorney at an informal hearing, but each party may subpoena witnesses. [MCL 600.8719(2) and MCL 600.8719(3). MCL 600.8819(2) and MCL 600.8819(3)] A magistrate may administer oaths, examine witnesses and make findings of fact and conclusions of law.

**c. Conduct of Hearing**

In general, the atmosphere surrounding the informal hearing allows for greater latitude to parties and witnesses. Nonetheless, the magistrate should keep in mind that informal hearings are many citizens' only experience with the court system. A case that seems routine to a magistrate may be a matter of great concern to the person who has requested a hearing. It is thus important that the magistrate control the proceedings, and treat both parties fairly, with courtesy and respect, no matter how routine the case may seem to the magistrate. Magistrates must also seek to make informal hearings understandable to those who appear, and to provide reasons for their decisions. The hearing shall be conducted in an informal manner so as to do substantial justice according to the rules of substantive law.

See 7.2.5, Adjudication, page 38 regarding the preponderance of the evidence standard. For a procedural checklist and script on conducting hearings, see subchapters 7.3.3 and 7.3.4, pages 55 through 60.



### **7.2.3 Failure to Appear**

If the citing officer fails to appear, except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, the court shall dismiss the case without prejudice. If an offender fails to respond to a citation or to appear for a scheduled hearing, the magistrate may enter a default determination of responsibility. This determination will include the imposition of sanctions. However, the defendant may move to set aside the default for good cause upon timely application.

#### **A. Entering Default Judgment**

##### **1. Authority**

If a defendant fails to respond to a citation or to appear for a scheduled hearing, the magistrate may enter a default determination of responsibility, and impose appropriate sanctions. [MCL 600.8723, MCL 600.8823, MCR 4.101(B)]

Prior to the entry of a default judgment for failure to respond to a citation the magistrate must determine whether the plaintiff has filed an affidavit stating whether the defendant is in the military. The check box on the citation is sufficient for this purpose. If the citation indicates the defendant is on active duty in the military service a default judgment cannot be entered until the court appoints an attorney to represent the defendant, unless the servicemember has waived his or her rights and protections under the Servicemembers Civil Relief Act, *50 USCS Appx 501, et. seq.*

The court must initiate procedures to prevent default judgments when a citation indicates a person is on active duty in the military. If a default judgment is entered, the defendant may file a motion to set aside the default and provide proof to the court that he or she is on active military duty.

##### **2. Sanctions**

Failure to answer a citation or a notice to appear in court for a state civil infraction violation can also result in a hold on the driver license. Moreover, such failure is a misdemeanor. [MCL 600.8727(8), (9)] The district judge and/or prosecuting attorney (but not the magistrate) will decide whether to prosecute the defendant for this misdemeanor offense. For details on sanctions see subchapter 7.2.4, page 59.

##### **3. Court Policy**

Magistrates inevitably face the question of what to do about "no-shows." Defendants and enforcement officers may arrive late or fail to appear at a scheduled informal hearing.

Therefore, the magistrate should consult with the chief district judge to develop a clear, no-exceptions policy under which parties who arrive more than a given number of minutes late are considered no-shows. When one party appears and the other one does not, the magistrate should advise those present of the time by which the absent party must appear.

#### **4. Process**

When the defendant fails to appear for a scheduled hearing, follow the steps in MCR 4.101(B)(4) and then dismiss the citing officer and any witnesses who appeared. Before dismissing these persons, it is good practice to explain what procedures the court will follow against the defendant who is in default. Under MCR 4.101(B)(4), the court:

- must enter a default against the defendant;
- must make a determination of responsibility, if the complaint is sufficient;
- must impose a sanction by entering a default judgment; and
- must send the defendant a notice of the entry of the default judgment and the sanctions imposed.

Upon entry of a default judgment, the magistrate should turn the court file over to the court employees who are responsible for sending the defendant the notices required by law and for processing the necessary paperwork.

If an out-of-state defendant who posted a bond deposit fails to appear as required in the citation or for a scheduled informal or formal hearing, the court shall enter a default judgment and the money deposited shall be forfeited and applied to any civil fine or costs ordered pursuant to MCL 600.8827. [MCL 600.8808]

### **B. Setting Aside Default Judgment**

In some instances, a defendant may have a legitimate excuse for failing to answer the citation or attend the hearing. Under MCR 4.101(C)(1), the defendant may request the court to have the default judgment set aside.

#### **1. Motion**

The defendant's request must be made within 14 days of the day on which the court sends the notice of default. The request may either be in writing, or presented to the court in person, and must explain the reason for the defendant's failure to appear. The request must also state that the defendant wants to offer a defense to or explanation of the complaint and must be accompanied by a cash bond equal to the fine and costs due at the time the motion is filed. [MCR 4.101(C)]

A defendant may request that a default be set aside on SCAO Approved form CIA 04, Motion to Set Aside Default Judgment and Order.

## **2. Setting Aside the Judgment**

Once the defendant has filed a timely request to have the default set aside, a judge may set the default aside "for good cause" under MCR 4.101(C)(2)(a). If the judgment is set aside, an informal hearing on the charge should be scheduled, unless a party expressly requests a formal hearing, or the violation is a trailway municipal civil infraction which requires a formal hearing pursuant to MCL 600.8717(4).

## **3. Hearing on Motion**

Alternatively, the judge, for "good cause," may require the clerk to schedule an informal hearing on the defendant's motion, under MCR 4.101(C)(2)(b).

## **4. Untimely Request**

An untimely request to set aside a default must comply with additional requirements set forth in MCR 2.603(D). Defendants may wish to seek legal advice to determine whether they are able to meet the additional requirements of this court rule.



## **7.2.4 Informal Hearing**

The magistrate has a duty to maintain control over the proceedings during an informal hearing. Following the steps outlined in this subchapter will assist the magistrate in maintaining control, and will help to insure that the hearing is conducted fairly. See subchapter 7.3.3, starting on page 55 for a checklist, worksheet, and script to assist in properly conducting informal hearings.

### **A. Facilities and Environment**

During an informal hearing, the magistrate should maintain a dignified and judicial environment. The magistrate should wear standard business attire and eliminate personal items from the hearing room, such as family pictures. The ideal hearing room should contain the following items:

- A work area for parties and witnesses that includes a calendar and a magnetic board or chalkboard and writing implements;
- A seating area for parties and witnesses;
- Separate seating areas for spectators and for parties awaiting scheduled hearings;
- A raised bench for the magistrate;
- The United States and Michigan state flags, and a Michigan state seal; and,
- A copy of the Michigan Vehicle Code and municipal traffic ordinances.

### **B. Information Sheet**

The magistrate may want to develop an informal hearing information sheet and send it to defendants who have a hearing scheduled. Such a sheet would contain information to help defendants understand what to expect at their hearings. A sample information sheet is found in subchapter 7.3.5, page 61. This document was adapted from material developed by several district courts.

### **C. Conducting the Hearing**

#### **1. Examine the Case File**

The first step in conducting an informal hearing is to examine the case file and determine whether it is complete.

- The file should contain the citation; a copy of Form CIA 01, Notice to Appear, that corresponds to the citation for the case (court personnel should have sent this notice to each party in advance); and a copy of Form CIA 02, Judgment.
- In addition, the case file may contain a copy of an incident report.

## **2. Check for Material Defects**

After examining the file for completeness, the magistrate should check for material defects in the citation. See subchapter 7.2.2, B, page 14 for minimum standards.

## **3. Determine Elements of Infraction**

Finally, the magistrate should determine the elements of the alleged infraction that the police officer must prove by a preponderance of the evidence to support a finding of responsibility. See subchapter 7.2.5, A, page 37 on establishing the elements of an offense. During the parties' testimony, it is helpful for the magistrate to take notes that document testimony related to each element of the offense. These notes may then be used to establish a preponderance of the evidence. See subchapter 7.3.3, page 61 for a copy of the worksheet.

## **4. Call the Case**

The informal hearing begins when the magistrate calls the case. The defendant must appear in person and the plaintiff (the State of Michigan, a city, village, or township) must be represented by the officer who issued the citation. To verify that all persons connected with the case are present at the hearing, the magistrate should ask the officer, defendant, and any witnesses who are present to please step forward.

### **a. Failure to Appear**

If the defendant fails to appear, the magistrate should enter a default judgment. If the citing officer fails to appear, the magistrate shall dismiss the case without prejudice except when the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing. See also 7.2.3, page 25.

### **b. Ethical Conduct**

Magistrates should not socialize with police officers anywhere in view of the public before the start of a scheduled hearing. Parties who perceive that the magistrate has a social relationship with the officer may also perceive that the magistrate's decision will be biased in the officer's favor.

## **5. Explain the Proceeding**

Once the magistrate is satisfied that the parties and witnesses are present, the magistrate should introduce himself or herself, and identify the defendant and officer. The magistrate should next tell all present, in plain English, what will happen. Some of the items to be explained include the following:

- The proceeding is an informal hearing.
- The purpose of an informal hearing is to determine whether the defendant is responsible for a civil traffic infraction.
- Each side will have the opportunity to be heard.
- After the citing officer has testified, the defendant will testify about the facts relating to the incident, and offer a defense.
- The magistrate will decide the case after hearing all relevant testimony and applying the appropriate law.
- A preponderance or majority of the evidence is required to find the defendant responsible. See subchapter 7.2.5, A, 1, b, page 37 for details.
- The possible civil sanctions include a civil fine and costs. A jail sentence is not a possible sanction.
- Either party may appeal if dissatisfied with the magistrate's decision.

## **6. Read the Complaint**

### **a. Complaint Information**

After explaining what an informal hearing is, the magistrate should read the complaint information aloud, exactly as it appears on the citation, including:

- The citation number;
- The name of the defendant;
- The date and time of the alleged incident; and,

- The location and description of the alleged offense.

**b. Defendant Response**

The defendant may allege at this point that there is an error in the citation. Many defendants believe that any error in the citation makes the citation invalid, no matter how minor the error is. The magistrate (who would have checked the citation for material defects prior to the hearing) should explain that the only defects that affect the validity of a citation are material defects, that go to the essence of the charge. See subchapter 7.2.2, B. page 14 on material defects.

**c. Applicable Statute or Ordinance**

Next, the magistrate should read the applicable statute or ordinance. The magistrate must be satisfied that the defendant understands the charge and confirm that the defendant denies responsibility. Often, defendants belatedly realize that they committed the infraction and may admit responsibility. If this happens, the magistrate need not hear testimony because the proceeding becomes either an admission of responsibility or admission with explanation. The magistrate may dismiss any witnesses and the citing officer, and proceed to entering judgment with just the defendant present.

**d. Inquire Whether Ready to Proceed**

If the defendant still wishes to deny responsibility, the magistrate should ask the parties if they are ready to proceed with the hearing.

**7. Administer the Oath**

Before taking testimony, the magistrate must administer the oath to the parties and witnesses. The parties and witnesses may take the oath as a group. The magistrate instructs the group to raise their right hands while the oath is administered.

**8. Take Evidence**

**a. Officer's Evidence**

The magistrate may begin by asking the citing officer to present the evidence in support of his or her case. The officer's evidence may be in the form of verbal testimony, physical evidence, or documents (such as photographs). The officer's evidence should be confined to facts relevant to the elements of the offense. See also subchapter 7.2.5, A and B, pages 37 through 41.

Testimony about the defendant's attitude toward the officer, for example, is not relevant to the elements of most civil infractions, and should be prohibited. After the officer has finished presenting evidence, the magistrate may ask the officer questions to clarify elements of the alleged infraction.

**b. Defendant's Questions**

Once the officer's presentation is concluded, the magistrate should ask the defendant if he or she has any questions for the magistrate to ask the officer or the officer's witnesses. The defendant must not be allowed to argue with the officer

To maintain control of the proceedings, the magistrate should tell the defendant to direct questions to the magistrate who will, in turn, conduct the actual questioning of the officer or the witnesses. The magistrate must ensure that the defendant's questions are relevant and not argumentative. The magistrate may wish to remind the parties that courtroom etiquette applies, even though the hearing is informal.

**c. Defendant's Evidence**

The magistrate should ask the defendant to present his or her case. Like the officer, the defendant may present verbal testimony, physical evidence, or documents. The defendant is probably less experienced in testifying than a police officer, so that his or her evidence is more likely to be disorganized, unfocused, or irrelevant to the main issues of the case. The magistrate will often need to question the defendant after his or her presentation.

**d. Treatment of Defendant**

The magistrate should be sensitive to the defendant's inexperience, and make every effort to maintain an atmosphere of dignity, decorum, and impartiality. At the end of the defendant's presentation, the magistrate should ask whether the officer has any questions for the magistrate to ask the defendant or the defendant's witnesses

To avoid arguments arising between the defendant and the officer, the officer's questions should be directed to the magistrate, who in turn will question the defendant. If the magistrate still requires more facts to decide the case after hearing the testimony, he or she should question the parties.

## **9. Decide the Case**

After hearing the testimony and asking questions, the magistrate should assess whether each element of the officer's case has been established by a preponderance of the evidence, and reach a decision. See subchapter 7.2.5, page 37 for more on the reasoning process involved in deciding a case. In announcing his or her decision, the magistrate should:

- Recite the facts not in dispute;
- Explain how he or she has resolved the disputed facts;
- Apply the facts to the appropriate law;
- Announce whether or not the defendant is responsible for the infraction; and,
- Give reasons for the decision.

## **10. Impose Sanctions**

### **a. Finding of Not Responsible**

A magistrate who finds a defendant not responsible should dismiss the defendant and anyone else who is still in the hearing room.

### **b. Finding of Responsible**

A magistrate who finds the defendant responsible must impose civil sanctions immediately. Since sanctioning is a matter that concerns only the magistrate and the defendant, the officer and any witnesses may be excused for this stage of the hearing, if they wish to leave.

If the officer or witnesses remain in the hearing room while the magistrate imposes sanctions, they should be advised that they have no opportunity to argue the sanction once it is imposed. The officer has no right to contest the sanction.

### **c. Advice About Failure to Comply with Judgment**

Whatever sanctions are imposed, the magistrate should advise the defendant that failure to pay fines and costs or complete a rehabilitation or service program may result in a misdemeanor conviction, possible hold on one's driver's license, and even

punishment for contempt of court. See subchapter 7.2.8, page 47 on the consequences of noncompliance with a judgment.

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#### **D. Complete Case Processing**

After deciding a case, the magistrate should ensure that SCAO Approved form CIA 02 (Judgment) is completed, with a copy given to the defendant and the original filed with the court. The magistrate's involvement in the case ends when the defendant is dismissed from the hearing room.

Once the day's proceedings are concluded, all case files should be returned to the court clerk.



## **7.2.5 Adjudication**

A magistrate's primary duty in adjudicating a civil infraction case is determining whether to find the defendant responsible for the offense. The magistrate makes this finding by consulting the state statute or local ordinance governing the charged offense, and determining whether the defendant's conduct corresponds to the particular elements that comprise the offense.

### **A. Establishing Elements of Case**

The elements of an offense are the factual criteria that must be met to prove that the defendant has committed it. The elements of a civil infraction can be established either in the defendant's admission of responsibility given in response to a citation, or in an informal hearing.

#### **1. Burden of Proof**

##### **a. Presenting Evidence**

###### **1) Plaintiff**

The citing officer must present evidence proving that the defendant committed a given offense. At an informal hearing on a civil infraction, the plaintiff (usually the citing officer) presents his or her evidence first, because the plaintiff has the burden of proof to establish responsibility. To meet this burden, the plaintiff must present evidence establishing each element of the charged offense. These elements constitute the plaintiff's prima facie case. Black's Law Dictionary (5th Edition, 1979) defines a "prima facie case" as one that will entitle a party to recover if no evidence to the contrary is offered by the opposite party.

If the plaintiff does not prove each element of the charged offense, the magistrate must enter a finding of non-responsibility in favor of the defendant.

If the plaintiff presents a prima facie case at the informal hearing, the magistrate should find the defendant responsible if the defendant offers no evidence whatsoever. Defendants usually present evidence in their defense at an informal hearing, however.

###### **2) Defendant**

When the citing officer has finished his or her presentation of evidence, the magistrate must allow the defendant an opportunity to present his or her evidence before making any decision in the case.

If the defendant has a defense to a violation charge, the defendant must present evidence supporting that defense. The obligation to establish an element of or a defense to a violation of law is known as the burden of proof.

A defendant's evidence will either contradict the facts presented to establish the plaintiff's prima facie case, or raise an excuse from responsibility not present in the prima facie case.

#### **b. Preponderance of the Evidence**

In considering the evidence presented by both parties at an informal civil infraction hearing, the magistrate should render a decision that is supported by a preponderance of the evidence. [MCL 600.8719(4), MCL 600.8821(5)] When the evidence shows that a fact is more likely than not consistent with a party's description of it, that fact is said to be established by a preponderance of the evidence. Black's Law Dictionary, (5th Edition, 1979). A preponderance of the evidence is sometimes expressed as a 51% showing that the evidence is consistent with a party's version of the facts.

The burden of proof by preponderance of the evidence in civil infraction cases is much different than the burden of proof beyond a reasonable doubt in criminal cases. The prosecution bears a much heavier burden of proof in criminal cases than does the plaintiff in civil infraction cases. To establish a fact beyond a reasonable doubt, the trier of fact must be entirely convinced of it, to a moral certainty. Black's Law Dictionary, (5th Edition, 1979).

If the magistrate determines by a preponderance of the evidence that the defendant is responsible for the infraction, the magistrate shall enter an order against the defendant as provided in MCL 600.8727 or MCL 600.8827. Otherwise a judgment shall be entered in favor of the defendant. [MCL 600.8719(4) and MCL 600.8819(4)]

## **2. Basic Elements of Civil Infraction Offenses -- The Plaintiff's Case**

As basic elements of all civil infraction offenses, the magistrate must establish:

- the identity of the defendant;
- that the alleged violation occurred within the jurisdiction of the officer and the political subdivision that enacted the statute or ordinance at issue; and
- that the alleged offense took place within the magistrate's jurisdiction.

### **3. Excuses from Responsibility -- The Defendant's Case**

The defendant may escape responsibility if he or she can show that an element of the plaintiff's case is lacking.

## **B. Applying the Law to the Facts -- Evaluating the Evidence**

Once the magistrate has identified the elements of a civil infraction offense from the statute or ordinance that creates the offense, he or she must carefully listen to the parties' renditions of the facts, looking for facts that match the elements of the offense. This can be a difficult task in an informal hearing, since the parties are not represented by attorneys who understand that adjudication involves a process of applying facts to statutory criteria.

The parties may present the magistrate with numerous facts that have no relevance at all to the elements of the charged offense, and the magistrate must be familiar enough with these elements to discern which facts are important to his or her decision and which are not.

The parties may also present the magistrate with evidence that is not reliable. While the magistrate is not bound by the Michigan Rules of Evidence in an informal hearing, certain principles from these rules are useful to the magistrate in deciding what weight to give the evidence that the parties present.

### **1. Relevance**

Magistrates should not base their decisions on evidence that is not relevant to the charged offense. Michigan Rule of Evidence 401 defines "relevant evidence" as:

"...evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

In plain English, this Rule lists two components for relevant evidence;

- a. The evidence pertains to a fact that impacts on the magistrate's decision; and,
- b. The evidence makes the existence of that fact more or less probable than it would be without the evidence.

## **2. Establishing the Reliability of Evidence Presented**

Evidence at an informal hearing may take the form of testimony by the defendant, the complaining officer, or nonparty witnesses, who will verbally explain what happened as it pertains to the charged offense. The parties may also introduce physical evidence. Finally, documents may be presented as part of the evidence in a civil infraction hearing. The following discussion describes briefly some factors a magistrate should consider in assessing the reliability of these types of evidence.

### **a. Evaluating Testimony of Witness**

#### **1) Competency of Witness**

When evaluating the testimony of a witness, one factor the magistrate should consider is whether the witness is competent to make the statements offered into evidence. A magistrate should not give much weight to a witness's testimony that is not based upon the witness's personal knowledge. [See Michigan Rules of Evidence 601, 602]

#### **2) Distinguishing Between Perception and Statement of Opinion**

The magistrate should also distinguish between a witness's description of some fact perceived and a statement of opinion. A witness does not need to be an expert in the matters of the case to give an opinion, but if opinion testimony is given, the magistrate should inquire into the perceptions that form the basis for the opinion, and consider whether the opinion is reasonable in light of the witness's perception. [See Michigan Rule of Evidence 701] In questioning plaintiff's about evidence pertaining to offenses, magistrates should inquire as to the plaintiff's training and expertise. Plaintiffs may appear in court having observed something, give examples, and based on this, have made a determination. Such determinations are valid only if the officer has the proper training and experience to support them.

### **b. Evaluating Documentary Evidence**

When evaluating documentary evidence, the magistrate should make sure that the document is properly identified, and that no questions are raised as to its authenticity. [See Michigan Rules of Evidence 901 - 1007 for guidance on authentication of documents]

### **c. Evaluating Defendant's Admission of Fact**

A defendant's admission of a fact to a plaintiff may be considered reliable, particularly where the fact admitted is against the defendant's interest.

## 7.2.6 Sanctions

A magistrate shall impose sanctions only to the extent expressly authorized by the chief judge of the district court. [MCL 600.8727(5) and MCL 600.8827(4)]

### A. Fines and Costs

- If a defendant is found responsible or admits responsibility "with explanation" the magistrate may order the defendant to pay a civil fine as provided by law.
- If a civil fine is imposed, the magistrate may also assess costs of not more than \$500.00. Costs may include all direct and indirect expenses which the plaintiff has incurred up to the entry of judgment.
- The magistrate may order that the fine and costs are payable immediately, grant an extension to pay or allow installment payments. [MCL 600.8727(2), MCL 600.8727(3), MCL 600.8827(2), MCL 600.8827(3)]
- In municipal civil infraction actions, an authorized magistrate may, in addition to assessing fine and costs, exercise equitable jurisdiction and authority by issuing a writ or order under MCL 600.8302(4). [MCL 600.8727(4)]
- In railway municipal civil infraction actions, a magistrate may order that the defendant pay for the amount of damages caused to natural resources or facilities damaged by violation of the ordinance. Reimbursement for vehicle impoundment expenses may also be ordered. [MCL 600.8733(2)(a), (b)]

District and municipal courts may establish a schedule of civil fines and costs that occur within the district. If a schedule is established, it must be prominently posted and available for public inspection and may exclude cases on the basis of a defendant's prior record of similar infractions. If a schedule is established, the **fine** may not be increased following a hearing. See People v Courts, 401 Mich 57, and People v Bogedain, 185 Mich App 345.

[MCL 600.8727(6) and MCL 600.8827(5)]

See the following pages for comparisons of civil infractions and fine, cost, and fees.

### B. Justice System Assessment

In addition to any civil fines and costs ordered, the magistrate shall order the defendant to pay a justice system assessment of \$10.00 for each civil infraction determination. [MCL 600.8727 and MCL 600.8827]

**COMPARISON OF CIVIL INFRACTIONS**

<b>Activity Description</b>	<b>Traffic</b>	<b>State</b>	<b>Municipal</b>
Case Type Codes	SI, OI Parking: SK,OK	SN or ON <sup>1</sup>	ON
Notice Issued to appear at Municipal Bureau	No	No	Optional MCL 600.8396
Citation Issued to appear in Court	District or Municipal MCL 257.727c	District or Municipal MCL 600.8803	District or Municipal MCL 600.8703
May admit or deny in person or in writing	Yes MCL 257.745	Yes MCL 600.8815	Yes <sup>2</sup> MCL 600.8709
Request to Withdraw Admission of Responsibility MCR 4.101(G)(3)	Yes	Yes	Yes
Bond for Request to Withdraw Admission MCR 4.101(G)(3)	Yes	Yes	Yes
Informal Hearing	Yes MCL 257.746	Yes MCL 600.8819	Yes <sup>2</sup> MCL 600.8719
Bond for Appeal after Informal Hearing MCR 4.101(G)(1)	Yes	Yes	Yes
Formal Hearing	Yes MCL 257.747	Yes MCL 600.8821	Yes <sup>2</sup> MCL 600.8717 MCL 600.8721
Default Judgment if fail to answer citation or appear for hearing	Yes MCL 257.748	Yes MCL 600.8823	Yes MCL 600.8723
Maximum fine	\$100, or \$250 if Commercial Motor Vehicle MCL 257.907	As provided by state law MCL 600.8827	As provided by local ordinance MCL 600.8727

<sup>1</sup> If a local ordinance creates a State Civil Infraction pursuant to MCL 600.113(1)(e), the Case Type Code would be ON. The Case Type Code for violations of statute as State Civil Infractions is SN.

<sup>2</sup> Municipal Civil Infraction Trailways Violations with damage to property or for which a vehicle has been impounded **must** be scheduled for a Formal Hearing. These are not payable by mail or in person prior to Formal Hearing, and the magistrate may not handle them.

<b>Activity Description</b>	<b>Traffic</b>	<b>State</b>	<b>Municipal</b>
Cost May include all expenses, direct and indirect, to which plaintiff has been put up to entry of judgment	\$100 maximum MCL 257.907	\$500 maximum MCL 600.8827	\$500 maximum MCL 600.8727
Justice System Assessment	\$40 MCL 257.907(14)	\$10 MCL 600.8827(4)	\$10 MCL 600.8727(4)
Cost to compel appearance	Yes MCL 257.729	Yes MCL 600.8835	Yes MCL 600.8735
Abstract conviction	Yes MCL 257.732	No	No
Motion to Set Aside Default MCR 4.101(C)	Yes	Yes	Yes
Bond for Motion to Set Aside Default	Yes MCR 4.101(C)(1)(e)	Yes MCR 4.101(C)(1)(e)	Yes MCR 4.101(C)(1)(e)
14-Day Notice 28 days after judgment if unpaid	Yes MCL 257.321a	Yes MCL 600.8827	Not required
License action taken 14 days after 14-Day Notice	Yes, Suspension <sup>3</sup> MCL 257.321a	Yes, Non-renewal MCL 600.8827	No
Show Cause or Bench Warrant	Yes MCL 257.908	Yes MCL 600.8829	Yes MCL 600.8711 MCL 600.8729
Civil Contempt	\$10/day MCL 257.908	\$30/day MCL 600.8829	\$30/day MCL 600.8729
Injunctive Orders	No	No	Yes MCL 600.8302
Lein against land, building, or structure, obtained by plaintiff	No	No	Yes MCL 600.8731
Impounded Vehicle, lein, bond	Yes MCL 257.724	No	Yes MCL 600.8733

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<sup>3</sup>Except for Parking, requiring 6-or-more unpaid tickets, or 2-or-more unpaid Handicapped Parking tickets, resulting in a non-renewal hold.

**STATE CIVIL INFRACTION FINE, COST, FEES**

<b>Description</b>	<b>Amount</b>	<b>Authority</b>
Fine	Set by individual statute	MCL 600.8827(2)
Cost, including expenses up to the entry of judgment	\$500.00 maximum	MCL 600.8381
Justice System Assessment	\$10.00	MCL 600.8827(4)
Driver License Reinstatement Fee	\$45.00	MCL 600.8827(7)(b)
Civil Contempt	\$30.00/day	MCL 600.8829(5)
Cost to Compel Appearance	As determined by the court	MCL 600.8835

**MUNICIPAL CIVIL INFRACTION FINE, COST, FEES**

<b>Description</b>	<b>Amount</b>	<b>Authority</b>
Fine	Set by individual ordinance	MCL 600.8727(2)
Cost, including damages & expenses up to the entry of judgment	\$500.00 maximum	MCL 600.8381
Justice System Assessment	\$10.00	MCL 600.8727(4)
Trailway Action; damages and expense of impoundment	As determined by the court	MCL 600.8733(2)
Civil Contempt	\$30.00/day	MCL 600.8729(5)
Cost to Compel Appearance	As determined by the court	MCL 600.8735
Trailway Action; Impoundment release bond	\$750.00 cash or surety	MCL 600.8733(1)

## **7.2.7 Appeals**

### **A. Authority**

Either party who is dissatisfied with the magistrate's decision after an informal hearing may appeal the decision, and have the case reheard at a formal hearing before a district judge. The formal hearing on appeal is held de novo, meaning that the judge will hear the case as if for the first time. No consideration will be given to evidence or testimony from the informal hearing. [MCL 600.8719(5)(b) and MCL 600.8819(5)(b), MCR 4.401(D)]

An appeal following an informal hearing is a matter of right, and must be asserted in writing, within 7 days after the decision, on a form to be provided by the court. The appeal will result in a de novo hearing. [MCR 4.101(G)(2)]

There is no appeal of right from an admission of responsibility. However, within 14 days after the admission, a defendant may file with the district court a written request to withdraw the admission, and must post a bond as provided in MCR 4.101(G)(1)(a). If the court grants the request, the case will be scheduled for either a formal hearing or an informal hearing, as ordered by the court. If the court denies the request, the bond may be applied to the fine and costs. [MCR 4.101(G)(3)]

### **B. Process**

The party appealing must request an appeal in writing within 7 days of the magistrate's judgment on Form CIA 05, Claim of Appeal of Right/Request to Withdraw Admission and Order, Civil Infraction. A defendant who appeals must post an appeal bond equal to the fine and costs imposed at the time the appeal is taken. [MCR 4.101(G)(1)(a)]. A plaintiff's appeal must be authorized in writing by the prosecutor; no bond is required, however. [MCR 4.101(G)(1)(c)]



## **7.2.8 Non-Compliance with Judgments**

### **A. Late Penalty and Collection**

Under MCL 600.4803, a defendant who fails to pay a judgment within 56 days after it is due is subject to a late penalty equal to 20% of the amount owed the court. To collect judgments that are 180 days or more in arrears, the district court and its funding unit may enter into an agreement with the Department of Treasury under MCL 12.131-12.140, assigning delinquent accounts to the Department of Treasury for collection. The Department will collect the amount owed by offsetting tax refunds or other payments due from the state to the defendant.

In addition, the court may assess costs to compel appearance. [MCL 600.8735, MCL 600.8835]

### **B. Sanctions**

Defendants who fail to pay a judgment entered after a default or finding of responsibility are guilty of a misdemeanor, and may be subject to criminal prosecution at the discretion of the district judge or prosecutor. [MCL 600.8727(7), MCL 600.8827(8)] Additionally, such defendants face the following possible civil sanctions:

- license sanctions
- contempt of court proceedings
- lien
- bond forfeiture
- impoundment
- civil process to collect the judgment, including attachment and garnishment

#### **1. License Sanctions**

##### **a. Authority**

If the defendant fails to appear or fails to comply with the order or judgment in a **state civil infraction**, the court shall notify the secretary of state. The secretary of state will not issue or renew a driver's license until the matter is resolved with the court and a \$25.00 driver's license reinstatement fee is paid. [MCL 600.8827(7)]

**b. Process**

Twenty-eight days or more after noncompliance with the judgment, the court initiates the proceedings by sending SCAO Approved form CIA 03, 14 Day Notice, to the defendant.

**2. Civil Contempt Proceedings, Default as Civil Contempt****a. Authority**

If the defendant defaults in the payment of a civil fine or costs for a **state or municipal civil infraction** or, if applicable, damages or expenses involving a trailway municipal civil infraction, the court may require the defendant to show cause why the defendant should not be held in civil contempt. The court may respond to a defendant's noncompliance with judgment by initiating civil contempt of court proceedings under MCL 600.8729(1) and MCL 600.8829(1). This decision is made by the district judge and not the magistrate. The prosecutor may also request contempt proceedings against the defendant.

**b. Process**

Civil contempt proceedings begin when the court sends the defendant Form CIA 06, Order to Show Cause. Courts may issue a summons, an order to show cause or a bench warrant to command the defendant's appearance. If the defendant fails to appear, or if the court finds the defendant intentionally refused to obey the court order, it may jail the defendant until the matter is resolved.

**c. Finding and Sanction**

Unless the defendant shows that the default was not due to an intentional refusal to obey the order of the court or that a good faith effort was made to obtain the funds required for payment, the court shall find that the default constitutes civil contempt and may order the defendant committed until all or a portion of the judgment is paid. [MCL 600.8729(3), MCL 600.8829(3)]

The term of imprisonment for civil contempt shall not exceed 1 day for each \$30.00 fine and costs owed. The defendant shall receive \$30.00 credit per day served. [MCL 600.8729(5), MCL 600.8829(5)]

### **3. Lien**

#### **a. Authority**

If a defendant does not pay a civil fine or costs within 30 days after the due date in a **municipal civil infraction** action involving the use or occupation of land, building or structure, the plaintiff may obtain a lien against the land, building or structure. [MCL 600.8731]

#### **b. Process**

- 1) A copy of the court order requiring payment of fine and costs must be recorded by the plaintiff with the county register of deeds along with the legal description of the property. [MCL 600.8731(1)]
- 2) Written notice of the lien must be sent by the plaintiff by first class mail to the land, building or structure owner of record. [MCL 600.8731(2)]
- 3) The court shall certify any remaining unpaid amounts to the attorney for the governmental entity whose ordinance was violated. The attorney may in turn enforce the lien at a foreclosure sale. [MCL 600.8733(3) and (4)]

### **3. Impoundment**

#### **a. Authority**

For non-compliance with **trailway municipal civil infraction** judgments, a vehicle operated in the commission of a trailway municipal civil infraction may be impounded by authorized local officials. [MCL 600.8733(1)]

#### **b. Process**

- 1) Once impounded, the vehicle is subject to a lien in the amount of unpaid fines and costs and any other expenses ordered by the court.
- 2) The defendant or owner of the vehicle may post a \$750.00 cash or surety bond. If posted, the vehicle shall be released.
- 3) If the defendant is found not responsible for the municipal civil infraction or if fine and costs, damages and expenses are paid, the lien shall be discharged and the vehicle released.

- 4) If the defendant is found responsible for a **trailway municipal civil infraction** and then defaults in the payment of court ordered fine and costs, damages or expenses, the court shall forfeit and apply any bond posted. [MCL 600.8733(3)]

## 5. Civil Process to Collect Judgment

The state or locality that issued the citation may decide to collect the judgment using the civil remedies in MCL 600.4001 - 600.4065, 600.6001 - 600.6098. The magistrate does not make the decision to use these remedies. Among these remedies are:

- garnishment of wages;
- attachment of property; and,
- levy and execution.

Political subdivisions may bring an action in a court of competent jurisdiction for the collection of court ordered fine and costs on **municipal civil infractions**. Collection action does not invalidate or waive a lien upon land, a building, or structure. [MCL 600.8731(5)]

To collect judgments that are 180 days or more in arrears, the district court and its funding unit may enter into an agreement with the Department of Treasury under MCL 12.131-12.139, assigning delinquent accounts to the Department of Treasury for collection. The Department will collect the amount owed by offsetting tax refunds or other payments due from the state to the defendant.

**Note:** Under MCL 600.8403, a defendant who fails to pay a judgment within 56 days after it is due is subject to a late penalty equal to 20% of the amount owed.

### **7.3.1 Checklist for Admission of Responsibility with Explanation; Appearance in Person or by Representation**

- Schedule the defendant's appearance.
- Prepare for the explanation.
  - ✓ Prepare Hearing Room.
  - ✓ Examine case file for completeness. The case file will contain the court copy of the citation. It also may contain a copy of the incident report.
  - ✓ Check for material defects. See subchapter 7.2.2, B, page 14 for minimum standards.
  - ✓ Verify the defendant's identity, by asking the person before you whether he or she is the individual named on the citation, or whether he or she is representing the individual named on the citation.
  - ✓ Read the charge(s) from the citation, and ask whether defendant understands the charge(s). If defendant does not fully understand, explain further to make the charge(s) clear. See subchapter 7.2.2, B, page 19 for minimum standards.
  - ✓ Explain possible responses to the charge(s) (admission, admission with explanation, and denial), and again ask defendant how he or she wishes to respond. Make sure defendant understands an admission with explanation will not result in dismissal of the citation; only a denial will lead to this result.
  - ✓ If defendant is charged with multiple offenses on a multi-charge citation, ask if he or she has appeared to respond to the other charges. If defendant has not appeared on the other charges, explain that a separate response is necessary for each charge.
- Determine whether defendant has admitted responsibility. See subchapter 7.2.5, A, page 37.
  - ✓ Ask for defendant's explanation.
  - ✓ Determine whether defendant is admitting facts that constitute responsibility for the infraction.
  - ✓ Consult statute or ordinance that creates the infraction.

- ✓ If defendant denies responsibility, schedule a formal or informal hearing. [MCR 4.101(E)(2)] See subchapter 7.2.2, C, page 22 for minimum standards.
- ☐ Evaluate defendant's explanation. See subchapter 7.2.2, B, page 17 for minimum standards.
  - ✓ Distinguish between explanations that mitigate defendant's circumstances and justify a reduction in sanctions, and explanations that contest elements of the offense or otherwise excuse defendant from responsibility. See subchapter 7.2.5, A. 3, page 38 for a discussion on situations where defendant contests elements of the offense or offers an excuse from responsibility.
  - ✓ Decide whether to accept defendant's explanation, and consider reducing the applicable sanctions.
- ☐ Enter judgment. See subchapter 7.2.2, page 18 for minimum standards. When defendant has admitted responsibility, enter a judgment that finds defendant responsible for the citation and impose the appropriate sanction. See subchapter 7.2.6, page 41 for details on sanctions.
- ☐ Prepare order on SCAO Approved form CIA 02 (Judgment). File original judgment with the court and give copy to defendant.
- ☐ After judgment is entered, give case file to court clerk.
- ☐ Once day's proceedings are concluded, return all case files to court clerk.

### 7.3.2 Checklist for Admission of Responsibility with Explanation; Appearance by Mail

- Examine case file for completeness. The case file will contain the court copy of the citation, and the defendant's letter of explanation, accompanied by the defendant's signed civil infraction copy of the citation. The file may also contain a copy of the incident report.
  - ✓ Examine appearance date. If the defendant's letter of explanation is not postmarked by that date, a default judgment of responsibility may be entered. See subchapter 7.2.2, B, page 20 for minimum standards. See subchapter 7.2.3, page 25 for defaults and 7.2.8, page 47 for noncompliance with judgments.
  - ✓ Check for material defects. See subchapters 7.2.2, A, page 8 and 7.2.2, B, page 20 for minimum standards.
  - ✓ Compare contents of mailed explanation with citation. Verify that letter and citation refer to the same offense and offender and to the same time, location, and offending vehicle
  - ✓ Verify citation is signed by defendant. See subchapter 7.2.2, B, page 20 for minimum standards.
- Determine whether defendant has admitted responsibility. See subchapter 7.2.5, A, page 37. See subchapters 7.2.2, B, page 20 for minimum standards.
  - ✓ Determine whether defendant is admitting facts that constitute responsibility for the infraction and that defendant is offering an explanation in mitigation of the civil sanctions.
  - ✓ Consult the statute or ordinance that creates the infraction.
- Evaluate defendant's explanation. See subchapter 7.2.2, B, page 21 for minimum standards.
  - ✓ Decide whether to accept the defendant's explanation, and consider reducing the applicable sanctions. Where the defendant's admission with explanation is unclear or defective, either:
    - Mail notice to appear in court regarding the letter of explanation; or
    - Mail defendant a judgment of responsibility, informing him or her of right to appeal; or
    - Schedule informal hearing; or

- Send defendant a letter of non-acceptance of the admission with explanation, advising defendant to submit a revised response to the citation by a stated time deadline and informing defendant of the particular sanction that may be imposed and of the consequences of failure to reply within time deadline.
- Enter judgment. See subchapter 7.2.2, page 21 for minimum standards. When defendant has admitted responsibility, enter judgment that finds defendant responsible for the citation and impose the appropriate sanction. See subchapter 7.2.6, page 41 for details on sanctions.
- Prepare order on SCAO Approved form CIA 02 (Judgment). File original judgment with the court and mail copy to defendant. See subchapter 7.2.2, page 21 for minimum standards.
  - ✓ If defendant sent payment along with his or her mailed explanation, apply payment to the fine and costs upon entry of judgment.
- After judgment is entered, give case file to court clerk.
- Once day's proceedings are concluded, return all case files to court clerk.

### **7.3.3 Checklist for Conducting Informal Hearings**

- Examine the case file. The contents should contain the following:
  - ✓ Court copy of citation
  - ✓ Form CIA 01, Notice to Appear
  - ✓ Form CIA 02, Judgment
  - ✓ Incident report (optional)
  
- Call the case
  - ✓ Call the parties' names
  - ✓ Ask the parties and witnesses to come forward
  - ✓ Ensure that all parties and witnesses are present
  - ✓ If the defendant is not present, initial default proceedings
  - ✓ If the citing officer is not present, dismiss infraction with prejudice or adjourn hearing, and explain the procedure to those present
  
- Explain the proceeding
  - ✓ Introduce yourself to those present
  - ✓ Identify the citing officer and defendant
  - ✓ Explain the purpose of an informal hearing
  - ✓ Explain the procedures (such as taking testimony, questioning, decision-making, sanctioning, and right to appeal) to be following in an informal hearing
  - ✓ Answer any questions relating to the hearing

Read the charge

- ✓ Read the citation number, defendant's name, and the date, time, and location of the alleged civil infraction
- ✓ Read the applicable statutes or regulations
- ✓ Ask whether the defendant understands the charge
- ✓ If the defendant does not understand the charge, explain further
- ✓ Determine whether the defendant still intends to deny responsibility
- ✓ If the defendant admits responsibility, impose sanctions; otherwise, continue
- ✓ Ask officer and defendant if they are ready to proceed

 Administer the Oath

- ✓ Swear in all parties and witnesses at once
- ✓ Ask all present to be seated

 Take evidence

- ✓ Request and take the plaintiff's (citing officer's) testimony
- ✓ Request the plaintiff's witnesses' testimony
- ✓ Identify the witnesses' relationship to the case
- ✓ Take the witnesses' testimony
- ✓ If the defendant has questions, direct them to the officer. (To maintain control, do not allow the defendant to question the officer directly.)
- ✓ Request and take the defendant's testimony.
- ✓ Request the defense witnesses' testimony

- ✓ Identify the witnesses' relationship to the case
- ✓ Take the witnesses' testimony
- ✓ If the officer has question, direct them to the defendant. (To maintain control, do not allow the officer to question the defendant directly.)
- ✓ If necessary, determine additional facts by questioning the citing officer, the defendant, and the witnesses
- Decide the case
  - ✓ Recite the facts not in dispute
  - ✓ Give and explain your decision regarding the disputed facts
  - ✓ Relate the facts to the applicable statutes or ordinances
  - ✓ State your decision (responsible as charged, responsible for a lesser included offense, not responsible)
  - ✓ Give the reasons for your decision
- Impose sanctions
  - If you found the defendant not responsible;**
    - ✓ Advise defendant of plaintiff's right of appeal
    - ✓ Dismiss all parties and witnesses
    - ✓ Ensure that all clerical work connected with the case will be completed
  - If you found the defendant responsible;**
    - ✓ Advise defendant of right of appeal
    - ✓ Dismiss the citing officer and witness

- ✓ Determine what sanctions will be imposed
- ✓ Impose the sanctions and inform the defendant
- ✓ Determine whether the defendant can pay the civil fines and costs
- ✓ If the defendant cannot pay, make alternate arrangements
- ✓ Ensure that Form CIA 02, Judgment, is completed
- ✓ Ensure that a copy of the judgment is handed to defendant
- ✓ Dismiss the defendant
- ☐ Complete case processing
  - ✓ Ensure that the records of your magisterial activity are updated
  - ✓ Call the remaining cases (repeat the above steps)

### **7.3.4 Script for Informal Hearings**

The following contains recommended language which a magistrate may use while conducting an informal hearing. The steps below are based on the discussion in subchapter 7.2.4 pages 29 through 35.

- **Call the Case**

“Would Officer Howell and Mr. Bay please come forward? Do either of you have any witnesses with you today? Will you both please take a seat?”

- **Explain the Proceeding**

“I am Magistrate Smith for the 100<sup>th</sup> District Court in Whiting. Are you Officer Howell and are you Mr. Bay? We are here for the purpose of an informal hearing. As magistrate, I will preside over this hearing. Based on the evidence, testimony, and application of the appropriate law, I will render a decision. My decision will be a judgment of whether Mr. Bay is responsible or not responsible for the alleged civil violation. I will now describe the informal hearing process.

Officer Howell will have the first opportunity to testify as to the reasons and circumstances that caused him to issue the citation. When he has concluded his testimony, Mr. Bay, it will be your opportunity to testify as to what happened and to provide a defense you have concerning this alleged infraction. I reserve the right throughout the hearing to ask either of you questions for purposes of discovering points of fact or clarifying issues raised. I will arrive at my judgment and determine whether or not Mr. Bay is responsible, based on a preponderance of the evidence. Officer Howell or Mr. Bay, either of you may appeal my decision, in which case a formal hearing would be held before a judge.”

- **Read the Charge**

“Civil infraction No. T13574 alleges that on February 14, 1998, Mr. Bay failed to remove accumulated refuse from property located at 1234 W. Green Street, Whiting,”

“Mr. Bay, do you understand the charge against you? Do you wish to deny responsibility of the charge and continue with this hearing?”

“Are you both ready to proceed?”

- **Administer the Oath**

“Will you each (or all parties and their witnesses) please stand and raise your right hand? Do you swear or affirm the information that you are about to give in this matter will be the truth and nothing but the truth?”

- **Take Testimony**

“Officer Howell, you may now testify.”

*After the officer’s testimony is presented, you may ask if there is any additional information that the officer wishes to add. You should then follow with testimony from the officer’s witness(es).*

“Mr. Bay, the officer’s side of this case is momentarily concluded. Do you have any questions that you wish me to ask of the officer regarding the testimony?”

*After the defendant’s testimony is presented, you may ask if there is any additional information he or she wishes to add. You should then follow with testimony from the defendant’s witness(es).*

“Officer Howell, do you have any questions that you wish me to ask of Mr. Bay regarding this testimony?”

- **Decide the Case**

“The testimony from Mr. Bay and Officer Howell agree on these elements [state]. The testimony disagrees on these elements [state].”

“The court finds the defendant not responsible for [give reasons].”

### **7.3.5 Worksheets for Informal Hearings**

The following worksheets may be used to document testimony related to each element of the offense during the informal hearing. See subchapter 7.2.4, C, 8, page 32 for a discussion.

Defendant:

Charge:

Plaintiff:

Code:

Case Number:

TESTIMONY:

FACTS IN DISPUTE:

FACTS:

LAW:

DECISION:

State the question that must be answered:

Note: The plaintiff has the burden of proof.

1. The elements of the offense (according to statute):
  - a.
  - b.
  - c.
2. Officer's testimony that support or disproves the elements:
  - a.
  - b.
  - c.
3. Defendant's testimony that support or disproves the elements:
  - a.
  - b.
  - c.
4. Decision: \_\_\_\_\_ Responsible \_\_\_\_\_ Not Responsible
5. Decision: Why is defendant responsible/not responsible?

The court finds that: \_\_\_\_\_  
 (list findings of fact)

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The court finds that the statute requires: \_\_\_\_\_  
 (list elements of offense)

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Further, the court finds that: \_\_\_\_\_  
 (apply facts to law)

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Therefore, the court will enter a finding of \_\_\_\_\_.

### **7.3.6 Explanation About Informal Hearings**

- **What is an informal hearing?**

An informal hearing is a court proceeding held to decide whether you committed and whether you are responsible for the offense with which you were charged. It is your opportunity to defend yourself, to ask questions, and to have witnesses testify in your favor. The testimony is under oath but the hearing is much less formal than a trial.

- **How is the hearing different from a trial?**

The magistrate, rather than the district judge, usually presides over the hearing. Neither side may be represented by an attorney. There is no jury and no court reporter. The magistrate's final decision will be based on a preponderance (a 51 to 49 percent majority) of the evidence, not on proof beyond a reasonable doubt. In general, the hearing will be less formal than a trial.

- **How do I defend myself at the hearing?**

You may testify on your own behalf, have witnesses testify on your behalf, and ask questions of the witnesses against you. It is expected that any questioning will be concise, courteous, and not argumentative. You should also present any documents or other physical evidence you might have that supports your case. Remember that the hearing is your "day in court," so come prepared. Have your defense and questions ready.

- **How do I get my witnesses to appear?**

You may ask witnesses to come in voluntarily, or if necessary, you may use the subpoena power of the court to obtain their attendance. Subpoena forms may be obtained from the court clerk.

- **Must I pay witnesses for appearing?**

Yes, if you are the party ordering the attendance of the witness. Check with the court clerk to find out current witness fee amounts.

- **May the citing officer bring witnesses?**

Yes.

- **What are the possible outcomes of the hearing?**

You may be found not responsible, responsible, or responsible for a lesser infraction than the one charged.

- **What happens if the citing officer fails to appear?**

If the officer does not appear, the case will be either adjourned (postponed), or dismissed “with prejudice” which means you are not responsible for the offense charged and cannot be charged again in connection with the same incident.

- **What happens if I fail to appear?**

If you fail to appear, the court will enter a default judgment against you. This means the court will automatically find you responsible for the infraction charged, set the fine and costs, and mail you a judgment notice requiring you to pay. On a state civil infraction, if you do not pay the judgment within 28 days, the court will send you a 14 day notice. If you do not pay within 14 days of receiving the notice, your driver’s license will be earmarked for non-renewal by the Secretary of State. The court may also issue a warrant for your arrest.

- **What are the penalties if I am found responsible?**

The maximum fine is set by law. In addition, you must pay court costs to cover such expenses (not to exceed \$500). You may be required to perform other activities relating to the offense.

- **Do I have a right to appeal?**

If you are found responsible by the magistrate after an informal hearing, you have the right to appeal for a formal hearing before the district judge. If the judge finds you responsible after a formal hearing, you have the right to appeal again to circuit court.

- **How do I appeal the decision made at an informal hearing?**

Within 7 days of the judgment, you must complete an appeal form and file it with the court, together with an appeal bond equal to the fine and costs imposed by the magistrate. You do not have to pay a filing fee for the appeal to the district judge.

- **What if I have further questions about informal hearings?**

Ask any court employee. He or she will answer your question or find someone who can. There is one exception: they cannot give you legal advice.

## **7.4 Forms**

UC-01b - Uniform Law Citation (or in the alternative UC-01a)  
(for use when there is no municipal civil infraction violations bureau or for violations for which the bureau has not authority)

UC-02 - Municipal Civil Infraction Notice of Violation  
(for use with municipal civil infraction violations bureaus)

UC-03 - Uniform Municipal Civil Infraction Citation  
(for use with municipal civil infraction violations bureaus)

[DC 223 - Plea by Mail](#)

[CIA 01 - Notice to Appear, Civil Infraction](#)

[CIA 02 - Judgment, Civil Infraction](#)

[CIA 03 - 14 Day Notice, Civil Infraction](#)

[CIA 04 - Motion to Set Aside Default Judgment, Civil Infraction](#)

[CIA 05 - Claim of Appeal of Right/Request to Withdraw Admission, Civil Infraction](#)

[CIA 06 - Order to Show Cause, Civil Infraction](#)

[CIA 07-JIS - Default Judgment, Civil Infraction](#) (post card version generated by system)