

**OPINION NO. 91-039****Syllabus:**

If an individual is charged with more than one misdemeanor arising from the same act or transaction or series of acts or transactions, and a municipal court or a county court assigns a single case number with respect to the prosecution of these misdemeanors, while simultaneously distinguishing between each misdemeanor charged within that case number by attaching an additional identifier, each misdemeanor charged within that case number is not considered a "case" for purposes of assessing the court costs mandated by R.C. 2743.70 and R.C. 2949.091.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Lee Fisher, Attorney General, September 12, 1991**

I have before me your request for my opinion concerning the assessment of state mandated court costs. By way of background, your opinion request states that, municipal and county courts are assigning, pursuant to M.C. Sup. R. 12, a single case number where a defendant is charged with more than one misdemeanor. "These

courts then attach an additional identifier, such as -A, -B, -C, or -01, -02, -03, for each [misdemeanor charged]." In light of this practice, you ask: If an individual is charged with more than one misdemeanor and a municipal court or a county court assigns a single case number with respect to the prosecution of these misdemeanors, while simultaneously distinguishing between each misdemeanor charged within that case number by attaching an additional identifier, may each misdemeanor charged within that case number be considered a "case" for purposes of assessing the court costs mandated by R.C. 2743.70 and R.C. 2949.091.

#### Assessment of State Mandated Court Costs

Courts are required, pursuant to R.C. 2743.70 and R.C. 2949.091, to impose additional court costs and bail against nonindigent individuals. Under R.C. 2743.70(A)(1)

[t]he court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender:

- (a) Twenty dollars, if the offense is a felony;
- (b) Six dollars, if the offense is a misdemeanor.

The court shall not waive the payment of the twenty or six dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. All such moneys shall be transmitted on the first business day of each month by the clerk of the court to the treasurer of state and deposited by the treasurer in the reparations fund.

Similarly, R.C. 2949.091(A)(1) provides:

The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of eleven dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. All such moneys shall be transmitted on the first business day of each month by the clerk of the court to the treasurer of state and deposited by the treasurer of state into the general revenue fund. The court shall not waive the payment of the additional eleven dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

These sections, thus, require a municipal court or county court, in which any individual is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, to assess a specific sum as costs in the case.

In the syllabus of 1991 Op. Att'y Gen. No. 91-022, I concluded that "[t]he court costs imposed by R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) are to be charged per case, and not per offense." See 1982 Op. Att'y Gen. No. 82-050 (syllabus, paragraph two). In so concluding, I noted that

neither R.C. 2743.70 nor R.C. 2949.091 sets forth a definition for the term "case." Terms not statutorily defined are to be accorded their common or ordinary meaning. R.C. 1.42; see, e.g., *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983). *Black's Law Dictionary* 215 (6th ed. 1990) defines the term "case" as "an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice." It is clear, therefore, that the costs mandated in R.C. 2743.70 and R.C. 2949.091 are to be imposed when an aggregate of facts furnishing a court the opportunity to exercise its jurisdiction results in a person being convicted of or pleading guilty to any offense other than a traffic offense that is not a moving violation.

Op. No. 91-022 at 2-118. Since neither R.C. 2743.70 nor R.C. 2949.091 has been substantially amended,<sup>1</sup> I affirm the conclusion reached in Op. No. 91-022.

**Additional Identifier to each  
Misdemeanor Charged in a Prosecution**

With this background in mind, I turn now to your specific question. Mandatory provisions with regard to the administration of municipal courts and county courts are set forth in the Rules of Superintendence for Municipal Courts and County Courts. See M.C. Sup. R. 1(A) (the Rules of Superintendence for Municipal Courts and County Courts "are applicable to all municipal courts and county courts of this state"). These rules were promulgated by the Ohio Supreme Court in an effort

(1) to expedite the disposition of all matters before the courts of this state, while at the same time safeguarding the unalienable rights of all parties to the just processing of their causes; (2) to standardize record keeping and statistical reporting of caseload and case flow information and to provide [empirical] data to federal, state, and local legislative bodies, and to the general public; and (3) to permit the judicial branch of government to assess, monitor, and evaluate its performance.

Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual* 6 (January 1, 1990). See generally Ohio Const. art. IV, §5(A)(1) ("[i]n addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court"); M.C. Sup. R. 1(B) (the Rules of Superintendence for Municipal Courts and County Courts "are promulgated pursuant to Section 5(A)(1) of Article IV of the Constitution of Ohio").

The Rules of Superintendence for Municipal Courts and County Courts, thus, set forth mandatory provisions regarding the standardization of record keeping and statistical reporting of caseload and case flow information. In particular, M.C. Sup. R. 12 delineates provisions concerning the transmission of reports and information to the Ohio Supreme Court. Division (E) of this rule provides:

**(E) Case numbering.**

**(1) Method.** When filed in the clerk's office, cases shall be categorized as civil, criminal, or traffic and serially numbered within each category on an annual basis beginning January 1 of each year. Cases shall be identified by year and by reference to the case type designator on the Administrative Judge Report form. *Additional identifiers may be added by local court rule.*

**(2) Multiple defendants or charges in criminal cases...**

*Where a defendant is charged with a misdemeanor and a traffic offense, the defendant shall be assigned one case number. The category selected for the case number and its case type designator shall be that of the offense having the greatest potential penalty.*

*Where, as a result of the same act, transaction, or series of acts or transactions, a defendant is charged with a felony and any misdemeanor or misdemeanors, including traffic offenses, the defendant shall be assigned two case numbers, one for the felony and one for all the other offenses. The category selected for the case number and its case type designator shall be that of the offense having the greatest potential penalty. (Emphasis added.)*

Under M.C. Sup. R. 12(E), municipal courts and county courts may only assign one case number in situations in which an individual is charged with more than one

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<sup>1</sup> I note R.C. 2949.091 has been amended by Am. Sub. H.B. 298, 119th Gen. A. (1991) (eff. July 26, 1991). The only substantive change contained therein was an increase from ten dollars to eleven dollars in the sum to be imposed as costs in a case.

offense arising from the same act, transaction, or series of acts or transactions."<sup>2</sup> Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 225* (January 1, 1990). See generally R. Crim. P. 8(A) ("[t]wo or more offenses may be charged in the same...complaint in a separate count for each offense if the offenses charged...are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct").

M.C. Sup. R. 12(E) further provides that municipal courts and county courts may add additional identifiers to a case number. Accord Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 225* (January 1, 1990). Additional identifiers are utilized by courts to augment the information provided by the case number. See Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 225* (January 1, 1990).

It is apparent from the foregoing that the Ohio Supreme Court has determined that when an individual is charged with more than one misdemeanor arising from the same act, transaction, or series of acts or transactions, a municipal court or county court may only assign one case number to that criminal prosecution. Consequently, all the misdemeanors charged within that criminal prosecution are part of one case. The fact that courts may add an additional identifier to each of the misdemeanors charged within that criminal prosecution, does not make each of the misdemeanors a "case." As indicated above, additional identifiers provide additional information. The Ohio Supreme Court, in its *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 225* (January 1, 1990) has stated that an identifier may be used to identify the judge to whom a case is assigned or to indicate the degree of misdemeanor charged in a case. The Ohio Supreme Court, thus, has indicated that additional identifiers are to be used to provide additional information, rather than to identify and distinguish between different cases within a single case number. Moreover, I have been unable to locate any authority to the effect that additional identifiers are to be used to identify and distinguish between different cases within a single case number.

Therefore, it is my opinion and you are hereby advised that, if an individual is charged with more than one misdemeanor arising from the same act or transaction or series of acts or transactions, and a municipal court or a county court assigns a single case number with respect to the prosecution of these misdemeanors, while simultaneously distinguishing between each misdemeanor charged within that case number by attaching an additional identifier, each misdemeanor charged within that case number is not considered a "case" for purposes of assessing the court costs mandated by R.C. 2743.70 and R.C. 2949.091.

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<sup>2</sup> I note that

[t]here is one exception to the multiple charge rule. Where a defendant is charged with more than one offense arising out of the same act or transaction or series of acts or transactions and one or more but not all of the offenses charged are felonies, two case numbers are assigned. [O]ne number is for the felony or felonies and the other number is for all of the non-felony offenses.

Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 226* (January 1, 1990), see M.C. Sup. R. 12(E)(2).