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August 18, 2017

BY U.S. CERTIFIED MAIL & FACSIMILE

The Honorable Teddy Harris  
Mayor of Rossville  
400 McFarland Avenue  
Rossville, GA 30741  
Fax: (706) 861-0765

**Re: Unlawful Practices in the Rossville Municipal Court**

Dear Mayor Harris:

We write to raise concerns about practices in the Rossville Municipal Court that violate the United States Constitution, Georgia Constitution, Georgia Code, and Uniform Municipal Court Rules. Because the practices discussed below are longstanding and it is not debatable that they violate the rights of people who appear before the Court, we respectfully ask that the City take swift and appropriate steps to remedy these problems.

**A. The Court Demands Large Initial Payments from Indigent Defendants and Detains Those Who Cannot Pay.**

Under the Supreme Court's decision in *Bearden v. Georgia* and its progeny, a person cannot be incarcerated for failing to pay a fine if the failure to pay is beyond the person's control.<sup>1</sup> Accordingly, "the State cannot 'impose a fine as a sentence and then automatically convert it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full.'"<sup>2</sup>

The Rossville Municipal Court violates these principles by sentencing defendants to pay a fine and then preventing them from leaving the courtroom until they make initial payments. For example, on March 6, 2017, Britany Kelley<sup>3</sup> appeared in this Court for three traffic offenses: failure to use a turn signal, improper display of a license plate, and driving while license suspended. Kelley was not represented by counsel. She pleaded guilty and was sentenced to a total fine of \$1,035. On the day that Kelley was sentenced, the Court orally ordered her to make an immediate \$100 payment before she could leave the courtroom. After calling family and friends, Kelley found someone who would bring \$100 to the courthouse and lend it to her so that she could leave that day. This practice, which we understand to be routinely followed by the

<sup>1</sup> See *Bearden v. Georgia*, 461 U.S. 660, 667 (1983); cf. *Robinson v. California*, 370 U.S. 660, 667 (1962).

<sup>2</sup> *Bearden*, 461 U.S. at 667 (quoting *Tate v. Short*, 401 U.S. 395, 398 (1971)) (alterations omitted); see also *Frazier v. Jordan*, 457 F.2d 726, 728 (5th Cir. 1972) (holding Atlanta Municipal Court's practice of jailing defendants unable to immediately pay fine unconstitutional); *Walker v. City of Calhoun*, No. 4:15-CV-170, 2017 WL 2794064, at \*3 (N.D. Ga. June 16, 2017) (holding Calhoun Municipal Court's practice of jailing arrestees unable to immediately pay preset bail unconstitutional).

<sup>3</sup> Ms. Kelley's name is misspelled "Brittany" on Rossville Municipal Court documents.

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Rossville Municipal Court, is a clear violation of due process and equal protection under *Bearden*.

**B. The Court Uses the Threat of Jail to Coerce Payments from Indigent People.**

In addition to detaining people in court pending payment, the Municipal Court also informs people that they will be jailed if they fail to pay large sums within a short period following adjudication. This too violates core precepts of *Bearden*.

Britany Kelley was orally directed to make payments of \$150 every two weeks, under threat of arrest for nonpayment. At a hearing on Monday, June 19, 2017, Judge Moore told Kelley that she would be jailed if a member of her family did not arrive with a payment within 20 minutes. Later during the same proceeding, Judge Moore told Kelley that she would go to jail if she did not pay by that Friday at 4:30 p.m. At no point did the Court inquire into Kelley's circumstances or ability to pay. If Judge Moore had inquired, he would have discovered that Kelley is a single mother supporting her three-year-old son on the low wage she earns as a drive-through cashier, and that Kelley had resorted to paying her fines in part by selling her blood plasma.

The Municipal Court has used threats of jail to coerce payment on many other occasions. For example:

- On June 19, 2017, a man appeared in court in connection with citations for no proof of insurance and failure to use a turn signal. The man had previously been fined \$589, and still owed \$430. The man explained that he was indigent, had only \$10, and that his girlfriend was due to give birth at any time. Judge Moore ordered the man to pay by July 17 or go to jail.<sup>4</sup>
- On July 3, 2017, a man pleaded guilty to traffic offenses, was fined a total of \$894, and was ordered to return with \$300 by July 17. Judge Moore threatened to have the man jailed if he failed to pay \$300 by that date.
- On July 3, 2017, another man pleaded guilty to traffic offenses and marijuana possession and was fined a total of \$2,185. The Court told the man he would be sent to the Walker County Jail if he did not pay \$550 by July 17.

In none of these cases did the judge inquire into the person's ability to pay, explore alternatives to incarceration, or explain that incarceration could only be imposed for a willful failure to pay.<sup>5</sup>

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<sup>4</sup> The girlfriend of the man described in this paragraph also appeared in court on June 19, 2017. She was obviously heavily pregnant. She too owed money for traffic offenses, and had been ordered to pay \$100 per month. When the woman reported that she was due to give birth imminently, the Court ordered her to report back with proof of hospitalization or face jail for "lying."

<sup>5</sup> *Bearden*, 461 U.S. at 667.

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**C. The Court Imposes Unauthorized Costs on People Whose Cases Have Been Dismissed, Then Issues Arrest Warrants to Collect Those Costs.**

The Municipal Court imposes court costs on people whose cases have been dismissed. This practice is clearly prohibited by the Georgia Constitution and the Georgia Code. *See* Ga. Const. art I, para. I, Sec. XXIV (“No person shall be compelled to pay costs in any criminal case except after conviction on final trial.”); O.C.G.A. § 17-11-1 (“The costs of a prosecution, except the fees of his own witnesses, shall not be demanded of a defendant until after trial and conviction. If convicted, judgment may be entered against the defendant for all costs accruing in the committing and trial courts and by any officer pending the prosecution.”). Indeed, officers of the court who knowingly demand court costs in cases that have been dismissed are themselves at risk of criminal penalty.<sup>6</sup>

The Municipal Court not only assesses costs in cases that have been dismissed, but also issues warrants to arrest people for allegedly failing to pay such costs. Many of these outstanding warrants are years old. For example, in 2002, W. Young received a citation for a problem involving his vehicle’s windshield.<sup>7</sup> When Young appeared in court, the judge dismissed his case but ordered him to pay \$20 in “court costs.” The Court then ordered Young to return on a later date to pay the invalid costs. When Young allegedly failed to appear on the subsequent date, the Court issued an arrest warrant. Young’s warrant is active, which means he could be arrested at any time for his alleged failure to pay \$20 in illegal court costs on a 15-year-old, dismissed case.

A review of Municipal Court case files shows that other defendants have active warrants for failing to pay costs in cases that were dismissed. For example:

- A. Wheeler received a citation for speeding on January 19, 2006. The Court dismissed the case but assessed \$100 in court costs. Wheeler paid \$60. Despite lacking a valid judgment, the Court ordered Wheeler to reappear on March 20 and April 17 to answer for the remaining \$40 in court costs. When Wheeler allegedly failed to appear on April 17, 2006, the Court issued an arrest warrant.

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<sup>6</sup> *See* O.C.G.A. § 15-13-35 (stating that except as otherwise provided by law, “any officer of court who knowingly demands, as costs from a defendant in a criminal case, fees to which such officer is not entitled and any prosecuting attorney who demands or receives any fee or costs on any criminal case which has not been tried by a trial jury or otherwise finally disposed of shall be guilty of a misdemeanor”).

<sup>7</sup> We received Young’s file and arrest warrant in response to our Open Records Act request to Rhonda Keith in which we sought copies of court files in all cases with active warrants. Young’s file was one of hundreds of files produced to us in response to our request. Ms. Keith separately confirmed by telephone on August 4, 2017, that the large box of files she produced on August 3, 2017 contained “active warrant” cases.

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- M. Caldwell received a citation for driving without a license on March 1, 2004. The Court dismissed the case but assessed \$100 in court costs. The Court ordered Caldwell to reappear on June 7, 2004 to answer for the unlawful court costs. When Caldwell allegedly failed to appear on that date, the Court issued an arrest warrant.
- C. Haywood received a citation for expired tag on December 17, 2005. The Court dismissed the case but assessed \$50 in court costs. The Court ordered Haywood to reappear on March 6, 2006 to answer for the unlawful court costs. When Haywood allegedly failed to appear on that date, the Court issued an arrest warrant.

The City risks incurring significant legal liability on these and other cases, if arrests are made, and the arrest warrants themselves are illegal

#### **D. The Court Fails to Comply with Law That Requires Accommodation of Financial Hardships.**

Under Georgia law as recently amended, a "court shall waive, modify, or convert fines, statutory surcharges, probation supervision fees, and any other moneys assessed by the court or a provider of probation services upon a determination by the court prior to or subsequent to sentencing that a defendant has a significant financial hardship or inability to pay or that there are any other extenuating factors which prohibit payment or collection."<sup>8</sup> A significant financial hardship exists when there is "a reasonable probability that an individual will be unable to satisfy his or her financial obligations for two or more consecutive months."<sup>9</sup>

The Municipal Court fails to comply with this statute. On June 19, 2017, a man charged with traffic offenses appeared before the Court. He was obviously physically disabled. Even though the man informed the Court that he received an SSI check, the Court made no further inquiry into the man's financial circumstances, but rather imposed a large fine and ordered him to pay \$100 per month. On the same date, a homeless man was brought before the court. He told the judge he was on parole, had no money, and no place to live. The Court told the man he had agreed to pay \$100 per month on his fines and since he had not done so, the Court was going to sentence the man to 30 days in jail. The Court made no further inquiry into the man's financial circumstances and failed to consider alternatives to incarceration. A stranger, who was there on another matter, heard the exchange and loaned the homeless man \$100 so he would not be jailed.

While observing the Court's proceedings on multiple occasions, we did not see any evidence that people were given the option to do community service in lieu of paying a fine. The options given were payment or jail, without the required inquiry into alternatives to jail.

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<sup>8</sup> O.C.G.A. § 42-8-102(e)(2).

<sup>9</sup> O.C.G.A. § 42-8-102(e)(1)(C).

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### **E. The Court Fails Properly to Advise Defendants of Their Rights.**

Any Municipal Court defendant who faces incarceration or probation is entitled to the assistance of counsel and the right to have counsel appointed if she or he is indigent.<sup>10</sup> A defendant cannot waive this right without first being "made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'"<sup>11</sup> Similarly, a defendant who wishes to enter a plea of guilty must be informed beforehand that the plea will waive the defendant's privilege against self-incrimination, right to trial by jury, and right to confront one's accusers.<sup>12</sup> Where a pro se defendant enters a plea of guilty without having been informed of and intelligently waiving these rights, the conviction is invalid.<sup>13</sup>

The Municipal Court fails adequately to advise defendants of their rights before accepting pleas of guilty. For example, at the July 3, 2017 arraignment calendar, the judge announced in open court that defendants had the right to a jury trial, but did not explain that defendants had a right to counsel, a right to remain silent, or a right to confront witnesses. After the initial announcement, the judge informed people that they had "three choices." They could: (1) plead guilty; (2) plead not guilty; or (3) talk to the solicitor. The solicitor then called each defendant's name, read the charges, and asked whether each defendant wanted to plead guilty. Defendants who answered in the affirmative were later instructed to sign a form. The Court did not explain what the form said or give defendants time to read it.<sup>14</sup>

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<sup>10</sup> See *Alabama v. Shelton*, 535 U.S. 654, 658 (2002) ("[A] suspended sentence that may 'end up in the actual deprivation of a person's liberty' may not be imposed unless the defendant was accorded 'the guiding hand of counsel' in the prosecution for the crime charged.") (quoting *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972)).

<sup>11</sup> *Faretta v. California*, 422 U.S. 806, 835 (1975) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942)).

<sup>12</sup> *Boykin v. Alabama*, 395 U.S. 238, 243 (1969).

<sup>13</sup> See *United States v. Cronin*, 466 U.S. 648, 659 n.25 (1984); *Boykin*, 395 U.S. at 242-43. The Georgia Uniform Municipal Court Rules also require courts to advise defendants of these rights before accepting pleas. See Ga. Unif. Muni. Ct. R. 25.

<sup>14</sup> Presumably the form was a waiver of rights. The waiver used by the Court states, "I have been advised of my rights to be represented by counsel and have counsel appointed to represent me if I am indigent, plead not guilty and be tried by a jury or a judge, confront the witnesses against me; and, not give incriminating evidence against myself. I hereby waive these rights; state that I have not been induced by any threat or promise to enter this plea and do freely and voluntarily enter my plea of Guilty." Even if defendants had time to read that form, it would not render their waivers knowing and intelligent because the form does not explain the meaning of the rights or consequences of waiving them. See *Faretta*, 422 U.S. at 835.

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A right cannot be intelligently waived where there has been no explanation of what the right means.<sup>15</sup> And a waiver of rights that comes after a defendant has entered a plea of guilty provides no assurance that the defendant had “a full understanding of what the plea connotes and of its consequence” before it was irrevocably entered.<sup>16</sup> For these reasons, the Court’s practices violate defendants’ constitutional rights.

#### F. The Court Fails to Maintain Adequate Records.

Under the Georgia Uniform Municipal Court Rules, “A verbatim mechanical recording or a contemporaneous paper record, or both, of the proceedings at which a defendant enters a plea of guilty or nolo contendere shall be made and preserved for a minimum of two years.”<sup>17</sup> In addition, “[a]ll court records are public and are to be available for inspection in accordance with and as limited by the Georgia Open Records Act, as amended.”<sup>18</sup> On June 22, 2017, we requested recordings of Municipal Court proceedings held on June 19, 2017. On June 26, Rhonda Keith informed us that the City does not keep recordings of any of its proceedings.

Additionally, the Court’s documentation and record keeping practices are problematic. In case after case among the files reviewed—including many cases in which the Court has issued arrest warrants—the underlying criminal disposition form appears to lack a judge’s signature. Court orders requiring defendants to return to court and make additional payments are often incomplete, unintelligible, or not documented in writing at all. Some court “orders” consist of indecipherable scribbling that does not provide defendants with clear notice of what is required of them. (Ex. C.)

#### G. Conclusion

The practices of the Rossville Municipal Court are out of line with the requirements of the Constitution and Georgia law. In light of the seriousness and longstanding nature of these problems, we respectfully ask that the City immediately enact remedial legislation or take other appropriate action to implement a remedy. If the City wishes to resolve this matter without litigation, please respond to this letter by August 28. In so doing, please provide written assurance that the Court will immediately rescind all active warrants for the arrest of persons ordered to pay court costs in dismissed cases.

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<sup>15</sup> See, e.g., *Carnley v. Cochran*, 369 U.S. 506, 516 (1962) (“The record must show . . . that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.”).

<sup>16</sup> See *Boykin*, 395 U.S. at 244.

<sup>17</sup> Ga. Unif. Muni. Ct. R. 26.

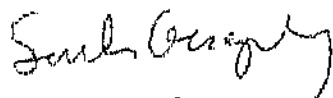
<sup>18</sup> Ga. Unif. Muni. Ct. R. 6.

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We would welcome the opportunity to work with the City in developing policies to remedy the problems identified in this letter. However, if we are unable to reach a consensus on durable, mutually agreeable policies within 45 days of today's date, we intend to file a lawsuit seeking declaratory and injunctive relief to prevent further violations of law.

Thank you for your attention to this matter.

Sincerely,



Sarah Geraghty

cc: Judge Joseph Moore  
Judge Benjamin Bradford  
Rossville City Council  
Ms. Rhonda Keith, Clerk of Court  
Mr. James Bisson, City Attorney