

**Missouri How To Series:
Criminal Law**

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Topics for Discussion:

- I. Preliminary Proceedings/Arrestment
- II. Bail

I. PRELIMINARY PROCEEDINGS/ARRAIGNMENT

A. V.A.M.R. Crim. Rules 21.09 and 2207 (2003) which apply to misdemeanors and felonies respectively, require that any individual arrested and charged under a warrant for any misdemeanor and/or felony shall be brought before a judge of the Court, as soon as practicable, from which the warrant issued. See attached: Rules 21.09 and 22.07.

B. Once the individual charged/defendant is presented to the Court of appropriate jurisdiction, V.A.M.R. Crim. Rules 21.10 and 22.08 (2003), again concerning misdemeanors and felonies respectively, require that the Court inform the defendant of the offense(es) charged, "his right to retain counsel, his right to request the appointment of counsel, if private counsel cannot be retained, and his fundamental right to remain silent, and that any statement made by him could be used by the prosecutor against him at any subsequent proceeding". See attached: Rules 21.10 and 22.08

PRACTICE TIPS:

1. The term "Arraignment" means the "taking of the plea." This can be misleading depending on whether the charged offense is a misdemeanor or a felony. If the offense charged is a misdemeanor, the Associate Circuit Court, which is the Court of competent jurisdiction, can in fact "take" the defendant's plea. (actual Arraignment).

2. If the offense is a felony, an Associate Circuit Court is not a Court of competent jurisdiction, as a general proposition, to accept a defendant's plea. Such a plea can only take place subsequent to a defendant's conducting of a Preliminary Hearing or Waiver thereof, assuming the offense was charged by way of complaint or Information, as opposed to an Indictment.

3. Be aware the foregoing draws a distinction between initial appearance before an Associate Circuit Court and formal arraignment before a Circuit Court.

4. Statements made by a defendant at the initial appearance are admissible against the defendant in subsequent proceedings. Accordingly, counsel should clearly monitor any/all statements made by the defendant, and certainly there should be no need and/or reason for the defendant to discuss any aspect of the charged offense, or any issue related directly or indirectly thereto.

5. Note that in some jurisdictions, the setting of bail/bond may be taken up at such initial appearances. Specific discussion of bail will be addressed in subsequent course materials.

II. FORMAL ARRAIGNMENT

A. V.A.M.R. Crim Rule 24.01, which applies to both misdemeanors and felonies, requires that Arraignment take place in open Court. Further, the Arraignment shall consist of reading the charging document (Complaint/Information or Indictment) to

the Defendant or stating the substance of the charge to the defendant and ultimately requiring the defendant to plead thereto. Additionally, the Rule requires that the defendant be given a copy of the charging document prior to the Court taking the defendant's plea.

B. As previously indicated, if the offense is a misdemeanor, the Arraignment proceeding will generally take place before an Associate Circuit Judge. If the case is a felony, an Associate Circuit Arraignment will only take place subsequent to a Preliminary Hearing, where probable cause has been found by the Court, or waiver thereof. If the felony is pending in the Associate Circuit Court, for presentment to the Grand Jury, and upon a return of a True Bill, or Indictment, the Associate Circuit Court will conduct an Arraignment prior to transfer to the Circuit Court. This constitutes the distinction between Associate Circuit Court Arraignment, and Arraignment before the Circuit Court which is required pursuant to Rule, as previously addressed herein (See attached Rule: 24.01)

C. Upon the progression and transfer of a criminal cause to the Circuit Court by way of Indictment, Preliminary Hearing or Waiver of Preliminary Hearing, an Arraignment, as previously discussed, must also be conducted at the Circuit Court level. V.A.M.R., Crim. Rule 24.02 (a) dictates and/or limits the types of pleas which can be accepted by the Court. This includes: guilty, not guilty, not guilty by reason of mental disease or defect, excluding responsibility or both not guilty and not guilty by reason of mental disease or defect excluding responsibility. Further, if a defendant refuses to plead or if a corporation fails to appear, the Court will enter a plea of not

guilty. See attached: Rule 24.02

PRACTICE TIPS

1. Although the Arraignment is a critical stage of the criminal proceeding, without engaging in a discussion of when the 6th Amendment right to Counsel attaches, it has become in most jurisdictions a "formality", whereupon the basic "not guilty" plea is entered. For example, in the Circuit Court of St. Louis County, the defendant is not required to physically appear in open Court, and rather, the defendant signs an Arraignment Memorandum, which is also signed by defense counsel, and filed with the Court, constituting the defendant's waiver of formal reading of the Complaint or Indictment and entry of a plea of not guilty. See attached: St. Louis County Arraignment Memorandum.

2. Felony Arraignments are, to a great extent, a formality in that generally at this stage of the criminal proceeding, defense counsel will often not be in possession of the discovery, and accordingly, will not be in a position to make critical and substantive decisions regarding the law and theories of the defense. For example, although Rule 24.02 (a) contemplates a plea of not guilty by reason of mental disease or defect excluding responsibility or not guilty by reason of insanity (N.G.R.I), such a defense will call for expert examination, possibly by both the defense and the State to make such a determination, which will obviously take place at a time subsequent to the Arraignment. However, be aware there are specific Rules and notice requirements for such defenses.

3. Despite the routine nature of Arraignment, the process will provide defense counsel with the charging document. Review the document closely so that any deficiencies in the same may be presented to the Court by way of motion practice or any other accessible method within any given jurisdiction.

III. BAIL/PRE-TRIAL RELEASE

The procurement of bail causes a defendant to be released from incarceration during the pendency of the criminal proceedings which have been initiated against him; and the defendant shall continue to be free from custody, assuming that the conditions of bail/bond are not violated. Obtaining a favorable bail/bond for a defendant, is of paramount importance to a defendant and his family, and in fact, may be some of the most important initial legal work that a defense lawyer performs. The securing of bail strengthens the attorney-client relationship, and provides a defendant with a sense of confidence in his counsel during what are clearly difficult times for the defendant and those associated with the defendant.

A. CONSTITUTIONAL BASIS FOR BAIL/PRE-TRIAL RELEASE

The Eighth Amendment to the United States Constitution provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." As a corollary to the Eight Amendment, the Missouri Constitution establishes the right to bail/pre-trial release in Article I, §20. The same provides, "all persons shall be bailable by sufficient sureties, except for capital offenses,

when the proof is evident or the presumption great." Further, the Missouri Constitution addresses the issue of exorbitant bail in Article I, §21, which provides that "excessive bail shall not be required....".

B. MISSOURI RULES AND STATUTORY BASIS FOR BAIL/PRE-TRIAL RELEASE

Be aware that the statutory basis and policies governing the operation of bail/pre-trial release are located in RSMo Chapter 544 et seq. V.A.M.R. Crim. Rule 33.01, sets forth the setting of bail and the administration thereof, including any and all issues and/or conditions related thereto. Note that Rule 33.01 applies to both bail in misdemeanor and felony cases. Pay particular attention to Rule 33.01 (e) which sets forth a detailed list of the factors a Court should consider when setting bail and the conditions thereof. This critical list of factors will be discussed in great length herein. See attached: Rule 33.01.

I. THE HISTORICAL BASIS FOR BAIL VS. THE NEED FOR WITNESS AND COMMUNITY PROTECTION

A review of Missouri appellate case law clearly indicates that the historical basis or purpose for setting bail was the need to ensure the defendant's appearance at trial, or any proceeding related thereto. This historical basis primarily focused on the defendant's "risk for flight."

However, and as previously discussed, Rule 33.01, in conjunction with RSMo. Chapter 544 et. seq and Article I, §32.2 of the Missouri Constitution, dictates that in

addition to determining a defendant's risk for flight in setting bail, an equally, if not more important factor, is determining the need to protect witnesses and the safety of the community in general, and that if bail is set, the Court shall also impose certain conditions or combinations thereof to effectuate those concerns. Specifically, Article I, § 32.2 of the Missouri Constitution provides: "Notwithstanding Section 20 of Article I of this Constitution, upon a showing that the defendant poses a danger to a crime victim, the community, or any other person, the Court may deny bail or may impose special conditions which the defendant and surety must guarantee." This provision has been codified in §544.457 RSMo. (2000), and is clearly reflected in Rule 33.01 (e).

C. TYPES OF BAIL/PRE-TRIAL RELEASE

Rule 33.01 provides for the following types of pre-trial release and/or bail options:

1. Personal Recognizance: (A defendant's written promise to appear);
2. Third Party/Organization Supervision (Sponsored Recognizance);
3. Restrictions on the defendant's travel, association or place of abode;
4. Surety Bond (may include professional bond, property or the deposit of cash;
5. Regular reporting to Probation Office, Court designee or some other pre-trial release entity;
6. 10% cash deposit;
7. The imposition of any other condition deemed reasonably necessary to ensure the appearance of the defendant, including a condition requiring that the defendant return to custody after specific hours.

PRACTICE TIPS:

1. Again, pre-trial release is a priority to the Defendant. Accordingly, the securing of pre-trial release should be taken seriously and pursued with zeal.
2. Often times, when attempting to secure bail, defense counsel will be without discovery. However, that does not mean the attempt to obtain pre-trial release will be fruitless. The lesson here is, with or without discovery, INVESTIGATE, INVESTIGATE, INVESTIGATE, this includes:
 - a. Meet with the defendant;
 - b. Obtain the facts surrounding the offense (es) charged;
 - c. Gather names of all witness(es) and interview them (get affidavits if need be);
 - d. Obtain your client's criminal history, education, background, employment background.....;
 - e. Interview and meet with your client's family and friends (obtain affidavits if needed);
 - f. Obtain your client's financial status and that of family (Note to Counsel: bond assignments, not discussed herein, are acceptable, but secure your fee first);
 - g. This list is certainly not exhaustive, and any and all other information that may be useful in obtaining bond must be obtained.
3. Bond negotiating with the prosecutor and the Court are unique to the jurisdiction in which you are attempting to obtain the same, this means they may be formal or they may be rather informal, proceed accordingly. The information presented

in the previous paragraph will be useful in presenting a cohesive and detailed presentation to either a prosecutor and/or a Court in obtaining bail, and/or a reduction thereof.

4. Depending on the type of offense charged and the procedural posture of the case, and the availability of information, it may take counsel multiple attempts with the Court to obtain bail. The point is, be persistent!!!!

5. Attached is an example of a Motion to Set Bond and a Motion to Reduce Bond.

6. Review the factors set forth in Rule 33.01 (e) in great detail!!!