

# **THE NEW YORK CITY BAR ASSOCIATION TASK FORCE ON TOWN AND VILLAGE COURTS**

## **Recommendations Relating to Assisting Town and Village Justices**

Based on interviews, discussions, testimony in public proceedings and research, as well as the experience of the Task Force members, the Task Force recommends that the Office of Court Administration (“OCA”) make available to town and village justices an adequate number of lawyers to aid the justices in conducting the research and analysis needed to resolve the substantive, procedural, and judicial-conduct issues that arise in cases over which they preside. The justices should also be assisted by experts in court and fiscal management to enable the justices to fulfill the responsibilities imposed upon them by law.

The system of using lawyers, law secretaries, to assist state-paid judges, all of whom are themselves lawyers, provides a model for assisting the town and village justices. In the state system, a lawyer assists a particular judge, or a pool of lawyers assist several judges. An analogous arrangement, the Resource Center (“Center”), is already in place for both lawyer and non-lawyer justices of the Town and Village Courts and lawyer-judges of the City Courts. However, the Center is not funded sufficiently to provide assistance comparable to that made available to state-paid judges through law secretaries.

The recommendations of the Task Force relate to the enhancement and modification of the Center to enable it to provide essential services for both lawyer and non-lawyer justices. The Center must have a sufficient number of lawyers and other staff to provide requested assistance and to enhance the confidence of the justices in the Center’s work, while making clear to the justices that they are the responsible decision-makers.

Like the previous report on technology issued by the Task Force, this report does not preclude further investigation by the Task Force and recommendations for structural or organizational changes in the Town and Village Courts. The Task Force does not view the extensive and costly network of lawyers and other people needed to assist the justices and their court clerks as a substitute for changes in the structure, jurisdiction, or funding sources of the justice courts if such changes are shown to be needed after our study is completed. It is the Task Force’s hope that the proposals in this report will be viewed as essential for making immediate improvements in the justice court system, but that no assumption will be made that these recommendations are all that is requested in the long run.

### **Recommendation 1**

**The Task Force recommends that the State, through the Office of Court Administration, fully fund a sufficiently large staff of lawyers:**

to respond promptly to town and village justices’ inquiries about the law and the governing rules of judicial conduct;

to provide assistance for the evening and night-court sessions held in most Town and Village Courts, as well as for night-time arraignments and bail decisions; and

to prepare and distribute regularly updates to relevant laws, regulations, and new case law.

## **Recommendation 2**

**The Task Force recommends that the State, through the Office of Court Administration, fund a staff knowledgeable in court and fiscal management to assist the justices in carrying out their responsibilities as record keepers, finance officers, and administrators of their courts.**

## **Recommendation 3**

**The Task Force recommends that The New York City Bar Association, working with other bar associations and entities as appropriate, identify lawyers who are qualified to assist in answering questions about the law and prepare a list of those who, until the Center is fully staffed, would be available to answer inquiries from Center lawyers that originate with the Town and Village Justices. The names of the lawyers contacted and other information would be disclosed as required by the relevant Ethics Canon to the parties in the cases in which the information is used.**

## **Recommendation 4**

**The Task Force recommends that OCA undertake a project of statewide publicity about the Center, encouraging the justices to call the Center for assistance, while emphasizing that the decisions made remain are the responsibility of the justices.**

## **Recommendation 5**

**The Task Force recommends the establishment of regional offices, especially in areas where the justices are not lawyers; on-site assistance when dealing with difficult cases or issues; small group training sessions; and other face-to-face contacts between Center staff and the justices and court clerks.**

## **Recommendation 6**

**The Task Force recommends that the Center continue its work even if all the town and village justices are required to be lawyers because town and village justices, like judges of other courts, need such assistance.**

## **Discussion**

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1. The Resource Center

In 1988, in its Annual Report, the Commission on Judicial Conduct recommended that the Office of Court Administration assign a small staff of attorneys to assist town and village justices with legal research as problems arose. (See Op. 13-88 New York State Bar Association on Committee on Professional Ethics June 23, 1988.) Most justices did not have law degrees and sought assistance from others. Id. It was explained that town and village justices were relying on prosecutors and police for legal advice and it was apparent that some law-secretary equivalent was needed to provide assistance to the justices. In 1990, OCA established the Center to assist town and village justices and their court clerks. Since then, Center lawyers have supplied advice and guidance in response to inquiries; non-lawyers on the staff have served as advocates for the justices in dealing with localities in which they serve. (See 2001 Annual Report of the Chief Administrative Judge at 36.) It was expected that assistance would be available to the approximately 2,250 justices, who sit in 1,280 Town and Village Courts, and to their court clerks, the total number of whom approximates the number of justices (some courts do not have a clerk and some have more than one). In 1997, the Center's services were also made available to the 158 City Court Judges who sit in 61 City Courts. (See 2005 Annual Report of the Chief Administrative Judge at 16.)

In 1997, approximately 13,000 requests for assistance were made to the Center. (See 1997 Annual Report of the Chief Administrative Judge.) In 2005, the number of requests climbed to approximately 15,000. (See Benchmarks, Journal of the Office of Court Administration Unified Court System (Summer 2006).) In 2006, the number of requests by phone, e-mail and fax from town and village justices 16,200 "for legal research and guidance from the Justice Courts, touching all aspects of their criminal and civil jurisdiction" reached approximately 16,200. (Action Plan at 18 & note 72.) An additional 1,800 inquiries came from City Court judges. (See Action Plan at 18 note 72.)

In November, 2006, when this Task Force began its work, the Center was staffed by three full-time lawyers, one lawyer working half-time, an assistant court analyst, and a clerk. Now the Center has four lawyers. The lawyers are available from Monday through Friday 9:00 a.m. to 5:00 p.m. One attorney is available Monday through Friday from 5:00 p.m. to 9:00 p.m. and on weekends from 8:00 a.m. through 5:00 p.m. A weekend call made after 5:00 p.m. is answered the following morning at 8:00 a.m.

The Task Force was unable to obtain any data about the substance of the requests for information from the justices.

To supplement the assistance of the Center, OCA announced the use of supervising judges in each of the eight judicial districts outside of New York City to assist the Justice Courts, to serve as a forum for the justices, and to be a conduit between the Justice Courts and OCA. (See Action Plan at page 33.) The Task Force learned that it is the intent to use the law secretaries of the supervising judges to answer questions from the town and village justices. It is anticipated that the law secretaries would cooperate and coordinate with the Center; the exact dimensions of the project are being considered.

## 2. The Staffing of the Center Must Be Sufficiently Large to Fulfill the Mandate of Assisting the Justices

Views of the Center's work have been mixed. Some justices report the information given was helpful; others say the information was not helpful and they did their own research. Some reported the answers to the questions were slow in coming and adequate for easy problems, but not on the mark for more complex or nuanced issues. Whatever the reaction to the quality of the aid, the resources of the Center, especially the size of its staff, are not presently adequate to fulfill the responsibilities with which it is charged. 18,000 requests are too many for four lawyers to answer, especially if some requests can be answered only after extensive or prolonged research. On the other hand, 18,000 questions are too few in light of the almost 4,000 justices and court clerks who should be seeking assistance. If even a quarter of the justices used the Center, many more than four lawyers would be needed.

Not only is a legal staff of four inadequate to assist a group of justices and court clerks numbering close to 4,000, but the number of Center lawyers appears to be too small to meet the needs that arise during the justice courts' evening, night-time and weekend sessions. The Center has only one attorney available in the evenings between 5:00 and 9:00 p.m. and on the weekends from 8:00 a.m. to 5:00 p.m. Throughout the State, justices, all of whom are part-time, hold regular court sessions in the evening (see Appendix 1) when they have completed their full time occupation, whether as a lawyer or in another position, including teacher, retired police officer, farmer, construction worker, miner, small business owner, large business employee, administrative aide to security company, bus driver, hospital worker, and electrician.

In addition to their regularly scheduled calendars, the justices set cases for hearings and trials at other times, both day and night. We were advised that a justice held a full trial on a day during a holiday weekend and that some justices have conducted trials that proceeded until, and after, midnight.

A single lawyer on duty to receive calls in the evening until 9:00 p.m. and on weekend days leaves it uncertain that the lawyer can respond to all the requests that may be made from justices holding court in simultaneous sessions all over the state. In order to reduce scheduling conflicts, the Action Plan will seek to prevent overlapping of judges' scheduled sessions.

However, this revised scheduling does not help the Center lawyers because the scheduling is county-wide and does not accommodate the state-wide scope of the Center's work. In fact, given the number of justice courts, a system that avoided overlap statewide would be impossible.

Finally, assuming that half of the inquiries asked are ones that are repeated or easily answered by someone familiar with the law, it is likely that others need research of several hours or more. As was acknowledged in our discussions and interviews, where questions involve extensive research or analysis, the Center staff, unless greatly expanded, cannot fulfill its obligations to the justices.

The flip side of the coin is that the number of calls to the Center is too small to believe that the over 4,000 justices and court clerks are asking all the questions they should be asking. Further, while our research shows that there are no collected statistics showing the annual total caseload of the Town and Village Courts (see 2005 Annual Report of the Chief Administrative Judge at page 17, table 13, setting out the caseload of the District and City Courts, but not the Town and Village Courts), some identification of the volume of cases is possible. Statistics kept by the Division of Criminal Justice Services show that the Town and Village Courts reported 129,574 "fingerprintable" offenses in 2005 and 110,620 such offenses in 2006. With just these misdemeanor and felony cases, and not counting civil jurisdiction, violations, code violations, and violations of the Vehicle and Traffic Law (which our questionnaires show to exceed hundreds of thousands cases), the number of cases alone shows that the frequency of requests for aid should be larger than 18,000.

The underuse of the Center is recognized by the Center's lawyers, who encourage the justices to bring their questions to the Center rather than to the lawyers in the case, generally the prosecutor. Interviews reveal that the justices' reluctance to use the Center has been attributed to several reasons: the justice believes he/she has the right answer without need to call the Center; the justice does not realize there is a problem or issue; the justice "wings it" rather than admitting lack of knowledge; the justice is embarrassed to inquire; the justice disagreed with the prior help given by the Center and consequently does not seek further help; or the justice waits until there are several questions to be asked in a single request for help.

Whatever the reasons given for justices not using the Center with greater frequency, it is expected that the enhanced education program for the justices and their court clerks, an initiative introduced in the Action Plan, at pages 41-52, is expected to increase the justices' and clerks' awareness and sensitivity to issues that arise in their courts, their recognition of the need to examine these issues, and the willingness of the justices and their clerks to use the Center. The enhanced education programs for the non-lawyer justices will give them notice of the difficulties and risks of making judicial decisions without the requisite knowledge and the importance of achieving some kind of comparability with state-paid judges, who must not only be admitted to the Bar, but belong to the Bar either five or ten years depending on the judicial position. (See N.Y. State Constitution, Art.vi, section 20 (a).) As aptly said by Chief Judge Kaye and Chief Administrative Judge Lippman in the Action Plan when dealing with the educational and training requirements for judges:

While award of a law degree and admission to the New York Bar is no guarantee that each judge will be fluent in the complexities of every particular matter that may come before him or her . . . there is nearly unanimous agreement that the unique education that law school provides can empower judges to discern, apply and shape the law in ways that non-attorneys can find difficult, if not impossible. The language of the law, the structure and standards of law, and the fundamental guarantees of constitutional and statutory rights conveyed by law are indispensable to our democratic society and thus inseparable from the fair administration of justice. All of these reasons command that all judges — however trained and regardless of the court in which they preside — must be proficient in the law.

Action Plan at 41.

The justices' responses to a questionnaire prepared and distributed by the Task Force confirmed that most believed that more information about the issues and the law was needed. Answers to the inquiry concerning needed education were:

“lots of paperwork and many rules, procedures and steps that need to be known;”

“for non/lawyers [there is needed] more intense training on motions etc. and use of computer for research on case law;”

“establish a para-legal course for the justices;”

“there is a lack of adequate training for the scope of responsibility;”

“more Training;”

“initial training is not sufficient;”

“sitting with an experienced judge while that judge is handles his or her calendar would be a good mentoring experience;”

“[need more training] about evidence at trial ... and what can be and cannot be admitted;”

“objections and how to handle [them];”

“ex parte communications(when and how);”

many asked for forms, trial procedure guidelines, DVDs for studying, computer research;

use time allotted for “more real case info” rather than judicial conduct;

more training on civil law procedures and more seminars;

training on use of computers, especially legal research;

basic training is not enough;

better training;

have a person come to show proper procedures;

more hands on work rather than lectures for training.

The circumstances make clear that the Center is essential to the working of the Town and Village Courts, that the Center should be used more frequently by the justices, and that funding for staffing and services must be increased. The Action Plan, at pages 48 and 51, already calls for additional attorney assistance by the Center, and for the availability of that assistance by telephone or internet, expanded Center office hours, and participation by Center lawyers in Internet based discussion groups. The effort must be to make these resources truly adequate to aid the justices.

3. The Complexity of the Law in Civil and Criminal Cases and in the Rules Governing Judicial Conduct Emphasizes the Need for Additional Center Staffing and Resources

The Action Plan describes the recent changes in civil and criminal law in clear terms:

The legal universe has transformed dramatically since the Legislature decided in the 1960's that non-attorney justices could continue presiding in the justice courts. During the intervening four decades, indigent criminal defendants obtained fundamental constitutional rights to assigned counsel; rights to counsel expanded and have come to attach earlier in the criminal justice process; complex drug and domestic violence cases then virtually unknown in many Justice Courts now increasingly appear on Justice Court dockets; evidentiary standards have become more complex; ethical expectations of judges have risen as modern sensibilities have more strictly guarded the separation of powers against intrusion by dual-role judicial officials; public rights to observe court proceedings have become more fully articulated; and statutory mandates on Justice Courts vis-a-vis reporting agencies, sentencing, probation and financial auditing all have multiplied.

Action Plan at 42.

The Action Plan's statement of the complexities of presiding in a Town or Village Court is the beginning of an examination that ultimately refutes any claim that Justice Court matters are simple and easily handled by common sense and a kind heart.

The Justice Courts have jurisdiction over preliminary matters in felony cases including initial arraignment, assignment of counsel and notification of the public defender (see Uniform Rules for Courts Exercising Criminal Jurisdiction section 200.26), bail applications, and felony hearings (see C.P.L. section 10.30 (2).) Further, Justice Courts have jurisdiction over misdemeanor and violation cases to resolution, including setting bail and assigning counsel. (See C.P.L. section 10.30(1); UJCA section 2001.)

Among the many Penal Law misdemeanors that come before the Town and Village Courts are endangering the welfare of a child and sexual abuse in the second and third degrees (see e.g. People v. Walters, 164 Misc.2d 986 (Schoharie County Court 1995); People v. Yates, 165 Misc.2d 375 (Yates County Court), lv. denied 86 N.Y.2d 743 (1995)), and welfare fraud (People v. Laumeier, 9 Misc.3d 1125A (Yates County Court 2005)). See also Appendix 2 for a list of Penal Law misdemeanors. There are other statutes that also define misdemeanors. A conviction for misdemeanors can result in a year in jail and if consecutive sentences are imposed on multiple misdemeanor convictions, the sentence can be two years in custody.

The justices preside over vehicle and traffic cases, often involving seizure of controlled substances, landlord and tenant cases, probation violation cases, local zoning ordinances and animal control regulations, environmental law cases, building code violations, family court matters when the family court is not in session, and civil cases for money or chattels involving \$3,000 or less. See UJCA sections 201, 202. They also hear cases arising under other state statutes including the Alcohol Beverage Control Act (see e.g. People v. Ekman, 185 Misc.2d 905 (St. Lawrence County 2000)); the Environmental Conservation Law (People v. De Witt, 171 Misc.2d 622 (Delaware County Court 1996)); the Navigation Law (People v. Thompson, 136 Misc.3d 740 (Yates County Court 1987)); the General Obligations Law (People v. Elliott, conviction in Village Court, reversed by 125 Misc.2d 851 (Madison County Court 1984), rev'd, 65 N.Y.2d 446 (1985)); and the Agriculture and Markets Law (People v. Sitors, 12 Misc.3d 928 (Schoharie County Court 2006)).

As shown in the published opinions of the County Courts, which serve as the appellate courts for the Justice Courts, legal issues before the courts are often varied and complex. For example, issues have included the proper sanction for conduct that is not a crime (People v. Ekman, 185 Misc.2d 905); determining when the charging instrument in a criminal case must include a statutory exception to the illegal conduct (People v. Krathus, 181 Misc.2d 378 (Cattaraugus County Court 1999)); determining what constitutes a valid roadblock and check point (People v. Richmond, 174 Misc.2d 40 (Madison County Court 1997)); whether a defendant can be compelled to admit guilt as part of a treatment program when the defendant took an Alford plea (People v. Walters, 164 Misc.2d 986); what constitutes deviate sexual behavior under the statutory language (People v. Bielewicz, 158 Misc. 2d 567 (1993)); whether possession of the property that is the subject of the lawsuit is needed for defendant to be in violation of the

