

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

Recommendations Relating to Training for Town and Village Justices and Court Clerks

The New York City Bar Association Task Force, established to study the system of Town and Village Courts and to make recommendations with respect to those Courts, recommends substantial changes in the training of the justices and the clerks of those courts. The Task Force shares a commitment to the improvement of the training and education of town and village justices with the Office of Court Administration, the members of the Bar of this State, and, of course, the New York City Bar Association. Through their answers to questionnaires the Task Force prepared and distributed, many of the town and village justices and the clerks of the town and village courts have told us that they share an interest in, and desire for, improved training and education.

The jurisdiction of the Town and Village Courts, while limited, remains extensive and affects the rights and the lives of the litigants before those courts. Despite the impact of the decisions of the Town and Village Courts, the justices need not be lawyers to preside over the cases; the justices can earn their livelihood in any occupation and, indeed, 72% of the over 2,000 justices are not lawyers. Up to now, only minimal training, measured by time and depth of study of the subject matter, was required before justices were authorized to preside over cases. More advanced training for the justices was similarly of short duration and often without scope and depth.

Concern about the training and education of the justices led to the Office of Court Administration's ("OCA") Action Plan (the "Action Plan") for providing enhanced and more extensive training for the justices and court clerks. As suggested by the Action Plan at page 49, the "OCA will work with the organized bar to channel their generous assistance in helping prepare and implement [the] new curriculum." The City Bar recommends that its resources — its lawyer-members — be part of the preparation and presentation of the education and training programs.

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 development of extensive training programs particularized for the justices and court clerks as a substitute for changes in structure, jurisdiction, or funding source if such changes are shown to be needed after our study is complete. It is the Task Force's hope that these proposals 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 required for the long run.

Recommendation 1

The Task Force recommends that the New York City Bar Association, working with other bar associations and entities as appropriate, establish a committee to identify volunteer lawyers to work with the New York State Judicial Institute to prepare and present courses of study for basic and advanced programs for Town and Village Justices.

Recommendation 2

The Task Force recommends that the New York State Judicial Institute establish a collaborative program for Town and Village Justices and the clerks of the courts with the Office of Court Administration, Office of the State Comptroller, The Division of Criminal Justice Services and other agencies for training on court administration and fiscal responsibility and accountability.

Recommendation 3

The Task Force recommends that the members of any advisory committee established to plan and monitor the training programs for the town and village justices should be manifestly neutral about the issues before the Town and Village Courts, and do not, by reason of employment or association, have an interest in the outcome of cases before the Town and Village Courts; alternatively, the membership of the Committee should reflect the perspectives of all the litigants before those courts and not, as proposed, only governmental or prosecutorial interests.

Discussion

1. Background: The Training Requirement for Town and Village Justices

The New York Constitution, Article VI, section 20(c), states that the Legislature shall require a course of training and education to be completed by the justices of the Town and Village Courts who have not been admitted to practice law in this state.

The Uniform Justice Court Act, section 105, requires that, prior to assuming the powers of judicial office, non-lawyer justices file with a clerk of the municipality a certificate of completion of a prescribed course in judicial education and training. The municipality in which the justice shall serve is charged with the necessary costs of the training.

The Rules of the Chief Judge, 22 NYCRR section 17.02, require training programs for town and village justices be held at least three times a year consisting of basic and advanced courses. Non-lawyer justices must complete the basic course at the first available time after election or appointment and receive a certificate which is valid until the next advanced course is given.

Pursuant to these mandates, OCA has conducted basic training on three successive Fridays and Saturdays totaling six days. Topics in the basic program have included introduction to law, bibliography and legal research, principles of substantive criminal law, basic criminal

procedure, youthful and juvenile offenders, vehicle and traffic matters, unauthorized use of an automobile and DWI, search warrants, criminal motions and hearings, domestic violence, evidence, principles of substantive civil law, basic civil procedure, small claims, summary proceedings, contempt and appeals, dangerous dogs, cruelty to animals, environmental conservation laws, sentencing, negotiated pleas and ACDs, judicial ethics, court records, sealed records, access to records, trial procedures, conducting marriages, providing notary services, and record keeping including records for Vehicle and Traffic and criminal cases and fiscal matters. After the justices completed the course, certificates were issued and they were then able to preside over cases.

Thereafter, the justices took an advanced course to receive a certificate of completion. In each year thereafter, to maintain certification, the justices attended advanced courses totaling 12 hours. Those justices who were lawyers were required to attend the first available advanced course after election or appointment and then an annual advanced course.

It was OCA's practice to have the advanced courses taught numerous times throughout the state in two segments, each lasting one day. (See Document prepared by OCA.) In 2006, Part I was taught 31 times at different locations and Part II was taught 30 times at various locations. Part I was concerned with judicial ethics, overview of a civil case, overview of a criminal case, civil and criminal appeals, and domestic violence. Part II included a further study of ethics and ex parte communications, commercial DWI, pre-trial discovery, common problems in vehicle and traffic cases, orders of protection, and re-sentencing. The sessions for 2007 varied from those given in 2006 and included evidence, assignment of counsel, pretrial hearings, subpoenas, dealing with the media, and financial accountability.

Elective credits equivalent to advanced credits were often available by attending training programs sponsored by County Magistrates Associations through OCA. The topics were chosen by the Association which then transmitted the request to OCA in the form of a request for certification credits. The programs were conducted by Resource Center attorneys, other justices who were experts in the requested subject, judges from the city and county courts, or other officials including probation officers.

2. The Reaction to the Training Efforts

Interviews and responses to questionnaires distributed by the Task Force reflect the almost unanimous view that the training and education program used until now is deficient and that the justices do not have adequate knowledge about most of the relevant laws, constitutional guarantees, and legal procedures, including substantive law, pretrial and trial procedures, ethics rules, administrative functions, fiscal responsibilities, rules of evidence and presumptions. In interviews with both defense counsel and prosecutors, they have reported that there are more than occasional instances when non-lawyer justices do not understand legal issues, do not promptly schedule cases for trial, engage in ex parte communications for arranging guilty pleas or affecting litigation positions, do not provide the paperwork needed when a case is resolved, render decisions ignoring the relevant legal principles (one example of recent vintage was consideration of the defendant's ability to make restitution in deciding whether the defendant had been proven guilty), fail to make a record of the reasons for a decision, fail to take a full plea allocation including elements of the crime, and fail to advise the defendant of the consequences

of a plea. Lawyers in civil cases in their public testimony at legislative hearings have noted predispositions on the part of some justices in landlord-tenant cases and in domestic violence cases.

It was the almost universal opinion of the lawyers who appear in the justice courts that many justices, both non-lawyer and lawyer, lack familiarity with the rules of evidence. Further, they do not particularize jury charges relying on the form instructions. They share an effort to avoid trials. Counsel also note the lack of preparation by some of the justices for court proceedings because the justices are part-time officials with other obligations, whether as lawyers or in other employment of every kind except active law enforcement officials.

As noted in the Task Force Recommendations for Assisting Town and Village Justices, in responses to questionnaires, the justices themselves stated their lack of knowledge of the law and of ethics principles, and requested additional training and assistance, including the use of mentors.

The Office of the State Comptroller, in its various reports and audits, also has expressed the view that the justices' knowledge of their record keeping and financial obligations must be improved. See Justice Courts Accountability and Internal Control Systems, 2005-MR-10 (2006); Opportunities for Town and Village Justice Court Consolidation, 2003-MR-4 (2003). To aid in this endeavor, the Comptroller has set up a separate unit for Town and Village Courts, the Justice Court Fund. The Fund has prepared the Handbook for Town and Village Justices and Court Clerks (2006) to explain how the courts should be administered and fiscal obligations fulfilled.

3. The OCA Action Plan and Classes

In November 2006, in the Action Plan, OCA recognized that the training as established was inadequate for non-lawyer judges and that major changes in the training program would be needed. Further, the OCA explained that the need for additional training is highlighted by the increasing complexity of the law that the justices were required to administer. As the Action Plan states:

There is simply too much for non-attorney justices to learn — civil procedure, criminal procedure, substantive criminal law, the U.S. and New York State constitutional law of search and seizure, the U.S. and New York State constitutional law of right to counsel, admission of evidence, constitutional and statutory jury selection procedures, burdens of proof, criminal sentencing, proper interaction with law enforcement and State agencies, indigency screening for appointed counsel, information technology, judicial ethics, court administration, the sociology and penology of addiction and abuse, as well as a panoply of other cutting-edge topical issues of law and justice — for a single week of basic training to suffice, if it ever could.

Action Plan at 44.

The Action Plan, at page 43, explains that, whatever the original motivation and current merit of the foregoing system may have been, the “legal universe” has changed so markedly in the last 40 years that the current system cannot exist unaltered if New Yorkers are to have a uniform standard of justice throughout the court system.

To foster a uniform system of justice, the Action Plan, at page 44, proposes to increase the resources and high tech equipment for training, to use advanced teaching methods, to have the justices spend more time preparing for their duties, and to provide more training for court staff. Concluding that the one week of basic training was inadequate, the Action Plan outlines the new training program, alternating home/self study with classes.

The program begins with a three-week self-study period using the Internet and written materials to familiarize the justices with legal terminology, legal principles including burdens of proof and presumptions, steps in civil and criminal cases, and constitutional rights. It is expected that 15-20 hours per week will be used for study. In this period, contact with educators over the Internet will be available for answering questions.

According to the Action Plan, the three-week study period will be followed by one week of class room study, resembling the old two day sessions, about substantive law, procedure, court administration and financial control.

Next, the Action Plan provides for an additional two-week period of home study in which the justices will become familiar with information sources, information technology, resources to enable contact with other government agencies including the Comptroller’s Office, reading case studies and making “factual and legal connections.”

Finally, the Action Plan envisions for the basic program a second week of classes for discussion and experiential learning. After each classroom session, a test of the justices will be administered.

A compulsory one week program also will be designed for newly elected justices who are lawyers.

Changes also are proposed for the advanced program of studies. See Action Plan at 48. The programs will be directed to two levels of knowledge and will be simulcast over the Internet allowing for interaction between the instructor and the justices watching the program. Also planned are Internet-based discussion groups with other justices and Resource Center lawyers. Issues and questions that repeatedly arise will be incorporated into regular quarterly study sessions.

Two specific substantive topics are designated by the Action Plan for study. The first is the law relating to indigent defense with particular emphasis on safeguarding the right to assignment of counsel. See Action Plan at page 29-31. The second is the law relating to the Americans with Disabilities Act. See Action Plan at page 32.

4. The Action Plan and the Permanent Committee

The Action Plan states that the educational program will “depend” on the active engagement of justices, law enforcement personnel, the Office of the State Comptroller and other state agencies with direct stakes in Justice Court operations. To manage this new program, the Action Plan envisions a Permanent Committee on Justice Court Education and Training. The members of this Committee are to be from the Magistrates Association, the New York State Association of Towns, The New York State Conference of Mayors, the Office of Court Administration, and the Office of the State Comptroller, as well as experts in adult education and testing. “The Committee will confer with these constituencies, as well as with the New York State Judicial Institute, National Center for State Courts,” and other states training non-lawyer justices. The Committee will develop the materials for the program, prepare the examinations, and monitor the effectiveness of the programs. See Action Plan at 48-49. There is no provision in the Action Plan for membership on the committee by those representing criminal defendants, tenants, parties in matrimonial cases, victims of domestic violence, debtors in contract cases, or any litigant but government agencies.

5. The Action Plan and the Organized Bar

The Action Plan anticipates help from the organized Bar to help prepare and implement the new program. The Plan sees members of the Bar serving as instructors in both the basic and advanced programs and as participants in long distance education. See Action Plan at 49.

6. The Action Plan and Training in Ethics

The Action Report notes that training in ethics rules will be conducted by members of the New York State Advisory Committee on Judicial Ethics. These programs will be developed in accord with the Permanent Committee on Justice Court Education and Training “to ensure complementary curricula.”

7. The Action Plan and Training in Financial Management and Court Administration

The Action Plan, at pages 34-39, explains at length the complicated procedures for meeting the fiscal obligations of the town and village justices and of the court clerks. It also points to the confusing supervisory roles over the fiscal management of the courts by local governments and the Office of the State Comptroller. There is little reference in the Action Plan to the many record-keeping responsibilities of the Town and Village Courts.

Recommendation 1

The Task Force recommends that the New York City Bar Association, working with other bar associations and entities as appropriate, establish a committee to identify lawyers who will work with the Judicial Institute to prepare and present courses of study for basic and advanced programs for Justice Court training.

Members of the Task Force met with the New York State Judicial Institute (the "JI") Dean and the Associate Dean in charge of Justice Court training. The JI will be executing the Action Plan initiatives for the training of the town and village justices and court clerks. The plan for training has four components: in-person training, interactive distance learning via the Internet, videotapes and DVDs, and bench books and guides.

The in-person training will be the presentations by attorneys and other instructors to classes of justices held at various locations throughout the state with related written materials and, where appropriate, power point presentations.

The programs for distance learning through the Internet are planned to be interactive, based on the "lunch and learn model" now used to train all state-paid judges. These are generally hour-long presentations on a specific topic using technology that allows interaction between the speaker and the audience in a local courthouse or other facility. Written materials for use in conjunction with the presentation would be prepared. The presentations would be recorded for later use although obviously those who use the tape could not partake in the interchange.

Specially-prepared videotaped materials on specific subjects also would be prepared and available for loan. These would ideally include scenarios displaying the application of the legal principles. These materials would be archived and catalogued (as would other preserved presentations) to be available on loan to the justices. The videotaped version could be made available on computer and the JI website, and by DVD. Finally, guide books and manuals would be prepared for general distribution on needed topics.

The JI has the technical equipment and technologically-skilled personnel to prepare the material for printing, presentation, and distribution. To enable long distance learning, the OCA is conducting a survey of each court to determine what equipment and access is available and what must be done to provide speedy access.

The Dean and Associate Dean of the JI will undertake total revision of current programming by the fall of 2007. They have asked the New York City Bar Association to identify lawyers with knowledge of specific and relevant areas of the law who will prepare and give presentations, write materials, and direct scenarios displaying court procedures. The subjects to be included in the training will be identified by the JI after an appraisal of the cases pending in the courts and the needs of the justices.

According to the JI, what is critical for the project is that those who make presentations be capable of teaching an audience of non-lawyers whose education ranges from high school graduates to those with graduate degrees. The JI notes there is need to be sensitive to the fact that most of those in the program are non-lawyers who need a clear presentation of the law. These

