

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

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

General Obligation Law (People v. Elliott, 65 N.Y.2d 446 (1985)); the evidence needed to prove animal cruelty (People v. Sitors, 12 Misc.3d 928); whether a justice court has the power to restore to its calendar a case in which the defendant was given an adjournment in contemplation of dismissal where the defendant committed another crime (People v. Antis, 147 Misc.2d 513 (County Court Fulton 1990)); whether the destruction of a warrant by the justice who signed it prevents the right to counsel from attaching and whether a Justice Court has jurisdiction in a particular case to file a complaint or sign a warrant (People v. Caruso, 2002 NY Slip Op. 40027U (Sullivan County Court 2002)); and whether a delay for a year and one-half to render a verdict invalidates a guilty verdict (People v. Uchie, 8 Misc. 3d 1004A (Monroe County Court 2005)).

Additional complicated legal issues arise with respect to sentencing possibilities and requirements. It is often said that the justice court system is desirable because the justices are familiar with the members of the community using the court system. But such knowledge has a negative side — that is, justices using information about the parties known to them but outside the record of the case in determining the outcome of and the sentence in a criminal case. The use by the judge of his or her own personal knowledge without disclosure to the parties and without an opportunity given to the parties to rebut the information raises due process issues and, in some instances, can be a violation of the right to a jury trial. See Cunningham v. California, 127 Sup. Ct. 856 (2007); Blakely v. Washington, 542 U.S. 296 (2004). In addition, restitution requires hearings with difficult to apply burdens of proof. See People v. Tzitzikalakis, 8 N.Y. 3d 217 (2007); People v. Consalvo, 89 N.Y. 2d 140 (1996). Moreover, probation conditions, as already noted, must be consistent with the law.

Under current law, the collateral consequences of a criminal conviction are complicated and carry potentially enormous impact. Housing, employment, public benefits, licensing, permission to drive with a valid license, and records of criminal cases accessible to the public all are affected by the results of court proceedings resulting in a conviction after trial or after a plea. (See New York State Courts Collateral Consequences of website (www2.law.columbia.edu/fourcs/)). Consequently, the judge must be aware of the collateral consequences and how to fashion or avoid them in a specific case in order to impose a just sentence.

Another area of concern relating to just sentencing is the interplay of federal and state law. With the passage of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 279 (April 24, 1996) (codified at scattered sections of the U.S.C.), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996) (codified at scattered sections of 8 U.S.C.), the collateral consequences of a state misdemeanor conviction now include possible deportation or denial of re-entry into the United States of even legal immigrants. And as stated succinctly by the United States Supreme Court long ago, deportation may result in “loss of both property and life; or all that makes life worth living.” Ng Fung Ho v. White, 259 U.S. 276, 284 (1922). Further, a state conviction can enhance a later federal sentence. See James v. United States, 127 S.Ct. 1586 (2007); Salinas v. United States, 547 U.S. 188 (2006).

Rarely mentioned but of critical importance to litigant-tenants in landlord and tenant cases, is the Justice Courts' summary proceeding jurisdiction. See UJCA section 204. These cases for eviction and rent due are based on complicated law concerned with loss of trailers, rent abatement and the warranty of habitability (see Clarkson Mobile Home Park, Inc. v. Ecklund, 141 Misc.2d 83 (Monroe County Court 1987)) that often result in homelessness and loss of property. The law differs depending on whether the housing is Mitchell-Lama, rent regulated, deregulated, Section 8 housing, private multiple dwelling, illegal apartments, low interest/low income, or mobile (manufactured) homes. The disclosures in our interviews show that many justices approach the cases with a pre-disposition for the landlord in favor of eviction and put obstacles in the way of achieving a fair hearing and resolution of the cases and sometimes involve imposition of court fees upon tenants that are of questionable appropriateness. It was reported to us that often, the justices' approach is that if the conditions about which the tenant is complaining are so bad, the tenant should have moved, thereby giving slight attention to burdens of proof.

Concerns about the non-lawyer justices' knowledge of the rules of judicial conduct also affect the scope of the needed aid and the size of the Center staff. Lawyers who become judges are, from the beginning of their careers, trained in the rules of professional conduct. Each candidate for bar admission must pass the Multistate Professional Responsibility Examination, and meet continuing legal-education requirements in ethics. Many lawyers confront and discuss ethical issues virtually every day. Lawyers who later become judges are aware of the ethics rules long before they preside over cases. However, non-lawyers who become justices have no such threshold training. Further, when lawyers become judges the already present sensitivity to ethics standards becomes the route to discussing and following the judicial conduct rules. Many town and village justices do not have this opportunity because of geographic isolation, their part-time status, and the previously short education programs concerning the rules of judicial conduct. Our interviews have revealed that the rules of judicial conduct are often not followed, confirming that the efforts by the Center to educate the justices about the rules of judicial conduct and to assist the justices in applying those rule are essential.

As noted above, interviewees of the Task Force have almost unanimously reported that the justices know the litigants, their lawyers, the witnesses, and the families of the participants. Because the justices know the people in the community who use the courts, an understanding of the requirements of ethical behavior takes on added importance. As one interviewee noted, even when an ex parte communication is not a deliberate violation of the rules, the familiarity leads naturally to conversation and that inevitably leads to talk about the pending case. The circumstances are particularly conducive to ex parte communications when one of the lawyers is not present. The need for the justice to distance himself or herself from the litigants and their lawyers may be awkward, but is necessary.

A few examples of misconduct discussed by the interviewees include the following. In one instance, a judge had lunch with a juror sitting on a case before him. See People v. Timothy White, Criminal Index # 28 2005 (Franklin County Court 2006). In another case, a justice destroyed a warrant to avoid assigning counsel (the warrant was found invalid so that the

destruction was held not to affect the right to counsel). Interviewees have reported incidents, some repeated behavior, in which justices conferred ex parte with lawyers or arresting officers in cases before them and then used the information in plea negotiations or to try to affect the adversary's strategy. It was reported in another instance that a justice spoke ex parte to a witness. In another, a justice communicated by note, passed in front of the jury, with the defense lawyer about the sentence he would impose. Public testimony revealed that some justices issue protective orders against spouses who have been the subjects of abuse and are not even before the court as the wrongdoer. In addition to these examples are the situations described in the decisions of the Commission on Judicial Conduct.

Unsurprisingly, Chief Judge Kaye and Judge Lippman have recommended enhancing training programs related to judicial ethics. See Action Plan at 49. However, that training must be supplemented by Center lawyers who are immediately available for advice as the problems arise.

4. Publications Concerning Developments in the Law

Throughout each year, without regard to judicial training sessions, the Legislature enacts new laws, the court administration promulgates new rules, the courts render new opinions, and the Commission on Judicial Conduct issues new rulings that affect the work of the justices. It is necessary that the Center learn about and publish the new relevant material both for Center lawyers and the justices whose inquiries they answer. Many of the new legal materials are already the subjects of memoranda and notices from OCA lawyers to the judges of the State, but the lawyers on the Center staff must craft the information so it is particularized for the Town and Village Courts.

5. Conclusion

It is apparent that more support lawyers are needed if the jurisdiction of the Town and Village Courts is to remain the same. With almost 4,000 possible clients, four lawyers and one non-lawyer assistant are not sufficient to meet the actual and anticipated demand. The number of lawyers should at least be comparable to that made available to the particular state-financed courts that use pools of attorneys to provide assistance. An accounting should be taken of the kind of questions asked and of the amount of time and resources needed to answer the questions in order to evaluate the needs of the Center. It is also important to determine why justices have not used the Center and how to overcome any inhibitions to its use.

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 and their court clerks in carrying out their responsibilities as record keepers, finance officers and administrators of their courts.

Town and village justices, unlike other judges in the State, have responsibility for court record keeping, the collection and safeguarding of bail money and of the funds received by the court, and for remitting of the funds collected to the Comptroller, his designee, or the local government every 30 days. In most courts, the court clerks perform the record keeping functions; some courts have no clerks, as in Chenango County, and the justice is responsible for maintaining the records.

Records are filed with the Office of the State Comptroller, the Department of Motor Vehicles and the Division of Criminal Justice Services. (See Handbook for Town and Village Justices and Court Clerks, Justice Court Fund of the Office of the New York State Comptroller (2006). Answers to our questionnaires also show that court clerks keep records for state and local police, Town Boards, OCA, probation departments, district attorneys, and TSLED (parking records). They also prepare orders of protection, orders to show cause in summary proceedings and judgments.

As the Handbook prepared by the Comptroller reveals, the paper work is time consuming, difficult, complicated and extensive. The safety of the funds is the personal responsibility of the justice and any loss brings with it personal liability. The reports of the State Comptroller show that the failure to fulfill these obligations is recurrent. (See Town of Cherry Creek Justice Court, Report of Examination, 2007M-12 (Office of the New York State Comptroller 2007); Justice Courts Accountability and Internal Control Systems, 2005- MR-10 (Office of the New York State Comptroller).)

In their responses to our questionnaires, court clerks and justices requested training and assistance with the paperwork and fiscal responsibilities. Given this context, unless the State decides to takeover the administrative burdens of the court, the Center should assume the responsibility for assisting the justices in whatever way they can. Because of the large number of agencies that require records from the Town and Village Courts, the Center should coordinate with those agencies and clarify the records required by each agency. Then perhaps some coordination can be undertaken to simplify and consolidate the records to be maintained.

Of course, the Center must be alert to new rules and laws relating to the obligations of the justices in administrative and fiscal matters and advise the clerks and justices of any changes in their obligations.

Recommendation 3

The Task Force recommends that The 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.

It is likely to take some time for the Center to evaluate its needs and to put in place its trained staff. For the interim period, to improve the day-to-day functioning of the Town and Village Courts, the Task Force recommends that the City Bar Association take direct, if temporary, action to assist by seeking the help from its members, and from attorneys who live and practice outside of New York City, particularly those members who live or practice out of New York City.

The proposal is to create a structure through which assistance can be provided to town and village justices by counsel from the private bar and in the public sector acting on a volunteer basis through the auspices of the City Bar Association and in conjunction with the Center. The Bar Association would provide a list of lawyer volunteers to the Center. These lawyers would have been identified by the City Bar Association as qualified and willing to answer questions presented by the Center lawyers. If the Center receives a request for assistance from a justice or court staff member, and the Center attorney believes that consultation with a lawyer who is qualified to assist will help in providing an answer to a question, the Center lawyer could discuss the issues with a member of the panel.

The Task Force believes the use of volunteer attorneys working through the City Bar Association in conjunction with the Center to provide information about the law to the justices at their request meets the standards of the Rules of Ethics if the identity of the lawyer and the information supplied is disclosed.

In defining the adjudicative responsibilities of judge, Canon 3 of the Code of Judicial Conduct (the "Code") provides: "A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding." 22 N.Y.C.R.R. § 100.3(B)(6). On the other hand, Canon 3 also provides that "[a] judge may initiate or consider any *ex parte* communications when authorized by law to do so." 22 N.Y.C.R.R. § 100.3(B)(6)(e).

An exception to the prohibition on ex parte communications authorized by the Code states:

A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

22 N.Y.C.R.R. 100.3(B)(6)(b).

The exception pertaining to advice from a disinterested expert appears applicable, as that rule was designed to give judges flexibility to seek assistance from experts in specific area of

knowledge. While this is generally applied to technical or scientific issues, in the context of town and village judges who are not lawyers, the definition is particularly apt. Attorneys available to the Center as qualified in a particular field of law, would appear to be appropriate under the rule along with a procedure requiring a justice to inform the parties of the identity of the attorney consulted by the Center and of the advice eventually given, with the opportunity to respond. It is important that each volunteer lawyer contacted for a specific case appraise the circumstances of the matter to avoid conflict. It may be possible to make the use of volunteers more acceptable by disclosing the identity of the volunteer lawyer before the advice is given.

This plan is in accord with the 1988 opinion of the New York State Bar Association Committee on Professional Ethics, Opinion number 13-88 concerning "confidential law clerks to town and village justices." The structure is also in accord with a 1989 opinion of the Advisory Committee on Judicial Ethics, opinion number 89-87, in which the Advisory Committee determined that it was permissible for an acting village justice to seek advice from a village attorney on a regular basis as long as the identity of the attorney and the information provided were disclosed to the parties, but that the practice was not permissible if the town attorney regularly appeared before the justice.

The Task Force has considered that the requirement for disclosure of the volunteer lawyers' identity and the advice given may deter some lawyers from participating in this project. It has also considered that some reluctance to participate may arise because the information given by the volunteer lawyer is likely to be given to the justice indirectly. As explained above, the first requirement is mandated by the Ethics Canon. Further, the idea of using the Center as a conduit for the information seems needed as an administrative matter because of the anticipated number and difficulty of questions from over 4,000 people. Even if some lawyers chose not to participate, for these or other reasons, the availability of as many lawyers as chose to volunteer is anticipated to be helpful.

It is, of course, the plan that the use of volunteers be a temporary measure until the Center is fully prepared to assume the full responsibility for advising the justices and the court clerks.

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 are the responsibility of the justices.

Recommendation 5

Task Force recommends that the Center have 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.

The confidence of justices in the Center and its use by them should be encouraged by having greater personal contact between Center lawyers and the justices. Center lawyers can visit the justice courts, maintain small regional offices, conduct small training sessions, assign specific lawyers to particular justices or geographic areas, or allow a specific Center lawyer to provide assistance to one justice for a particular case.

The contacts are particularly important in those counties in which most or all of the justices are not lawyers. For example, in Alleghany County, one justice of 36 is a lawyer; in Sullivan County, 12 justices of 36 are lawyers; in Schuyler County, one justice of 12 is a lawyer; and in Fulton County, one justice of 34 is a lawyer. The knowledge of a Center lawyer and the information given to the justices fills an important role.

While these proposals do not establish the close one-on-one relationship associated with the traditional judge-clerk relationship, they come as close as possible given the resources likely to be made available. Having a law secretary assigned to one part-time justice is unlikely to occur and is probably not necessary. Should the structure of the justice court system be modified to include a smaller number of justices who work full time, a different structure may be used.

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.

The Task Force recommends that the Center be funded to assist the town and village justices whether or not they are lawyers and whether they work full or part-time. New York judges are usually provided with a legal secretary or clerk who helps research, analysis, drafting, editing, and assists with the management of the court and the cases before it. In some instances, the judges are served by a pool of attorneys who assist the judge in a somewhat diminished fashion on request of the judge.

When a full time judge is on the bench most of a day, there is insufficient time to do the work of a judge as set out above. When a part time judge presides, whether lawyer or non-lawyer, often the time for study and research of legal issues is limited by the justices other work commitments. In interviews, we have been told that some justices, whether lawyer or non-lawyer, do not use time outside the court sessions to prepare for the proceedings. Assistance from the Center, therefore, is vital.

Task Force on Town and Village Courts

Hon. Phylis Skloot Bamberger, Chair
Rachel G. Balaban, Secretary
Hon. Frank J Clark
Hon. Penelope Clute
Elizabeth Donoghue

Hon. William C. Donnino
Norman Effman
Amy Feinstein
Amy Goldstein
Raymond R. Granger
John L. Pollok
Daniel C. Richman
Hon. Robert T. Russell, Jr.
Jay Safer

June 11, 2007

Appendix 1: Sampling of the times of court sessions in Town and Village Courts

Note 1: The source of the information is the Internet

Note 2: This chart shows the court sessions and not the business hours of the court clerk's office.

Stafford Town Court Genesee County: Tuesday and Wednesday evenings

Pavilion Town Court Genesee County: Tuesday 5:00 p.m.

Le Roy Town Court Genesee County: Monday 1:00 p.m.

Batavia Town Court Genesee County: Monday 5:00 p.m.; Thursday 1:00 p.m. (two judges)

Darien Town Court Genesee County: Tuesday night; third Wednesday of the month in the morning (two judges)

Byron Town Court Genesee County: Monday evening

Bethany Town Court Genesee County: Tuesday 7:00 p.m.

Bergan Town Court Genesee County: Wednesday evening

Ossining Town Court Westchester County: Monday and Thursday 7:00 p.m. (civil cases); second Monday of the month 2:00 p.m. (criminal cases)

Conesus Town Court Livingston County: second, third and fourth Wednesday of the month 7:00 p.m. ; first Wednesday of the month 6:30 p.m. (District Attorney night)

Genesco Town Court Livingston County: Wednesday 5:00 p.m.

Genesco Village Court Livingston County: Tuesday 5:00 p.m.

Moravia Town Court Cayuga County: second and fourth Thursday of the month 7:00 p.m.

Carmel Town Court Putnam County: Monday and Tuesday 6:00 p.m.

Dover Town Court Dutchess County: Monday and Tuesday 7:00 p.m.; third Tuesday and fourth Monday of the month 6:00 p.m. (District Attorney night)

Clinton Town Court Dutchess County: first Thursday of the month 4:00 p.m.; Thursdays of odd months 7:00 p.m.; Tuesday of even months Tuesdays 9:00 a.m. (two judges)

Greenwood Lake Village Court Orange County: second and fourth Tuesday of the month daytime; second Thursday of the month (night court)

Chenango Town Court Broome County: Tuesday and Wednesday 4:00 p.m. Special sessions for pretrial proceedings in misdemeanor cases and non-jury trials in violation cases

Grand Island Town Court Erie County : Wednesday 5:00 p.m. (criminal); 6:30 p.m. (traffic)

Alden Town Court Erie County: first and third Thursdays of the month (arraignments and small claims); first and fourth Tuesdays of the month (criminal cases); third and fourth Wednesdays of the month (traffic offenses) all at 7:00 p.m.

Angola Village Court Erie County: Tuesday evenings

Aurora Town Court Erie County: Wednesday 6:00 p.m.

Brandt Town Court Erie County first and last Monday of the month; second and third Friday of the month 6:30 p.m.

Clarence Town Court Erie County: Tuesday and Thursday 7:00 p.m.

Lancaster Town Court Erie County: Tuesday 11:a.m.; Thursday 5:30 p.m.

Kenmore Village Court Erie County: Tuesday 7:00 p.m.

Hamburg Village Court Erie County: Wednesday 8:30 p.m.

Brighton Town Court Monroe County: Monday 3:30 p.m.; second and fourth Wednesday of the month 1:00 p.m. (More time as needed for hearings and trials.); second Wednesday and fourth Thursday of the month 4:30 p.m. (small claims).

Irondequoit Town Court Monroe County: Monday 5:30 p.m.; Tuesday 4:00 p.m.; Friday 9:p.m. (three judges)

Webster Town Court Monroe County: One judge: first Tuesday of the month 8:00 a.m. (landlord-tenant); second Wednesday of every month 8:00 a.m. (District Attorney present); fourth Wednesday of every month 1:00 p.m. (District Attorney present); small claims as scheduled; Friday trials as needed. Second judge: second Tuesday of every month 8:00 a.m (landlord-tenant); first and third Wednesday of every month 1:00 p.m. (District Attotnry present); last Monday on odd numbered months 6:00 p.m. (Small laims); Friday trials as needed.

Appendix 2: Partial List of Penal Law Misdemeanors and Violations

110.05 attempt to commit an E felony
120.00 assault in the third degree
120.14 menacing the second degree
120.15 menacing in the third degree
120.16 hazing in the first degree
120.17 hazing in the second degree
120.20 reckless endangerment in the second degree
120.45 stalking in the fourth degree
120.50 stalking in the third degree
125.50 self abortion in the second degree
125.55 self abortion in the first degree
130.20 sexual misconduct
130.52 forcible touching
130.55 sexual abuse in the third degree
130.60 sexual abuse in the second degree
135.05 unlawful imprisonment in the second degree
135.45 custodial interference in the second degree
135.60 coercion in the second degree
140.05 trespass
140.10 criminal trespass in the third degree
140.15 criminal trespass in the second degree
145.00 criminal mischief in the fourth degree
145.14 criminal tampering in the third degree
145.15 criminal tampering in the second degree
145.22 cemetery desecration in the second degree
145.25 reckless endangerment of property
145.30 unlawfully posing advertisements
145.40 tampering with a consumer product in the second degree
145.50 littering on railroad tracks and rights of way (undesignated conduct)
145.60 making graffiti
145.65 possession of graffiti instruments
150.05 arson in the fourth degree
155.25 petit larceny
156.05 unauthorized use of a computer
156.20 computer tampering in the fourth degree
158.05 welfare fraud in the fifth degree
158.30 criminal use of a public benefit card in the second degree
165.00 misapplication of property
165.05 unauthorized use of a vehicle in the third degree
165.09 auto stripping in the third degree
165.15 theft of services
165.17 unlawful use of a credit, debit or public benefit card
165.20 fraudulently obtaining a signature
165.25 jostling
165.30 fraudulent accosting
165.35 fortune telling
167.71 trademark counterfeiting in the third degree
170.05 forgery in the third degree

170.20 criminal possession of a forged instrument in the third degree
170.45 criminal simulation
170.47 criminal possession of an anti-security item
170.55 unlawfully using slugs in the second degree
175.05 falsifying business records in the second degree
174.25 tampering with public records in the second degree
175.30 offering a false instrument for filing in the second degree
175.45 issuing a false financial statement176.10 insurance fraud in the fifth degree
177.05 health care fraud in the fifth degree
178.10 criminal diversion of prescription medications and prescription in the fourth degree
180.00 commercial bribing in the second degree
180.05 commercial bribe receiving in the second degree
180.50 tampering with a sports contest in the second degree
180.55 rent gauging in the third degree
180.56 rent gauging in the second degree
184.00 fraud in insolvency
185.05 fraud involving a security interest
185.10 fraudulent disposition of mortgaged property
185.15 fraudulent disposition of property subject to a conditional sale contract
190.05 issuing a bad check
190.20 false advertising
190.23 false impersonation
190.27 criminal sale of a police uniform
190.35 misconduct by a corporate official
190.45 possession of usurious loan records
190.50 unlawful collection practices
190.55 making a false statement of credit terms
190.60 scheme to defraud in the second degree
190.78 identity theft in the third degree
190.81 unlawful possession of personal identification information in the third degree
195.00 official misconduct
195.05 obstructing governmental administration in the second degree
200.35 receiving unlawful gratuities
210.05 perjury in the third degree
215.10 tampering with a witness in the fourth degree
215.25 tampering with a juror in the first degree
220.03 criminal possession of a controlled substance in seventh degree
220.46 criminally possessing a hypodermic instrument
220.70 criminal possession of methamphetamine manufacturing material second degree
221.05 criminal possession of marijuana in the fifth degree
221.15 criminal possession of marijuana in the fourth degree
225.05 promoting gambling in the second degree
225.15 possession of gambling records in the second degree
230.03 patronizing a prostitute in the fourth degree
230.04 patronizing a prostitute in the fourth degree
230.05 patronizing a prostitute in the third degree
230.20 promoting prostitution in the fourth degree
235.05 obscenity in the third degree
240.05 riot in the second degree
240.08 inciting to riot
240.10 unlawful assembly

240.20 disorderly conduct
240.25 harassment in the first degree
240.26 harassment in the second degree
240.30 aggravated harassment in the second degree
240.35 loitering
240.36 loitering in the first degree
240.45 criminal nuisance in the second degree
240.71 criminal interference with health care services or religious worship in the second degree
245.00 public lewdness
245.01 exposure of a person
245.11 public display of offensive sexual material
250.10 possession of an eavesdropping device
260.05 non-support of a child in the second degree
260.10 endangering the welfare of a child
260.20 unlawfully dealing with a child in the first degree
265.01 criminal possession of a weapon in the fourth degree
270.10 creating a hazard
270.25 Unlawful fleeing a police officer in a motor vehicle in the third degree