Minutes
Municipal Courts Task Force
Tompkins County Legislature Chambers
April 27, 2016

Present:	Ray Schlather, Jason Leifer, Betty Poole, Glenn Galbreath, Scott Miller
Excused:	Mark Solomon, Elizabeth Thomas, Gwen Wilkinson
Staff:	Joe Mareane, Marcia Lynch

Mr. Schlather called the meeting to order at 12:00 p.m.

Call for agenda changes: Correct the meeting time on the agenda to 12:00-1:30PM. Also, in the discussion we will not talk about the district courts, diversion, etc. Item "C" will be fine, also strike "D". Some copies of the agenda already reflected those changes.

Approval on the March 30 minutes and the April 13th minutes will be deferred until the May 11th meeting as corrections are being made.

Public Comment: Town of Newfield Judge William Chernish has spoken to other Tompkins County area magistrates seeking their feedback on Judge Galbreath's 16-point outline. Judge Chernish had them rate their importance on a scale of 0-4. The attached copy of the results (attached) was distributed to the task force. The group was most supportive of the use of confessions of judgment, giving people sufficient time to pay their fines/fees, and diverting DWI cases to a superior court. There is no support for diverting all misdemeanor cases to a different court, or for mental health courts, or for requiring judges to be attorneys. The issue of having just one justice was looked at as local issue.

Chair's Report: Regarding writing assignments, we need to come up with a schedule and figure out logistics to see us through to the conclusion of our work.

Staff Report: Mr. Mareane is working on a calculation of the expense of creating a new judge for the county courts. He should have it before the next meeting by email.

Discussion:

Mr. Schlather recommended starting with Mr. Galbreath's "Issues Still Under Consideration" memo to look at issues still under consideration. He grouped the issues into topics, beginning with "money" and specifically the questions of bail, fines, confessions of judgments, and ancillary items. Subtopics include partial payments, time to pay, confessions of judgment, presumptive ROR, OAR thresholds, and the provision of rap sheets to defense counsel at arraignment .

He would then like to talk about centralized arraignment and transfer to lawyer-trained local courts as the second part of the discussion.

As the final part of the discussion, he would like to talk about remaining issues including pre-trial diversion to youth court, mental health court, posting of policies on line, recommended training, and the like.

Mr. Schlather reminded the group that the task force can generally only make recommend to the courts, and that short of state legislation, few things can be mandated on the courts.

Mr. Schlather asked if anyone is opposed to allowing partial payments. Mr. Miller said that the two judges in City Court enjoyed a large enough staff to manage a partial payment system and still conduct the business of the court. He said a partial payment system has been in place in City Court for a long time, and that the unconstitutionality of debtor's prison is acknowledged. He said no one is jailed for an inability to pay a fine or surcharge. Instead of warrants, the City Court prefers to use the judgment approach for non-criminal violations. He sees no issue with the task force making recommendations that benefit all citizens of the County and those that appear in the municipal courts, including a recommendation that municipal courts accept partial payments and use confessions of judgment. He acknowledged the burden on staff associated with the recommendation.

Ms. Poole agreed with most of Mr. Miller's position, including the staff burden created with a partial payment plan. The bookkeeping process is complex. She said many courts do accept partial payments. Some, like hers, extend the payment period to meet the client's needs. When necessary, she applies a confession of judgment. She is not aware of anyone who's been jailed because of an unpaid V&T; they are simply scofflawed

Mr. Leifer said that a suspended license can then lead to a criminal charge. Ms. Poole said that most judges would not go out to an arraignment on an AUO 3rd and incarcerate the individual for not paying a $168 fine.

Mr. Leifer and Ms. Poole discussed the difficulty some individuals face when making payment, and the need for individuals to establish priorities.

Mr. Schlather asked whether there are, or could be, technological solutions, such as online transfers of funds, to make it easier for people to pay their fines.

Mr. Galbreath noted that his court takes partial payments, and that the process is difficult for the clerk. He believes the partial payment system makes it easier to collect what is owed. To the extent people pay, the court doesn't have to worry about the consequences of nonpayment such as scoffing or imposing a confession of judgment. He believes the partial payment system works out better in the long run for all involved, including the defendant.

Mr. Schlather asked about the logistics of the Cayuga Heights process. Mr. Galbreath said a check is mailed to the Court, with the clerk making an electronic entry (but must also make a paper record.) He said (and Ms. Poole agreed) that the process must include a paper receipt sent to the defendant. He said it is complicated, but believes it is worth it. Ms. Poole suggested that partial payments should be discretionary, and decided by each court. Mr. Schlather agreed that most of the items being discussed would only be a recommendation, but that the task force's recommendations could be incorporated by the State into legislatiom and made statewide. He said he would like to see the panel recommend the courts accept partial payment in a way that is consistent with their own operational resources.

Mr. Schlather asked whether anyone is opposed to recommending that confessions of judgment become the presumptive default. There was no opposition.

Mr. Schlather asked about the use of the scofflaw. Mr. Galbreath said it is only used in Cayuga Heights when the court loses track of someone. He said it is the best enforcement device in getting tickets paid. When an individual finds out that their license has been suspended, the matter is quickly rectified. He said there is no apparent controversy in using the scofflaw. Mr. Leifer raised concerns about individuals who cannot afford to pay. Mr. Schlather said it seems the use of scofflaw should remain a part of enforcement.

Mr. Schlather turned to the issue of bail, and asked whether there should be presumptive ROR for all non-felony offenses in the local courts. Mr. Galbreath said that it should exist—and that effectively does exist, although the law may not state it that directly. It is clear that bail shouldn't be required unless there is a legitimate concern that the person is not going to appear. Phrasing it as a presumption of ROR is a different way of saying the same thing. There will be a lot of exceptions to that. No one will argue that ROR is the only tool that the judge has. Like many of the group's recommendations, what we're trying to do is to emphasize techniques and procedures that will be more efficient, more just, and not cost us a lot of money.

Mr. Schlather asked whether the group would recommend sending a clear request to the State legislature that presumptive ROR for non-violent offenses be enacted in statute. Ms. Poole objected on the basis of separation of powers. Mr. Schlather and Mr. Galbreath agreed that this would not be a constitutional matter, but could be addressed by statute by the Legislature. Ms. Poole raised a concern about the preliminary jurisdiction the local courts have. Mr. Schlather clarified that this would involve only non-felony charges. Mr. Miller cited the factors in law that must be considered by the court in setting bail. He said the presumption of ROR intrudes in the discretion of the court. He suggested that two factors be considered: 1) that town and village courts place on the record the bail factors under CPL 510-30 (which would address concerns about the factors applied when setting bail) and 2) that bail not be set at levels solely to exclude the defendant from bail provided through OAR. Mr. Schlather said he cannot think of a single misdemeanor in which the world would come to an end of the individual didn't return to court, and that with today's technology, it is only a matter of time before someone would be returned to court. Mr. Miller said that in any given week, he will have several individuals who have 40-50 misdemeanor convictions, 8 or 9 failures to appear, and is brought in under a misdemeanor charge. Mr. Schlather questioned whether that individual would be jailed for several months while the case was adjudicated. If there is a repeated failure to appear, it could affect sentencing. He said many things can influence bail that should not be considered. If an appearance ticket is issued, it would avoid late night arraignments. Most would show up for court, and the matter is adjudicated. The few who don't show up can ultimately be arrested. Ms. Poole said the Town of Ithaca dealt with a number of forfeited bail cases (an estimated 60 over 24 years.) She said she does not forfeit bail for non-appearance. In CPL 510.30, there is a list of issues beyond securing their appearance. She cited a highly inebriated individual arrested for strangling her daughter, who should not have been released back to the home with her daughter. Mr. Schlather suggested there are alternatives other than jail, such as a no contact order of protection. The individual could stay at a hotel rather than her home. Ms. Poole noted the risk

presented by this defendant; Mr. Galbreath said the courts are not allowed to consider such risks when setting bail.

Mr. Schlather agreed that there is a need for alternatives, such as additional shelter beds or assistance from DSS. Ms. Poole wondered whether that kind of assistance is available when needed.

Mr. Schlather returned to the basic premise that bail is not a vehicle for preventive detention. We can put in reference to after hours arraignment, what we don't want, which is a system such as in Nassau where individuals are held overnight and over the weekend until a court is in session.

Mr. Schlather asked whether the task force will support the presumption of ROR. Mr. Miller preferred the language of the statute that recommends the court place on the record its analysis of bail factors. He wondered whether anything in the statute is changed by calling this presumptive ROR. Mr. Schlather said the group would be urging the courts to be more consistent in releasing people to their own recognizance. If he were writing it, he would recommend all be released ROR at the local court level. Given the purpose of bail, releasing people ROR for non-felony offenses is best. He will argue for that to be included as a part of the task force's final product. Mr. Miller, Mr. Galbreath, and Ms. Poole said they would oppose that recommendation. Mr. Galbreath said if there is a frequent pattern of failure to appear, the judge should not have to chase them down. The judge should want some security, but within the OAR bail level (OAR can vet the risk of non-appearance). Mr. Miller said in today's city court there were 15 defendants who didn't appear. Arresting officers had issued appearance tickets. To get people into courts, warrants must be issued. ROR is still possible, as are other options such as being supervised by probation. At some point, with a defendant who routinely fails to appear, there is an escalation that argues for some level of monetary security. If the recommendation is that bail never be placed on a misdemeanor offender, it could color the other recommendations of the task force.

Mr. Schlather asked whether the language of "presumptive ROR" with other acknowledgments including CPL language, would be acceptable. All agreed.

Mr. Schlather turned to the OAR level of bail, recognizing that the number can vary over time. All agreed that if bail is set, it should be set at a level the individual can make with the assistance of OAR. All agreed.

Mr. Schlather raised the issue of rap sheets being shared with defense counsel. He asked whether the judge has access to the rap sheet at arraignment. Ms. Poole said she does; Mr. Galbreath said that in theory it is available, but he doesn't always have access to it. He relies on the DA to provide it, and if they don't, he assumes there is not a sheet. Mr. Miller said the rap sheets are a recurring problem. At the time the defendant is fingerprinted by the police (prior to the court's involvement), law enforcement can download from DCJS the criminal history/rap sheet. There is a statutory prohibition on releasing copies of the rap sheet. Only the agency that downloads it can keep a copy. In an after hours arraignment, the police can show it to the judge, the DA, and the defense counsel—but no one can make a copy. Once the charges are entered into the court's computer system, then the courts can have access to a copy (which is on the next day). A rap sheet is then printed for the file. Once a case has been filed with a court, a DA can download a rap sheet. At the time the defense attorney shows up, the

court can then provide a copy. That may be a week or two later. The defense attorney is never an authorized agency that can get a copy of the rap sheet, and that causes problems. He suggests this is an unnecessary disparity—that the defense counsel should get the rap sheet quickly as law enforcement has the sheet. That should be addressed by statute. Mr. Leifer said this was a recommendation of the Kaye Commission, and would be helpful at arraignment and bail hearings. Ms. Poole said she can circulate copies as soon as the case is docketed which, in her case, is quick.

Mr. Schlather said that a recommendation could be that after a court is docketed, then the court should provide a rap sheet to the defense counsel. Mr. Miller said there is always a copy the City downloads when a case is docketed, and provides it upon the request of the defense counsel. Mr. Schlather suggested that the recommendation be consistent with the request the task force has heard that the rap sheet be provided as a matter of course. Mr. Galbreath said he would want the rule to extend to the district attorney as well as the defense attorney, and asked whether the court would be required to dig up the rap sheet. There was a discussion about whether this occurs as a part of discovery, and the scenarios that can occur that affect the timing of discovery.

Mr. Schlather asked about the mechanics of obtaining the rap sheet. Mr. Miller said that in City Court, once a criminal charge is entered, the DCJS system has a downloadable rap sheet. Ms. Poole said the process in the towns is more complex. Judges go into a portal system, enter an ID and password, and then run. Getting the rap sheet is a separate 10-minute online exercise than securing other documents. However, since there is always a rap sheet run when a case is docketed, the question is only when the rap sheet should be produced. (A question emerged about whether a rap sheet is really required, or simply a custom in some courts, including City Court. In Cayuga Heights, when the DA or police have a rap sheet, it will ultimately be shared with the court and defense counsel. The judge assumes there is no past record unless they see one. (Mr. Miller will check the rules.)

Mr. Schlather turned to the question of centralized after-hours arraignment.

Ms. Poole said she has done some research under the NYS bill search, and has found several pending bills that relate to after hours arraignments outside of New York City, including some that authorize a system of rotating courts to hear after hours arraignments, video arraignments, and the use of a detention center to hold individuals prior to arraignment. The senate and assembly are both looking into these.

Mr. Schlather noted his concern with the idea of using the jail to hold individuals prior to arraignment, but that the rest of the legislation sounded positive. He recalled that everyone on the task force earlier agreed that there should be a centralized place for all people to be arraigned via a system of rotating judges. He asked whether the rotation would be restricted by having to involve only contiguous jurisdictions. The consensus is that under existing State law, the jurisdictions must be contiguous. Other than Groton and Caroline, all towns are contiguous. Mr. Galbreath said that a statutory change would be in order to ensure an efficient and equitable rotation. Mr. Schlather asked what the task force should recommend, particularly if requested changes in State law don't occur. Mr. Miller asked how the local magistrates would react if State law was passed that would allow any town or village judge to

conduct an arraignment hearing anywhere in the County. Mr. Galbreath said no one has said they wouldn't want another judge to take their case, but it could happen. He feels there should be a more equal distribution of the burden of covering after-hours arraignments. Mr. Miller suggested that the City Court would not be involved in the rotation. Judge Chernish was asked if he had heard reservations about a rotating system. He said he and Judge Poole already have an informal arrangement that one will cover for another when the need exists. He has not heard of discussions within the magistrates about this issue, and in his opinion, a rotation would be fine (as would a judge electing not to participate.) Anecdotally, he has heard from law enforcement that there are some judges now who do not participate in after hours arraignments, indicating that others are covering those gaps.

Mr. Schlather noted that the centralized after hours concept also should consider the impact on defendants, law enforcement, attorneys, and judges. There should be a centralized after-hours arraignment operation that includes the City. Whether done on a rotating basis or an additional part-time City judge to handle after hours arraignments is a question. This will need more discussion by the task force.

Mr. Miller favors the pending Senate (S07209) legislation that will allow any town or village judge to hear arraignments within that County. He raised a concern about City Court's involvement, based on the problem of IPD having someone in custody having to take the person to Enfield. They currently have an efficient, closed system, although the City could serve as the central arraignment facility. Mr. Leifer cited an example of Dryden Town Judge Ravo being precluded from holding an arraignment in his downtown office in the City of Ithaca. Mr. Galbreath asked if the legislation would allow any judge to hold the hearing in any jurisdiction. (It is not clear.) Mr. Galbreath suggested that logistics would be improved if the police had to take a person to the court of the arraigning judge, or to a central location. Mr. Schlather, in looking at the Senate bill, said it allows the Chief Administrator of judicial district to a develop plan for a county. The task force will revisit this issue.

He would also like to revisit the automatic transfer provisions, youth court, intermunicipal consolidation issues, mental health court, and other items on Mr. Galbreath's list on May 11th.

The May 11th meeting will return to the 4:30 p.m. time slot, as will the May 25th meeting.

Mr. Schlather urged the group to set aside the two weeks in June (8th and 22nd) to finish the report. He also asked member to submit their written sections, in whatever form, to him. He is hoping to do some writing next week.

The meeting adjourned at 1:30 p.m.