Minutes
Municipal Courts Task Force
June 14, 2016
County Legislature Chambers

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

Mr. Schlather opened the 23rd meeting of the Task Force at 4:00 p.m. and introduced members of the task force.

The minutes of the May 25 meeting were amended at the request of Mr. Solomon to correct a made by comment by Ms. Thomas, moved by Mr. Galbreath, seconded by Ms. Thomas, and unanimously approved.

Judge Jules Ravo (Town of Dryden) asked to address the task force as a part of the public comment period. He referred to a letter that he had sent after looking at the first draft of the task force report. He thanked the task force for its work, noting that he'd reviewed the minutes for all of the meetings that the task force has conducted. He said that a lot of the group's work will lead to real coordination between the courts and the DA's office, which will achieve the group's goal of improving the equality of results of the courts. He said all of the local courts should be communicating with each other and the DA's office. With respect to some of the recommendations, he agreed that improving electronic access is a good idea, noting that Dryden now has electronic payments, which are popular in spite of a small surcharge, and is using email more than before. He said all judges strive to come up with the correct approach to bail (reacting to the "presumptive ROR" element of the draft report.) He agrees with Mr. Schlather's belief that rap sheets should be given to defendants, but that some confusion remains. He said he provides a copy if it is requested. Law enforcement, he said, believes the rap sheets should not be shared.

Mr. Galbreath said he'd gathered information this afternoon regarding the rap sheets. A "repository" rap sheet has arrests and convictions (i.e., has more information), and is not allowed to be given to defendant and defense attorney, based on a contract between Criminal Justice Services and the Unified Court System that says the document can be seen, but not copied. A "fingerprint" rap sheet, can and should be copied and shared. It does not have as much information about what the defendant was originally charged with, pled down to, etc. Attorneys don't seem to know the difference, so don't know to ask for a copy of the fingerprint rap sheet. Mr. Schlather said the rationale for the difference probably relates to the "seal order" that applies to some closed cases. Mr. Galbreath said this is the current situation, and is unlikely to change. In response to Mr. Solomon's question about the

enforcement of a breach of the contract, Mr. Galbreath said the result of a breach would be a denial of access to the repository rap sheet.

Judge Ravo continued his comments to the task force. He said many of the group's recommendations are already in place, such as the recommendation to issue written decisions. Dryden also does partial payments. One of the items that upset him was the statement in Section 2 that "inconsistent results in the administration of justice at the grass roots level of Tompkins County that raises fundamental fairness and due process concerns." He said the courts strive to make sure those are the two elements that are always carried out. If people would observe the courts, they would see how carefully they work to provide due process and full and fair hearings. He also objected to the statement that the local justice court system is survived on the good will of a number of the local justices. He said the report doesn't give enough credit to the work the local justices do. The work of the judges is hard, and they are dedicated to their craft. He cited Judge Bauman's testimony that showed the complaint rate against local judges is 14%, the rate against supreme court judges is 89%, and the rate against county judges is 114%. He counsels younger attorneys about facing superior court judges who aren't as versed as local court judges. He also cited Judge Bauman's reference to the $800,000 cost of local courts in Tompkins County and compared that to the cost of adding close to $700,000 to add a DWI court. He said a bad justice court judge can be removed after 4 years, compared to much longer terms at the higher level.

Judge Ravo expressed strong disagreement with the statements made in the report regarding the DWI part, including the reference to the "nearly universal" support among town and village judges. He said that he, Judge Clausen, Judge Dresser—a total of 9-10 judges—were not ready to relinquish their authority over DWI cases. He also objected to the reference to uneven results of DWI cases in different courts, saying he found no evidence of that fact in the testimony. Judge Ravo said it is almost impossible to have uneven results because the laws have virtually eliminated judicial discretion. The little bit of discretion that remains is that discretion reserved for the DA. He observes that fact often in his court. He said the penchant among some judges for weekend sentences can be cured in a number of ways. He said the DA's office advised him of a policy that requires jail time in return for a dispositional reduction. He reiterated that local judges have little discretion.

Judge Ravo said the "extensive" paperwork associated with a DWI case consists of a conditional discharge, victim impact panel schedule, suspension/revocation, and interlock device, and (in the case of a refusal at the arraignment) refusal. The documents are all on the computer and can be completed in 15 minutes or less. With respect to reduced caseloads, in Dryden, there were 57 total DWI cases, shared by two judges, or an average of 2 per month per judge. On a DA night, there are 50 criminal cases, so DWIs represent a small fraction of the total caseload. He disputed whether there would be a dispositional difference between the DWI court and his court.

Ms. Wilkinson asked about Judge Ravo's call for increased communication between the DA's office and the judges. He said his comment was in the spirit of the report. He said the DA's office may make different offers for the same offense in different courts, which creates an uneven result. Ms. Wilkinson said her office can't privately discuss the disposition of cases with a judge.

Judge Ravo said that in reviewing the testimony, he recognized a number of names, and noted that the testimony was generally not very specific with respect to lack of due process or fairness. He said that one statement said that attorneys were not making motions or requesting suppression hearings because they were concerned about what the judges would do in response. He said suppression and probable cause hearings are a great vehicle for disclosure that he encourages. If lawyers are not availing themselves to these hearings, including felony hearings, that is a matter of the inexperience or unwillingness of the attorneys to go forward.

Mr. Schlather thanked Judge Ravo for his comments. He said the task force has not signed off on the language of the report; that it is currently the sum of contributions from various members, knitted together by him.

Mr. Schlather referred to the 6/14/16 draft report. Section three is incomplete and section four has not been started.

Mr. Miller referred to page 25. He will provide the 2015 DWI stats when they arrive. On page 31, b, he asked for clarification that the DWI court would be centralized in either the Ithaca City Courthouse or the County Courthouse. He wanted to make it clear that the cases would not be referred to Ithaca City Court. On page 32, there is a specific reference to using the Ithaca City Court as Chambers. Mr. Miller suggested broadening that to include the County Court. Mr. Schlather said that because most DWI cases are handled by the City, the City Court Clerks may be well equipped to handle the additional load, and are also employees of the Unified Court System, which may ease the transition. On page 37, he suggested adding the proviso to the ROR reference stating "where the individual has no history of failures to appear." He further suggested adding after "Technological Oversight" that "local courts should be encouraged to articulate the mandatory bail factors on the record whenever an individual with only a misdemeanor is considered for remand to the jail." This would remind the judges that there are factors that must be considered, and that this may result in the individual not being remanded to the jail.

Mr. Schlather did not want to dilute the overall message that it is a very rare case that an individual should be required to post bail in misdemeanor cases. Mr. Solomon said that point is made clearly in the next paragraph.

Mr. Galbreath suggested adding the words "absent clear evidence the defendant is unlikely to appear in court" to the recommendation in Section 3 that courts not set bail in excess of OAR's bail ceiling. Absent that caveat, Mr. Galbreath said the courts would have no latitude to exceed the OAR threshold. He said the norm would be no bail (ROR) and that the maximum bail amount would be the OAR threshold. He supports Mr. Miller's recommendation in the prior section, and wants the freedom to exceed the OAR bail level in the rare occurrence that someone has an awful record and is very unlikely to appear.

Mr. Schlather noted that these are not capital cases, but are misdemeanor cases. By shifting the burden to OAR that does have better resources to monitor and ensure compliance, you are already

implementing additional oversight and constraint. Mr. Galbreath said there are times when it's clear the defendant is not going to come back, and that he wants discretion to exceed OAR bail limits in these cases. Ms. Wilkinson said that in an assault case, for example, they know they can be facing a local year in jail, which increases the risk of failure to appear. Mr. Schlather said that we live in an increasingly constrictive society in which there are multiple ways of finding people. Mr. Miller said that he agrees with that concept. In his experience, where the charge is just a misdemeanor and the person has a few failures to appear, the judge wants to set the bail at a level the person can post, say $1-$2,000. If they fail to appear, it's an immediate bench warrant and tolls the speedy trial time, the warrant hangs over the person's head and there is money forfeited that goes to law enforcement. So if it is a run-of-the-mill misdemeanor, bail should be set at a reasonable level even if it's a flight risk. Mr. Schlather said whether the person posts a low bail or ROR, failure to appear triggers a bench warrant circulated throughout the US. Any time the person goes through airport security, gets stopped for a traffic stop, etc. the warrant will pop up and the individual will be returned. In addition, there is a bail jumping charge that is imposed after 30 days. Mr. Leifer said that $1,000 means more to some than others—something that isn't recognized in every courts.

Mr. Solomon said this is a writing problem; that if the section begins with a studied and neutral presentation about the purposes of bail, it will even itself out. He would begin with a historical note that the purpose of bail is historically misunderstood by the public. Mr. Schlather suggested that point is made in Section 2. Mr. Galbreath said he can agree to the report language pertaining to OAR bail thresholds, so long as there is an escape valve.

Ms. Wilkinson said the quality of justice as perceived by the citizenry is important. In the case of someone who has violated bail, there is a risk of a perception that the justice system doesn't care about a victim who has been injured, noting that there are misdemeanors such as Assault 3rd can be quite violent. Where there is some sign that someone may not come back, we should not assume zero (ROR) to be the starting point. The perception of the quality of justice dispensed will be reflected in the kinds of arguments judges accept when deciding whether to accept bail.

Mr. Schlather suggested qualifying the language in the report by adding the word "generally" to the sentence that continues "local courts should not set bail in excess of that limit." Mr. Galbreath agreed. Mr. Schlather suggested accepting Mr. Miller's caveat "where the individual has no history of failure to appear", and putting in "local courts should be encouraged to articulate the mandatory bail factors on the record whenever an individual with only a misdemeanor is considered for remand to the jail."

Mr. Schlather said the group is capturing the substantive discussion on these matters from an earlier meeting, which said CPL 510.30 has standards that judges should follow, and that we want to avoid putting people in jail unnecessarily.

Mr. Solomon said the problem is real. It is the problem of the stranger and the local person too well known by the court. In both cases, bail has been abused historically in this county, and we want it not to be done anymore. These sections of the report capture that end and purpose.

Mr. Schlather turned to pages 30-32 that try to look at the numbers associated with the cost of putting in the DWI part and the offsets. He went through the testimony, including comments about the 45 minutes it takes to process a DWI case and then extrapolated the numbers. He invited members to critique the approach. He asked Lance Salisbury, from the Assigned Counsel Program, for an estimate of saved waiting time if there was a central DWI part. The avoided law enforcement costs is less clear. Joe Mareane agreed to follow up on that. The local court costs is based on the number of cases, and is the equivalent of roughly one town justice and one clerk. He invited feedback on all of these calculations.

It was noted that Ms. Wilkinson's bio was omitted in the draft. Each member was encouraged to send his/her bio to Mr. Schlather.

Mr. Galbreath said that one of the arguments for the consolidated DWI was the therapeutic value of defendants seeing how cases are handled consistently across all defendants. He agreed with Judge Ravo that the DWI part is not universally in favor of the DWI part, and is not sure that there is a majority of justices who support the change. Mr. Schlather said that the task force has discussed the idea, and heard from other judges that this is something they'd welcome, and was given a survey from Judge Chernish that showed a majority of judges supporting the change. Mr. Schlather agreed that the reference to "near universal" support should be changed, although that was the impression the task force had been given. Mr. Galbreath suggested the LEAD program be listed as #2, because it is more overarching than either mental health or youth court. There is no known argument against the LEAD program. Here are concerns about the practicality of Mental Health and Youth Court. All agreed.

Mr. Schlather asked about the group's position on Mental Health Court. Most agreed it should be included in the report as something to be explored.

Mr. Galbreath cited page 39 regarding the use of confessions of judgment. He wants to make it clear that the judge shouldn't be dependent on the DA filing a contempt charge, but that the judge should have the power to send a letter to the person and bring them back into court. Mr. Schlather said he'd considered that approach, but was concerned that the personal animus of a judge may color the response, so that if there is a flagrantly egregious contempt, and an ability to pay, it should be passed to someone who is more objective to decide. The individuals involved are those charged with a misdemeanor offense, and who are not violent criminals. Mr. Galbreath understands Mr. Schlather's point, and can accept his language as written. Ms. Wilkinson said she is concerned about restitution that, if it is not paid, should be penalized by jail. Mr. Schlather said if the individual can pay, it is collectable via the judgment. The court has the authority to direct the DA to enter the judgment on behalf of the victim. The DA on behalf of the victim, or the victim, would then turn the judgment over to the Sheriff for execution. If there is an ability to pay, the civil system will do its work. He said the alternative is debtor's prison.

Mr. Schlather said near indigence is where mistakes are made in determining the ability to pay. Mr. Leifer spoke of a case in which his client couldn't pay, but that the court insisted the attorney return to

court 7 times on the matter. He unsuccessfully requested a confession of judgment. Mr. Salisbury said that is a common and costly occurrence.

Mr. Schlather returned to the question of the number of county judgeships in Tompkins County, saying Chemung County still has 3 judges, and Tompkins 2, in spite of Chemung losing and Tompkins gaining population.

Ms. Poole spoke to the issue of DWI court. She said when the committee began, the judges were receptive to the idea, but as the process has progressed, it has become an issue with judges. Back then, they were open to what the task force had to say. It seems that they are frustrated and, in her opinion, can see that once that change occurs, it will keep going until everything is taken away. The judges have changed their mind. Ms. Wilkinson said she has heard the same thing. Ms. Poole said that initially the judges were open to see what the task force came up with, but as the process has evolved they have become more reluctant. Mr. Schlather said the group has been very transparent in the process, and that there are people who are strongly in favor of all criminal cases going to a central court, and that there was a strong pushback against that. The DWI court was a unique area where there could be centralization, because the types of points being made, i.e., being in the same room with others going through the same process. However, the task force's report suggests that if the DWI model is put in place, it could be a model for expanded into other misdemeanors. He also believes it may require a constitutional convention. The issue for the task force is whether it will stick with the recommendations or drift. Ms. Poole said the justices have been demeaned throughout the process, and it is unwarranted. Mr. Schlather said the group has been very respectful of the work of the justice courts in Tompkins County. He said the consensus of the group has not been a criticism of the good faith or desire to act honestly or with absolute integrity to serve the people of the towns and villages. It is conceivable that some of the things that were reported could have been misunderstood or misreported.

All said the meeting added value.

He invited members to submit items for Section 4.

The meeting adjourned at 5:30 PM.