

Minutes  
Municipal Courts Task Force  
Meeting #6  
September 30, 2015  
Old Jail Conference Room

Members Present: Ray Schlather, Betty Poole, Gwen Wilkinson, Glenn Galbreath, Jason Leifer, Mark Solomon, Elizabeth Thomas

Members Excused: Scott Miller, Mary Ann Sumner

Staff Present: Joe Mareane, Paula Younger, Marcia Lynch

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Mr. Schlather opened the meeting at 4:30 p.m.

Minutes of the September 16<sup>th</sup> meeting were moved by Judge Poole, seconded by Judge Galbreath, and approved.

The meeting was opened for public comment. No comments were received.

Judge Poole stated that she advised the president of the NYS Magistrates Association, Mr. Harold Bauman about the task force. She will be emailing Judge Bauman to invite him to speak at the task force's November 18<sup>th</sup> meeting.

For his Chair's report, Mr. Schlather advised that he will be talking to intern candidates in the near future.

Mr. Mareane did not have a staff report.

Mr. Schlather invited the judges to the table, and noted that others could join the discussion as the meeting goes along.

Judge William Chernish, from the Town of Newfield, began the presentations. He said he was one of 18 town and village justices who were thought to be unqualified by the panel who spoke to the task force at the last meeting. He hoped to give a different view today. He said he would speak to ethics, how the justices got here, qualifications to sit as a town or village judge, the organization of the courts, other areas' experiences, and incremental changes. (Judge Chernish presented written testimony attached to these minutes.)

Judge Chernish said he is bound by ethics that keep him from speaking too broadly, and has sought the counsel of the advisory committee on judicial ethics about what he can say to the task force and received seven prior cases that related to judicial qualifications or court consolidation. He said he would

confine his comments to a narrow position in order to remain within his ethical bounds. He has seldom had someone question his ethics.

Judge Chernish noted he was elected to serve his post by the citizens of Newfield (after being appointed to fill a vacancy.) He said he had first heard of the task force from reporter Keri Blakinger, who had called to get his reaction to the County Administrator's proposal to TCCOG. While he didn't respond to Ms. Blakinger, he did call the County Administrator who laid out what he hoped would be the outcome of the process, which related to the organization of the courts and the qualifications of the judges. He cited the unanimous opinions of the speakers at the task force's 9/16 meeting that only lawyers should be judges, and objected to the belief that only "members of the guild" should be judges for the kind of cases heard at the town and village level. He said passing the bar doesn't demonstrate competence to be a jurist. In citing his own qualifications, he said he'd written a 200 page master's thesis on the United and Capital Airlines merger, thus gaining a knowledge of the Railway Labor Act, and a doctoral dissertation on collective bargaining. He has also taught business and labor law at the university level.

Judge Chernish then turned to the organization of the local courts, suggesting that the pre-ordained goal of the task force seems to be the elimination of town and village courts. He said any plan to replace local courts with a district court has serious implications and needs a careful analysis. He suggested that there may be savings possible within the existing system, such as the number of judges in any town or some other kind of consolidation. He questioned whether the creation of a district court would result in more even justice, or save time or money beyond adding to the convenience for downtown-based lawyers. He also questioned whether a district court would assume all the functions of town and village court, including arraignments, pre-trial hearings, summary judgments, small claims, and vehicle and traffic matters.

Judge Chernish said he had just returned from the 106<sup>th</sup> annual meeting of the magistrates association, where it was abundantly evident that the issues considered by the task force have already been visited many times and in many areas. He hoped that the president of the Magistrates association will provide a historic context, and that the task force will ask the OCA for its input. He said that improvements are possible in the current system, such as bringing new technology to the local courts.

Mr. Schlather advised that the representative of the OCA on the task force had withdrawn because of a concern that her presence indicated a bias on the outcome.

Judge Barr from Caroline spoke next, stating that the report issued by the task force did much damage, and put local judges in a difficult position. She was disappointed that attorneys believe that only attorneys can study and read law in spite of a long history of non-lawyers reading and apply law. She felt it unfair that comments about the judges wiped out the background and experience of existing judges, noting that citizens of her town felt otherwise. It should be recognized, and not dismissed, that she has received an engineering degree, an MBA, important life experiences, and has studied much law that should be recognized and not dismissed. She compared town courts to the system in the Army, where the lowest level of administration of justice is done by non-lawyers. She said a lawyer judge is not needed for speeding tickets or small claims cases, and that it is a waste of lawyer-judges time to do the small items. She said she also believes in locality; that not everyone should go to a single central

school or shop at a centrally located store. Judge Barr said there aren't many domestic violence cases in Caroline; she refers to most as family brawls. Because local judges know those involved, they are better equipped to take the whole situation into account.

Mr. Schlather responded that the task force has not taken any positions. He said the committee has not drawn any conclusions and that it has been extremely careful and uncertain about where it will land. He said the whole point of the exercise is to talk to a broad range of people and to gather as much information as possible, in order to make intelligent and informed decisions. Nothing said should be taken as a prediction or forecast.

Mr. Solomon agreed that the committee has not said local judges are not competent. Mr. Schlather referred to testimony taken at the last meeting as the only comments that have been provided so far. The committee will post everything it hears on the website so that all can read and hear what has happened. He said the committee's intent is to avoid misinformation; to keep things as transparent, open, and free-flowing as possible.

Mr. Solomon asked about the report Judge Barr was referring to. References were made to comments made by Mr. Gradess and Judge Rowley at the previous meeting. Ms. Wilkinson noted that the audio of the 9/16 meeting is on the task force's web page and the minutes of the meeting were approved by the task force tonight. She reiterated that there's not a preordained conclusion. Mr. Mareane provided directions to the County's web page.

Judge Chernish said the communication circulated by Judge Barr was the first many of the judges had seen, and had been preceded by articles in the Ithaca Times that cited the objectives of the County Administrator. Mr. Schlather noted that all judges received a letter outlining the charge and objectives of the task force.

Judge Harold Phoenix from the Town of Caroline read a passage out of the State Magistrates Association publication "Century of Service: Dedication and Justice" that found that the District Court experience in Suffolk and Nassau County was not inexpensive—that a judge makes \$25,000 and that there is a full time staff, and that there is a large backlog of cases. The publication says that if change occurs, it should only be via the electorate, and that the local courts are a cornerstone of our heritage and freedom. Judge Phoenix said creating a district court would not be an easy task.

Judge Jules Ravo from the Town of Dryden then spoke. He was appointed to the bench in early 2014 and was elected last November. He noted that there is an important element of standing within the community associated with being an elected town or village judge. He referred to the value of getting out into the community that goes along with the election process. His familiarity with the community allows him to better relate to the people who come before him on the bench. It has made him a more effective judge and given him a better perspective. A County judge doesn't experience that familiarity with people in the community. Although he had 36 years of experience as an attorney, he found that he knew nothing about being a judge. He has found how capable and dedicated all of the town and village judges are to delivering just and fair decisions. He also referred to the value of the extensive experience of many local judges, noting that a District Court judge wouldn't know the community as well

as the current judges. He said he draws on the experiences of Judge Clausen, and has relied on other local judges for their knowledge and expertise. He said that lawyers get into a small niche, citing an example of a local judge who had a better command of the rules of evidence than the two experienced lawyers trying the case. Judge Ravo referred to Mr. Hoyt, who appeared at the last task force meeting, and had cited Judge Phoenix's 42 years on the bench and his standing as the most highly regarded person in Caroline. He said people feel comfortable with the idea that the person judging him has been elected from the community. Going to a district court system would eliminate that and impersonalize the delivery of justice. As an experienced lawyer, Judge Ravo said he has been impressed by all of the local judges in Tompkins County and questions the premise of advocates of a district court who think a lawyer-judge will be better qualified than the local, duly elected local judges.

Mr. Schlather then allowed panel members to ask questions of the presenters.

Mr. Leifer had no questions.

Judge Ravo asked to present a question to the task force about the first question on the list (that had accompanied the "stakeholder letters") regarding due process rights. Mr. Schlather said the questions were designed to elicit comments. Mr. Solomon said that the record would show that questions were stated in a way that got people interested, elicited comment, and resulted in people speaking to the task force.

Ms. Wilkinson asked whether town justices were involved in the TCCOG discussion that resulted in the creation of the task force. (Many responded that they were not involved.)

Ms. Wilkinson then noted the variety of cases heard in the local courts, and asked whether certain types of cases would be better served by a law-trained or non-law trained judge.

Judge Barr said local courts carry a broad range of cases that require judges to study hard to keep all balls in the air. She said that in her first two years, it was a steep learning curve, because there is so much law. It is hard because of the breadth, and would be hard for anyone, including a lawyer. She sees herself as an entry level justice. She keeps up with the things she needs to do by spending time on the cases and studying hard.

Judge Salk said every judge is different—whether it's a lawyer or not. Where one is weak, all try to get stronger. But there's not a blanket answer to Ms. Wilkinson's question.

Ms. Wilkinson re-framed her question. Mr. Salk said it still depends on the individual judge.

Judge Chernish said that DWIs are incredibly complex and that local judges don't see them often enough to get comfortable with them, so the task force might want to think about centralizing DWIs at the county level.

Judge Phoenix disagreed with Judge Chernish, saying that after one or two cases, they can be figured out. He said that a lot of this is common sense.

Judge Becker, Newfield Town Judge, said that the local courts have resources in Albany that can assist when questions arise.

Judge Ravo agreed with Judge Phoenix and Salk, in believing that everything is on an individual-by-individual, case-by-case basis. He also said he's found that local attorneys are not as knowledgeable in some areas than the local judges.

Judge Barr said she is struggling with young adults who are opportunistic, didn't think, have no car, no credit, live with grandma, and if she sets bail, they're going to sit in jail. Ms. Wilkinson noted that if they're not a flight risk, the judge doesn't have to set bail.

Judge Dresser said that his familiarity with the community, enhanced by election process, is helpful. He knows families, community and relationships, and that informs his decisions. In terms of judicial education, he said judicial training is intense and that continuous education occurs when he prepares for an upcoming case. He said all judges do extensive research to make sure they do their jobs well.

Mr. Leifer asked whether the ability of the town boards to afford full-day hours of operation affects the fairness to constituents.

Judge Chernish said Newfield is covered four days a week. Mr. Leifer asked if that's something that needs to be addressed. Mr. Schlather asked what four day coverage means. Judge Chernish said the office is open 10:30-4 four days a week, except the day court is in session, which extends the day to 6. He also said he created a way for people to pay their tickets by mail, which essentially extends the hours of access.

Judge Dresser said there are two judges in Ulysses—one at day; one at night—and a full time clerk. He said a different structure that allowed a larger share of the money generated by the courts to stay with the town or court would make a difference in how the courts could operate. The taxpayers spend a lot of money to maintain the courts, but don't realize the benefit of revenue generated by the courts. (Judge Poole noted that the County receives some of the fine money.)

Mr. Solomon asked whether Judge Clausen wanted to speak. Judge Clausen said there is something that people don't get, which is that a local judge knows the law inside and out, works hard, and studies. He said he is dead against it (district courts) and wants to be a part of his community as a judge. He thinks local town and village courts should not go away.

Mr. Solomon said that all have talked about the enormous value of their local knowledge and their knowledge of their people, and that he doesn't disagree with that proposition. However, not all who appear before them are residents of the judge's community, and they may have interests in conflict with people in their communities, e.g., they don't look or talk like people in community and can be difficult. He asked whether the judges think it is appropriate to tell the task force how important it is to be local, when the person before you is anything but local? Several judges responded that this was never a problem. Mr. Solomon said when he was in another county representing a client from outside the

community, it was a problem. Judge Clausen said when a speeder from New Jersey is caught going 90 in a 55 mph zone, the feeling may be that they have more money in New Jersey, so the fine may be higher. Judge Ravo said that all people at every level battle against bias.

Ms. Thomas said the last group of speakers indicated training was more important than whether a judge was an attorney, and that she is hearing the same thing tonight. She said that at the last meeting, she also heard that it might be better to move criminal cases to a different level. She also said that she wonders if familiarity might be an impediment to impartiality.

Judge Poole said Judge Chernish earlier suggested that DWI cases, not criminal cases, might be moved.

Judge Clausen said he doesn't want any cases moved out of Dryden court.

Judge Ravo said that Ms. Thomas was referring to the last meeting, not this meeting. He also agrees with Judge Clausen about not wanting any cases to be moved. Regarding the familiarity factor, he said he feels that all in his court feel comfortable with their ability to say their piece. He acknowledged that all humans have biases, but that all work hard to overcome them.

Judge Galbreath asked to shift the focus, and requested the judges identify any suggestions they have that could improve the justice system or save money.

Judge Clausen said that savings could be achieved with a central lock-up and scheduling arraignments each morning, thereby avoiding the delays that accompany after-hours arraignments. He believes several judges would do arraignments each morning if there was a central holding cell.

Judge Ravo said that one of the improvements that could be made is a little bit more communication. Judges aren't supposed to have policies, but DA sometimes has policies. We all have to work together with respect to that. There are times when, from life experiences, it's clear a young person made a mistake in committing a minor offense. The last thing you would want to see happen is for the person to plead to a class A or B misdemeanor when the case cries out for an ACD. However, there is an inconsistent application of those rules in each of the Justice Courts—not the judges, who must judge each case on its own merits. In the City, a \$5 theft guarantees an ACD, but in Dryden you have to plead to a B misdemeanor or try the case. It's not caused by the judges; but they don't have the discretion to give that ACD. ACD is his pet peeve, because it is inconsistently applied throughout the County.

Judge Chernish suggested inviting someone to sit in to review his work as is his experience in the classroom where objective, feedback is provided. He also said that people who get vehicle traffic violations—if they know the secret—will get them reduced; if they are from out of state or don't know the secret, they will pay the full freight. He suggested someone could represent all at a bench trial. He also said more work is needed with after-hours arraignment and assigned counsel.

Mr. Schlather asked if centralized booking would work. Judge Clausen said video arraignment would be acceptable to him, with an on-call attorney on the other end. It would save money, time, gas.

Mr. Schlather asked for anecdotal data regarding caseloads, especially the amount of time spent on particular kinds of cases, e.g. how much time spent as a judge, how much in small claims, V&T, felony arraignments, misdemeanor, trial, etc.

Judge Chernish is putting together a grant proposal that will include that kind of information, and will provide the results when it is done.

Judge Phoenix spends 15 hours a week as a rule, with 90% spent on traffic, 7% misdemeanors, and 3% on small claims and other civil.

Judge Huddle from Danby estimated that he spends 75% of time on V&T, 7% misdemeanors, and the rest on zoning, town, dog cases, park police or DEC. V&T includes DWI, with perhaps 2 DWI cases per month. He spends close to 20 hours per week on judicial work. He has had 3 jury trials in 8 years.

Freeville Village Judge Marchese spends 4 hours a week, with 90% V&T. He has had 2 jury trials in 25 years.

Judge Dresser said 95% of his caseload is traffic and DWI, with the rest in small claims, other. He has had one jury trial in 4 years (first one now for DWI). The most time consuming cases are DWIs. He also handles a lot of criminal cases—now has 34 on docket. He spends about 15-20 hours a week as judge.

Judge Clausen tries to get assigned counsel cases in and out quickly, and suggests there are ways to coordinate that process. He said he spends about 15-20 hours a week, with half V&Ts (no DWI), 25% criminal, rest small claims, traffic trials. He averages 5 trials each Monday night and has not had a jury trial.

Judge Poole said 30% of her cases are misdemeanors, including domestics, 20% are civil cases, and the remaining 50% are V&T's. She spends about 20 hours a week, but it fluctuates. There have been no jury trials in her 24 years on the bench.

Judge Galbreath said that 80% of his cases are V&Ts, 15% are criminal, and 1-5% are small claims. He has between 20-120 trials a year, and has had a couple of jury trials.

Assigned Counsel Coordinator Julia Hughes said that on Monday, beginning at 5:00 p.m., there are five courts in session. She will provide data to the committee. There are an average of 20 attorneys involved on that night, going to five different corners of the county. They are paid travel time, mileage, and time in court. Her report will include each night. Dryden has the largest volume. She will provide the travel time and mileage for each.

Judge Ravo said that over the past 18 months, he has had one jury trial, three bench trials, and backed up 2 or 3 jury trials that were disposed of the week before. On DA night, he will arrive at 11 a.m. and leave at 9 p.m. He works 15 hours on average.

Mr. Schlather asked whether an electronic system allowing motions to be filed, appearances to occur, etc. would help.

Judge Chernish said Newfield is going paperless as a part of a new grant proposal and is experimenting with it now. Judge Phoenix said he was called out at 4 a.m. and power was out, so electronics would not have helped.

Mr. Leifer noted that pre-trial conferences in the City do not require client to attend, but that in town courts, justices want clients there. Judge Galbreath said that the conference can resolve the case, and wants the client there to get everything done.

Mr. Schlather said there will be another meeting for additional comments, and that there is still much work to be done to find efficiencies.

Mr. Solomon asked whether anyone else had comments on an electronic records system.

Judge Clausen said he prefers to have motions in his possession (not electronically filed), but evictions and other things might work. Judge Chernish said that some procedural items could be addressed on a court-by-court basis.

Mr. Schlather said the discussion will be continued and the task force will arrive at intelligent conclusions by next spring. He thanked all of the Judges for attending and for their comments.

The meeting was adjourned at 6:10 p.m.