DRAFT

REPORT

OF THE

SUPREME COURT TASK FORCE

ON THE

IMPROVEMENT

OF

MUNICIPAL COURTS

The New Jersey Judicial Conference
Middlesex County College
Edison, New Jersey
June 28, 1985

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Introduction

It is through the municipal courts that most citizens in the State of New Jersey come into contact with the judicial system as defendants, plaintiffs, or witnesses. More than five million cases ranging from minor criminal to zoning to motor vehicle and parking violations were heard in the New Jersey municipal courts in 1984, compared to 750,000 in all other courts in the state.

However, despite the large volume of cases and their significant impact on the individual citizens and communities that they serve, the municipal courts in New Jersey have until recently received relatively little statewide administrative and management attention. As a result, the municipal court system has been described as the "stepchild" of the judiciary, that is, "in" the judiciary, but not "of" the judicial branch.

The goal of the Supreme Court Task Force on Municipal Court Improvement is to effect a permanent change in the status and operation of New Jersey's municipal courts so that their role and value in the state's system of justice is recognized.

HISTORICAL OVERVIEW AND BACKGROUND

The municipal court system can trace its origin to the "justice courts" created by Lord Cornbury, the first Royal Governor of the colony that became the State of New Jersey. The justice courts, based on English common law and principles of equity, had civil jurisdiction over small debts (similar to the small claims now heard in the Special Civil Part of Superior Court) and were included in New Jersey's court system by the first state Constitution, adopted on July 2, 1776.

Police courts joined the justice courts as local courts to handle minor criminal matters following the Constitution of 1844, which also set up a variety of county trial courts and state appellate courts that were to endure for 100 years. Local court judges were appointed by local governing bodies, and their operations varied from community to community. In general, these local judges were not held in high esteem by the public or members of the legal profession.

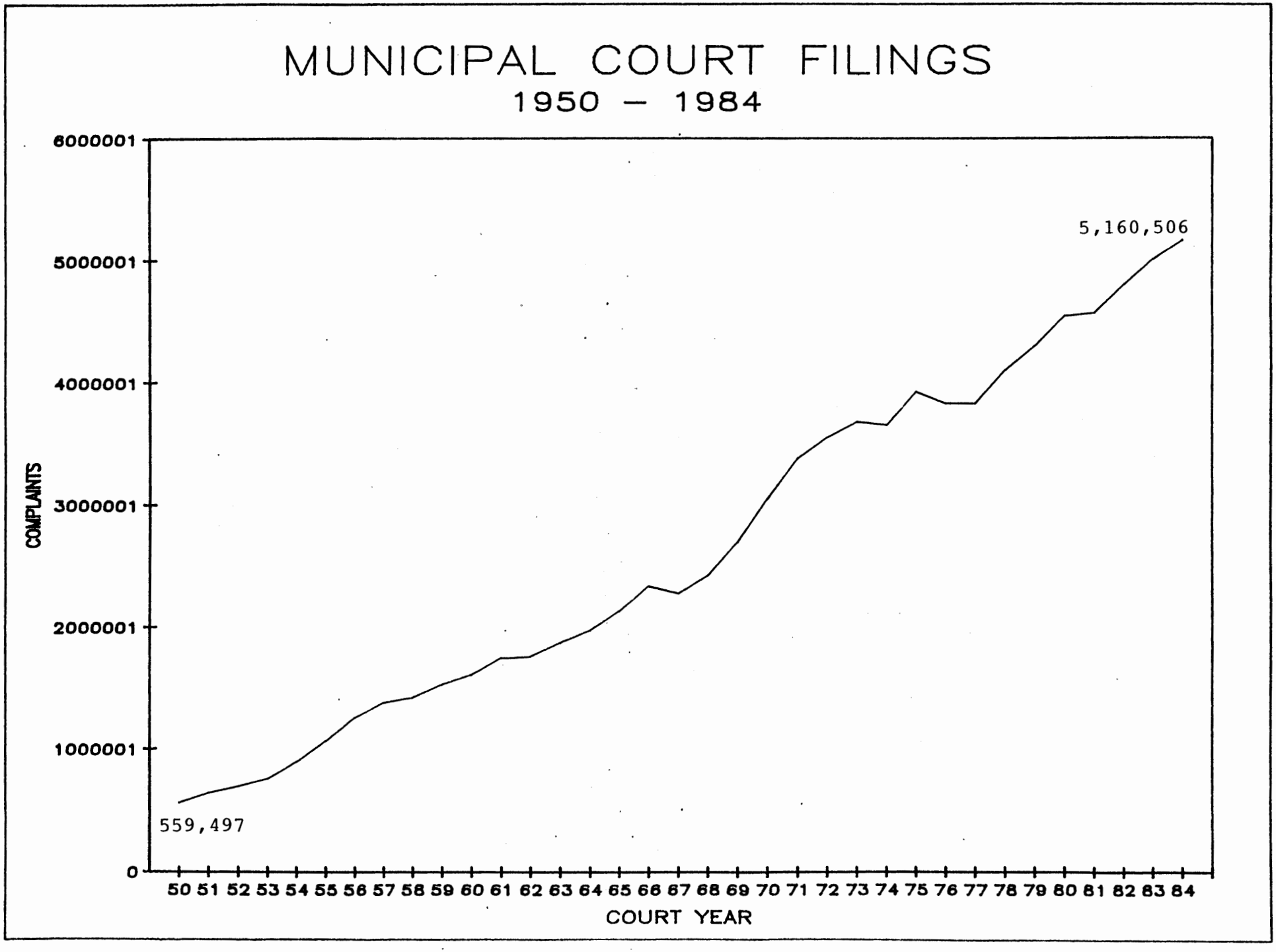
By the mid-1940s, concern about the quality of the court system and the myriad of courts that had been created led to the inclusion in the Constitution of 1947 of New Jersey's existing court structure, which includes municipal courts. The reforms of 1947 placed administrative responsibility for all court rules and procedures, including municipal courts, with the Chief Justice and the Supreme Court, and authorized the creation of an Administrative Office of the Court to assist in this task.

Although the creation of the Municipal Courts and subsequent rules setting minimum qualifications for judges and uniform procedures had improved the overall standing of the local courts and had received national acclaim, efforts at further improvement were undertaken periodically and unsuccessfully over the next three

decades. A system of regional courts with judges appointed by the Governor was formally advocated by Chief Justice Joseph Weintraub in 1958, and again in 1969 by Administrative Director of the Courts Edward McConnell. In 1971, a consultant report urged a similar restructuring. These and other recommendations for change never gained the public support necessary to be implemented.

During these decades, the rest of the court system, created in 1947, became a national model for court reform and administrative strength. Because of the uncertainty created by frequent public debate about regionalization or abolishment of the courts, those improvements in the municipal courts that were undertaken by the Administrative Office of the Courts during these decades were not as far reaching or ambitious as they might otherwise have been. Non-lawyer judges were phased out by attrition, and state training programs were developed for judges and court personnel. Assignment Judges in each vicinage were given responsibility for annual visits to each municipal court; annual audits were required; and as of 1975 sound recording was required, providing the first record of municipal proceedings, and special management studies were conducted in large urban courts. The Supreme Court created the Committee on Municipal Courts to review and make recommendations on the operation of the courts, and to provide vicinage level training for municipal court judges. Budget preparation assistance was provided for judges and clerks, and comprehensive bench manuals and procedures manuals were developed.

While specific municipal court problems were being addressed by these improvements, the courts were being buried in an avalanche of cases and added administrative responsibilities as shown in the table on the next page. For example, in court year 1983-84, there were 4.2 million cases filed in municipal court, as compared to 559,497 in 1949-50. At the same time the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COURT YEAR

courts acquired the additional responsibilities of collecting installment payments of fines and providing data to other agencies, such as the Division of Motor Vehicles, and changes in the law drastically affected the nature of the workload. This increased workload generally did not prompt substantial funding increases, thereby exacerbating the situation by creating backlog conditions in most courts.

Chief Justice Robert N. Wilentz, convinced that a thorough review of municipal court operations was necessary if the municipal court system was to continue to function, created the Task Force on the Improvement of Municipal Courts in October, 1983. In announcing the creation of the Task Force, Chief Justice Wilentz noted the following:

> More citizens have contact with the municipal courts than any other part of the judicial system, and it is not without its critics. There has been a staggering increase in the municipal caseload over the years, including cases involving new laws placed under municipal jurisdiction. The system cannot keep up with the burden. Despite the best efforts of municipal judges and court personnel, backlog problems are compounded by a lack of modern technology and processing and by a lack of coordination between the individual courts. Creation of the Task Force represents a commitment to analyze these and other problems, and find solutions that will ensure maximum efficiency and a high quality of justice in the lower courts.

The Task Force, chaired by Associate Justice Robert L. Clifford, included a broad cross-section of representatives, including judges, lawyers, state and local elected officials, court administrators, and private citizens. A survey was conducted among the participants at the Municipal Court Judges' Conference in October, 1983 to identify those areas of municipal court operations in need of revision and reform. As a result, five committees within the Task Force were established to examine the following areas: 1) administration; 2) budget, personnel and physical plant; 3) trial practice and procedure; 4) computerization and case processing techniques; and 5) issues involving the accountability of the courts to the public, including performance/evaluation standards and other topics

of public concern. Representatives of the AOC, working in conjunction with members of the Bench, developed a tentative mandate for each committee, including those issues in need of review and possible reform. Ultimately, the Task Force produced over 50 position papers examining numerous aspects of municipal court operations. The papers were written by the committees and reviewed (and debated) by the Task Force membership.

Local Advisory Committees (LAC) were established in each vicinage representing all sectors of the criminal justice system, including municipal court personnel, the bench, the bar, and private citizens. Comments from the LACs were relayed directly to each committee as well as to the entire Task Force so that comments and criticisms could be taken into consideration when reviewing and rewriting the papers. Thus, proposals were subjected to a wide range of scrutiny and review, thereby ensuring that all aspects of each issue were considered.

The final product, presented herein, is based on the position papers approved by the Task Force and represent the culmination of its work.

The following describes the mandate of each Task Force Committee and summarizes major recommendations:

ACCOUNTABILITY

Mandate: To ensure the accountability of the municipal courts to community expectations and to develop a means for evaluation of calendar performance.

* Public Access to Court Records - sets forth policy and procedures for providing the press and public with information.
* Domestic Violence - presents recommendations that would change the role of the municipal courts in issuing Temporary Restraining Orders.
* DWI Case Processing - identifies methods to aid courts in the timely disposition of DWI cases.

* Calendar Performance -presents a comprehensive review of calendar management techniques and establishes goals for the disposition of cases.
* Community Advisory Committees - in conjunction with the recommendations of the Administrative Committee, recommends the establishment of a community-based committee to provide the local municipal court judge and other community groups with information and education materials.

ADMINISTRATION

Mandate: To establish a management structure which will ensure the proper and efficient administration of the municipal court system.

* Presiding Judge and Case Manager - establishes these vicinage positions as a management team that will assist the Assignment Judge in overseeing the operation and improvement of the municipal courts.
* Pretrial Intervention - calls for the expansion of the existing Superior Court program to provide first-time municipal court defendants with an opportunity to be diverted from the criminal justice system.
* Liability of Judges and Staff - presents a method for providing Attorney General representation for judges and staff sued for their actions while in office.
* Courts in Crisis - provides a method to aid municipal courts when faced with either short-term or long-term administrative problems.
* Preparation of Complaints - identifies a long-standing "appearance of impropriety" issue and calls for the preparation of criminal complaints by the police, not court personnel.

BUDGETS, PERSONNEL AND SPACE

Mandate: To examine the basic budgetary needs of municipal courts and recommend the adoption of guidelines and standards for the preparation, presentation, review and adoption of their budgets.

* Budgets - establishes a uniform budget format that when used with the proposed weighted caseload system will aid the Presiding Judge and municipal court judge in obtaining sufficient resources to operate each municipal court.
* Budget Impasse Procedure - provides for a modification of the existing court rule, thereby giving the Assignment Judge the authority effectively to recommend a budget to the municipal governing body. Also provides the governing body with a way to appeal the recommendation of the Assignment Judge.
* Personnel - presents uniform criteria for the hiring, evaluation, and termination of municipal court judges and staff. Also recommends the creation of the title of Municipal Court Clerk/Administrator to upgrade and standardize the qualifications of this critical position.
* Court Facilities - establishes minimum standards for court facilities and presents a plan for their incorporation during either new construction or renovation.
* Court Security - suggests a security study be conducted in each municipal court and recommends specific security precautions for the courtroom and the handling of prisoners.

TRAFFIC/COMPUTERIZATION

Mandate: To consider, independently, the areas of traffic cases and computerization as they may relate to each other.

* Computerization - presents a basis on which a comprehensive statewide computerized municipal court system can be justified, established, and implemented for the purpose of unifying the flow of information among the municipal courts and the various agencies with which they must interact.
* Installment Payments - recognizes the authority of the court to take action when defendants fail to pay fines and costs, as ordered by the court, as well as the ability to suspend such payments when a defendant is found to be indigent.
* Revenues and Funding - suggests a uniform distribution scheme to aid the courts in the management of and planning for its collections and expenditures.
* Traffic Case Processing - presents solutions to multiple problems faced by the courts in disposing of its traffic cases.
* Violations Bureau - recognizes the extremely valuable role of the Violations Bureau in disposing of a court's cases, and therefore expands that role to include receipt of driver registrations, insurance cards, etc. to further help relieve the court calendar.

TRIALS

Mandate: To examine and recommend the adoption of standards and goals for more efficient case processing from the complaint stage through sentencing practice.

* Case Management - makes specific recommendations for improvements to the control and tracking of cases, as well as suggesting methods to expedite caseflow.
* Plea Agreements - recognizes that the Municipal Courts are now more professional in virtually all areas of operations and are, therefore, capable of instituting, on an official basis, the use of plea agreements of its matters.
* Handling of Indictable Complaints - proposes improved communication between municipal and county prosecutors for the purpose of more effectively handling those cases originally filed as indictable.
* Role of the Municipal Prosecutor - a much debated issue, it sets forth a proposed full-time Municipal Court Prosecutor to handle cases filed in the municipality. Also suggests the prosecutor act as a screening agent for complaints filed in the municipality.
* Standards and Procedures in the Appointment of Counsel - sets forth a systematic procedure for the assignment of counsel that will allow attorneys sufficient time to prepare cases.

Chapter 1

Statewide Management Structure

Introduction

The New Jersey Constitution grants the Supreme Court a broad authority to administer the practice and procedure in all courts. N.J. Const. of 1947, Art. VI, § VII, para. 1. The tradition that has sprung from that mandate is one of a centralized court system supported by a strong administrative structure. Consistent with that tradition, New Jersey was one of the first states in the early 1970s to experiment with full-time county-level trial court administrators. More recently, the Supreme Court has reorganized the Superior Court management structure into separate divisions, under the overall authority of the Assignment Judges, with each division administered by a Presiding Judge and a division executive, named the Case Manager.

In the shadow of this well-structured and increasingly efficient Superior Court system stand our municipal courts, approximately 530 in number presided over by 369 municipal court judges. The sheer breadth of this local level court system creates formidable obstacles to the achievement of uniform and consistent

statewide policies. The situation is compounded by the diverse nature and size of these courts.

While the Court Rules provide that the Assignment Judges are responsible for the administration of all courts in the vicinage, see Rule 1:33-4, the Assignment Judges have generally been provided with neither the resources nor the organization to monitor effectively and closely the performance of these courts. In fact, past efforts to abolish or regionalize municipal courts have probably, in the long run, resulted in making them even more remote from the Superior Court structure.

In practical terms, the presence and influence of the State over the municipal courts has been remote and often inconsequential. The nature of this relationship was pointed to by Chief Justice Weintraub:

> It is idle and incongruous to charge the Supreme Court with administrative supervision as the Constitution does while the capacity to frustrate effective supervision and performance remains with 587 autonomous bodies. 81 N.J.L.J. 597, 602 (1958).

The rightful place of municipal courts in the judicial family is further confounded by the fact that they are wholly funded by local governing bodies, which also appoint and re-appoint the judges. This financial dependence on the municipality, in conjunction with the various other problems set forth above, tends to foster an attitude that these courts are "step-children" of the larger system, "in" but not really "of" the judiciary at large. The close relationship with police agencies creates an environment that, as noted by Chief Justice Weintraub in the 1958 article quoted above, makes it "difficult for a magistrate to dispel the notion that the municipal court is not wholly detached from the executive agency charged with law enforcement."

Finally, most municipal courts find themselves facing a low priority in the organizational structure of the municipality. While municipal courts generate

revenue for the three levels of government, through the imposition of fines and court costs, there is little motivation for the local governing body to appropriate sufficient funds. As pointed out by Chief Justice Vanderbilt in a 1956 address, 10 Rutgers L. Rev. 647 (1956), "members of local governing branches lose sight of the fact that the court exists to perform an indispensable function of government and not for the purpose of producing a profit."

The result of these problems has been a somewhat laissez-faire approach to municipal court management, requiring courts to operate relatively autonomously. This, in turn, has led to the multitude of organizational and structural problems that this Task Force was appointed to address. For example, the municipal court judges at their 1983 Conference identified weaknesses in the areas of judicial involvement in the hiring and retention of staff, as well as the difficulty in obtaining sufficient funds from the municipalities to operate the courts properly. Most municipal court judges felt that without increased influence over these two key areas, the opportunities for improving a poorly run court were almost nonexistent. Another problem area identified at the 1983 conference was the lack of a strong central management authority from which the municipal judge could obtain advice or assistance when needed. The Assignment Judge and the Administrative Office of the Courts were simply not staffed adequately to respond to the multitude of courts in need of such assistance. The organizational divisions at both the county and state levels do not even recognize municipal courts as a distinct division.

To combat such problems, the Task Force has developed specifications for personnel that will improve and complement the existing system. The proposed management structure is modeled after the Superior Court system, and provides for a separate Municipal Court Services division at both the vicinage and state

level. This unit will be staffed with sufficient personnel to provide training, guidance, and technical assistance to the more than 530 municipal courts. Working in concert with this new division at the vicinage levels will be fifteen Presiding Municipal Court Judges and their Case Managers. The PJ/CM team will be available to assist municipal courts on a daily basis, to establish programs that will prevent the occurrence of problems, and to identify and correct those problems that do arise.

Implementation of these recommendations not only will build a strong bridge between the local level courts and the Judiciary, but will also enhance and advance the operation of every municipal court in the state.

Position 1.1

Vicinage Presiding Judge - Municipal Courts Responsibilities, Eligibility, and Compensation

A State-funded Presiding Judge-Municipal Courts, shall be appointed by the Chief Justice in each vicinage with the advice of the Assignment Judge. The Presiding Judge shall be responsible for the management of all municipal courts within the vicinage and shall report directly to the Assignment Judge. The Presiding Judge shall perform these duties part-time or full-time, depending on the vicinage, at a prorated salary based on 95% of a Superior Court Judge's salary. The Presiding Judge will limit any outside law practice to non-litigated matters.

Commentary

In reviewing the management structure involving the municipal courts, the Task Force has determined that in recent years the increasing Superior Court-related responsibilities of the Assignment Judges have made it difficult for them to devote sufficient attention to municipal court matters. This has occurred at a time when municipal courts are in need of greater support and assistance to

meet the demands of increased caseloads and administrative responsibilities within strict budget limitations. The needs of the municipal court system will continue to demand and deserve increased attention, particularly as the proposals of the Task Force are implemented. Accordingly, the Task Force concluded that the position of Presiding Judge-Municipal Courts be created, with direct accountability to the Assignment Judge and with responsibility for managing municipal courts within each vicinage.

The concept of a Presiding Judge to handle managerial, administrative, and judicial duties has already been successfully adopted in each of the three divisions in Superior Court (Civil, Criminal and Family), as a result of the 1982 recommendations of the Supreme Court Committee on Efficiency. The Committee, composed of chief executive officers of New Jersey's largest corporations, found that the greatest obstacles to achieving efficiency within the judiciary included the absence of a coherent trial court management structure and the concomitant lack of well-defined lines of responsibility and accountability. The Task Force determined that municipal courts have also suffered from a lack of management structure that would be remedied by the creation of the Presiding Judge position. In the context of the municipal court system, the Presiding Judge and Municipal Court Case Manager (see Position 1.2), working directly with the Assignment Judge and Trial Court Administrator, will provide the necessary expertise to implement the recommendations of the Task Force and to oversee the improvement of the municipal court structure within each vicinage.

The Presiding Municipal Court Judge will be responsible for a wide range of administrative duties. In general, the Presiding Judge will be involved in those tasks requiring centralized management, such as the development and implementation of vicinage-wide policies, procedures and programs. Duties will include:

a. serving as a liaison among municipal court judges, the Assignment Judges, the Administrative Office of the Courts and Supreme Court, to insure promulgation of and compliance with court rules and directives;

b. determining which judges within the vicinage shall hear all municipal court conflict cases, as well as deciding when and where such cases will be heard;

c. assisting municipal court judges and clerks in solving their day-to-day administrative problems;

d. supervising the proposed Case Manager-Municipal Courts and support staff;

e. developing and encouraging municipal judges' education programs, both for new and sitting municipal judges;

f. coordinating evening and weekend emergency availability of municipal court judges;

g. assisting in the preparation of annual individual municipal court budgets, and discussing matters of concern with local governing bodies, where necessary;

h. conducting studies of caseloads and backlogs in each municipal court and recommending methods for eliminating backlogs and efficiently processing all cases;

i. implementing the recommendations of the Task Force;

j. performing such other judicial and administrative duties and responsibilities as are designated by the Assignment Judge under the authority of the Chief Justice.

In addition to these administrative duties, the Task Force determined that ultimately judicial duties might also be undertaken by the Presiding Judge,

though not in the initial stages of the program. The matters listed below are viewed as being suitable for assignment to the Presiding Judge:

a. reviewing all County Prosecutor recommendations to downgrade, remand, or conditionally remand cases to municipal courts;

b. expediting the processing of municipal court matters that accompany indictable cases presented to the Prosecutor;

c. hearing all applications for bail reduction, except in capital cases;

d. considering all applications for temporary commitment;

e. reviewing jail population each morning and considering each detainee to determine whether the charges may be summarily disposed of by entry of a guilty plea or dismissal;

f. hearing conflict cases or matters in which a municipal court judge has been disqualified or is not available;

The Task Force has recommended that each Presiding Judge be appointed by the Chief Justice, with the advice of the Assignment Judge, from among sitting municipal court judges, to ensure experience in the unique responsibilities, organization, and procedures of municipal courts. The Presiding Judge will sit at the pleasure of the Chief Justice, or until no longer sitting as a municipal court judge. The time requirements of the position will vary among vicinages, but it is expected to require between one and three days per week depending on the geography of the vicinage, the number of municipal courts, and the particular management and program needs. The Task Force estimated that, at least initially, a minimum of three days will be required in the busier or more complex vicinages. After the introduction of judicial responsibilities (as proposed), the required time commitments are expected to increase. The Task Force also recommended that if a Presiding Judge maintains an outside law practice, it should be restricted to non-litigated matters.

The compensation of the Presiding Municipal Court Judge will be provided by the State, and should include all benefits and pensions attendant to their status as State-funded Judges. A Presiding Judge's annual salary will be equal to 95% of the current salary of a Superior Court Judge (i.e. 95% x $70,000 = $66,500), with actual compensation prorated on the basis of the number of days served (e.g., a judge serving as Presiding Judge one day a week will earn $13,300 annually in that position).

References

"Case Manager for Municipal Courts," Committee on Administration, Appendix B.

"Eligibility Requirements, Evaluations and Tenure," Committee on Budgets, Personnel and Space, Appendix C.

"Presiding Municipal Courts Judge," Committee on Administration, Appendix B.

"Judicial and Court Employees Salaries," Committee on Budget, Personnel and Space, Appendix C.

See Exhibit 2.b. Rule 1:33-2. Court Managerial Structure.

Related Positions

The following Positions may be applicable in implementing Position 1.1:

Position 1.2	Case Manager - Municipal Courts
Position 3.1	Qualifications of Municipal Court Judges
Position 3.4	Limitations on Practice
Position 4.1	Budget Reporting
Position 7.1	Minimum Standards for Municipal Court Facilities
Position 7.2	Court Security

Position 1.2

Case Manager - Municipal Courts

Each vicinage shall appoint a Case Manager-Municipal Courts. This person shall assist the Presiding Judge in providing support and services to the municipal courts in the vicinage.

Commentary

Each vicinage has developed its own procedures for attending to the needs of the municipal courts. Some vicinages have added particular personnel, such as Assistant Trial Court Administrators (ATCA) or Municipal Liaisons, who are specifically responsible for providing assistance to these courts. Duties of the ATCA include responding to the problems as they occur in the municipal courts, conducting visitations to the courts to ensure that proper administrative procedures are being followed, reviewing and assisting in the preparation of various statistical reports, and meeting with representatives of the governing bodies regarding problems and issues affecting the courts. The position, however, has been a reactive one, responding to situations only after problems

have arisen, rather than acting to prevent them. In addition, such positions have been created on an ad hoc basis, and there has been little effort to address the issue on a uniform, statewide level. As a result, the duties and responsibilities of these people are often diverse and ill-defined, resulting in a reduction of their effectiveness in the administration of the municipal courts.

In place of the current positions, the Task Force has recommended that each vicinage establish the position of Case Manager-Municipal Courts (CM-MC), with the sole function of providing assistance to the municipal courts within the vicinage. The positions of Case Manager and Presiding Judge (see Position 1.1) are already in place in the Superior Court and serve to strengthen the management component of the Judiciary. It is anticipated that the CM-MC will assist the vicinage Presiding Judge in carrying out his duties and will report on a day-to-day basis to the vicinage Trial Court Administrator. The proposed duties of the CM-MC will be similar to those of the Presiding Municipal Court Judge and will include supplying extensive administrative support to all areas of municipal court operations. The CM-MC will also have responsibility for reviewing municipal court reports, implementing and monitoring Task Force recommendations and other new programs as they are developed, investigating complaints, and providing assistance in such areas as sound recording, computerization, and budget preparation.

References

"Case Manager for Municipal Courts," Committee on Administration, Appendix B.

"Presiding Municipal Courts Judge," Committee on Administration, Appendix B

See Exhibit 2.b. Rule 1:33-2. Court Managerial Structure.

Related Positions

The following Positions may be applicable in implementing Position 1.2:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 1.3	Vicinage Advisory/Liaison Committee
Position 1.4	Management Assistance Team
Position 2.5	Emergency Procedures
Position 2.11	Evaluation of Calendar Performance

Position 1.3

Vicinage Advisory/Liaison Committee

Each vicinage shall establish a Vicinage Advisory/Liaison Committee, which will assist the Presiding Judge and Case Manager in the administration of the municipal courts within the vicinage by addressing problems involving the courts and other governmental units and by serving as a liaison group between the courts and the community.

Commentary

To assist the vicinage Presiding Judge and Case Manager, the Task Force has recommended the creation of a vicinage-level committee responsible for handling a wide variety of problems involving the relationship of the courts with other governmental agencies and groups and for serving as a mechanism for bringing matters of public concern to the attention of the court system.

The need for such a committee has long been recognized by those involved in the operation of the municipal court system. In order to function effectively, each municipal court must interact with a myriad of municipal, county, and state

agencies in all sectors of the criminal justice system. Such agencies include county penal institutions, probation departments, alcohol/drug programs, and other social service groups. As the number and complexity of these "interacting agencies" have multiplied over time, so too have the problems of resolving matters of concern to the courts. Currently, each municipal court must develop its own relationship with these agencies, as there is no organized alternative. In addition to being inefficient, such a splintered approach increases the complexity of resolving common problems on a timely basis. Moreover, the failure to coordinate the programs and efforts of the various governmental units and agencies has allowed each department to act relatively independently, in disregard of the obvious interrelationships that exist among the various groups. Exacerbating these problems is the lack of any mechanism for informing new municipal court judges (as well as other court personnel) of the existence of various procedures and programs. As a result, a new judge or clerk must learn "on the job," thereby decreasing the efficiency of the court during this learning process.

In addition to interacting with other agencies, each municipal court must also interact with and be responsive to the community in which it operates. The policies of the courts obviously affect the public, especially in such areas as personnel, scheduling, condition of facilities, and management of the court itself. Despite this fact, there is generally no mechanism providing for exchange of information between the court and the public. The issue is further complicated by the unique status of the municipal court. Although it is an essential part of the State's court system, the municipal court clearly remains subject to local control, especially as to personnel and budgetary issues. Coupled with the lack of tenure for municipal court judges and most court staff, this has often placed the municipal court judge in the untenable position of having to preserve

his judicial independence and strive to improve court operations, while at the same time be completely dependent upon local authorities for his very appointment and the funding of the court. The result has often been a certain alienation between the two branches of government. The Task Force has found no coherent program in existence that would enable the court to respond to local concerns, while at the same time assisting the court in providing quality services by procuring public support for its operations. Even more basic is the lack of any procedure or mechanism to assist in educating the public in matters relating to court operations and procedures.

In view of the foregoing, the Task Force has recommended the creation of the Vicinage Advisory/Liaison Committee. This Committee, consisting of between 15 and 20 people, will be similar to the Local Advisory Committees that assisted the Task Force in its efforts. Committee members will include representatives of all sectors of the criminal justice system, such as the Assignment Judge, Presiding Judge, Case Manager, County Clerk, as well as representatives of the Probation Department, Public Defender, Sheriff, Warden, County Prosecutor, and the local police. Additional members will be sought from among municipal prosecutors, municipal public defenders, municipal court clerks, the defense bar, mayors, social service organizations, and the public at large. Members will be appointed by the Presiding Judge with the approval of the Assignment Judge. It is anticipated that the Committee will serve as a forum for addressing issues of primary importance to the functioning of the courts (e.g., bail issues, processing of complaints, implementing Task Force recommendations, caseload processing, and backlog problems), as well as for resolving problems affecting relations between the different sectors of the criminal justice system (e.g., jail overcrowding, sentencing alternatives, rehabilitation, vocational programs, and probation supervision). It is also envisioned that the group will serve as a vehicle for

enabling newly-appointed judges and court personnel to become acquainted with programs and procedures at the vicinage level.

The Task Force has also recommended that this Vicinage Advisory/Liaison Committee serve as the catalyst for the development of two subcommittees, each charged with separate and distinct areas of responsibility. The first of these groups, the Subcommittee on Interacting Agencies, will be made up of some members of the Vicinage Advisory/Liaison Committee (VA/LC) and others from the municipal courts and from many of the previously identified interacting agencies. It is intended that this group encourage the development of effective working relationships between the courts and the interacting agencies by exchanging information on activities, policies, and procedures on topics that affect each other's operations, by establishing contacts with the various groups, and by creating a regular forum for the discussion of pertinent issues. This subcommittee shall also be responsible for bringing relevant matters before the larger Vicinage Advisory/Liaison Committee as necessary.

The second subcommittee, to be designated the Community Advisory Committee, shall be similarly structured. That is, a small group (three or four members) from the VA/LC will be selected to establish a committee consisting of "politically neutral" citizens from the vicinage, including representatives from the clergy, Chamber of Commerce, service-oriented groups (e.g., Rotary, Kiwanis, YMCA Boards), Grand Jury associations, and any other local public group that may be active in a given vicinage. These members shall be appointed by the Presiding Judge with the approval of the Assignment Judge.

The Community Advisory Committee will be charged with the responsibility of providing community input into court operations and for providing the court with a means to educate the public and to advocate the court's position on matters requiring improvement. It is anticipated that such a subcommittee will lead to

greater interaction between the citizenry of each municipality and its municipal court. It should be noted that it will not be the purpose of the committee to review or to comment on the daily performance of the individual municipal court judges, and it will be expressly prohibited from reviewing individual decisions. Rather, the committee will serve to examine areas such as the level of budget and personnel support required by municipal courts, problems with scheduling and workloads, the adequacy and condition of court facilities, and relations between the courts and the public, lawyers, litigants, and police.

The Task Force has also recognized that in some situations, particularly in urban municipalities with larger and more complex courts, there may be a need and/or desire to establish a local subcommittee to serve a similar function as the Community Advisory Committee. Should that prove to be the case, it is anticipated that the vicinage Community Advisory Committee (CAC) would assist the individual municipality in establishing and maintaining such a group. Again, membership would be comprised of politically neutral members of the local community who are interested in the functioning and operations of the local court. In addition to serving as a liaison between the community and the municipal court, a local CAC would also maintain contact with the vicinage CAC, referring such matters to it as may be appropriate.

References

"AOC Services to Municipal Courts," Committee on Administration, Appendix B.

"Community Advisory Committees to Municipal Courts," Committee on Accountability, Appendix A.

"Liaison With Interacting Agencies," Committee on Administration, Appendix B.

"Municipal Court Expanded Visitation Program," Committee on Administration, Appendix B.

"Vicinage Advisory/Management Teams," Committee on Administration, Appendix B.

"Work Performance in Emergency Situations," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 1.3:

Position 2.1	Community Dispute Resolution Committees
Position 6.1	Domestic Violence
Position 6.4	Victim/Witness Services

Position 1.4

Management Assistance Team

Each vicinage shall establish a Management Assistance Team to act as a resource unit to take corrective actions in those courts that have been identified as being in need of major assistance. This unit, composed of existing municipal court personnel with demonstrated expertise in the different operating areas of the court, could be dispatched by the Assignment Judge/Presiding Judge to any municipal court found to have systemic operational problems.

Commentary

A recurring theme identified by the Task Force was that problems have developed in our municipal court system because of its rapid growth during the last decade. In almost every court there has been a significant increase in caseload and, equally important, court clerks and their support staff have been burdened with ever - increasing administrative responsibilities, many of which are of a technical and complex nature. Stringent, although necessary, time limitations on the performance of innumerable office functions have been imposed

by the Administrative Office of the Courts as well as by other agencies with which courts interact. Furthermore, these new functions and concomitant time limits have been imposed upon the courts on a somewhat haphazard basis. As a result many courts have experienced difficulties in maintaining an orderly operational process. Fortunately, because of the dedication of their personnel, most courts have been able to meet the foregoing challenges. Unfortunately, however, some courts have experienced problems of such magnitude as to require action by the Assignment Judge ranging from temporary shutdown to seeking the assistance of competent personnel from other courts to work in a beleaguered court until a state of normalcy resumes. While these crisis situations have been relatively few, they have arisen on a sufficient number of occasions to warrant consideration of the formation of a Management Assistance Team within each vicinage.

Unlike Position 2.5 (Emergency Procedures), which provides guidelines for coping with short-term problems, the Management Assistance Team will be called into action by the Assignment Judge/Presiding Judge when a court has been identified as having major structural difficulties -- difficulties that have developed over the years and cannot be resolved by the court's own staff. The team will provide staff assistance, including restructuring and staff training, to ensure that the problem will not recur.

The Presiding Judge will be responsible for the selection, with the approval of the Assignment Judge, of all members of the Assistance Team. Personnel selected might include the Case Manager for Municipal Courts, a court clerk, a person with expertise in docketing and scheduling, a violations clerk, and perhaps an experienced cashier. The above is not intended to formalize either the membership of the team or its number; rather, each vicinage Presiding Judge

will be responsible for establishing an Assistance Team appropriate for the particular vicinage.

The team will constitute a reserve unit and will meet on a regular basis to formulate a detailed procedure to be followed should its services be required. It is recommended that within three months of the selection of the team members, each vicinage Presiding Judge prepare a procedure. The action plan must necessarily be in somewhat general terms. It will not be designed to deal with a particular court, but will strive to accomplish two equally important goals: re-establishing normalcy in the court and educating personnel in the team members' areas of expertise.

If a team is called into action by a PJ-AJ order, the question of reimbursement must be resolved. The Task Force has concluded that it is the responsibility of the municipality receiving the services of the team to provide compensation for the team members.

In order to ensure funding, it will be appropriate for the court itself, through the vicinage Presiding Judge, to petition the Assignment Judge to request the appropriation of emergency funding by the municipality. If this effort proves unsuccessful, an order by the Assignment Judge compelling the municipality to provide funding will be appropriate.

History has unfortunately shown that courts do encounter real difficulties from which they cannot extricate themselves without outside help. This position recommends the designation in each vicinage of a professional group of highly trained persons who will be prepared to provide immediate assistance to the courts.

References

"Municipal Court Expanded Visitation Program," Committee on Administration Appendix B.

"Work Performance in Emergency Situations," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 1.4:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 1.2	Case Manager - Municipal Courts
Position 1.5	Expanded Municipal Court Services Unit
Position 2.5	Emergency Procedures
Position 2.11	Evaluation of Calendar Performance

Position 1.5

Expanded Municipal Court Services Unit

The Municipal Court Services Unit, currently a subdivision of the Criminal Practice Division, shall be established as a distinct division within the Administrative Office of the Courts.

In addition to providing assistance to the 530 municipal courts, the Municipal Court Services Unit will also be responsible for developing and implementing the policies and programs recommended by the Task Force, as approved by the Supreme Court.

Commentary

In its examination of the administrative structure, the Task Force has also examined the nature of the resources available to the municipal courts at the state level. Since its inception in the early 1950s, the Municipal Court Services Unit has grown only from two to three employees, who are charged with the responsibility of providing assistance and guidance to all 530 municipal courts. This small staff is not sufficient to respond to all the questions and problems that

currently arise from the field, and it clearly does not have the resources to plan constructively for long-term improvement of the municipal courts. The problem will become even more acute when this unit is called upon to assist in the task of implementing many of the Task Force recommendations. The Task Force, therefore, recommends that the present Municipal Court Services Unit (currently a subdivision of the Criminal Practice Division) be expanded into a separate and independent division of its own, with such additional personnel as may be required.

Even before the creation of the Task Force, the municipal court bench indicated that the Administrative Office of the Courts should be providing more resources and greater assistance to the Municipal Court system. The implementation of Task Force recommendations will intensify that need. It is anticipated that the expanded Municipal Court Services Division will be charged with the following additional responsibilities:

1. The development of the Presiding Judge/Municipal Court Administrator concept.
2. The development of educational opportunities to be made available to municipal court judges and municipal court personnel.
3. The development of new programs to meet the changing needs of our courts, as a result of recent changes in legislation and the recommendations of this Task Force.
4. The coordination with other sections of the Administrative Office of the Courts (e.g., Statistical Services, Legislative Services, Computer Services, and Criminal Practice), to assure coordinated activity, to avoid duplication and to maximize productivity.

5. The expansion of the capacity of the Administrative Office of the Courts to respond to problems in municipal courts in an active, rather than a reactive manner.

6. The Provision of on-going review and update of the new Municipal Court Procedures Manual.

7. The identification of contact persons within state agencies affecting municipal court operations, for the purpose of addressing those interagency problems that must be resolved at the state level. In this way statewide policies and procedures may be promulgated. Meetings with Presiding Judges and Case Manager - Municipal Courts will also be held as a forum for identifying state-level problems and issues. A directory of state agency contact persons should be prepared for distribution to the municipal courts.

The need for a separate Municipal Court Services Division within the Administrative Office of the Courts is apparent. It is only through the establishment of such a division that sufficient resources and personnel can be devoted to the municipal courts so as to ensure both the continuation of existing programs and the development and implementation of new practices and procedures as envisioned by the Task Force.

The responding Local Advisory Committees unanimously supported the concept of creating a new Municipal Court Division within the Administrative Office of the Courts. While some groups expressed a degree of concern regarding "bureaucratic growth," it was generally agreed that such an expansion was necessary to provide the municipal courts with adequate assistance. Moreover, several LACs commended the present Municipal Court Services Unit for its current service-orientation, indicated surprise that such a small staff could

render such excellent support, and recommended the continuation and enlargement of such assistance.

References

"AOC Services to Municipal Courts," Committee on Administration, Appendix B.

"Liaison With Interacting Agencies," Committee on Administration, Appendix B.

"Municipal Court Expanded Visitation Program," Committee on Administration, Appendix B.

"Work Performance in Emergency Situations," Committee on Administration, Appendix B.

"Municipal Court Forms," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 1.5:

Position 1.4	Management Assistance Team
Position 3.7	Municipal Court Clerk/Administrator Qualifications and Compensation
Position 4.1	Budget Reporting
Position 7.1	Minimum Standards for Municipal Court Facilities
Position 7.3.a	Computerization and the Administrative Office of the Courts

Chapter 2
Calendar Management
Introduction

The other chapters in this report point out numerous problems in the municipal courts with respect to its organizational structure within the judiciary, low priority in the municipal budget process, important personnel issues, and antiquated procedures. These problems, in the face of burgeoning caseloads, have had a serious impact on the courts' ability to manage their calendars.

In addition to the burden of rising caseloads, the last several years have witnessed the most intensive period of legislation in the municipal court area in over 40 years. Legislation regarding domestic violence, drunk driving, increased traffic penalties, and the Violent Crimes Compensation Bureau, to mention a few, have increased and changed the nature of municipal court operations.

With the explosion of that new legislation came an awareness of the increased need for information. The Administrative Office of the Courts and other agencies are experiencing legitimate administrative needs for information. For example, information is needed by the Administrative Office of the Courts and the Department of Motor Vehicles to track the progress of DWI cases disposed of through a backlog reduction program.

In 1980, the use of Calendar Management as a means to provide for consistency and increased efficiency in the Superior Courts was addressed by the current administration when the Supreme Court appointed a Committee on Efficiency in the Operation of the Courts. The report of that Committee was presented at the 1981 Judicial Conference, at which time Chief Justice Wilentz noted that "the present court structure was never created as a system but evolved as a matter of history to deal with matters as they arose. That the courts presently function as well as they do is a miracle which may be attributed to the conscientious efforts of those working in the present court structure, not to the efficiency of the system itself."[1] The committee found that chief among the problems faced by the trial courts was a lack of procedural cohesiveness "particularly with respect to such key centralized functions as caseflow management"[2]. Although the Efficiency Committee was established for the review of caseload management problems at the Superior Court level, it is clear that many of the same problems trouble the Municipal Courts. As noted in the 1984 Annual Report, New Jersey's Municipal Courts still largely operate under procedures established when these courts were created in 1948.

It is clear that the courts' existing procedures are insufficient to meet the increased demands being placed upon them. The Superior Court has taken an active approach to the management of its casesloads. Municipal courts must learn from the Superior Courts and must begin to use the demonstrated principles of

case management that can free enough resources to continue to meet the expanding needs of the court. Also, in this time of limited resources, it is absolutely essential that the courts maximize the utility of each budget dollar. The courts must be able to decrease the amount it costs to process each complaint to a level that shows that the budgetary dollar is being properly spent.

Only by using ingenuity and sound management principles will the courts be able to meet and cope with the challenge of the modern municipal court structure. The Task Force has examined techniques of diversionary programs (i.e., Community Dispute Resolution Committees and Pre-trial Intervention on the Municipal Court level), as well as other methods to bring Municipal Court procedures current with the 1980's. These programs will help reduce case backlogs as well as provide for the more effective disposition of cases. It should be noted that efforts to improve the efficiency of municipal courts do not imply that a concern for speedy handling of cases should replace considerations of fairness and the sensitive treatment of those before the court. Court efficiency and sensitivity to the needs of the public must go hand-in-hand if quality justice is to be provided.

References

1 New Jersey Law Journal, Vol. VIII, July 16, 1981, p. 1.

2 1981 Annual Report of the New Jersey Judiciary, p. 31.

Position 2.1

Community Dispute Resolution Committees

Each municipal court should be encouraged to establish a Community Dispute Resolution Committee of citizens to assist in the resolution of neighborhood disputes and other selected non-criminal complaints.

Commentary

The use of alternative dispute resolution programs, designed to resolve disputes informally and out of court, has become popular around the country during the past 10 years. In New Jersey, the Supreme Court Committee on Complementary Dispute Resolution Programs chaired by Associate Justice Marie L. Garibaldi, has been studying various programs, including the use of citizen committees, to hear certain types of complaints at the municipal level.

The primary purposes of Community Dispute Resolution Committees (CDRC) are as follows:

1. To provide an alternate method of disposition of minor quasi-criminal offenses to relieve court backlogs.

2. To establish a flexible and open forum, not constrained by sometimes complex rules of procedure, to enable citizens with minor problems to resolve them without the expense of legal representation and the possibility of a record of conviction.
3. To encourage local citizens to become involved in the justice system, thereby increasing their awareness and support.

Conceptually, the only matters that will be referred to the CDRC will be those involving citizen complaints. Accordingly, the following "non-criminal" disputes will be appropriate referrals to local CDRCs: those involving neighbors or family members (other than those filed under the Domestic Violence Act), landlords and tenants, property, businesses and consumers, harassment, dog complaints, noise, bad checks, trespassing, destruction of property, and simple theft cases involving neighbors or relatives.

All such complaints involve citizen against citizen. The committees are "solution-oriented" and are not preoccupied, as are the courts, with an adversarial atmosphere to determine guilt or innocence and the imposition of a penalty. Committees allow the participants to disclose the genuine problem freely and to assist in formulating a lasting solution. No complaints signed by a police officer or a public official can be referred to the Committee.

It is the responsibility of the municipal courts to provide alternative methods so that citizens can resolve conflicts in a manner that will not generate another court appearance. Community dispute resolution committees have the potential to resolve disputes in a less formal setting and to assist the courts in decreasing their backlogs.

Other issues that are being studied by the Garibaldi Committee involve how to train mediators effectively and efficiently; whether referral should be voluntary or mandatory; and liability of individual members and the municipality.

In addition, all dispute programs instituted will be studied by this Committee to determine how mediation programming may be improved.

The Local Advisory Committees were in favor of the position, with only minor reservations about the exclusive use of volunteers. It was recommended that volunteers at least be assisted by professional mediators who would possibly be more experienced in sensitive family and neighbor disputes. It was further stressed that all mediators should be well-trained.

References

1 S. Pressler, Rules Governing The Courts of the State of New Jersey, 1983, Newark, 1982. p. 1078.

2 E. Brody, "Mediating Minor Disputes", New Jersey Lawyer, Journal of the New Jersey State Bar Association, No. 107, May, 1984, p. 10.

3 Municipal Court Manual, Chapter II, Rule 7:3-2 allows judges to refer to a designated neutral person charged with an offense that may constitute a minor neighborhood or domestic dispute. The notice in lieu of complaint requests an appearance before the court and approval by the Assignment Judge in order to determine whether a complaint should issue or other appropriate action be taken.

4 "Community Dispute Resolution in the Municipal Courts," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 2.1:

Position 2.2	Pre-Trial Intervention on the Municipal Court Level
Position 3.11	The Role of the Prosecutor

Position 2.2

Pre-Trial Intervention on the Municipal Court Level

Pre-trial Intervention (PTI) is a diversion program that permits selected defendants to meet certain performance requirements and to have charges dismissed after a specific time. This program, which has been available since 1974 in Superior Court to those charged with indictable offenses, should be extended to defendants in municipal court charged with lesser offenses. The program should be operated by the Superior Court Pre-Trial Intervention staff.

Commentary

For more than a decade, Pre-trial Intervention (PTI) has been available to select first-time offenders in Superior Court indictable matters, successfully diverting many defendants amenable to rehabilitation from the traditional trial system. The recidivism rate for PTI participants is 4%. Defendants charged with lesser offenses (Disorderly Persons, Petty Disorderly Persons, and Local Ordinance Offenses) in the municipal courts should have the same opportunity for application to PTI as those charged with more serious offenses in Superior Court.

Through appropriate revision to the existing PTI Rule 3:28, a Municipal PTI Program could be implemented in the municipal courts. Procedural rules adopted should be similar to those employed on the Superior Court level, but should emphasize less formality and minimal paperwork. In addition, the goals and objectives of such a program, as well as the criteria by which a defendant is evaluated for acceptance, should be consistent with those set forth on the Superior Court level.

The concept of Pre-Trial Intervention in the municipal courts received a significant number of valuable comments from the Local Advisory Committees. Uniformly the Local Advisory Committees' comments pointed out the need for a professionally run program, which would be best administered by existing court personnel. This position was ultimately adopted by the Task Force. It should be noted, however, that there were very few Local Advisory Committees that did not see the need for PTI on this level or felt that PTI should be administered by the local municipal courts.

References

"Pre-Trial Intervention in the Municipal Courts", Committee in Administration, Appendix B.

Exhibit 2.g. Rule 3:28 Pre-Trial Intervention.

Related Positions

The following Positions may be applicable in implementing Position 2.2:

Position 1.1	Presiding Judge - Municipal Courts
Position 2.1	Community Dispute Resolution Committees
Position 3.11	The Role of the Prosecutor

Position 2.3

Conflicts in Scheduling

The Supreme Court should establish guidelines for the resolution of attorney scheduling conflicts. This policy should be administered at the local level by the Court Clerk/Court Administrator and/or by the Municipal Court Judge. If a conflict cannot be resolved at the local level, the matter should be referred to and resolved by the Assignment Judge or the vicinage Presiding Judge, if so designated.

Commentary

One of the significant problems affecting case processing in municipal courts is that of conflicts in attorney schedules. The increased volume of cases and growing number of courts scheduling day-time sessions have increased the frequency of such conflicts. These conflicts involve situations in which municipal court sessions are being scheduled not only at the same time as other court sessions (e.g., Municipal, Superior, and Administrative Law Courts), but also at the same time that other legal proceedings (e.g., depositions) are routinely held.

Therefore, it is necessary to promulgate guidelines to be followed when a conflict in scheduling arises, to avoid unnecessary delays in municipal court proceedings.

To accomplish this goal in those rare instances when it is not possible to accommodate informally the needs of all the courts involved, the following priorities should be followed in determining which schedule should take precedence:

a. Supreme Court;

b. Appellate Division;

c. Superior Court - jury trials in progress;

d. Municipal Court - DWI cases (older case has priority);

e. Superior Court - jury trials not in progress;

f. Superior Court - non-jury trials in progress;

g. Municipal Court cases (other than DWI) older than sixty days (older case has priority);

h. Superior Court - non-jury; and

i. Depositions.

It is anticipated that it may be appropriate to amend Court Rule 1:2-5 in order to achieve the above priorities. Finally, any policy adopted in this regard should be clearly enunciated so that all judges, attorneys, and litigants are aware of it.

This approach was very well received by the Local Advisory Committees. Only two committees were opposed. One said the scheduling list of priorities should be strictly enforced, while the other said it should be flexibly enforced. The overall sense, however, was that such a list would be helpful and should be enforced to allow for only special exceptions.

Reference

"Conflicts in Scheduling," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 2.3:

Position 2.4	Postponements
Position 2.6	Case Processing

Position 2.4

Postponements

The Administrative Office of the Courts should develop statewide guidelines for continuances or postponements of municipal court cases. Incorporated within this policy should be a presumption that absent exceptional circumstances, all municipal court cases should be adjudicated within 90 days.

Commentary

The lack of uniform policy regarding postponements and adjournments causes frequent problems in case scheduling. Even within a single municipal court there may be no consistent approach to those requests. This absence of guidelines creates difficulties for attorneys, judges, and court personnel.

The problem is not unique to New Jersey. The President's Commission on Criminal Justice Standards and Goals recognized that "[i]n many jurisdictions judges have unlimited authority to grant continuances and often do so as a matter of routine or for frivolous or inconsequential reasons."[1] It ultimately recommended that no continuance be granted without a verified and written motion and a showing of good cause.

The Task Force recommends development of uniform guidelines regarding postponements. These guidelines should include the following:

1. each municipal court judge should submit to the Presiding Judge, for review and approval, a written policy regarding adjournments;
2. the uniform traffic ticket should be revised to include a statement of rights and minimum mandatory penalties in more serious offenses to minimize appearances by uninformed defendants;
3. the policy of allowing police officers to schedule the date of court appearances should be abandoned to allow the court effectively to control its calendar effectively;
4 breathalyzer machines used in the municipality should continuously meet testing requirements under the law; and
5. driver's record abstracts should be obtained by return mail to allow for prompt sentencing.

Virtually every Local Advisory Committee agreed that a postponement policy would be helpful, and it was therefore strongly endorsed. This position was further supported by the Task Force members' recognition that municipal court judges appropriately have the authority to discourage unnecessary delays and adjournments, and that much of the enforcement of any policy would occur at that level.

References

1 Courts, National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C., 1973, p. 97.

"Postponements," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 2.4:

Position 2.3	Conflicts in Scheduling
Position 2.6	Case Processing

Position 2.5

Emergency Procedures

Each municipal court should develop a set of priorities for work-flow that can be followed during periods of short-term crisis.

Commentary

It is not uncommon for a municipal court to face a workload crisis caused by an unusual increase in the number of complaints or by inadequate staff. During these periods of crisis some duties are more important than others, and work should be done by priority.

In order of priority, the Task Force suggests that the courts:

1. immediately docket new cases;
2. process and deposit monies;
3. perform post-court duties;
4. forward indictable complaints to county prosecutor;
5. establish court calendar;

6. carry out routine procedures (e.g., failure to appear notices, bench warrants, etc.).

The Task Force suggests that the Administrative Office of the Courts create a committee to develop guidelines for use by the courts in crisis. It should be the responsibility of the Presiding Judge or the Assignment Judge of each vicinage to aid the municipal courts in developing individualized crisis management plans.

To support this effort, the Administrative Office of the Courts should promulgate a directive that requires a municipal court in crisis to contact the Assignment Judge, Presiding Judge, or Trial Court Administrator in its vicinage. After notification, the Presiding Judge or Assignment Judge should be authorized to require the expenditure of funds by the municipality for short-term clerical assistance until a permanent solution to the crisis is found.

It was suggested by several Local Advisory Committees that Court Clerks should be consulted when the final list of priorities for emergency situations is developed.

References

"Emergency Procedures," Committee on Administration, Appendix B.

"Expanded Municipal Court Visitation Program".

Related Positions

The following Positions may be applicable in implementing Position 2.5:

Position 1.1	Presiding Judge - Municipal Courts
Position 1.2	Case Manager - Municipal Courts
Position 1.4	Management Assistance Team
Position 2.6	Case Processing in the Municipal Courts
Position 3.7	Municipal Court Clerk/Administrator Qualifications and Compensation

Position 2.6

Case Processing

Each municipal court judge, in conjunction with his court clerk, should develop and actively administer case-processing procedures designed to ensure a just, prompt, and economical resolution of all matters. In addition, the Administrative Office of the Courts should develop and submit to the Supreme Court a Court Rule to resolve the problem of scheduling expert witnesses.

Commentary

Each municipal court may be regarded as an information-processing system, in that it serves to receive, create, maintain, use, distribute, store, and, eventually, discard court information. The problems to be solved involve proper management of new records and the maintenance of old ones, so as to improve the productivity and effectiveness of the court.

The court clerk should exert control over establishing and maintaining the case-processing system. To initiate a case processing system, the court clerk should prepare an analysis of the information flow and designate (1) the source of

the information, (2) who needs the information, (3) what to do with the information, and (4) the result of processing the information. In addition, the court clerk should examine the method in which cases are filed and the resources available to the court to ensure that each is sufficient to meet the case-processing needs of the court. From there, the court clerk should propose solutions that will meet the court's needs.

After the court clerk prepares this analysis and proposes solutions to meet the court's needs, procedures should be introduced to assist in streamlining the workflow. One such method would require that the judge be involved in determining which cases need special treatment and designating them accordingly. Another method is one in which the court would set guidelines regarding appearances of expert witnesses. This has been a particular source of delay, especially with driving while intoxicated (DWI) cases. It is recommended that a Court Rule be established to correct this problem. (For background information on court-appointed expert witnesses, see Township of Wayne v. Kosoff, 73 N.J. 8, 14-15 (1977)).

The proposed Court Rule would establish guidelines pertaining to the appearances of expert witnesses and should be modeled on Rule 5:3-3, which involves the examination of experts in Family Court matters.[1] In addition, the new Rules of Professional Conduct, effective September, 1984, specifically Rules 1.3 and 3.2, which require a lawyer to act with reasonable diligence and promptness in representing a client and to make a reasonable effort to expedite litigation, should be considered by the municipal court judge when implementing the aforementioned case processing plan.

Reference

"Case Processing", Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 2.6:

Position 2.3	Conflicts in Scheduling
Position 2.4	Postponements
Position 2.8.a	Defense by Affidavit
Position 2.9	Violations Bureau
Position 2.11	Evaluation of Calendar Performance

Position 2.7

Municipal Court Forms

The Administrative Office of the Courts should issue a directive regarding the following:

1. No new forms shall be imposed upon the municipal courts by any agency without the review and authorization of the Administrative Office of the Courts .
2. A Supreme Court Committee or Subcommittee shall be established (to include representatives of the Administrative Office of the Courts and interacting agencies) to study and review all forms and requests for information prior to these requirements being imposed on the courts.

Commentary

Since the inception of the municipal court system in New Jersey, the transfer of information to interacting agencies has been recognized as essential. For this purpose, a number of forms have been developed and promulgated to

ensure uniformity when the information was transferred. Since there are many interacting agencies, each with its own need for information from the municipal court, three major problems appear:

a. Lack of coordination among the agencies resulting in the same data being sent to various agencies.

b. Lack of coordination within some agencies, resulting in requests for information that they already have on file.

c. Poorly designed forms that are difficult to complete.

Any new forms, as well as already existing ones, should be evaluated by the committee recommended in this Position. The following considerations should be paramount:

1. whether the information being requested is really needed;

2. whether the information is important enough to justify the work necessary to collect it;

3. whether the information is already being received by another part of the agency, and if so, whether there is a need for the municipal court to resubmit the data;

4. whether the information requested is available from other sources, and if so, whether there is a need for the court to replicate;

5. whether the form is properly designed for easy collection and transmittal. All forms should be reviewed in order to expedite the collection and transmittal of data.

The informational demands on municipal court personnel are increasing on a day-to-day basis. It is only through the establishment of a review body that the amount of work and data processed by the municipal courts can be coordinated to ensure that each agency's requirements are satisfied without an undue burden being placed on municipal court personnel.

The position on municipal court forms was unanimously endorsed by Local Advisory Committees, with one LAC stating, "This action ... is long overdue." A representative of Local Advisory Committee of Vicinage XII, Mercer County, further noted "Anything that can be done to reduce the paper work burden on the Municipal Courts should be implemented immediately."

Reference

"Municipal Court Forms", Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 2.8:

Position 1.5	Expanded Municipal Court Services Unit
Position 2.6	Case Processing

Position 2.8

Alternatives to Adjudication of Parking Matters

Methods and policies for processing parking matters should be modified to allow for informal adjudication. Parking matters, therefore, should be removed from the jurisdiction of the court and placed in other hands. However, the handling of traffic matters should remain under judicial control.

Commentary

All contested traffic matters, whether parking or non-parking, are heard by the judiciary under rules of criminal procedure. In other states, however, the authority to adjudicate parking matters is vested with persons other than judges. These non-judicial officers, who hold such titles as "hearing officer" (usually lawyers), or "judicial officer" (a person trained in the law), perform such quasi-judicial functions as the taking of pleas and the hearing of contested cases. In each instance certain characteristics of judicial proceedings are retained.

Professor Robert Force, in an assessment of problems facing administrative adjudication, concluded:

> Regardless of whether administrative agencies will be judicial to some degree, or whether courts will function more like administrative agencies, it appears inevitable that traffic adjudication will be handled in a matter which incorporates some of the attributes of both.[1]

Those who have compared the two concepts find no significant differences between them. Therefore, at the very least, judges in a courtroom proceeding should be permitted to handle parking matters in a less formal manner (similar to Civil Hearing Officer proceedings used in other jurisdictions) when appropriate.

References

1 R. Force, "Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers", in Arthur Young & Co. Effective Highway Safety Traffic Offense Adjudication, Vol. 3 at 97-186 U.S. Department of Transportation, Highway Traffic Safety Admin. (1974).

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8:

Position 7.3	Overview to Computerization
Position 7.3.a	Computerization and the Administrative Office of the Courts
Position 7.3.b	Existing Computerized Courts
Position 7.3.c	Courts Using Computer Bureaus
Position 7.3.d	Computerization of the Manual Courts

Position 2.8.a

Defense By Affidavit

Court rules should be amended to allow a defendant to plead by way of written certification (signed statement) in those cases that now require an affidavit (signed, notarized statement), and the procedure should be extended beyond hardship cases.

Commentary

Pleas by affidavits to certain traffic violations have been permitted by Rule in hardship cases, such as when the defendant lives far away and/or would have to take time off from work. Liberalizing this Rule to permit pleas by certification and in circumstances other than hardship would allow judges to conduct summary proceedings using the certification and other documents to determine the facts and adjudicate the matter. This would reduce the number of formal trials, adjournments, and many police appearances, while meeting the needs of the court and preserving the rights of the parties.

Many appearances by police officers, as well as formal trials and adjournments, are avoided when the judge conducts a summary proceeding using any documentation in proper form, determines the relevant facts, and adjudicates the matter. Therefore, consideration should be given to the relaxation of Rule 7:6-6 procedurally to permit a certification, instead of affidavit, to liberalize its use in other than hardship cases.

References

New Jersey Municipal Court Manual, Chapter V, Rule 7:6-6.

Pressler, Sylvia Rules Governing the Courts of the State of New Jersey, 1983 Newark, 1982, p. 1092.

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8.a:

Position 2.8	Alternatives to Adjudication of Parking Matters
Position 2.9	Violations Bureau

Position 2.8.b

Parking Tickets Unable To Be Processed

A uniform policy shall be developed by the Administrative Office of the Courts to provide for the disposition of parking tickets that cannot be prosecuted due to the lack of an identifiable defendant.

Commentary

When a summons is issued to the owner of an unattended vehicle (virtually all parking matters), the owner's name and address is obtained through the Division of Motor Vehicles. Occasionally, this information cannot be obtained because it is not possible to match the data supplied by the courts with the data in the Division of Motor Vehicles file (a so-called "no hit"). There is currently no uniform policy governing the disposition of these matters, resulting in disparate handling by different courts. Guidelines should be developed to rectify this situation by either Court Rule or administrative policy that would provide for the clear and appropriate disposition of such tickets.

Reference

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8.b:

Position 1.5	Expanded Municipal Court Services Unit
Position 2.8	Alternatives to Adjudication of Parking Matters
Position 2.8.a	Defense by Affidavit
Position 2.8.c	Docketing of Uniform Traffic Ticket
Position 2.8.d	Return of Uniform Traffic Ticket

Position 2.8.c

Docketing of Uniform Traffic Ticket

The uniform traffic ticket should be revised to facilitate interpretation by court personnel responsible for docketing. Any revision should be in a format conducive to an automated system of operation.

Commentary

The uniform traffic ticket is ill-designed for manual processing and modern data entry. At best, the document serves the need of the officer to issue something at the site of the incident and the need of the court to have an original for adjudication.

The vital information to be recorded is scattered throughout the document and does not appear in logical data entry order. Spaces for printing by the officer are too small and restrictive. The model form for data entry purposes would place all vital information at one location, preferably the top of the form, in a logical sequence. Spaces would be boxed to restrict one bit of information (letter or number) to a box and would be large enough to be legible.

The uniform traffic ticket should be redesigned to accommodate current needs and uses. Consistent with Position 2.7 entitled "Municipal Court Forms," it is suggested that before final adoption, the Uniform Traffic Ticket be reviewed by the assigned committee on Forms in order to bring the ticket to a level that reflects a "state of the art" document.

Reference

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8.c:

Position 1.5	Expanded Municipal Court Services Unit
Position 2.6	Case Processing
Position 2.7	Municipal Court Forms
Position 2.8	Alternatives to Adjudication of Parking Matters
Position 2.8.a	Defense by Affidavit
Position 2.8.b	Parking Tickets Unable To Be Processed
Position 2.8.d	Return of Uniform Traffic Ticket

Position 2.8.d

Return of Uniform Traffic Ticket

A statewide standard policy should be developed for the return of tickets to the municipal courts by the issuing law enforcement authority.

Commentary

The municipal courts and the general public are inconvenienced by the administrative delay between the issuance of a traffic ticket and its ultimate return to the court. Tickets may be issued by a variety of law enforcement authorities, other than the local police, within the municipality. These include institutional police from universities and colleges, the Port Authority of New York and New Jersey, Amtrak, and other county, state, or municipal officers. Practices vary among enforcement agencies as to when their tickets reach the court. Factors that may affect this timing are proximity to the court, hand delivery versus mailing, and review practices within the agency itself.

However, whatever the practice, tardiness in returning the ticket to the court often results in delayed data entry, difficulties in spacing and planning of

work, and processing problems, especially when a defendant pays (or attempts to pay) a ticket prior to its receipt or recording by the court.

In order to ensure that each traffic ticket is promptly returned to the municipal court, the Administrative Office of the Courts should develop a minimum standard to be followed uniformly by all agencies issuing those tickets.

Reference

"Traffic Case Processing," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.8.d:

Position 1.5	Expanded Municipal Court Services Unit
Position 2.6	Case Processing
Position 2.8	Alternatives to Adjudication of Parking Matters
Position 2.8.b	Parking Tickets Unable To Be Processed
Position 2.8.c	Docketing of Uniform Traffic Ticket

Position 2.9

Violations Bureau

In addition to the payment of fines and costs, the responsibilities of the violations bureau of a municipal court should be expanded to include the acceptance of proof of valid documents. Court personnel should be permitted to accept licenses, insurance cards, and registrations, thereby allowing for the disposition of matters that would otherwise require the attention of the prosecutor and/or judge.

Commentary

The first traffic violations bureaus were established approximately 50 years ago, because the courts could not keep pace with the mandatory court-appearance requirement in light of the number of tickets being issued. Rule 7:7-1 permits a municipal court to establish a violations bureau, if required for the efficient disposition of the court's business and the convenience of defendants.

Typically, a violations bureau consists of court staff who may, under the direction of the court, accept a motorist's written appearance, waiver of trial,

plea of guilty, and payment of a pre-set penalty for scheduled non-hazardous traffic offenses.

According to the report entitled Proceedings in the Municipal Courts (September 1, 1982 - June 30, 1983), approximately 4,500,000 traffic summonses are being issued statewide. This report further indicates that 94% of all parking tickets and 65% of all non-parking traffic tickets disposed of by the municipal courts were handled by violations bureaus without the necessity of a court appearance by the defendant. The role of the bureau is, therefore, crucial to the effective functioning of the municipal court system.

However, the number of dispositions would increase if the Court Rules did not exclude certain matters from violations bureau authority. Violations bureaus should be allowed to handle an increased variety of offenses (see "references" for Rule 7:7-3 that lists offenses excluded from authority of Violations Clerk), such as by accepting proof of valid operator's license, insurance or registration submitted by motorists charged with failure to produce any of these documents. Of course, to assure controls proper procedures would need to be implemented carefully.

The purpose in expanding the authority of the violations bureau to accept proof of documents is to reduce the formal processing of cases in which a defendant simply wishes to plead guilty and pay the fine. Currently, defendants frequently drive great distances and lose a day's work to do that.

References

Eight offenses are specifically excluded from the authority of the violations clerk pursuant to Rule 7:7-3 as follows:

1. non-parking traffic offenses requiring an increased penalty for a subsequent violation;
2. offenses involving traffic accidents resulting in personal injury;
3. operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug or permitting another person who is under such influence to operate a motor vehicle owned by the defendant or in his custody or control;
4. reckless driving;
5. careless driving where there has been an accident resulting in personal injury;
6. leaving the scene of an accident;
7. driving while on the revoked list;
8. driving without being licensed.

"Violations Bureau," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 2.10:

Position 2.8	Alternatives to Adjudication of Parking Matters
Position 2.8.a	Defense by Affidavit

Position 2.10

Handling of Indictable Complaints

In the handling of indictable complaints, the following standards should be adopted:

1. A formal, working relationship, as well as regular communication, should be developed between county and municipal prosecutors.
2. The Attorney General and County Prosecutor should review alternatives to the current system of handling indictable complaints and should promote procedures that expedite prosecutorial screening.
3. A study should be conducted to examine the types of cases that result in remands. Upon completion of that study, consideration should be given either to change the jurisdiction of the municipal courts legislatively or expand their authority to allow them to proceed on these cases by "Waiver of Indictment" under N.J.S.A. 2A:8-22.

Commentary

Currently, all indictable complaints are filed in municipal courts. Following a first appearance (or occasionally after a probable cause hearing), the matter is referred to the county, at which time the County Prosecutor screens all cases to determine those that should be presented to the Grand Jury for indictment.

Indictable complaints that are referred by a municipal court to the County Prosecutor pursuant to Rule 3:4-3 may be disposed of by the County Prosecutor in a variety of manners short of indictment or accusation. These forms of non-indictable disposition are as follows:

1. Termination of the complaint by administrative dismissal.
2. Referral of the matter to the originating municipal court by administrative dismissal with referral (sometimes called "remand" or "downgrade") of the indictable complaint back to the municipal court for hearing as a lesser disorderly offense.
3. Dismissal of the indictable complaint by a grand jury.
4. Dismissal of the indictable complaint by a grand jury with referral back.
5. By Waiver under N.J.S.A. 2A:8-22. A seldom-used procedure by which certain indictable offenses (notably, thefts under $500.00) may, by written consent of the County Prosecutor and the defendant, be heard in the municipal court, which becomes vested with authority to sentence the defendant with the indictable-level penalties of the applicable statute upon judgment of conviction.

The practice of down-grading and returning complaints to the courts creates numerous problems at the municipal level. The current procedures delay the adjudication of these matters, often resulting in their dismissal, as witnesses

and/or complainants lose interest or cannot be located. In addition, down-graded offenses are not always consistent with the facts that gave rise to the indictable offense, thereby resulting in further dismissals. Finally, the administrative demands of the process require a substantial commitment of time and resources at the municipal level.

Currently in New Jersey only 50% of persons charged with indictable offenses are ultimately indicted. Nearly one-third of those charged with indictable offenses are remanded to the municipal courts by the Prosecutor or grand jury for disposition on disorderly persons complaints. In addition, one of the more difficult and complex issues facing the municipal courts is the proper role of these courts as to indictable matters.

Therefore, a working relationship and formal lines of communication should be developed between municipal prosecutors and the County Prosecutor's office. Such a system of communication would allow for the exchange of information regarding specific cases, significantly reducing the time required to determine whether a complaint should be handled as an indictable offense or remanded to the municipal court.

In addition, the Attorney General and County Prosecutors should review the procedures currently used to handle remands, explore alternative methods, and promote those that expedite prosecutorial screening. Several counties have developed programs that deserve close study and possible emulation by other jurisdictions.

Finally, a study examining the types of cases that result in remands should be conducted. That study will help determine the role Municipal Courts should play in expeditiously disposing of indictable complaints.

Local Advisory Committees strongly endorsed the position that screening should be done as early as possible, and preferably before forwarding indictable complaints to the county. By making an early decision to downgrade, substantial clerical and municipal court time would be saved. The LAC's were also favorable toward improving lines of communication between County and municipal Prosecutors as a method to avoid duplication of effort.

References

N.J.S.A. 2A:8-22, In appropriate cases, and if indictment is waived, Municipal Courts have jurisdiction to allow the charged person to appear before Judge to determine crime/offense charged.

"Handling Indictable Complaints," Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 2.10:

Position 2.2	Pre-Trial Intervention on the Municipal Court Level
Position 3.11	The Role of the Prosecutor
Position 6.5	Plea Agreements in Municipal Courts

Position 2.11

Evaluation of Calendar Performance

The Administrative Office of the Courts should develop and promulgate standards of performance for the municipal courts. Those standards should be directed at improving such matters as calendar clearance, court productivity, and the realization of speedy trial goals.

Commentary

The task of establishing performance standards is particularly important in the context of municipal courts. Many aspects of court activity have escaped scrutiny, as these courts have never been held accountable to clearly enunciated goals or standards. In the past, the continued existence of the municipal court system was itself in question, and alternatives (such as regionalization of local courts) were under consideration. It is now evident, however, that not only will the municipal courts continue to function but that their status will be enhanced as they assume new responsibilities. Accordingly, it is imperative that standards of

performance should be promulgated and that community and governmental officials at all levels be kept aware of how their courts adhere to those standards.

Several areas of concern have been identified as being central to effective court management, including matters such as calendar clearance and backlog reduction, the implementation of speedy trial goals, and the development of productivity and cost-effectiveness standards. These matters will be discussed individually.

A. Calendar Clearance and Backlog Reduction

Simply defined, calendar clearance refers to the number of cases added to the system during a given time period compared with the number of cases disposed of during the same period. If a court disposes of as many cases as it has added, then it has "cleared" its calendar. The goal of 100% clearance is necessary to avoid adding to a continually expanding backlog. As the Chief Justice said at the October 1983 Conference of Municipal Court Judges:

> "There is a bottom line below which we cannot allow our court, your court, to fall. The test of minimum court performance is a concept called clearing the calendar. That is, for a given period disposing of at least as many cases as have been filed. It tests very simply whether we can keep up with the work the public asks us to perform... A court that doesn't clear its calendar can't even begin to make improvement, can't even begin to think about it. It simply has its hands full trying to survive. If your court can't even keep up with its work load it is in a crisis, a crisis that must be your first order of business."[1]

Calendar clearance of at least 100% is a basic goal for all courts. It is measured by dividing the number of dispositions by the number of filings. Therefore, if a court disposes of 3,000 cases in a month when 2,700 cases were filed, the calendar clearance rate is 3000/2700 or 111%. This ratio should be computed for each of the major classes of offenses, i.e., disorderly persons, parking, DWI, etc.

Once a court has begun to clear its calendar and is no longer adding to the backlog already accumulated, it is important for it to focus its efforts in disposing of "backlogged" cases. "Backlog" is defined as "the number of cases pending beyond the time goals established for their disposition." For it to be a useful standard or guideline, a backlog needs to be related to the "size" of the court. When the size of the backlog in the municipal court has been determined, procedures must be implemented to reduce the accumulated pending inventory and ensure that it will not recur.

B. Speedy Trial

"Speedy Trial" must be included as one of the goals of every municipal court. There are several practical reasons why swift and fair disposition of cases must be pursued. It is axiomatic that when a case is delayed, the prosecutor's case becomes weaker. Witnesses can no longer be located, their recollections fade, and for one reason or another evidence becomes unavailable. In addition, delayed justice lessens the impact of deterrence. The Chief Justice noted, "We have made substantial improvement in criminal case processing. We have eliminated much delay but we still have far to go. Criminologists believe that speedy trials are essential to deterring crime. The achievement of speedy trial goals, therefore, continues to be in my highest administrative priority." To define the concept of "speedy," a survey was taken at the October 1983 Municipal Court Judges Conference in an attempt to ascertain what the judges in attendance thought were "reasonable" goals for the disposition of various cases. The following is their recommendation for each of the six categories of offenses that fall under the jurisdiction of the municipal court.

1. Indictable offenses: 48 hours from first appearance.
2. Parking: 14 days.
3. Ordinance violations: 21 days.
4. Moving violations: 30 days.
5. Disorderly Persons/Petty Disorderly Persons: 45 days.
6. Driving While Under the Influence N.J.S.A. 39:4-50): 60 days.

It is generally estimated that 90% of all cases should be disposed of within the respective time goals. The remainder would represent cases that are classified as having exceptional needs. These time goals may be implemented gradually over several phases of a statewide delay-reduction project.

To assist in ascertaining whether a court is achieving speedy trial goals, currently available information allows for the estimation of the average age of the disposed of cases ("the turn-around time"). This "turn-around time" may be useful in devising methods to gauge "speedy" trial. To calculate turn-around time the following ratio is used: average active inventory divided by average monthly dispositions. That is, if the average active inventory is 1,000 cases, and the average monthly disposition is 250 cases, the "turn-around" ratio is 1000/250. This means the average turn-around time for all cases is approximately 4 months. Accordingly, it can be assumed that if a case is filed today, it will generally take 4 months to reach disposition. As with all other measurements discussed, standards must be established for an optimum turn-around time, which will enable the figures for a given court to be compared against both the optimum figure and a state or county-wide average. The statewide average "turn-around time" will initially be established as a standard for the first phase, and this figure will be reduced during following phases, consistent with goals that will be promulgated.

C. Productivity

Productivity is a measure of court efficiency. Courts should be encouraged to dispose of any eligible cases through the violations bureau and not to use bench time for taking guilty pleas for minor ordinance infractions and similar matters. Total judge hours, both time spent on the bench and on administrative duties, will be divided into the total number of disposed of cases. This analysis should reveal relationships between the amount of time the judge devotes to court-related matters and the volume of cases disposed of by the court. The performance of the court can then be measured against statewide averages for all courts and in particular for courts of similar size.

D. Cost Per Disposition

With the rapid rise of inflation and the decrease in available funding, frugality has become a way of life for both the public and private sector. As a result it becomes imperative to measure a court's level of efficiency in terms of productivity based on a cost per case. To derive cost-per-case it is necessary to compare the total number of case dispositions against the cost of court operation. This would allow the cost of operating a court to be measured in terms of a weighted caseload to obtain a cost per "weighted" case. Weights have been set as follows: Parking - 1.0, Traffic - 2.6, and Non-Traffic - 9.0. The above-listed weights are multiplied by the number of dispositions for each case type and added together. When the sum is divided into the expenditures of the court, it is then possible to obtain a reasonable gauge of cost per disposition. Courts can then be compared with each other to identify those that are most cost effective as well as those that fall below average standards of performance.

E. Presentation: The Collection and Dissemination of Data

Once the necessary standards of performance as discussed above have been identified and established, a system of rating the performance must be designed. It is suggested that a point system be used for this purpose. Grading will be done on either a country-wide basis or by individual courts. Goals or standards will be established with regard to the matters discussed above, i.e., for calendar clearance and backlog reduction, speedy trial (i.e., turn-around time), productivity, and cost effectiveness (cost per disposition). This will allow courts to be compared with each other as well as against statewide norms.

Local Advisory Committees expressed insightful ideas as to the use of the point system of rating a court's Calendar Management Procedure. One committee suggested that there should be a dual-rating system, one to include criteria over which the courts have direct supervisory control, and the other to include those criteria over which the court does not have direct supervisory control. It was believed that the dual criteria approach would facilitate a fairer rating of a court's performance while at the same time identify those factors that, while not under the court's direct authority, do affect its performance. This comment, while initially rejected by the Task Force, will be examined further by the Executive Committee during the implementation stage of this report.

References

"Calendar Management Evaluation," Committee on Accountability, Appendix A.

"Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

Related Positions

The following Positions may be applicable in implementing Position 2.11:

Position 1.1	Presiding Judge - Municipal Courts
Position 1.2	Case Manager - Municipal Courts
Position 1.5	Expanded Municipal Court Services Unit
Position 2.3	Conflicts in Scheduling
Position 2.4	Postponements
Position 2.6	Case Processing
Position 4.1	Budget Reporting

Chapter 3
Municipal Court Personnel
Introduction

Attention to issues regarding municipal court personnel -- judges, counsel, and court staff -- is not without a rich and extensive history. The 1947 Constitutional Convention resulted in an overhaul of the discredited 100-year-old system of police and recorders courts in favor of the present system of locally-appointed municipal court judges. Although this development was heralded as a vast improvement over the abuse-ridden former system, it was not long before some of the unfinished work of that Convention again began to overshadow the progress it had made.

In 1956, in a renowned address, then Chief Justice Arthur T. Vanderbilt described a number of fundamental problems, including: "The lack...of a municipal court prosecutor in all contested cases" (emphasis supplied); low salaries and the consequent inability of the courts to attract "qualified and experienced lawyers" to the bench; the lack of "sufficient competent clerical personnel . . . to permit the effective operation of the court"; and that each

year some of the "best magistrates were not reappointed solely because of a change in the political complexion of the governing body," suggesting that a solution would be to provide "longer terms for magistrates and to provide for tenure on reappointment."

The following year Chief Justice Weintraub reaffirmed these concerns in an article published in the New Jersey Law Journal, 81 N.J.L.J. 597, 602 (1958). He noted that the courts had severe problems in many areas, including "inadequate or incompetent clerical assistance." He pointed as well to "the inescapable shortcoming of the part-time judge," especially in that "lawyers are uncomfortable when, for example, they negotiate a settlement with or try a case against an attorney who is also a judge before whom they must practice." Finally, he acknowledged that the "magistrate is in the unhappy position of knowing that if he eschews politics, he is apt to be replaced at the end of his term by another who has labored for the organization," with "a change in the appointing authority almost certainly resulting in a change in magistrates."

During the ensuing years, several bills were introduced to create a unified full-time system of municipal courts. Law Journal editorials (92 N.J.L.J. 196 (1971)) supported this legislation to no avail. In the 1970's, the approach began to change from calls to abolish the municipal courts to demands for improvement of the courts within the current structure. These efforts are chronicled in an opinion written by Chief Justice Richard J. Hughes in 1977:

> "The members of the present court are equally convinced that the municipal courts, from the standpoint of contact, observations, and acceptance of the public, are in a pre-eminent position for the sustaining of universal respect for the administration of justice. That is why we have persisted, through the Administrative Office of the Courts, in training and orientation, not only of judges but other municipal court personnel. Our rules deal extensively with municipal court practice. Seminars are conducted at frequent intervals. A municipal court bulletin issues monthly, discussing recent decisions and procedural reforms. Regular audits of municipal court accounts are filed with and

> examined by the Administrative Office of the Courts, which maintains a special municipal court section. Local trial court administrators conduct periodic visitations of municipal courts at the direction of the respective Assignment Judges, who are responsible administratively for the program functioning of the municipal courts. This Court created the Advisory Committee on Judicial Conduct pointing out our adoption of the Code of Judicial Conduct." In re Yengo, 72 N.J. 425 (1977).

In 1983, the Task Force on Improvement in Municipal Courts was called upon to continue this approach. It again examined issues and problems relating to municipal court personnel. At the October, 1983 Conference of Municipal Court Judges, each judge was asked to list problems he or she faced in a number of areas, including personnel. The personnel issues that surfaced on most judges' lists were: (1) inadequate salaries for judges and support staff; (2) insufficient prosecutorial and public defense resources; (3) role of the prosecutor in cross-civilian cases; and (4) control over hiring and firing of court personnel.

Also in 1984, at the request of a Task Force Subcommittee, the Chiefs of Police in each municipality were surveyed as to their perceptions of the municipal courts. They generally favored the current structure of the courts as meeting the needs of the police. The major disadvantages pointed out were: the concept of the part-time judge, the role of politics in judicial appointment, the dysfunction caused by turnover in judges, lack of experience or qualifications of judges, and judicial findings made on the basis of political pressure.

The Task Force considered the various discussions of personnel-related problems occurring through the years, as well as the more recent reaffirmation of these problems in the Task Force process itself. The following recommendations are proposed.

Position 3.1

Qualifications of Municipal Court Judges

Minimum standards of character, education, and admission to the bar should be set for municipal court judges. A candidate for judgeship should be:

1. An attorney admitted to the practice of law in the State of New Jersey for a minimum of five years.
2. Cleared through a confidential investigative/background security check developed by the Administrative Office of the Courts. This "four-way check" would entail inquiries into the applicant's background on the state, federal, county, and local levels. A confidential check would also be made upon a judge's reappointment.
3. Within 90 days of his appointment and prior to sitting a municipal court judge shall be certified as having satisfied the requirements of a prequalification education program.

Commentary

Inherent in the judicial appointment process should be the aim to secure high-quality persons for judicial office. It has been noted on more than one occasion that

> [t]he weakness in the system is that political influences often cloud the issue and affect the ultimate selection. Appointment to the judiciary has been a favorite means of satisfying political obligations and favors. It would be unrealistic not to recognize that many judicial appointments are primarily based on political considerations. The problem is that when political considerations become involved, the matter of judicial qualification fades into the background. It is a fact that judges have been appointed who have lacked the talent, ability, health, will to work, or integrity required. This is not to say that a person who has been active in politics should not be appointed to the bench. Many of our finest judges have had political backgrounds. Indeed, their political experience has been an invaluable help in the carrying out of their judicial duties.[1]

The setting of minimum qualification standards for municipal court judges will enhance the integrity of the judicial appointing process by insuring appointment of the highest quality people to the position. For example, the five-year-minimum admission requirement provides the appointing authority with the opportunity to review the practical experience and professional competence of those under consideration for the position of municipal court judge.

Further, a four-way check on a candidate's background also aids in this endeavor. Currently, the municipal court judge is the only judge who is not required to cooperate in a background investigation upon nomination. This Position proposes that the appointing authority provide the Assignment Judge with a list of candidates under consideration for appointment. As noted in later Positions, the information obtained from the four-way investigation would be sent to and reviewed by the vicinage Assignment Judge. It would then be determined whether the information should be released to the appointing authority. In this

manner, any candidate who did not meet the highest qualifications could be passed over without having his or her deficiencies made public.

The requirements of a prequalification education program should be implemented by court rule. Just as Rule 1:39 provides for the certification of attorneys as civil or criminal trial attorneys upon establishing eligibility and satisfying requirements regarding education, experience, knowledge, and skill, so also should provision be made for municipal court certification.

The program, consisting of seminars, shall be held every 3 months, to familiarize the certification candidates with the responsibilities, including administrative requirements, of the position of municipal court judge. The education program should be developed in cooperation with the Administrative Office of the Courts and will be open to all interested attorneys. In addition to instruction in substantive legal matters and municipal court trial procedures, the course should provide a full explanation of the municipal court statistical report as well as a strong emphasis on the provisions of the Code of Judicial Conduct and Ethics Opinions applicable to municipal court judges.

The prequalification education program requirement may be waived upon application to the Assignment Judge and the Administrative Office of the Courts. Those who are currently municipal court judges will be "grandfathered-in" and not required to satisfy the prequalification education program.

Only one of the fifteen Local Advisory Committees considered the requirement for a confidential background check unnecessary. Almost all unanimously endorsed the aforementioned Position in its entirety, in particular the five-year prequalification for appointment to the the bench.

References

[1] Hon. Mark A. Sullivan, then Judge, Superior Court of New Jersey, in "A Selective Appointment of Judges: A Key to A Qualified and Independent Judiciary." American Judicature Society. Selected Readings on the Administration of Justice and Its Improvement (Chicago, 1969), p. 24.

"Eligibility Requirements, Evaluations, and Tenure," Committee on Budgets, Personnel and Space, Appendix C.

President's Commission on Law Enforcement and Administration of Justice. "The Judiciary: Personnel and Institutions," Task Force Report: Courts. Commission on Criminal Justice Standards and Goals. (Washington, D.C.: Government Printing Office, 1973), pp. 145-149.

See also Exhibit 3, amended N.J.S.A. 2A:8-7.

Related Positions

The following Positions may be applicable in implementing Position 3.1:

Position 1.5	Vicinage Presiding Judge - Municipal Courts
Position 3.2	Tenure of Judges
Position 3.3	Evaluation of Judges

Position 3.2

Tenure of Judges

Tenure should be granted upon reappointment to a third consecutive three-year term to full-time or prime-time* municipal court judges who hold office with good behavior.

Commentary

Since the 1940s, many of the proposed reforms to the municipal court system have focused on the need to develop a well-trained and professional municipal court bench. Without improvements in this key area, any other reforms to the system are of limited value. The first major step in this direction occurred in 1948 when eligibility requirements were promulgated mandating that all municipal court judges appointed henceforth would have to be attorneys. As a result, the number of lay (i.e., non-lawyer) judges decreased rapidly. Since then, the Administrative Office of the Courts and each vicinage have provided continuing education and training for both new and sitting judges. Such programs ensure that judges are informed and kept abreast of changes in case law and

administrative policy. A monthly Municipal Court Bulletin Letter was established to communicate such developments to the bench.

The evolution of a professional cadre of municipal court judges was furthered by the imposition of limitations on both the professional and personal activities of these judges. Rule 1:15-1 currently prohibits a judge from representing clients in many criminal and civil actions that may conflict with his position as judge. As noted in Position 3.5, there was strong sentiment among a significant minority of Task Force members to impose additional limitations on the outside practice of law. In addition to laboring under professional restrictions, municipal court judges are barred, pursuant to the Canons of Judicial Conduct and Rule 1:17-1, from any involvement in political activities, notwithstanding the fact that such activities may have facilitated the original judicial appointment.

The Task Force recognized that any attempts to improve the quality of the municipal bench, including those in this chapter, would be futile in the absence of provisions encouraging experienced and able judges to stay within the judiciary. A frequent and sizable turnover of judicial personnel is disruptive to the entire municipal court system, to the municipality where it occurs, and to the judge who is relieved of his position despite expertise born of years of experience. Accordingly, the Task Force has recommended the adoption of tenure provisions to protect municipal court judges. A tenure provision gives an assurance to lawyers who have taken municipal court judgeships (with the concomitant limitations in practice, which greatly restrict income from his legal practice) that "they may continue in office and not be forced to go back and rebuild a practice."[1]

Local Advisory Committees were in agreement with this Position, one even stating that tenure should be extended to part-time judges as well. Some concern, however, was expressed that municipalities might resist granting tenure,

and that a judge who might otherwise be reappointed would be denied reappointment if it resulted in the conferring of tenure. The Task Force membership recognized that adoption of this Position could result in some full-time or prime-time judges not being reappointed; however, the minimum five-year qualification and the annual evaluation program, set forth under Positions 3.1 and 3.3, would assist the tenure candidate in reappointment by the local appointing authority.

* A prime-time judge is defined as a judge whose private practice of law is limited by borough ordinance and who may not appear in court or represent clients in litigated matters. Prime-time judges may hold other judgeships.

References

[1] Glenn R. Winters, Executive Director, American Judicature Society, "Good Judges Must Be Compensated," National Conference on the Judiciary 1971: Justice in the States. (St. Paul, Minn.: West Publishing Co., 1971), p. 175.

"Eligibility Requirements, Evaluations, and Tenure," Committee on Budgets, Personnel and Space.

See also Exhibit g, amended N.J.S.A. 2A:8-5.

Related Positions

The following Positions may be applicable in implementing Position 3.2:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 3.1	Qualifications of Municipal Court Judges
Position 3.2	Tenure of Judges
Position 3.3	Evaluation of Judges
Position 3.5	Judicial Compensation

Position 3.3

Evaluation of Judges

In order to ensure that the administration of justice is maintained at the highest possible level, all municipal court judges should be evaluated on at least an annual basis.

Commentary

An annual judicial performance evaluation prepared and conducted by an appropriate Judicial Committee and supported by the Administrative Office of the Courts would assist a judge in identifying and correcting existing or potential problems. For example, the judge who consistently grants continuances without good reason is not exercising efficient control of the court calendar, thereby creating added paper work for his staff. An annual evaluation can provide a method for ensuring efficient, consistent practices by individual judges and the effective operation of municipal courts throughout the state. It has been noted that,

> "Rules and methods are unquestionably important, but they alone cannot create a highly regarded system. Since judges exercise enormous discretionary power, and since trial judges function without any kind of direct supervisions and perform their work alone rather than with colleagues, the quality of judicial personnel is more important than the quality of the participants in many other systems".[1]

It is mandatory, therefore, that an evaluation program be instituted to ensure the highest quality of judicial performance.

Local Advisory Committees were supportive of this evaluation concept. It was stated by one committee that with fair and adequate criteria, the evaluation of municipal court judges would indeed benefit not only the judge but also the operations of that judge's court, and in turn the judiciary itself.

References

"Eligibility Requirements, Evaluations, and Tenure" Committee on Budgets, Space and Personnel, Appendix C.

[1] President's Commission on Law Enforcement and Administration of Justice. "The Judiciary: Personnel and Institutions," Task Force Report: Courts. Commission on Criminal Justice Standards and Goals. (Washington, D.C.: Government Printing Office, 1973), p. 145.

Related Positions

The following Positions may be applicable in implementing Position 3.3:

Position 3.1	Qualifications of Municipal Court Judges
Position 3.2	Tenure of Judges

Position 3.4

Limitations on Practice

The following position was presented to the Task Force and rejected at its final meeting:

To eliminate conflicts or the appearances of impropriety that arise when a judge is also a practicing attorney, all municipal court judges should have a further limitation on their law practice that bars them from handling litigation.

Commentary

The rejected Position itself represented an attempt to reach a compromise on this issue. The earlier version of this Position had included a complete ban on the private practice of law by judges following a five year transition period. The comments received from Local Advisory Committeés and Task Force members seemed to agree with the problem stated, at least insofar as the appearance of impropriety is concerned. It was reported that each month several complaints are filed by parties because of situations in which an opposing attorney was also a municipal court judge. There was no evidence presented nor was there a

substantial consensus that actual conflicts were occurring at any significant level. However, the proposed position was disapproved in a very close vote, indicating that the Task Force was almost evenly divided on the issue.

It is important to note that most members did not disagree that there was at least an appearance of impropriety in many matters. The position of the majority, however, was that the proposed cure was worse than the disease. Many, if not all municipal court judges have developed a substantial practice before ascending to the bench, and they generally maintain that practice while they sit as judges. Therefore, a ban on maintaining a law practice would foreclose many highly qualified attorneys from consideration. Even the compromise position of restricting their law practice to non-litigated matters would eliminate most active trial attorneys from the pool of potential candidates for a municipal court judgeship. Moreover, since some municipal courts meet only a few times a month, the salary paid to judges in such courts would not be sufficient to justify the giving up of their law practices. Therefore, it is the majority position that to ban law practices would cause a diminution in the quality of the municipal court bench at a loss greater than the benefit that might be achieved by eliminating any appearances of impropriety or conflict in litigated cases.

MINORITY POSITION

To eliminate potential conflicts faced by judges who are also practicing attorneys, all municipal court judges should be prohibited from becoming involved in litigation.

a. The Administrative Office of the Courts should remind Assignment Judges and Municipal Court Judges of the limitations on practice set forth in Rule 1:15-1(b).

b. The Supreme Court should review Rule 1:15-4 concerning the limitations on practice of partners of municipal court judges.

Of the more than 300 municipal court judges, a few are employed full-time. The majority of municipal court judges are part-time with varying degrees of activity in private practice. To avoid the appearance of impropriety, partiality, or conflict, the judge's involvement in practicing law is limited in some respects under both Court Rule and the Code of Judicial Conduct.

Also, there is a group of judges who are forbidden by local ordinance from engaging in litigation. These are called "prime-time" judges. Theoretically, this status permits the municipal court judge to maintain an office practice devoted largely to business relationships, estate planning and administration, and real estate practice, but avoids conflict of scheduling between trial court appearances as an attorney and maintenance of a court schedule as a judge. This concept further eliminates from the public awareness the role shift from opposing advocate to judge. Admittedly, however, problems arise from conflicting roles even in the office practice; frequently in negotiation of business transactions and real estate closings where there is a well-recognized adversarial interest.

Underlying all of these limitations and disqualifications is the mandate of impartiality and independence. Presumably, the part-time municipal court judge is permitted to practice within the boundaries of the municipality in which he or she sits, and except as indicated above may practice law and represent clients among the local citizenry. However, in representing clients the judge comes in contact with attorneys who may later appear before him or her in the role of judge. The variations are infinite, but the range of the problem can be appreciated by considering the following, when counsel is either the prosecutor or defense counsel:

1. Counsel represents the mortgage in a real estate transaction and the municipal court judge represents buyer or seller.
2. Counsel represents buyer or seller in a real estate transaction in which the municipal court judge represents the other party.
3. Under real estate contract of sale, counsel represents the buyer or seller who does not wish to perform and the municipal court judge represents the other party.
4. Counsel represents the insurance carrier for defendant in a civil action and the municipal court judge represents plaintiff;
5. Counsel represents one party in negotiation of a matrimonial property settlement and the municipal court judge represents the other party.
6. Counsel represents one party in a bitterly contested matrimonial action and the municipal court judge represents the other party.

Many of the limitations extend to associates of the municipal court judge. Reasons for disqualification of the judge are also set forth in Chapter X of the New Jersey Municipal Court Manual and more specifically in Rule 1:12-1 and in the Code of Judicial Conduct at 3C.

References

"Practice Limitations," Committee on Budgets, Space and Personnel, Appendix C.

Reasons for disqualification of the judge are also set forth in Chapter X of the New Jersey Municipal Court Manual and refer specifically to Rule 1:12-1 and Canon 3C of the Code of Judicial Conduct. See Appendix C.

See also Exhibit 1, Minority Opinion on Limitations on Practice.

Related Positions

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 3.5	Judicial Compensation

Position 3.5

Judicial Compensation

Municipal court judges should be paid not less than $150 a session. A session is defined as up to four hours, inclusive of both administrative and bench time. Full-time municipal court judges should be paid at an annual salary rate of 95 percent of the salary of a Superior Court Judge. This amount should act as a salary cap on the judicial earnings of a municipal court judge unless otherwise approved by the Assignment Judge.

Commentary

While the salaries of municipal court judges since 1947 are no longer dependent "on the costs they assessed against defendants they found guilty," 10 Rut.L.Rev. 659 (1956), the Task Force found that there were still considerable problems involving compensation. The Task Force found abuses such as the "bid-a-judge" concept, in which a municipality offers a municipal court judgeship to the lowest bidder rather than to the most qualified applicant.

Equally astounding and far more pervasive is the enormous disparity that characterizes judicial compensation. In order to gauge the magnitude of the problem, the Task Force authorized a study. The results revealed that even when controlling for court size and caseloads, there were substantial differences in judicial salary levels. (For details concerning the methodology and findings of this study, see the Task Force position paper entitled "Judicial and Court Employees' Salaries", Appendix C).

As more fully discussed in Position 3.2, one of the major goals of the Task Force was to encourage the development of a professional municipal court bench staffed by the most qualified people available. To assist in realizing this goal, the Task Force has recommended the promulgation of standards concerning uniform compensation levels for all municipal court judges. Achieving uniformity, however, was not the primary purpose of these proposals. Rather, the Task Force found that most judges receive inadequate salaries given the workload presented and time required by the position. It was concluded that only by establishing adequate minimum compensation levels ($150 per court session) could municipalities hope to attract the best qualified candidates for the position. The figure of $150 per court session is meant to be a minimum and is not meant to prohibit a municipality from paying a higher amount. To aid in the implementation of the minimum salary, the Assignment Judge, when reviewing municipal court budgets, should when the circumstances warrant, take appropriate action. Competitive salaries will also encourage judges to devote the required time to administrative matters connected with the position.

By simultaneously establishing a "cap" on judicial salaries, the Task Force has not attempted to inhibit the practice of holding [or accepting appointment to] multiple judgeships. However, it was decided that abuses might occur if judges were to over-extend themselves and consequently not devote sufficient time to

each court's management and administration. Therefore, the ban should not be absolute, and should be subject to waiver at the discretion of the Assignment Judge.

After balancing the competing interests in establishing minimum and maximum compensation levels, the Task Force has recommended that the salary for a full-time municipal court judge be equivalent to 95% of the salary of a Superior Court Judge i.e. 95% of $70,000 = ¢66,500. It should be noted that a raise in the salary for the Superior Court would also result in an increase in the maximum allowed for a municipal court.

The reactions of the Local Advisory Committees to the original Task Force proposals concerning compensation issues were widely divergent. While generally not disagreeing with the concept that municipal court judges should receive adequate compensation, many of the LACs expressed concern over particular recommendations. The Task Force reconsidered the proposals in light of the LAC comments and substantially modified and amended many of the original positions but held to the requirement that absent Assignment Judge waiver, salaries for municipal court judges should be caped at 95% of a Superior Court Judge's salary.

References

"Court Employees, Duties, Qualifications and Appointments," Committee on Budgets, Personnel and Space, Appendix C.

"Judicial and Court Employees Salaries" Committee on Budget, Personnel, and Space, Appendix C.

Related Positions

The following positions may be applicable in implementing Position 3.5:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 3.4	Limitations on Practice
Position 4.1	Budget Reporting
Position 4.3	Impasse Procedure
Position 4.4	Revenue Distribution

Position 3.6

Liability of Judges and Staff

To remedy the lack of civil and criminal liability coverage for municipal court judges and staff, the Legislature should amend the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 to 12-3), to include judges and staff, under chapter 10 (Indemnification) and chapter 10A (Defense of Employees). Until such time as the amendment becomes enacted, municipalities should be encouraged to pass an ordinance to provide a similar level of coverage.

It is further recommended that the Administrative Office of the Courts establish a training program to educate judges and staff on the issue of liability.

Commentary

In recent years there has been a dramatic increase in the number of civil and criminal actions instituted against judges and other judicial personnel at all levels. Under current law there exists only a qualified rather than absolute judicial immunity for judges, which is inapplicable to the judge when his action or inaction is negligent, intentional, malicious, fraudulent, or criminal.

In an opinion of the Attorney General of New Jersey, dated July 16, 1984, municipal court judges are left unprotected as to representation in any action brought against them on any grounds, with or without merit. An exception can be made if the case involves statewide questions of law or unique issues. Court clerks and other staff members on the municipal court level are also not immune from liability. Court personnel are subject to civil and criminal liability for any conduct outside the scope of their authority or when they are acting within the scope of authority but without good faith.

We therefore recommend that:

1. the New Jersey Tort Claims Act be amended to provide liability coverage for municipal court judges and staff;
2. until this amendment becomes enacted, municipalities be encouraged to pass an appropriate ordinance to provide coverage for its municipal court judges and staff; and
3. the Administrative Office of the Courts institute a training program to educate municipal court judges and staff on the issue of liability.

The reaction of the Local Advisory Committees to the proposal of liability coverage for municipal court judges and staff was one of unanimous agreement. One LAC agreed that the current system is unacceptable, but was not in favor of the Attorney-General assuming defense of municipal court judges and court staff. The reason for its objection was that this would still not address the problem of an award of attorney's fees against a judge, nor would it provide for the payment of damages assessed against court staff.

Concerning training programs the LACs fully endorsed the need for the Administrative Office of the Courts to establish on-going training programs for judges and staff in order to ensure that all court personnel are kept up-to-date on the very important issues of civil liability.

References

"Liability of Judges and Staff," Committee on Budgets, Personnel and Space, Appendix C.

See Exhibit 3, proposed amended N.J.S.A. 59:1-3.

Related Positions

The following Positions may be applicable in implementing Position 3.6:

Position 1.5	Expanded Municipal Court Services Unit
Position 3.1	Qualifications of Municipal Court Judges

Position 3.7

Municipal Court Clerk/Administrator Qualifications and Compensation

To reflect the differences in levels and amount of responsibilities and experience, the position of "Municipal Court Clerk" should be redesignated as "Municipal Court Clerk/Administrator" at three distinct levels with appropriate qualifications for each. Further, the title Municipal Court Clerk/Administrator should then be removed from the classified category of the Civil Service System (existing Court Clerks would not be required to meet the new qualifications).

Commentary

There are currently two distinct systems for selecting and appointing municipal court clerks in New Jersey. In approximately one-third of the state's local jurisdictions, including most of the larger municipalities, court clerks are hired through the Civil Service system. In these municipalities, the court clerk position is defined by a standardized job description. Candidates for this position are tested by use of standardized test instruments. Selection is then

made from a list of eligible candidates by following strictly controlled Civil Service rules and procedures. Under this system there is often no provision for input by a municipal court judge in the appointment of a court clerk.

The majority of municipalities, however, are not under the Civil Service system; instead, the selection process and appointment of court clerks is left to local personnel and is often unsystematic. In the non-Civil Service jurisdictions, appointments of court clerks usually are made by elected or appointed non-judicial municipal officials, who are not required to, and therefore rarely consult with the local municipal judge or any other judicial officer before hiring court personnel. Many, if not most, non-Civil Service jurisdictions do not state specific job descriptions for court clerks such as the required minimum education, prior experience or training, in other words, those items that would assure the appointment of qualified municipal court employees.

To ensure that qualified people are appointed and retained in Municipal Court Clerk/Administrator positions, there should be three distinct levels of Municipal Court Clerk/Administrator. The minimum qualifications recommended for each position and corresponding salaries are as follows:

Municipal Court Clerk/Administrator I $28,638.84 to $38,665.08

REQUIREMENTS

Education/Experience

A baccalaureate degree from an accredited college and two years of municipal court or comparable office management and administrative experience. Experience may be substituted for academic credits on a year for year basis.

Municipal Court Clerk/Administrator II $23,559.17 to $31,809.72

REQUIREMENTS

Education/Experience

Either: (i) a baccalaureate degree from an accredited college; or (ii) the equivalent of two years of credit from an accredited college and two years of municipal court experience; or (iii) a high school diploma or its equivalent and four years municipal court experience.

Municipal Court Clerk/Administrator III $19,381.29 to $26,170.17

REQUIREMENTS

Education/Experience

At least a high school diploma or its equivalent plus a total of two years of either college credit or administrative experience.

It should be noted, however, that the qualifications and salaries as recommended by the Task Force may require further review in order to ensure that the qualifications and concomitant salaries are consistent with recognized personnel standards and evaluation.

Court Clerks currently holding the position would not be required to meet the above education requirements. In part-time courts in which the Municipal Court Clerk/Administrator III title would be used, this salary would represent an annualized and not actual salary, amounting to an hourly rate.

The Municipal Court Clerk/Administrator I title emphasizes duties in a large size court in which other court employees would be delegated the responsibility of performing all daily court clerk functions. The Municipal Court Clerk/Administrator I would be the court manager, responsible for budgeting, staff training and evaluation, organization development, short and long range planning, and liaison with local, county, and state officials.

The Municipal Court Clerk/Administrator II would serve a mid-sized court with several court employees. While some functions would be delegated to these employees, given the limited size of the court staff, many court clerk functions would still be performed by the Municipal Court/Clerk Administrator.

The Municipal Court Clerk/Administrator III would serve, either full or part-time, in a court with no other court employees. The Municipal Court Clerk/Administrator would perform all required court administration functions but would not have staff training or personnel supervision and evaluation duties and would have only limited responsibility for planning and organization development.

The setting of eligibility requirements will help to ensure that the most qualified persons are employed in addition to discouraging nepotism and political favoritism. Current Municipal Court Clerks would be "grandfathered" into this provision.

The Local Advisory Committees felt that it was appropriate to set forth guidelines for salary ranges, that the court clerks as a whole have been grossly underpaid, and that a salary guide should indeed be adopted based on the size of the court and the length of the employee's service, including the particular municipality's right to negotiate within that frame or guide. A minority of LACs expressed concern that salary guidelines might infringe on the authority of municipalities to determine how their funds are to be spent. To avoid this infringement, one LAC recommended that any salary ranges developed be in the form of suggested guidelines.

Although the Task Force recognized the budgetary constraints in the implementation of this Position, it concluded that the best interests of the system mandates the establishment of a uniform salary structure for Municipal Court Clerk/Administrators. Methods for implementation may be found in the Budgets and Finance section of this Report, infra.

References

"Judicial and Court Employees Salaries", Committee on Budgets, Personnel and Space, Appendix C.

"Court Employees, Duties, Qualifications and Appointments", Committee on Budgets, Personnel and Space, Appendix C.

"Nepotism in the Municipal Court" Committee on Budget, Personnel and Space, Appendix C.

Related Positions

The following Positions may be applicable in implementing Position 3.7:

Position 3.8	Appointment of Municipal Court Clerk/Administrator
Position 3.9	Background Investigation for Municipal Court Employees
Position 3.10	Employment and Termination of Municipal Court Personnel
Position 4.1	Budget Reporting
Position 4.3	Impasse Procedure
Position 4.4	Revenue Distribution

Position 3.8

Appointment of Municipal Court Clerk/Administrator

The appointing authority for Municipal Court Clerk/Administrators should remain with the municipal governing body; however, consistent with Rule 1:33-4, all appointments should be made with the approbation of the Assignment Judge. Prior to appointment, as a Municipal Court Clerk/Administrator the applicant shall be required to attend and satisfactorily complete a prequalifying course, which will be administered by the Administrative Office of the Courts every 90 days throughout the state.

Upon employment, and before being deemed "permanent", Municipal Court Clerks/Administrators shall satisfactorily complete a probationary period of between 6 to 12 months. After being appointed as "permanent" any termination shall be for "just cause" only.

Commentary

As noted in earlier Positions, one of the largest problems pointed out by the 1983 Municipal Court Judges Conference was the inability of the Judiciary to attract and retain highly qualified persons. The Task Force was charged in its original mandate with the review, and where necessary, the setting of personnel standards. As such, Position 3.7 establishes title and salary structure for a Municipal Court Clerk/Administrator and this Position ensures judicial involvement in the selection procedure. In addition, all newly appointed Municipal Court Clerk/Administrators will be subject to a probationary period to allow the appointing authority to determine, based on the employee's performance, whether he or she merits permanent status. The probationary period shall commence with the first day of work and extend over a period of six to twelve months.

Furthermore, to protect a permanent court employee from arbitrary termination, the standard for firing a Municipal Court Clerk/Administrator should be for "just cause" only. Reasons for termination should be stated in writing and served upon the employee at least two weeks prior to the date of dismissal. The employee will have the right to make a direct appeal to the Assignment Judge, who, with the assistance of the Presiding Judge, will hold a hearing within twenty days to determine whether the dismissal was, for a just cause.

In addition, the Task Force recognizes the importance of the function of the appointing authorities of each municipality and is therefore recommending that the governing bodies retain responsibility for appointing Municipal Court Clerk/Administrators. However, the Task Force also recognizes the need for the Judiciary to be actively involved in this personnel process and the concomitant

need to ensure that the best qualified persons are appointed and retained. Hence, the recommendation for Assignment Judge review and approbation, the prequalifying course, and a probation period.

Reports from the fifteen Local Advisory Committees have uniformly supported this position. Comments expressed concern that court personnel have been subject to varied and inconsistent hiring practices--often being hired, fired, or promoted based on the political climate of the municipality rather than on any standard of merit or ability.

References

"Court Employee's, Duties, Qualifications and Appointments", Committee on Budgets, Personnel and Space, Appendix C.

"Nepotism in the Municipal Courts," Committee on Budgets, Personnel and Space, Appendix C.

New Jersey Administrative Code, Civil Service Rules 4:1-13.2 and .3.

See also Appendix C for detailed descriptions of the three levels of Municipal Court Clerk/Administrator.

Related Positions

The following Positions may be applicable in implementing Position 3.8:

Position 3.7	Municipal Court Clerk/Administrator--Qualifications and Compensation
Position 3.8	Appointment of Municipal Court Clerk/Administrator
Position 3.9	Background Investigation for Municipal Court Employees
Position 3.10	Employment and Terminations of Municipal Court Personnel

Position 3.9

Background Investigation for Municipal Court Employees

Prior to the appointment and hiring of any municipal court employee, the County Prosecutor should perform a comprehensive investigation of the background of the applicant. Accordingly, backgrounds of those already employed by the court should be checked and upon completion, the information should be submitted to the Assignment Judge for review and certification.

Commentary

Because of the highly sensitive and complex nature of court business and the need to assure that those involved in the judicial process are above reproach, all municipal court employees should be required to undergo a criminal records background check prior to appointment. At a minimum, the investigation should include a records check of the State Police and Federal Bureau of Investigation, as well as the records of the files of the local police department. Background checks should be conducted by the County Prosecutor and submitted to the Assignment Judge and/or Presiding Judge for his review and certification. In

some cases, the results of the investigation may be released to the appointing authority in order to ensure that only the appropriate candidate is hired.

Comments from the fifteen Local Advisory Committees were supportive of this Position with the stipulation that current Municipal Court Clerk/Administrators be exempt from background checks.

Reference

"Court Employees, Duties, Qualifications and Appointments", Committee on Budgets, Personnel and Space, Appendix C.

Related Positions

The following Positions may be applicable in implementing Position 3.9:

Position 3.7	Municipal Court Clerk/Administrator--Qualifications and Compensation
Position 3.8	Appointment of Municipal Court Clerk/Administrator
Position 3.10	Employment and Termination of Municipal Court Personnel

Position 3.10
Employment and Termination of Municipal Court Personnel

To assure the complete independence of the judicial branch of government, no person shall be hired in any part of the municipal court system if he or she is related by adoption, marriage, or blood to any elected official or other person who has appointive or hiring authority in the municipality, including the municipal court judge. This prohibition shall not extend to persons currently in the employ of any municipal court.

All municipal court employees shall serve an initial probationary period of three months, except Municipal Court Clerk/Administrators, who shall serve for six to twelve months. During their performance probationary period their performance will be evaluated prior to being granted permanent status.

Commentary

Past practice in some municipalities has been for elected officials to attempt to repay patronage or political obligations by providing employment to relatives. This process has encouraged a steady turnover of court clerks and other

personnel after each election. Such hiring and firing practices have led to unqualified persons being placed in vital positions in the municipal court system, thereby causing disruption and other problems associated with rapid turnover. Additionally, when a relative of the mayor or other important official in the municipality serves as an employee of the court in that same municipality, it often creates an appearance of impropriety in the mind of the public.

We therefore recommend adoption of a general rule against nepotism as stated below.

> No person employed in any part of a municipal court system shall be hired if he or she is related by adoption, marriage, or blood to any elected official or other person who has appointive or hiring authority in that municipality. "Relative" means any of the following relations by adoption, marriage, or blood: spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, or first cousin. Any persons currently in the employ of any municipal court system should be exempt from this prohibition. (See Exhibit 2.a)

It will be noted that a similar, although not as broad, prohibition applies also to the court vis-a-vis police departments. By Municipal Court Bulletin Letter 5-6-77, no court clerk or deputy court clerk of a municipal court may be appointed or designated if that person has a spouse, parent, or child who is or becomes a police officer serving on the force in that municipality.

Notwithstanding the foregoing, the Task Force does not wish to eliminate from the court system qualified people who happen to be related to employees of the municipality who would not in any way affect the operation or appearance of the court system. For example, the suggested rule would not apply to a relative

of a person employed in the road department, presuming, of course, that the candidate for a municipal court position was otherwise qualified.

To accommodate unforeseen events that may arise, this rule may be waived or relaxed on proper application to the Assignment Judge of the vicinage, who would review all of the facts and circumstances. Both the application and waiver will be filed by the Assignment Judge with the Administrative Office of the Courts, consistent with the existing procedure for county employees.

Both Position 3.8 and Position 3.10 have referred to the important role the Assignment Judge will play in the selection and termination of municipal court personnel. In order to more fully define this role, the Task Force has made the following recommendations:

1. Whenever possible, comity should be afforded to the governing bodies and Civil Service statutes and recognition should be made of existing negotiation units and negotiating history. The Task Force recognizes the delicate balance that exists between the separate branches of government and agrees that there should be no confrontation by the judiciary asserting its authority without good cause. The term "employee" should include all employees who are necessary and integral to the operation of the municipal court regardless of the authority by whom they are appointed.
2. The Administrative Director of the Courts should establish uniform minimum standards and conditions pursuant to the provisions of Rule 1:33-4(e) that will:
   a. Establish criteria that will constitute a threshold for entry into this area by the Assignment Judge. It would be hoped that these criteria would determine the magnitude of the problem that must exist before the Assignment Judge becomes involved with personnel

problems of the court. For example, a vacancy in the post of Court Clerk with no appointment being made by the governing body or improper acts by court personnel without full appropriate action being taken by the governing body would be sufficient grounds for the Assignment Judge to act. Further, these criteria will also provide statewide uniformity in their application so there will not be a distinction between vicinages simply because there are different Assignment Judges.

b. Once the Assignment Judge becomes involved pursuant to the above criteria, establish qualifications for appointment by using recognized personnel practices as discussed in the "Qualification and Appointment" section of this report and provide cause for discharge.

3. This Task Force recommends that whenever the Assignment Judge does choose to intervene in personnel problems, he should be assisted by the Presiding Judge. In the absence of the Presiding Judge, the municipal court judge should be involved.

The consensus of the LACs was that the municipal judge should have the responsibility and be involved in the hiring and firing processes of the court staff but, if a problem arises, the Assignment Judge, with the advice of the Presiding Judge, should have the necessary authority to resolve the situation. In addition, the LACs agreed that there was a need to develop uniform standards for determining the conditions that would justify an Assignment Judges' involvement in personnel problems on the municipal level.

References

"Hiring and Firing of Court Employees," Committee on Budgets, Personnel and Space, Appendix C.

"Nepotism in the Municipal Courts", Committee on Budgets, Personnel and Space, Appendix C.

See also Exhibit 2.a Rule 1:17-5 Nepotism

See also Exhibit 2.c Rule 1:33-4(e) Assignment Judges

Related Positions

The following Positions may be applicable in implementing Position 3.10:

Position 3.7	Municipal Court Clerk/Administrator--Qualifications and Compensation
Position 3.8	Appointment of Municipal Court Clerk/Administrator
Position 3.9	Background Investigation for Municipal Court Employees

Position 3.11

The Role of the Prosecutor

In order to ensure a complete separation of the judicial branch of government from the prosecution of a case, each municipality shall appoint a municipal prosecutor. The prosecutor will be responsible for the prosecution of all cases filed in that municipality, irrespective of whether the complaint was filed by a police officer or by a private citizen, including cross-complaint situtations. In addition, the prosecutor should have complete responsibility for providing discovery to the defendant or to defendant's counsel consistent with Court Rule.

Commentary

A central figure in the municipal court system is the municipal prosecutor. Currently, his responsibilities differ markedly among municipalities, as they have been determined by contractual agreement between the individual prosecutor and the governing body. This tendency to develop individualized contracts has led to a situation in which prosecutors are part-time and handle only a selected group of cases. Only a few prosecutors are retained to prosecute all cases filed in the

court. This lack of consistency continues through the prosecution and trial of various complaints. In some municipalities the prosecutor handles every case, including complaints issued by police officers and private citizens. In other municipalities the prosecutor handles only those complaints signed by local police officers. In other courts a prosecutor will prosecute only those complaints filed by the local police department, but only if the defendant is represented by an attorney. The general rule in the vast majority of municipal courts is that the prosecutor's involvement is limited to those complaints signed by police officers.

Further complicating the task of defining the role of the prosecutor is the lack of a clear line of responsibility. Unlike the municipal court judge and his staff, who report through an Assignment Judge to the Administrative Office of the Courts, the prosecutor reports to no one. Presumably he is responsible to the Office of the Attorney General, but that relationship is generally a tenuous one at best.

This lack of a clear and consistent role creates unnecessary problems in the municipal court. Often the municipal court judge is placed in the untenable position of assuming the role of the prosecutor, at least in a de facto sense. When no municipal prosecutor is present, the municipal court judge must question both complainant and defendant in an effort to ascertain the facts of the case. After listening to both parties, the judge makes factual determinations and enters judgement. The position of the Task Force is that such a situation should no longer be tolerated. The public should not perceive the municipal court judge to be a prosecutor, defense attorney, and judge, as well as the one who imposes the sentence. The Task Force, therefore, recommends that every municipal court have a prosecutor, charged with the responsibility of prosecuting every complaint -- whether it is filed by a police officer, a private citizen, or even if it results in a civilian cross-complaint situation. In addition, the prosecutor must also be

responsible for providing discovery, consistent with Court Rule, when requested by defendant or by defense counsel.

Although the proposal for an expanded prosecutorial role was considered absolutely essential by the Task Force, Local Advisory Committees, and others involved in this process, some of the expanded duties were the subjects of considerable debate. Specifically, the recommendation that a municipal prosecutor handle private citizen and cross-complaints was debated at Task Force, Local Advisory Committee, and Executive Committee meetings. Presented below is a brief outline of the opposing views. For a more complete discussion of the position against having the prosecutor handle citizen and cross-complaints, please refer to the minority opinion found in Exhibit 2, which is appended to this Report.

MUNICIPAL PROSECUTORS SHOULD NOT HANDLE CROSS-COMPLAINTS

Those who are against requiring a prosecutor to handle all civilian complaints (including cross-complaint situations) base their position on three arguments. It is argued that if citizens know that a prosecutor will be available, the number of citizens' complaints would increase dramatically. The increased volume of complaints could in itself become a major problem and could result in the development of even more serious backlogs in the municipal courts. It was also argued that a problem could develop if the prosecutor screens a complaint prior to its presentation to the court, determines that it is frivolous, and moves for its dismissal. The prosecutor could find himself subject to the criticism of a disgruntled citizen, who might complain to the local mayor and counsel (as well as to the County Ethics Committee and County Prosecutor's Office) that the prosecutor was unfair when he deemed the complaint to be frivolous and moved for its dismissal.

The final argument against the involvement of the prosecutor in the prosecution of civilian complaints arises in those situations in which two citizens file complaints against each other. Under the Task Force proposal, the prosecutor will review both complaints prior to the court date in order to prepare for their presentation. Many feel that this would place the prosecutor in direct conflict with the New Jersey Rules of Evidence and the Fifth Amendment of the U.S. Constitution. Further, those objecting to the proposal believe that if the prosecutor should decide to dismiss one complaint and prosecute the other, the prosecutor would then be faced with a disgruntled litigant who might then complain to the County Prosecutor, Ethics Committee, or members of the local governing body.

Those opposed to this proposal have also argued against requiring the municipal prosecutor to serve as "counsel to the court", i.e., to aid the court by presenting the facts of each case, but without the need to prosecute either complaint.

ADVANTAGES FOR HAVING A MUNICIPAL PROSECUTOR

As noted earlier, one of the primary purposes of having a municipal prosecutor handle every case is to allow the municipal court judge to divorce himself completely from any prosecutorial role. There can be no more substantive conflict than to have a judge also act as prosecutor in an effort to elicit facts necessary to determine the guilt or innocence of the parties appearing before him.

There are several other factors that support the proposal presented in this Position. Under current procedures, citizens' complaints are "prosecuted" by the complainant. Generally this entails a long recitation of facts or allegations, with minimal - if any - adherence to procedural or evidentiary rules. The result can be a record filled with evidence (such as hearsay) that would not be admissable

if counsel attempted to present it. Not being schooled in legal practice, a complainant often has no concept of trial procedure, leading to a presentation of much extraneous or irrelevant information. The presence of a prosecutor in such matters would ensure not only that basic rules of evidence and procedure are followed, but that a case is presented in an efficient and structured manner.

Integrally related to the foregoing is that a private citizen who prosecutes his own complaint oftentimes is not aware of the proofs required in order to prevail in a court of law. Absent the involvement of a knowledgeable and probing prosecutor, elements may go unpresented due to the citizen's ignorance of the law, thereby creating the danger that defendants may be unjustifiably acquitted. An experienced prosecutor presenting the same matter would not be prone to the same omissions. Finally, it should be recognized that the State has an important interest in ensuring that all complaints are prosecuted fully and fairly so that justice be done. A violation of statute or ordinance should not go unredressed simply due to unskilled presentation.

As to the problems posed in the opposing opinion, these issues have already been both addressed and resolved at the county level. The County Prosecutors have no problem determining what complains are frivolous, nor do they have any difficulty in interviewing witnesses and defendants (albeit with a knowledgeable waiver or with counsel being present) during the preparation of their cases.

In view of the foregoing, it is clear that a continuation of current practices in this area would violate the entire purpose of the Municipal Court Task Force, which is to improve the municipal courts, to institute modern procedures, and to upgrade the professionalism of all concerned. It is the conclusion of the Task Force, therefore, that municipal prosecutors are needed in all cases. Inherent in their responsibilities is the duty to review each complaint and to prosecute each case, irrespective of whether the complaint was filed by a police officer or by a

private citizen. The Task Force, therefore, recommends the adoption of this position.

References

"Role of the Prosecutor", Committee on Trials, Appendix E.

President's Commission on Law Enforcement and Administration of Justice. Task Force Report: The Courts, Washington, D.C.: Government Printing Office, 1973, 227-228, 239-240, 247, 249.

See also Exhibit 1. Minority Opinions. The Role of the Prosecutor.

See also Exhibit 2.h Rule 7:4-2(g) Proceeding Before Trial.

See also Exhibit 3. Legislation - Liability of Municipal Court Judge and Staff.

Related Positions

The following Positions may be applicable in implementing Position 3.11:

Position 2.1	Community Dispute Resolution Committees
Position 2.2	Pre-Trial Intervention on the Municipal Court Level
Position 3.6	Liability of Judges and Staff
Position 3.12	Appointment of Counsel
Position 4.3	Impasse Procedure
Position 5.2	Preparation of Complaints
Position 6.5	Plea Agreements in Municipal Courts

Position 3.12

Appointment of Counsel

1. Each municipality should submit for approval by the Assignment Judge a systematic procedure for assigning counsel that will provide attorneys sufficient time to prepare cases prior to the trial date.
2. When a defendant wishes to waive counsel on a case that may result in a consequence of magnitude being imposed by the court, the waiver should be signed and could be provided by way of a notice stamped on the complaint, i.e.,

> I have been advised by the court that I may have a lawyer appointed to represent me if I have insufficient money for a lawyer. I do not want to have a lawyer represent me, but wish to proceed with my case now.
>
> _____
> DEFENDANT

Commentary

Appointment of counsel is required when a defendant is charged with an offense that may entail "consequences of magnitude" on conviction, and when a defendant is indigent.

A "consequence of magnitude" may be defined as any sentence with a jail term, or pretrial detention, or one in which a substantial loss of driving privileges occurs or large fines can be imposed. There have been cases in which consequences of magnitude, including a jail term, have been imposed without defense counsel and without a waiver of that counsel. This should no longer be the case.

Counsel is also provided when defendant is indigent. A person is considered indigent if he or she cannot afford the cost of counsel in addition to the other defense costs such as experts or investigation. To assist the judge in the determination of indigency, the Task Force has recommended that the current form 5A (used to establish indigency) be completely revised by the Forms Committee as recommended in Position 2.7.

There are three methods for the provision of counsel: employment of a staff public defender, use of a panel of private attorneys paid on a per-case basis, and reliance on a rotational unpaid appointed counsel system. There are significant reasons that the use of unpaid private attorneys is less desirable than either of the other two systems. While this method for provision of counsel should not be forbidden, it should be discouraged. It is important that a particular organized system should be adopted. The practice currently used in some courts of assigning to defend a person facing a consequence of magnitude whichever lawyer is present in the court that day is unacceptable. Such a system can never be expected to provide adequate counsel. The particular

system chosen should be recorded with the assignment judge. This record will assure that some system has been chosen.

Procedures should be established to identify cases requiring appointment of counsel before the first court appearance whenever possible, to appoint counsel, and to avoid adjournments. Once the case has been identified as possibly entailing a consequence of magnitude, the defendant should be informed that the case requires a lawyer and that defendant should hire an attorney. In cases in which the defendant is already incarcerated, the defendant should be so notified in person. If the defendant is indigent, a lawyer should be appointed immediately. If the defendant is not indigent, he or she should be directed to retain counsel.

As in cases in Superior Court, only a defendant who affirmatively desires to appear pro se should do so. The court should never suggest or encourage a defendant to appear pro se. As uncounseled cases should be exceptional, it would be appropriate to require that a form be filed with the Assignment Judge any time that a consequence of magnitude is imposed in a case without defense counsel. The counsel that is provided must be appointed early enough in the process to allow an opportunity to prepare the case. Adequate counsel cannot be provided if a lawyer is given a case and expected to try it on the same evening. Counsel must have an opportunity to sit down and interview his client, and reflect on that interview and develop a defense. Counsel must also have the opportunity to review discovery and decide what investigation and preparation is necessary. If a system of paid or unpaid appointed counsel is employed, the lawyer will need to be appointed well in advance of the trial date. Appointed counsel will also need to be educated as to what is expected in providing adequate representation. If a staff public defender is used, the public defender must also be given the opportunity to prepare the case well in advance of the

trial date. In establishing a public defender system, it will be necessary to provide a sufficient amount of public defenders to allow proper preparation and representation in all cases. Finally, courts should remember that in appropriate cases, ancillary defense services such as investigators, experts, etc. will need to be provided. The cost of these services, as well as the cost of a lawyer's time if a paid lawyer system is chosen, is the responsibility of the municipality. The municipal government should make provision in its budget for these costs.

Comments from Local Advisory Committees were in favor of a systematic procedure for providing counsel. The LACs felt that each municipal court should have its own paid public defender, as the appointment of the public defender would eliminate virtually all of the problems that currently exist as far as the assignment of counsel is concerned. It was felt that the current system is imposing too great a burden on the bar as lawyers are being asked to accept these assignments with greater and greater frequency and no attempt is being made to have the defendant contribute to the cost of his defense. However, the question of funding such a position is of great concern, and it remains unresolved. The Task Force sets forth the Position, therefore, that each municipality maintain a systematic procedure for assigning adequate counsel.

References

"Standards and Procedures in the Appointment of Counsel" Committee on Trials, Appendix E.

"Provision of Counsel in Municipal Courts" Committee on Trials, Appendix E.

"Driving While Intoxicated Case Processing" Committee on Accountability, Appendix A.

American Bar Association Standing Committee on Association Standards for Criminal Justice. Standards Relating to the Administration of Criminal Justice: Providing Defense Services, 2d Tentative Draft. Washington, D.C.: American Bar Association, 1978, C5, pp. 1, 9, 22, 27, 33, 34.

President's Commission on Law Enforcement and Administration of Justice. Task Force Report: The Courts. Washington, D.C.: Government Printing Office, 1973, pp. 251, 282-283.

Related Positions

The following Positions may be applicable in implementing Position 3.12:

Position 3.11	The Role of the Prosecutor
Position 5.3	Advisement of Rights

Chapter 4

Budgets and Finances

Introduction

Prior to the establishment of this Task Force, most reform efforts focusing on the municipal court system attempted to resolve isolated and individual problems besetting the courts. The limitations inherent in such an approach are noteworthy. While symptoms might be treated, quite often successfully, the underlying maladies afflicting the system remain untreated. The Task Force has departed from past reform methodologies by subjecting every facet of the court system to scrutiny including the very foundations of the system itself.

One of the most important and fundamental areas examined by the Task Force involves the funding of the individual municipal courts. The significance of this issue is apparent. Unless a court is adequately funded, it simply cannot function properly. A court lacking financial resources cannot hire needed personnel, improve its physical plant, or obtain necessary supplies and equipment. The result is that the efficiency of the court suffers and backlogs develop. Severe fiscal restraints can also hamper or prevent the implementation of any reforms.

The persistent underfunding of municipal courts may in some degree result from the unique status of these courts. While they are a vital part of the judiciary, functioning under the administrative control of the Chief Justice, they are also local courts, dependent on the local governing bodies for financial support. Therein lies the root of much conflict. Municipal courts are often viewed as non-income-producing departments, notwithstanding the fact that their operation results in the channeling of money (in the form of fines and court costs) to the municipality. Despite being the municipality's sole judicial branch, the court often finds itself lodged in a "Department of Public Safety," competing for funds with the police department. While municipalities respond to demands for more police protection by hiring new officers, they sometimes appear to fail to recognize that additional officers writing additional summonses cause additional work for the court. Requests for additional court personnel are rarely enthusiastically received.

Compounding the foregoing problems are the political realities of the situation. The municipal court judge is appointed by the local governing body, and his reappointment is similarly dependent on it. The judge is therefore placed in the untenable position of seeking funding from -- and at the same time maintaining a good relationship with -- the members of this body. The inherent conflict in this situation rarely inures to the financial benefit of the court. In addition, in some municipalities the judges have little control over the budgetary process, with budget requests originating elsewhere. Even when judges are involved in the process, they are not always effective participants therein due to their unfamiliarity with this area of responsibility.

The Task Force has undertaken a comprehensive review of the budgetary and funding procedures and policies affecting the municipal court system. It has recommended a wide range of reforms that are intended to assist the courts in

procuring adequate funds with which to operate. The Task Force has not been unmindful that the municipal court is only one of many competing elements for municipal financial resources. It has concluded, however, that a municipality that has assumed the responsibility of maintaining a municipal court must similarly undertake the duty of providing adequate funding for it.

In order to aid the courts in the area of budget and finance, the Task Force has recommended that a Uniform Budget Reporting System be introduced. All courts would use the same format for establishing budget requests, thereby eliminating the many and varied formats now being used throughout the state. Judges would be assisted in the task of budget preparation by guidelines promulgated by the Administrative Office. In addition, further assistance would be forthcoming from the vicinage administrative structure (i.e., the Case Manager, Presiding Judge, and Assignment Judge) concerning any defects or deficiencies in the budget prior to its submission to the local governing body. The Task Force has also proposed the institution of a budget impasse mechanism to resolve any conflicts between the recommendations of the Assignment Judge and the municipal governing body concerning the funding of the court.

To assist the municipalities in the task of providing adequate funds to the courts, the Task Force has studied current budgetary restrictions and has recommended that municipal court operations be exempt from the limitations of the New Jersey "CAP" law, which many municipalities cite as the reason for their inability to fund the courts properly. To aid the municipalities further, the Task Force has urged that the current system of disbursing monies collected by the municipal court (i.e., fine, costs) be revised to ensure that the municipality receives a larger and more appropriate share of these funds, part of which might be used to fund municipal court operations.

Finally, the Task Force addressed one area of specific need. Recognizing that the municipal courts of the 1980s can no longer afford to operate with badly outdated technology, and cognizant of the fact that computerization of court operations can be a costly undertaking, the Task Force has proposed that part of the funds received by the municipality by virtue of municipal court adjudications be "earmarked" solely for the purpose of computerizing court procedures. State funding for the initial costs of such computerization has also been recommended.

The proposals of the Task Force in the area of budgets and funding are intended to correct problems that have long plagued the municipal court system. The serious underfunding that has hampered court operations can no longer be permitted to continue if the municipal courts are to be fully integrated into the judicial system.

Position 4.1

Budget Reporting

The Administrative Office of the Courts should develop and promulgate a uniform budget-reporting system to aid municipal court personnel and the judiciary in reviewing and comparing municipal court budgets. Incorporated within the directive will be a requirement for the Administrative Office of the Courts to collect, analyze, and report on the annual budgets of all municipal courts. The report shall include information on the average cost per weighted case.

Commentary

Systems of budget preparation and reporting vary among municipalities and fail to provide the judiciary, local government, and others interested in the operation of the criminal justice system with a basis for comparison. Examination of budgets from courts of comparable size can assist in the identification of problem areas and the elimination of budgetary deficiencies. It should be the responsibility of the Assignment Judge, Presiding Judge, and Municipal Court Judge to ensure adequate funding to the courts by taking a managerial role in the formulation, supervision, and monitoring of municipal court budgets.

It is the conclusion of the Task Force that adopting standard policies and procedures relating to the preparation of court budgets will assist in the achievement of greater efficiency, uniformity, and problem-recognition. This can be accomplished through promulgation of a Budget Directive that mandates the use of a Uniform Budget Preparation Manual. The Administrative Office of the Courts can further assist the process through a case-weighting method to determine a cost per case. This information can then be used by the Assignment Judge to determine whether the budget submission is adequate, as it represents a general guideline to determine whether the budget of a particular court is below the average for courts of similar size. Adoption of a Budget Directive and manual, supported by weighted caseload information, should assist many courts in achieving and maintaining a uniform level of funding.

The implementation of the directive would require that each municipal court judge develop a series of budget priorities and allocations. The Case Manager and Presiding Judge would then review each court budget and report to the Assignment Judge. Only after this review and approval would the municipal court judge submit his budget to the municipality's budget committee. In addition, the Administrative Office of the Courts would be available to provide other technical assistance to the municipal courts to assist the Assignment Judge and the Presiding Judge in their review of court budgets.

While some of the Local Advisory Committees agreed that the use of uniform budget forms would be desirable, some viewed uniformity as difficult to achieve due to the varying sizes and needs of the municipalities. It was further suggested that the proposed forms be revised to allow for simplicity, as well as to include costs associated with the court appearance of police officers, service of arrest warrants, salaries of municipal prosecutors and public defenders, and cost and amortization of capital expenditures. The Task Force has taken all of these

comments into consideration in setting forth procedures for a uniform budget reporting system, as reflected in the Budget Directive and Budget Preparation Manual found in the Appendix C.

References

"Budget Preparation and Approval," Committee on Budgets, Personnel and Space, Appendix C.

"Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

"Revenues and Funding," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 4.1:

Position 1.5	Expanded Municipal Court Services Unit
Position 4.2	Budget Caps
Position 4.3	Impasse Procedure
Position 4.4	Revenue Distribution

Position 4.2

Budget Caps

In order to ensure an adequate level of funding, it is imperative that municipal court budgets be exempt from the limitations of funding imposed by the "cap" law.

Commentary

The inability of a municipality to provide proper funding for its municipal court is often blamed on the growth restrictions imposed by the New Jersey CAP law. Municipalities are currently subject to imposed ceilings on budget spending. Under this law, budget increases are limited to five percent or to "the index rate, whichever is less, over the previous year's final appropriation." In practice, a municipality that has an 1984 operating budget of $2 million would be restricted in 1985 to an operating budget of $2,100,000. The departments within the municipality must then compete for a percentage or share of the increase -- with the governing body making the decision.

Unfortunately, when the municipal governing body begins to order its priorities in an effort to apportion available monies, the municipal court is frequently assigned a low priority. The resultant underfunding is the root cause for many of the problems addressed by this Task Force. The Task Force therefore recommends the removal of the municipal court budget from the CAP restrictions.

Removal of the CAP restriction on municipal court budgets should permit the upgrading and improvement of the court without hampering the growth of other departments within the municipality. Of course, there is still the political and economic problem of an increase of tax rates.

This position received unanimous endorsements by the 15 Local Advisory Committees. Many indicated that adoption of this proposal was absolutely essential to the improvement of the municipal courts.

References

"Budget Preparation and Approval," Committee on Budgets, Personnel and Space, Appendix C.

"Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

"Revenues and Funding," Committee on Traffic and Computerization, Appendix D.

See also Exhibit 3, Legislation

Related Positions

The following Positions may be applicable in implementing Position 4.2:

Position 4.1	Budget Reporting
Position 4.3	Impasse Procedure
Position 4.4	Revenue Distribution

Position 4.3

Impasse Procedure

The Assignment Judge should have the authority, pursuant to Court Rule, to ensure that each Municipal Court has sufficient funds to operate in an efficient and effective manner. Incorporated in this Rule should be a provision that allows the municipality to initiate an impasse procedure if there is a conflict concerning funding between the recommendation of the Assignment Judge and that of the governing body of the municipality.

Commentary

Assurance of adequate funding is the cornerstone process of improving the municipal courts. Earlier Positions set forth methods to prepare and compare municipal budgets for the purpose of setting minimum requirements for each court. This Position proposes a procedure for Assignment Judge review and effective recommendation of an adequate funding level for each municipal court within the vicinage.

Currently, municipal court judges submit their budgets to the Assignment Judge for review, recommendation, and approval. Upon approval, the municipal court judge then submits the budget to the governing body, which then adopts the budget after making any changes. These changes usually translate into budget cuts. Any discussions over disagreements between the needs of the court and the desires of municipalities are conducted on a haphazard basis. No uniform or formal procedure is followed, and the final budget is often the product of informal coaxing rather than of any objective, methodological approach. Unfortunately, negotiation of budget matters is currently subject to the final discretion of the municipal governing body, which frequently assigns a lower priority to court needs than to other municipal functions. The court has no effective method of compelling expenditures to maintain even barely adequate operation. This problem can be addressed by a fair and uniform impasse procedure similar to that currently operating at the Superior Court level.

Procedurally, the budget process would remain much the way it currently exists except that after the municipality has finished its budget review, the Assignment Judge could make an effective recommendation for change to the governing body no later than 14 days after the municipality has introduced the budget for first reading. The municipality would than have ten days to appeal the recommendation. Failure to appeal would result in the recommendation of the Assignment Judge becoming a final order. The filing of an appeal would trigger the impasse procedure -- procedure that is exactly the same as used by the Superior Courts to resolve budget conflicts with county governments. (See Rule 1:33-9 in Exhibit 2.d for complete details).

The procedure developed at the Superior Court level establishes a three member panel designated by the Chief Justice. Similarly, the panel for the impasse procedure proposed herein would consist of three members, including an Appellate Division Judge (sitting or retired) as chairman, plus two other members,

one of whom should be a Certified Municipal Accountant and the other, a judge or other qualified person. Upon review of all testimony, whether written or oral, the panel submits its findings to the Supreme Court.

This impasse resolution procedure was debated by members of some Local Advisory Committees. While most were strongly in favor of it and pointed to the need to maintain a separation of powers and to insure adequate funding for the court, a minority felt that there might be opposition to the Assignment Judges' exercise of such authority. The position of the Task Force, after due consideration of all LAC arguments, was that a reliable funding method is paramount importance to the municipal courts, and can be assured only by the adoption of this recommendation.

References

"Budget Preparation and Approval," Committee on Budgets, Personnel and Space, Appendix C.

"Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

"Revenues and Funding," Committee on Traffic and Computerization, Appendix D.

See also Exhibit 2.d, Rule 1:33-9, The Assignment Judge's Authority in the Review of Administrative Recommended Dispositions.

Related Positions

The following Positions may be applicable in implementing Position 4.3:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 3.8	Appointment of Municipal Court Clerk/Administrator
Position 4.1	Budget Reporting
Position 4.2	Budget Caps
Position 4.4	Revenue Distribution

Position 4.4

Revenue Distribution

The current method of dispensing monies collected by the municipal court to the State, County, and municipality should be re-evaluated to provide for a more uniform distribution of revenue among municipalities. It is further recommended that the re-evaluation consider whether a portion of the revenues should be "earmarked" for municipal court operations prior to any other distributions. In addition, court costs should be increased to not more than $25, to reflect more closely the actual costs incurred by the court in processing a case.

Commentary

During 1982 two pieces of legislation were enacted that have dramatically affected the revenues collected by the municipal courts and the distribution thereof to the state, county, and municipal governments. These modifications to Title 39 (New Jersey Motor Vehicle Code) increased the penalties for many motor vehicle offenses (effective September 12, 1983), and affected the distribution of revenues

collected providing to the municipality a portion of the revenues formerly distributed to the county.

Traditionally, the revenue-distribution scheme for traffic matters provided revenues to the municipality through court costs (a maximum of $15.00) and fines that were assessed and collected from violations of municipal ordinances. If the complainant was a state trooper, fines were forwarded to the state. If the complainant was not a state trooper, the fines went to the county.

The 1982 revision to Title 39 attempted to give a greater share of the fine to the municipalities by reducing the amount paid to the county and by increasing motor vehicle penalties. Upon implementation, it was ascertained that the municipality did not benefit at the same rate as the state. In fact, an analysis of the revised revenue distribution schema (see chart below) reveals that although revenues distributed to the municipalities actually increased by 44% in 1983 (compared to 1981), the actual percentage share decreased by 1%, from 62% in 1981 to 61% in 1983.

3 COUNTY TOTALS:	1981		1983		
		% Share of Total Collections		% Share of Total Collections	% Revenue Increase Since 1981
STATE	1,074,000	9%	2,488,000	14%	132%
COUNTY	3,551,000	29%	4,598,000	25%	29%
MUNICIPALITY	7,675,000	62%	11,052,000	61%	44%
TOTAL	12,300,000	100%	18,166,000	100%	48%

In addition to the municipality not realizing its percent share of the increased revenue, the amount of court costs has remained static. For instance, prior to September 1982 (the effective date of the increase penalties), the typical

penalty for many moving violations such as careless driving, speeding, or disregard of a traffic signal was between $20 and $25, with court costs of $10 being included. Thus, the municipality received between 40% to 50% of the total penalty with the balance being distributed to the state. After the increased penalties in September 1982, the typical penalty for the same offenses became $60, with the municipality still retaining $10 as court costs and the balance of $50 being distributed to the state or the county. In other words, when penalties were lower, court costs represented about half of the total amount collected; when penalties increased, with court costs remaining frozen at $10, these costs now represent a smaller percentage of the total payment (about 17%). Further, court costs do not accurately reflect the length and difficulty of cases that are brought to trial. A lengthy trial for a serious motor vehicle offense clearly costs the court more than a short trial on a minor motor vehicle offense.

The lack of consistency and predictability in the distribution scheme and court costs is troublesome. There needs to be a higher degree of uniformity in the distribution of revenues without regard to the philosophy behind the distribution scheme. Accordingly, it is the recommendation of the Task Force that the revenue distribution scheme for Title 39 revenue should be re-evaluated and amended so as to provide for the more uniform distribution of revenue among the municipalities. During re-evaluation, the Task Force recommends that consideration be given to "earmarking" specific revenues to help fund the municipal court. The Task Force takes note of legislative precedent used to fund other agencies such as:

1. N.J.S.A. 39:4-50 provides for a $100 surcharge on DWI convictions to be used for an enforcement program and for administrative expenses.

2. N.J.S.A. 2C:43-3.1 provides for additional penalties to be imposed for all criminal convictions, to be used by the Violent Compensation Board in satisfying claims and for administrative costs.

3. N.J.S.A. 39:6B-3 provides for all revenues collected relating to driving without insurance to be deposited to a specific fund administered by DMV, to be used for enforcement of the compulsory motor vehicle law and for administrative expenses.

By earmarking funds for the administration of the municipal court, the court can be assured of a reliable and relatively constant source of funds. In addition, court costs, particularly for the more serious Title 39 offenses, should be increased to reflect more closely the actual cost incurred. It has been suggested that $25.00 would be an appropriate amount.

The Local Advisory Committees supported increasing court costs, especially for more serious Title 39 offenses. It was indicated that although costs should more accurately reflect the length and difficulty of cases, the amount of time needed to dispose of DWI cases could amount to hundreds of dollars. Therefore, while it is not feasible to attempt to set court costs to reflect the real costs borne by courts in processing cases, an increase is warranted.

References

"Budget Preparation and Approval," Committee on Budgets, Personnel and Space, Appendix C.

"Budget Ratio," Committee on Budgets, Personnel and Space, Appendix C.

"Revenues and Funding," Committee on Traffic and Computerization, Appendix C.

Related Positions

The following Positions may be applicable in implementing Position 4.4:

Position 4.1	Budget Reporting
Position 4.2	Budget Caps
Position 4.3	Impasse Procedure

Chapter 5
Trials and Case Processing
Introduction

A network of local courts of limited jurisdiction has existed in this state since colonial times. The modern municipal court system, however, is a product of the 1947 Constitution, which restructured the entire judiciary. Until 1947 the local court system consisted of police courts or magistrate courts, staffed primarily by non-lawyer judges. In the absence of an effective administrative structure, these courts functioned largely autonomously, with procedures and policies concerning all aspects of court operations differing from court to court. In addition, there was an attitude that many of the procedural requirements of the upper courts had no place at the local level. Instead, the magistrates' courts were viewed as places in which minor matters could be handled on a quasi-informal basis. The low public esteem in which these courts were held was perhaps not wholly unjustified.

Since 1947, however, there has been increasing recognition of the vital role that these courts play in the judicial structure. While in 1948/49 these courts

handled 559,497 complaints, this number grew to 4,234,533 by 1983/84. In contrast, all of the upper courts combined handled only 1,447,380 cases in the most recently completed court year. Accordingly, there was a realization that it was the municipal court that most people had any contact with, and that an citizen's experience there often had a profound effect on how he viewed the functioning of the entire judicial system. In addition, the stature of the municipal court system was further enhanced as its jurisdictional limits were increased and as various penalty provisions were made more severe. Whereas, at one time, only minor matters were adjudicated locally, the jurisdiction of the municipal courts now includes many serious matters such as domestic violence cases. Municipal courts also have the authority to impose serious penalty provisions, including substantial fines, lengthy license revocations, and significant jail sentences.

Many of the prior reforms in the municipal court system have focused on establishing higher qualifications and educational programs for judges and other court personnel. The recommendations of the Task Force in other portions of this report continue and expand these efforts. While the increasingly professional caliber of the municipal court bench is a major accomplishment, the Task Force also concluded that it is only a part of the necessary solution. Equally important is the upgrading of the policies and procedures utilized in the municipal courts (especially in the areas of trials and case processing), to a level more consistent with those in the upper courts. Such improvements are mandated by both the nature and the volume of the municipal court caseload. Procedures that at one time might have been deemed acceptable for handling minor matters are no longer sufficient, particularly given the serious offenses adjudicated at the municipal court level, as well as the potential for the imposition of substantial penalties.

In view of the foregoing, the Task Force has scrutinized the policies governing each step in the municipal court trial process, from the preparation and filing of the complaint to the appeal from a municipal court decision. The recommendations presented herein are intended to promote uniform and more professional trial practices throughout the municipal court system. Guidelines have been prepared to assist the municipal courts in areas such as the setting of bail, the advisement of rights, and the provision of language interpreters/translators. Moreover, the independence of the judiciary has been strengthened by the proposal to shift the task of complaint preparation to the executive branch (i.e., the police), where such a responsibility properly belongs. Finally, the Task Force has recommended that the present appeal system (trial de novo) be eliminated in favor of procedures that recognize the enhanced professionalism of the municipal court bench.

Position 5.1

Costs and Service of Bench Warrants

The current method of summoning a defendant into court is satisfactory, practical, and economical, except when the court is forced to serve a warrant for a defendant's arrest. Whenever the court issues a warrant for a defendant who has failed to respond to a summons, the court should have the discretion to impose costs in an amount up to $100.

Commentary

The service of a traffic or criminal complaint upon a defendant is controlled by Court Rule. In cases such as parking offenses, the summons is affixed to the defendant's vehicle, thereby completing service. In moving violations the defendant is considered to have been served in-person when handed a copy of the ticket by the police officer. At other times circumstances require that a defendant be served a copy of the complaint by regular mail.

The system becomes financially inefficient, however, when a defendant is notified to appear in court to answer a complaint and subsequently fails to do so.

The court then issues a bench warrant for the defendant's arrest, which requires the warrant to be served personally on the defendant by an appropriate police officer. The defendant is then placed into custody, processed, and brought into court to answer both the original charge, as well as a contempt of court charge for failure to appear. Whenever this occurs, the recovery of the cost by the municipality for increased work by court staff and the police department simply does not occur. So that the assessment of costs more accurately reflects the actual cost of service, the Task Force recommends that a cost of up to $100 should be imposed on the defendants requiring this additional service.

The Local Advisory Committees concurred with the need to increase court costs as discussed above. They agreed with the conclusion of the Task Force that while the court is not a profit-making entity, the court should be entitled to recover the cost of its operation by assessing costs more closely related to actual expenditures.

Reference

"Service of Process in Municipal Courts," Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 5.1:

Position 4.4	Revenue Distribution
Position 5.2	Preparation of Complaints

Position 5.2

Preparation of Complaints

In order to ensure the independence of the judiciary, court clerks and deputy court clerks should be directed to cease the preparation of criminal complaints. This function is the inherent responsibility of law enforcement and should be performed by its personnel.

Commentary

In the majority of municipal courts, it is common practice for the court clerk to prepare all criminal and quasi-criminal complaints originating within that court's jurisdiction. There is no formal or specific authority placing this responsibility within the job specifications of the court clerk. In fact, this procedure is improper and, at the very least, creates an appearance of impropriety.

To warrant the respect and confidence of the public, our judicial system must operate with integrity and with the highest ethical standards. These common objectives are compromised, however, when court personnel aid police officials in complaint preparation. It leads the public to believe that they are

being charged, tried, and possibly convicted by the same agency. This procedural anomaly places the court in an adversarial role in the eyes of the public.

The need for an absolute separation of authority has been supported historically by the Supreme Court. As noted in the New Jersey Municipal Court Manual,

> "It is important that law enforcement and police tasks be completely separate from those of the judiciary. It is, therefore, the policy of the Supreme Court that persons who perform any court duties or functions must not perform any duties or functions for the police and vice versa. The Municipal Court Clerk and Deputy Court Clerk must be a neutral and detached Judicial Officer. State v. Rutolo 52 N.J. 508 (1968). Thus, each Municipal Court Judge is urged to take the precautions necessary to prevent any false conclusions in the public mind that the court clerk is an adjunct of law enforcement agencies rather than a separate and independent official." (N.J. Municipal Court Manual, Sep. 1983, p. 6)

Accordingly, it is imperative that the responsibility of preparing all criminal and quasi-criminal complaints be transferred from municipal court personnel to the appropriate law-enforcement agency. In most cases that agency will be the local police department, which should prepare all criminal and quasi-criminal complaints, including those filed by civilians.

Each Local Advisory Committee agreed with this recommendation in theory, although several expressed concern over the actual practice. The police members of the Local Advisory Committees indicated they lacked the resources and staff necessary to perform such duties. The Task Force is cognizant of the impact this change will have on those agencies, but it determined that this procedural revision is absolutely essential to preserve the integrity of the court. In recent years, the municipal courts have become increasingly professional, and it is clear that implementing recommendations such as the foregoing will be necessary if this progress is to continue.

Although the Task Force finds it inappropriate to compromise on this critical issue, it is sympathetic to the needs of the law-enforcement agencies. Therefore, to ensure an orderly transition, preparation time should be provided to allow these agencies to develop, with the assistance of the County and local Prosecutors, sound guidelines and procedures to implement this function. The roles of the municipal and County Prosecutors can be increased so the police are not placed in the position of seeking advice from the municipal court judge and staff. The Task Force also suggests ongoing training programs for police personnel to ensure that this important procedure will be implemented properly.

Reference

"Complaints Preparation," Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 5.2:

Position 3.11	The Role of the Prosecutor
Position 5.1	Costs and Service of Bench Warrants

Position 5.3

Advisement of Rights

It is the responsibility of the municipal court judge to ensure that each defendant is advised of his rights and completely understands their meaning and implication.

Commentary

While every aspect of a trial is important, one of the most crucial stages is advising each defendant of his rights. This issue raised considerable controversy among Task Force members and the Local Advisory Committees.

The procedure regarding the advisement of rights is governed by Rule 3:4-2, which states in part that the judge shall inform the defendant of the charge made against him, of the right not to make any statements as to the charge against him, and that any statement by him may be used against him; of the right to counsel, or, if indigent, of his right to have counsel furnished without cost. Rule 7:6-7 requires advice to the defendant that a record of conviction will be sent to the Director of the Division of Motor Vehicles of the

state where the defendant received his license to drive, to become a part of his driving record.

The Task Force concluded that it was of paramount importance that each defendant be advised of his rights, as many charges carry serious penalty provisions including incarceration, monetary fines and restitution, and driver's license revocation. Since the rights involved are so basic and fundamental to the concept of justice, any waiver of same must be made intelligently and knowingly, with full appreciation for what is being waived. It is vital, therefore, that defendants be fully and completely advised of what these rights are.

While few disputed the necessity of informing the defendant of his rights, a great deal of controversy arose among Task Force, Local Advisory Committee, and Executive Committee members as to the format to be recommended for such advisement. A position paper written by the Trials Committee proposed that the aforementioned rights should be given to each defendant individually. Supporters of that recommendation expressed the view that it was the only way to ensure that the rights were heard and understood by each defendant. Opponents of the recommendation took the position that although the advisement of rights is important, advising each defendant individually in high volume courts was impractical as it would be too time-consuming.

The Task Force submitted this issue to the Executive Committee to resolve. After careful study, the following language was adopted:

> It is the responsibility of the municipal court judge to inform each defendant individually of his rights prior to the hearing. In cases not involving consequences of magnitude, it shall be sufficient that the defendant has been so advised of his rights by an approved general announcement of those rights at the commencement of the court session and upon his first individual appearance before the court, the defendant acknowledges orally and individually that he has been so advised of his rights, that he understands them, and that after having been offered the right to have them repeated by the court he waives that right. The court must decide prior to each hearing which cases involve consequences of magnitude.

It will also be incumbent upon the court to continue to abide by the notification requirements of Rule 7:6-7, as noted above.

The above-recommended approach will ensure that all defendants, particularly those facing possible consequences of magnitude, will be effectively informed of their rights. At the same time, it provides that this advisement can be done in an expeditious manner, so as to avoid unnecessary repetition and delay. Whatever extra time may be necessitated by this procedure is more than justified by the paramount importance of guaranteeing that every defendant be advised of his fundamental rights.

References

"Conduct of Trials", Committee on Trials, Appendix E.

Supreme Court of New Jersey Advisory Committee on Judicial Conduct, Do. No. ACJC 84-20.

Related Position

The following Position may be applicable in implementing Position 5.3:

Position 5.4 Language Interpreters and Translators

Position 5.4

Language Interpreters and Translators

The Courts must be equally accessible to all persons regardless of their ability to communicate effectively in English. It is the responsibility of the court to provide qualified interpreters where necessary.

Commentary

Not all people who appear in the Municipal Courts are able to speak and understand the English language. Currently N.J.S.A. 2A:11-28 and 2A:11-29 provide for the appointment and compensation of spoken-language interpreters in the courts. Unfortunately, however, the current practices regarding language interpreters is less than adequate. The fundamental problem is that translation services are not being provided at a competent level.

In 1980, the Census projected that 14.7% of New Jersey's residents five years old or older speak a language other than English at home; at least 6% of all residents speak Spanish at home, 3% speak Italian, 1% speak German, and another 1% speak Polish. There is considerable diversity among the counties in terms of

the presence of linguistic minorities. Hudson County, for example, is 26% Hispanic. These statistics only hint at the number of languages that appear in New Jersey's Courts.

Currently, there are no standards for selecting and appointing interpreters, nor are there guidelines regarding policy and procedures to be followed in the rendering of interpretive services. In fact, many courts do not have interpretive services at all. These problems, in conjunction with the case of Alfonso v. Board of Review, 89 N.J. 41 (1982) (which observed that "administrative and humanitarian considerations would warrant the use of bilingual documents," and "although bilingual or multilingual notices may in some instances be desirable, their use is not constitutionally required,") prompted the formation of a Supreme Court Task Force on Interpreter and Translation Services. Headed by the Honorable Herbert S. Alterman, J.S.C., this Task Force is due to issue its report to the Supreme Court during the summer of 1985.

It is the position of the Municipal Court Task Force that equal access to the courts for linguistic minorities is essential to ensure fundamental fairness. Hence, it is the responsibility of the municipal courts to provide qualified interpreters for all trial participants in need of them. Furthermore, the final report of the Interpreter and Translator Services Task Force should be reviewed and the recommendations contained therein made available to all municipal courts.

Reference

"Conduct of Trials," Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 5.4:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 2.7	Municipal Court Forms
Position 3.11	The Role of the Prosecutor
Position 3.12	Appointment of Counsel
Position 5.3	Advisement of Rights

Position 5.5

Abolishment of Trial De Novo

When deciding a municipal court appeal, the Superior Court should be bound by the same standards of appellate review as exist for appeals to the Appellate Division from the Law Division.

Commentary

Simply stated, an appeal that is heard de novo is a new trial on the record. It allows the Superior Court judge to reconsider completely the testimony and/or replace the findings of the municipal court judge with his own findings of fact. When the Municipal Court system was established following the 1947 Constitutional Convention, there were two reasons for requiring appeals to be heard de novo. First, the municipal court was not a court of record, and therefore the Superior Court could not review earlier proceedings. Second, municipal court judges were often laymen and not viewed as professionals, whose findings of fact could be accepted without question. The overwhelming majority of the bench was staffed by either police recorders or by lay (non-attorney) magistrates. It was,

therefore, considered essential for the Superior Court to be able completely to review an appealed case and, if necessary, to call for additional testimony and to be able to substitute findings of fact for those of the municipal court judge.

During the past twenty years, the quality and professionalism of the municipal court bench has improved dramatically and today every sitting municipal court judge, with but one exception, is an attorney. In addition, by Supreme Court order, since September 1, 1975, every municipality has had to provide sound recording equipment, thereby resolving the second problem that the de novo trial was meant to correct. In the vast majority of cases, the decision on an appeal is now made after the Superior Court judge reviews a written transcript and exhibits of the initial trial and considers arguments presented by the attorneys. For these reasons, it is now appropriate to change an archaic system by changing the procedure for appealing a municipal court judgment.

With regard to the review of factual determinations, the Task Force recommends that the standards in the Appellate Division governing the review of Law Division matters should be applicable to the review of municipal court decisions on appeal to the Law Division. In essence, such a standard would require determining "whether the findings made [below] could reasonably have been reached on sufficient credible evidence present in the record... considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge on their credibility." Close v. Kordulak, 44 N.J. 589, 599 (1965). In addition, the reviewing court would, of course, be empowered to correct any errors involving questions of law.

The fifteen local advisory committees reviewed and concurred with the recommendation to abolish trial de novo. Not one local advisory committee reported a desire to retain the existing system.

References

"Abolishment of Trial De Novo," Committee on Administration, Appendix B. See also Exhibit 2.f, Rule 3:23-8, Hearing on Appeal

Related Position

The following Position may be applicable in implementing Position 5.5:

Position 1.1 Vicinage Presiding Judge - Municipal Courts

Position 5.6

Bail Procedures

The purpose of bail is to ensure the presence of the defendant at every stage of the judicial hearing. Any other use, except that authorized by law, would be arbitrary and capricious.

Commentary

The Task Force recognizes that the intent of bail and its applications are governed by Court Rule and case law. However, the membership expressed the need for the following issues to be re-enforced:

1. Bail should be used only to ensure the presence of the defendant at each stage of the proceeding; and
2. Court Clerks, Deputy Court Clerks, and police personnel should be permitted to set bail only in the absence of the judge.

Court Rule 3:26-1 sets forth:

> all persons, except those charged with crimes punishable by death when the prosecutor presents proof that there is a likelihood of conviction and reasonable grounds to believe that the death penalty may be imposed, shall be bailable before conviction on such terms as, in the judgement of the court, will insure their presence in court when required, having regard for their background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention. .

New Jersey courts have long recognized the purpose of bail as a means to ensure the presence of the accused at all proceedings prior to and including trial. The concept of bail is a critical component of the Criminal Justice system; "as such it is not to be denied merely because of the Community's sentiment against the accused nor because of evil reputation."[1]

Inherent therein is the recognition of the presumption of innocence and that an accused released on bail should be able to develop his case because he is at liberty to contact witnesses, gather supportive evidence, and freely consult with counsel. Finally, as stated in the case U.S. v. Edwards, 420 A.2d 1321, 1330 (D.C. app. 1981), "The traditional right to freedom before conviction permits the unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction."

It is imperative, therefore, that the practice of setting bail be consistent with Court Rule and be uniform statewide. The present policy as set forth in Rule 7:5-3 states in part: "In the absence of the judge, a person arrested and charged with a non-indictable offense which may be tried by the judge, may, before his appearance before him, be admitted to bail by the Clerk of the Court; and in the absence of the judge and the clerk, may be admitted to bail by any other person authorized by law to admit persons to bail other than the arresting officer, designated for such purposes by the judge."

Although it is expressly pointed out in the Rule, investigations revealed certain abuses and non-compliance is occurring. The Task Force, therefore, urges that each Municipal Court Judge properly admits defendants to bail consistent with the prescribed Rules.

References

1 Carbo v. United States, 82 S.Ct. 662,665, 7 L. Ed. 2d. 769,773 (1962).

"Bail Procedures," Committee on Trials, Appendix E.

Related Positions

The following Positions may be applicable in implementing Position 5.6:

Position 1.1	Vicinage Presiding Judge - Municipal Courts
Position 2.6	Case Processing

Chapter 6

Accountability and Special Issues of Public Interest

Introduction

Throughout the Task Force's report, there are constant reminders that municipal courts are the "people's courts", and that the primary reason for maintaining the present system of permitting municipal court judges to be appointed and financed by local governing bodies is to keep the court close to the people. If municipal courts are truly people's courts, the municipal courts must be both responsive and accountable to the needs of the people, subject to the strictures imposed by the United States and New Jersey Constitutions, New Jersey statute and Court Rules. In a sense, every recommendation emerging from the Task Force in some matter relates to the public. This chapter deals with six specific problems that currently affect the public in a tangible manner and that influence the public's perception of the courts.

One of the items of public concern is the handling of cases arising from acts of domestic violence. The inability of the police and courts to deal with this problem in a satisfactory manner has subjected the court system to considerable

public criticism. A number of recommendations involving the transfer of jurisdiction to the Superior Courts, the modification of existing procedures, and the establishment programs to aid in the training of police, court staff, and judges should result in an improved system for adjudicating domestic violence cases and should accordingly help restore public confidence in the judicial system.

Secondly, a number of factors, including campaigns by such organizations as RID and MADD, have resulted in the highlighting of cases involving intoxicated motor vehicle drivers. The public is concerned not only with the imposition of just sentences, but also with the speedy adjudication of these cases so that those convicted are removed from the road and participate in rehabilitation programs pursuant to mandatory penalty provisions. This chapter contains recommendations that, if adopted, could meet the public's concerns.

The third matter considered in this chapter is the interest of the public in the sentencing process. Frequently, cases that are highly publicized attract the attention of the public, both in the proceedings and in the sentence imposed by the court. Unjustifiably harsh or lenient sentences are unacceptable, because an accused is entitled to equal treatment under the law and each sentence must be imposed in accordance with statutory standards. The sentencing process must maintain the appearance of justice if the public is to retain its confidence in the judicial process. Recommendations to promote justice and public confidence in the judicial process are presented in this section.

The fourth subject researched in this chapter is the treatment accorded victims and witnesses. Insensitivity to the needs of both victims and witnesses results in alienating these parties, losing their cooperation, and at the same time creating an impression of a lack of concern and fairness on the part of the court. Recommendations for improvement in this area are presented.

The last topic appearing in this chapter involves the problem of public access to municipal court records. The public and the press are concerned with what the municipal courts are doing. Their respective concerns sometimes result in a conflict between the public's right to know and the justifiable right to privacy of parties, witnesses or others involved in the judicial process. This problem is addressed and proposals are offered for its solution in this chapter.

Position 6.1

Domestic Violence

The role of the municipal courts in handling Domestic Violence matters should be consistent throughout the state. Consistency requires uniform statewide procedures for the administration and enforcement of the "Prevention of Domestic Violence Act," N.J.S.A. 2C:25-1 to 16.

Commentary

The fact that domestic violence is not only prevalent in our society but is also an extremely serious social problem with criminal overtones has only recently received any degree of attention. Effective April 9, 1982, the New Jersey "Prevention of Domestic Violence Act" provides for granting emergency relief in the courts, including municipal courts, for victims of domestic violence. Relief includes court orders barring the abuser from the household, the awarding of temporary custody of minor children, and the mandatory payment by the abuser to the victim of medical, legal, and other expenses.[1]

Although New Jersey is one of the leaders in recognizing the seriousness of domestic violence, there remains room for improvement in handling these matters. Given the extremely delicate, as well as serious, nature of these cases, it is imperative that all court personnel, including judges and clerks, apply new techniques to improve the courts' accountability for the proper administration and enforcement of the "Prevention of Domestic Violence Act." Implementation of this recent legislation has not been uniform within the court system. Recognizing the special circumstances involved with domestic violence cases, the Task Force, backed by the Local Advisory Committees, recommends that consistent procedures be adopted on a statewide basis to handle domestic violence matters more effectively.

The Task Force specifically recommends procedures that require the Family Court, rather than the municipal court, to hear all applications for temporary restraining orders except in emergent situations; make available family crisis intervention counselors to speak with victims; develop uniform contempt procedures; train municipal court judges and police officers in sensitive areas of domestic violence; require the Family Court to hear domestic violence-related criminal cases; require statistical reporting by the Administrative Office of the Courts to indicate whether counseling was voluntary or mandatory; ensure access by judges to reports on and records of domestic violence complaints; and develop guidelines for use by police officers to secure compliance with the law.

Reference

1 "Domestic Violence Relief in Municipal Court," Committee on Accountability, Appendix A.

Position 6.2

Processing of Drunk Driving Cases

The Municipal Courts should use special procedures in processing DWI cases to meet the statewide goal of disposition in 60 days and to prevent case backlog.

Commentary

In recent years, public concern about the safety hazard of drivers operating motor vehicles under the influence of alcohol or drugs has been reflected in the passage of stricter laws to deal with offenders (including more severe minimum mandatory penalties), and in increased enforcement efforts. Last year, a total of 41,801 DWI cases were filed in the Municipal Courts.

In order to respond to the thousands of cases and dispose of them as efficiently as possible a statewide program to reduce delay in DWI case processing has been in effect since last year, by order of the Chief Justice. The program sets a goal of disposition of DWI cases in 60 days, requires monthly statistical monitoring of DWI case age, and makes available to courts backlog reduction

grants for extra court sessions. In light of this goal the Task Force makes the following specific recommendations for procedures in handling DWI cases:

1. The certification of all breathalyzers must occur on a monthly basis. If State Police resources are insufficient for this task, alternative procedures must be adopted.
2. Adjournments should be granted only when unusual circumstances exist. Procedures for resolving scheduling conflicts must be established. (See Position 2.3 and 2.4)
3. Municipal courts should establish stand-by policies for holding special DWI sessions when a backlog appears likely.
4. Court clerks should give special attention to DWI cases at all stages.
5. Warrants issued for DWI matters should be given priority attention to ensure that those charged have their cases adjudicated promptly, and that those found guilty are removed from the roads and, when appropriate, referred to alcohol rehabilitation programs.
6. Municipal prosecutors should be assigned the responsibility of processing and moving of DWI cases, including securing the appearance of witnesses and responding to discovery requests. (See Position 3.11)
7. Arraignments should serve to inform the defendant not only of the specific charges, but also of the seriousness of this particular offense. In addition, arraignments should provide an opportunity to review the issue of need for and availability of counsel.

These procedures will assist the municipal court system in the processing, hearing, and adjudication of DWI cases in an efficient and professional manner.

The provisions presented in this Position were generally endorsed by the 15 Local Advisory Committees. There were, however, some concerns over the requirement for the prosecutor to be in charge of providing discovery. After due consideration, the Task Force concluded that since Position 3.11 calls for the prosecutor to spend more time in the court, he would be able, without undo hardship, to assume the duty of providing discovery.

Reference

"DWI Case Processing," Committee on Accountability, Appendix A.

Related Positions

The following Positions may be applicable in implementing Position 6.2:

Position 2.3	Conflicts in Scheduling
Position 2.4	Postponements
Position 2.11	Evaluation of Calendar Performance
Position 3.11	The Role of the Prosecutor

Position 6.3

Sentencing Issues

A convicted offender is entitled to equal treatment under the law, and uneven sentencing practices can endanger that right. To ensure that each defendant is treated equally in municipal court, where the range of sentencing options is broad, the Administrative Office of the Courts should:

1. establish a committee of Municipal Court Judges and representatives from the Administrative Office of the Courts to study sentence disparity and to develop a monitoring system to ensure compliance with mandatory sentence provisions,
2. study the feasibility of creating a statewide criminal history sheet for all offenders, and
3. develop a more intensive effort in the area of judicial education.

Commentary

In 1984, there were 386,511 criminal complaints filed in municipal courts statewide. Of those defendants convicted, 17,015 were incarcerated, 8,168 were

placed on probation, and 10,563 received suspended sentences. During the 1984 court year jail sentences increased by 18.5% over 1983, while probation and suspended sentences decreased substantially.

For a defendant convicted of a criminal or quasi-criminal offense, sentencing becomes the most crucial aspect of the judicial process. The options available to the municipal court sentencing judge generally range from suspended sentences to application of the maximum penalty (six months in jail and $1,000 fine) provided by law.

In 1978, the New Jersey Legislature enacted the Code of Criminal Justice, which provides for "degrees" of crimes and "grades" of disorderly persons offenses, resulting in the displacement of previous standards based on decisional law. A goal of the 1978 Code is to ensure greater uniformity in sentencing by limiting the discretion of the court. To accomplish this, the code established a range of permissible sentences for each degree of crime, and creates presumptive terms of imprisonment. The Code's sentencing structure also includes certain mandatory punishments, discretionary "extended terms of imprisonment," and dispositional alternatives.

The Code of Criminal Justice falls short of its goal, however, when addressing issues involving the municipal courts and the offenses cognizable therein. For example, one of the only disorderly or petty disorderly persons offenses that mandates incarceration for a fixed period of time is for defendants convicted of a third shoplifting offense. Sentences for most of the remaining offenses are left up to the discretion of each judge within the broad parameters of the Code. The resulting sentencing disparity is of major concern to the municipal court judges.

Undue sentence disparity has also long been a matter of concern at the Superior Court level, and the judiciary has experimented over the years with

instituting sentencing guidelines and educational programs. Recently, the Supreme Court appointed a Committee on Sentencing, Chaired by The Honorable James Coleman, J.A.D. to review sentence disparity under the new Code of Criminal Justice and make recommendations.

The Task Force recognizes that basic reform is necessary to ensure that sentencing is fair, equitable, and uniform statewide. To achieve this goal two proposals must be adopted:

1. additional training in this area must be provided for municipal judges;
2. sentencing policy should be more rational, so that sentences can be grounded in sound principles of ethics, logic, law, and resource allocation.

While the Local Advisory Committees endorsed the premise of this paper, there were differing views regarding certain recommendations. For instance, the reaction to the proposed statewide criminal history sheet was equally divided among the Committees. Those in favor of it stated that it would provide the judge with critical information on repeat offenders. Some, however, viewed the idea as impractical.

Reference

"Sentencing Issues," Committee on Accountability, Appendix A.

Position 6.4

Victim/Witness Services

Municipal courts should take steps to meet the needs of both victims and witnesses, whose participation is vital to the handling of a criminal and traffic cases.

Commentary

In recent years there has been growing concern on the part of those responsible for the administration of our judicial system that the average citizen has become disenchanted with the criminal justice process and its officials. In particular, citizens have manifested reluctance to come forward with information and to participate as witnesses in judicial proceedings. While the causes of these negative attitudes are many and complex, one cause may be the insensitive and sometimes even shoddy treatment accorded both victims and witnesses.

Facilities for witnesses, as a rule, are either inadequate or nonexistent. Sensitivity to the needs of witnesses who are required to return to court again and again, often at considerable personal sacrifice, is usually lacking.

Notwithstanding that the appearance as a witness in a judicial proceeding is a duty of citizenship, repeated court appearances occasioned by adjournment of trials cannot be justified.

Insensitivity on the part of judges, attorneys, and court attendants affects victims as well. In addition to the immediate physical and emotional trauma associated with the crime itself, many victims are subjected to insensitive treatment at each stage of the proceeding. The end result of this is that the victims of the crime often feel victimized by and hostile toward the criminal justice system.

New Jersey has been a leader in addressing victim/witness concerns at the Superior Court level by establishing programs for the specific purpose of assisting victims and witnesses. As a particularly noteworthy achievement, the position of victim/witness coordinators has been established in all County Prosecutors' offices. Unfortunately most of the services provided by those offices have not been available to persons appearing in a municipal court matters.

It is imperative that all victims and witnesses in municipal court proceedings be treated fairly and respectfully by the agencies communicating with them. Clearly the justice system cannot function without private citizens who are willing, if not enthusiastic, participants in the prosecution of criminal violations. Of course, even if every municipal court adopted the recommendations set forth, the problems of citizens' apathy and hostility would not vanish. Our system of justice, however, would function more effectively if citizens emerged from their courtroom experience with a deeper understanding of and appreciation for the problems of the administration of justice.

In view of the foregoing, the Task Force specifically recommends the following proposals be adopted:

1. extending services of the County Prosecutors' Victim/Witness Assistance Units to municipal court cases, upon request of municipal police department, municipal prosecutor, or municipal court judge;
2. providing a general information leaflet designed for crime victims and witnesses to be published at state expense and distributed by municipal police departments, municipal prosecutors, and municipal court clerks;
3. placing a greater emphasis on victim/witness concerns in the training program presented by the Administrative Office of the Courts to municipal court judges and court personnel.
4. encouraging municipal court judges to solicit and review victim impact information at all appropriate stages of municipal court matters;
5. When applicable, encouraging municipal court judges to order restitution to crime victims.

The comments received by the Local Advisory Committees were uniformly favorable. Many reiterated the position taken by the Task Force and expressed a need for greater sensitivity by the court toward victims and witnesses.

Reference

"Victim/Witness Services," Committee on Accountability, Appendix A.

Related Positions

The following Positions may be applicable in implementing Position 6.4:

Position 2.3	Conflicts in Scheduling
Position 2.4	Postponements
Position 2.6	Case Processing

Position 6.5

Plea Agreements in Municipal Courts

The existing Supreme Court prohibition on plea agreements in the municipal courts should be abandoned and the practice permitted under the following conditions.

Plea agreements shall be permitted only in those courts in which there is a municipal prosecutor and where the defendant is represented by counsel or makes a knowing waiver of counsel. All aspects of the plea agreement, including the reasons and necessity as well as the factual basis for the entry of the guilty plea, shall be disclosed fully on the record. The prosecutor must also indicate to the court that the victim and arresting officer have been advised of the plea agreement.

In those offenses involving a minimum mandatory penalty, when a plea agreement is reached for a lesser and/or amended charge, the prosecutor must represent that insufficient evidence exists to warrant a conviction.

Commentary

Historically, the New Jersey courts have moved conservatively and cautiously in the areas of plea agreements and sentence agreements. Plea negotiations in Superior Court criminal cases became formalized by Administrative Memorandum dated December 11, 1970. See 94 N.J.L.J. Index page 1. The Memorandum was eventually codified and evolved with amendments into what is now Rule 3:9-3.

In the municipal courts, it has long been the understanding among judges and attorneys that the development of a plea agreement is not permitted. Notwithstanding this fact, the practice is engaged in anyway, and without supervision.

Under the current practice, plea discussions between prosecutors and defense counsel are informal and consequently virtually unreviewable. This invites the use of questionable, if not improper, criteria. Justice demands that a control mechanism be superimposed on the administrative disposition of the prosecutor and defense counsel. In order to establish such a control and preserve the integrity of the court, the use of plea agreements in the municipal courts should be permitted pursuant to strictly-enforced and specific guidelines.

The issue of plea agreements in the municipal courts was raised prior to the formation of the Task Force. In 1982, the Supreme Court's Committee on Municipal Courts recommended that plea bargaining be permitted in the municipal courts. As a result, the Supreme Court approved an experimental program to be undertaken by six municipal courts. The program was to last three months with guidelines that to some extent proved to be impractical and unmanageable for practice in the municipal courts. In August, 1984 the Supreme Court reviewed the results of the experiment and again refused to permit plea agreements in the municipal court.

The reasons for "no plea agreements" in municipal courts might be directly linked to fear of potential abuses and plea bargaining on drunk driving summonses. These two areas of concern cannot be taken lightly. However, the guidelines established by the Task Force would place all plea negotiations under close scrutiny and preserve the integrity of the disposition of all offenses. Additionally, extra protection has been adopted for offenses prescribing a minimum mandatory penalty. These procedures are similar to those followed in the Superior Court for Graves Act offenses.

As for the fear of potential abuse, it is clear that the administration of the municipal courts has become much more professional in the judicial and administrative areas, and the municipal court, now a court of record, is required to maintain a sound recording device and log. With the general improvement in municipal court quality, along with the specific Task Force recommendations for continued municipal court improvement; there should be no doubt about the competency and integrity of the courts and their personnel.

The Task Force has established a good foundation to monitor and control the plea-agreement process effectively. With those guidelines in place, along with the other Task Force recommendations on municipal court improvement, the plea agreement can be a workable technique.

References

"Plea Agreements in Municipal Courts," Committee on Trials, Appendix E.

See Exhibit 2.i Rules 7:4-2(j) Proceedings Before Trial.

Related Positions

The following Positions may be applicable in implementing Position 6.5:

Position 3.11	The Role of the Prosecutor
Position 3.12	Appointment of Counsel
Position 5.3	Advisement of Rights

Position 6.6

Public Access to Court Records

The courts should provide the press and public access to nonconfidential records on a timely basis. To accomplish this, Rule 1:38, (involving the confidentiality of court records), should be amended to include a list of all publicly-accessible records. This should be augmented by a directive from the Administrative Office of the Courts setting forth a statewide policy on public access, including a simple appeal process when access to court records has been denied by the municipal court judge. The Administrative Office of the Courts should also establish a "public access" training program for municipal court personnel.

Commentary

Freedom of the press must be preserved if a free society is to acquire and disseminate information to all areas of society, provided such information does not endanger basic rights. In the course of the work of the Task Force a number of important questions were raised on the issue of public access to court records.

The press in its traditional role as surrogate for the public has the right to know and must have access in order to function.

The courts, especially the municipal court and its personnel, have in the past received little guidance as to what information should be released to the public and press. The result has been the development of local policies, which in many cases resulted either in the outright denial of access to clearly public information, or in the release of information that is clearly confidential. There is also a concern about the ability of the courts to respond in a timely manner to legitimate requests for information or access to court records, due to the courts' limited personnel, limited access to copy equipment, and workload conflicts.

To correct existing abuses and balance the informational needs of the press and public with the personnel and time constrictions of the court, the Task Force has recommended a two-tier approach. The proposal would include an expansion of Rule 1:38 to include a list of all publicly accessible records and the establishment of a directive for response time that the court will adhere to when information is requested. The directive on response time should include: a) immediate access to readily accessible records (i.e., docket books and court calendars); b) access within normal business hours for records not immediately accessible (i.e., items in general storage); and c) for those requests that require extensive research, the requestor should put his request in writing and schedule an appointment to meet with the court to determine a completion date.

The Local Advisory Committees recognized that the promulgation of these guidelines would reduce the burden currently borne by court staff when making decisions in the area of public access. All recommendations were accepted by the Local Advisory Committees.

References

"Public Access to Court Records," Committee On Accountability, Appendix A. See Exhibit 2.e, Amendment to Rule 1:38, Confidentiality of Court Records.

Related Position

The following Position may be applicable in implementing Position 6.6:

Position 1.1 Vicinage Presiding Judge - Municipal Courts

Position 6.7

Installment/Partial Payments

In order to maintain the objective that a fine be punishment for violating a law, the municipal courts must design an effective plan for collecting fines in a fair but timely fashion.

Commentary

When a defendant pleads or is found guilty of a charge involving parking, non-parking, quasi-criminal, or ordinance violation, a fine may be imposed. In many cases the defendant informs the court of his financial inability immediately to satisfy the fine ordered by the court. This then places an enormous burden on the court by reason of the 1971 Supreme Court decision of State v. DeBonis, 58 N.J. 182 (1971). This decision held that "[i]f a defendant is unable to pay a fine at once, he shall, upon showing of inability, be afforded an opportunity to pay in reasonable installments consistent with the objective of achieving punishment the fine is intended to inflict."

DeBonis further holds that a fine is intended to punish, and imprisonment upon non-payment of a fine is substituted punishment and not a device for collection. To implement the mandates of this case, the judge, in open court, must first establish whether a defendant has the ability to pay the fine. If the defendant is indigent, the court must allow time for satisfaction of defendant's financial obligation. Unfortunately, there are neither written guidelines to aid the judge nor a way the judge can determine the accuracy of the defendant's statements. From a practical perspective this means that in almost every case, the defendant is given time to pay and the court must establish a payment schedule. It then becomes the responsibility of the often poorly staffed municipal court clerk's office to ensure that the defendant makes regular payments. The end result is that there are millions of dollars that are due the municipal courts by way of assessed but uncollected fines and costs.

The Task Force developed a series of recommendations designed both to reduce the number of instances in which the judge orders partial payments and to aid the court in collecting monies owed. These recommendations are:

1. The municipal court judge should be given the authority, at time of sentence, to suspend fines in cases in which the defendant clearly does not have the ability to pay.
2. The municipal court judge should be permitted to substitute community service or "earn it" programs in lieu of the payment of fines and costs.
3. The "earn it" concept would place an unemployed defendant in a job in a local business and a substantial part of his earnings would be paid to the court to cover the outstanding fine, costs, or restitution.
4. The judge should be able to order a defendant to surrender his/her driver's license, in return for which the court would issue a temporary license, printed in red, clearly stamped with an expiration date that

coincides with the date the fine must be satisfied. If the defendant does not pay his obligation or return to court to request additional time, the license would expire and the defendant would then be driving without a license.

5. The judge should be allowed to suspend the driving privileges of a defendant who fails to make his payments as ordered.
6. Legislation should be considered that would allow the following in instances in which funds are due the court:
   a. Withholding of New Jersey Income Tax Rebates.
   b. Withholding of New Jersey Property Tax Rebates.
   c. Simplified or automatic wage garnishments via civil judgments.
7. All municipal courts should be permitted or required to accept credit card payments in lieu of installment payments.
8. An accounting of all outstanding payments in each court should be required on a monthly report form to be sent to the Administrative Office of the Courts in order to keep all informed as to the magnitude of the problem.
9. A uniform accounting and enforcement procedure should be implemented to ensure that each court can follow up on open cases.
10. Municipal court judges should be trained in techniques to determine who should receive installment payments and what to do when a defendant defaults.

The overall reactions of the 15 Local Advisory Committees to the Task Force recommendations regarding installment payments were favorable. Each committee agreed with the recommendation for creation of a uniform, statewide system to be used in all municipal courts. There were, however, certain recommendations that were greeted with opposition by certain local committees. The proposal requiring

an additional monthly report was met with strong resistance. The committees believed this type of auditing was already performed during field visits, thus making the additional paperwork unnecessary.

There were also mixed comments regarding the "Red Driver's License." Certain local advisory committees reacted positively to the concept, while others believed it would be ineffective and would create an additional burden on the court staff. Finally, all the local committees agreed that the municipal court judge should have the authority to suspend fines, thus eliminating the futile attempts by the court to collect fines from defendants who truly do not have the ability to pay.

After careful consideration, the Task Force concluded that the magnitude of the problem necessitated that every possible step be taken to ensure that the defendant meet his obligation to the court. The Task Force, while recognizing the concerns of the Local Advisory Committees, reaffirmed the importance of implementing the forgoing recommendations.

References

"Installment Payments," Committee on Traffic and Computerization, Appendix D.

"Partial Payments, Committee on Administration, Appendix B.

Related Positions

The following Positions may be applicable in implementing Position 6.7:

Position 2.7	Municipal Court Forms
Position 7.3.b	Existing Computerized Courts
Position 7.3.c	Courts Using Computer Bureaus
Position 7.3.d	Computerization of the Manual Courts

Chapter 7
Court Facilities and Operations
Introduction

In this chapter, the Task Force directs its attention to inadequate court facilities, security, and the need to develop modern computer practices in order to upgrade the courts' capabilities.

The problem of inadequate facilities was recognized as early as 1955 when Chief Justice Arthur T. Vanderbilt, in an address before the Annual Conference of Municipal Magistrates and Attorneys, identified exceedingly substandard conditions in municipal courts, with sessions being conducted in pool halls, garages, and homes. Thirteen years later, the Governor's Commission on Civil Disorders found similar conditions, and commented that municipal courts should occupy "more dignified physical facilities."

In 1984 the Task Force examined physical conditions in municipal courts to determine whether improvements were still needed.. A. survey revealed that approximately one in every five municipal courts is <u>still</u> operating in unsatisfactory physical facilities. The study found that many court sessions are

conducted in cramped or antiquated quarters, in basements, old theatres, firehouses, and school gymnasiums. It further determined that most courts are lacking handicap accessible entrances. Also, the judge's bench is in some cases surrounded by boxes, pianos, pool tables, and kitchens. Many courtrooms that were once acceptable are now in need of repair and refurbishing. In addition, many courts are not adhering to fire and safety codes, making the courtroom a possible fire trap.

Chief Justice Vanderbilt noted that, "In my judgment the municipal court is the most important court in the state."[1] A courtroom is a symbolic extension of the concept of justice and the overall appearance must support this. Justice should be properly housed, and should foster and promote an atmosphere of dignity and respect. The adequacy, quality, and competency of our criminal justice system includes the courts' accommodations for the public, bench, bar, litigants, and court personnel.

Further, the Task Force examined the offices of the Municipal Court Clerk/Administrator and found many cramped, cluttered, unclear work areas, in addition to the lack of basic necessary furniture and equipment such as typewriters, adding machines, and cash registers. As extensions of the court, the office of Municipal Court Clerk/Administrator must also be symbolic of the administration of justice. These offices, therefore, should be located in close proximity to the courtroom and should reflect the court's decorum.

Compounding the problem of inadequate court facilities is the lack of routine security provided for judges and their courtrooms. When police officers are present in court for the purpose of giving testimony, the judge is often left with no police presence when such testimony is completed. Lack of security has resulted in at least one instance of a municipal court judge escorting a prisoner to a lock-up cell. Lack of security may have played a role in the death of one

municipal court judge who was shot by a defendant who stood outside the building and fired through a window in front of which the judge sat during court. Security must be a primary concern and not a by-product of an officer's court presence on other matters.

Furthermore, an upgrading of the municipal court system must include a modernization of court operations. On the average, courts process up to 80 different forms daily. Complex reporting requirements include interaction with the State Police, Division of Motor Vehicles, Administrative Office of the Courts, and local government agencies. One out of every four parking tickets is never adjudicated because of difficulty in processing. The use of out-dated and limited equipment (such as 30-year old typewriters), and the absence of cash registers or adding machines, necessitates a strictly manual operation. Computerization would permit vast streamlining between the courts and administrative agencies, resulting in expeditious adjudication of parking tickets.

The recommendations presented in this chapter are intended to improve the physical conditions of the municipal courts and to provide for the equipment which is necessary for them to function effectively.

Reference

[1] Arthur T. Vanderbilt, "The Municipal Court--The Most Important Court In New Jersey: Its Remarkable Progress And Its Unsolved Problems," 10 Rut. L. Rev. 647 (1956).

Position 7.1

Minimum Standards for Municipal Court Facilities

Adequate physical facilities should be provided for court processing of criminal and traffic cases. These facilities include the physical structure itself, such internal components as the courtroom and its adjuncts, and facilities and conveniences for witnesses, jurors, and attorneys.

Commentary

As noted in the foregoing introduction, the courtroom is a symbolic extension of the concept of justice, and the overall appearance must support this. Court facilities should be designed to facilitate the adjudication of cases and the functioning of the participants in the process. This includes facilities that aid, not hinder, the conduct of trials as well as the work preformed by court support staff.

The goal of the Task Force in this area is to foster and promote an atmosphere of dignity and respect for the municipal courts. Thus, justice should be properly housed. Unfortunately, however, research performed by the Task

Force revealed that approximately one out of five municipal courts is currently operating in physical facilities that can be defined as unsatisfactory.

The Task Force recommends that the following minimum standards be provided for in every court:

1. Location in a public building, preferably a municipal building or complex.
2. A judge's platform and bench.
3. A court clerk's work station and witness stand.
4. Two separate counsel tables with chairs in front of the judge's bench.
5. Adequate seating for all participants,as well as spectators.
6. Sound recording system in accordance with Administrative Office of the Courts guidelines.
7. Adequate lighting, heating, and air-conditioning of the courtroom, as well as proper maintenance of same.

The issue of adequate facilities for the municipal courts is an important one. Each of the fifteen Local Advisory Committees concurred with that position. Those Committees did, however, voice concern about the capital outlay for the improvements. The Task Force has recommended several options, including adoption of the budgetary impasse procedures, for the gradual upgrading of court facilities.

The Task Force urges that any proposed renovation, redesign, or capital development of court facilities be reviewed, evaluated, and approved by the Assignment Judge and the Administrative Office of the Courts. To aid in this procedure and to insure the proper construction of future court facilities, the Administrative Office of the Courts should train a staff member or retain an architect to review all plans for renovation of new construction. The

recommendation of the Administrative Office of the Courts shall be binding on the municipalities.

Reference

"Minimum Standards for Municipal Court Facilities," Committee on Budgets, Personnel and Space, Appendix C.

Related Position

The following Position may be applicable in implementing Position 7.1:

Position 7.2 Court Security

Position 7.2

Court Security

Each municipal judge should review the security of his court facility, and with the assistance of the local Police Chief or County Sheriff prepare a report to the Presiding Judge. Steps should be taken immediately to rectify or upgrade the security of each court in order to protect the judge and the court personnel.

COMMENTARY

The safety of judicial participants must be assured in order for them to carry out their roles in the administration of justice. Unlike the situation in the Superior Court, this issue of security in the municipal court has never been studied and thus many questions are left unanswered. In practice, each municipal court depends on the assistance of the local police department to perform the necessary security functions. This assistance, however, is often not a compulsory duty of the police department, but rather a courtesy extended by it to the court.

The security situation in the municipal court differs from that in Superior Court. The latter enjoys a professionally-staffed force charged with the responsibility of providing in-court and in-chambers security. Thus, the Superior Court is able to study and plan for the security of its courts, personnel, and litigants, while the municipal courts cannot.

In most situations, the appropriate way to allocate courtroom security personnel and equipment is by the principle of risk management. By using this technique, the levels of anticipated risk are appraised and resources are allocated to meet the need. Currently, the municipal courts have no professional staff to perform these functions.

The Task Force is aware that cases heard in the Superior Court are of a much more serious nature. Municipal Court matters, however, do have the potential for creating security problems and should not be slighted. It is therefore recommended that a security plan be developed for each municipal court, using the following guidelines:

1. When the court is in session, at least one person should be charged with the responsibility of maintaining security.
2. Routine security devices should be used in all courts, e.g., magnometers, emergency lighting, etc.
3. Contingency plans capable of responding to hostage situations, bomb threats, and other emergency situations should be established.

The topic of security in our municipal courts should not be taken lightly. As noted, a plan should be devised either by the County Sheriff's Department or local police department that provides for the comprehensive security of the municipal courts. There is currently a Judiciary/Sheriffs Liaison Committee to the Supreme Court that recently published a manual dealing with security in the

Superior Courts. The recommendations contained therein could be shaped to fit the Municipal Courts as well.

Reference

"Court Security," Committee on Budgets, Personnel and Space, Appendix C.

Related Position

The following Position may be applicable in implementing Position 7.2:

Position 7.1 Minimum Standards for Municipal Court Facilities

Position 7.3

Overview to Computerization

One of the most important issues facing the Task Force was the need to develop a Master Plan for the automation of traffic-ticket processing in New Jersey's 530 Municipal Courts.

Most traffic cases (approximately two-thirds) are currently processed by some form of automation, whether through service contractors or through municipally-operated systems. Yet, courts continue to experience backlogs in processing, and millions of dollars in revenues remain uncollected. In addition, automation in the courts has developed without overview planning. That is, each municipality has responded to its own automation needs with no requirement that the informational needs of outside agencies (DMV, AOC, and/or other central agencies) be considered.

Collectively, the municipal courts comprise a massive network, with 530 courts processing between 4-5 million tickets per year, yielding almost 100 million dollars in collected revenues. The traffic matters processed in the courts provide the data base on which driving records are maintained and updated and traffic and highway safety is monitored. It is important to note that as a group, the courts are unique in that they are both a branch of local government and a part

of the state court system. Operational decisions such as funding and staffing are made at the local level, consistent with municipal resources and priorities, while other decisions that affect court operations are made at the state level, either by Court Rule or AOC Directive, consistent with the need for uniformity in the administration of justice.

In addition, the municipal courts are unique in that they range in size from large, busy courts, operating in urban settings handling hundreds of thousands of traffic tickets per year, to small courts, handling only a few tickets per month. Consequently, the impact of any particular court upon the statewide system will vary with its volume. Also, the internal processing needs of the courts will differ dependent upon volume, as will the type of matter processed (i.e., parking or moving violation).

Therefore, any development of a Master Plan for computerization of the Municipal Courts must accommodate the following:

1. the current and future needs of the courts as they relate to internal processing, giving consideration to differences in terms of volume and type of matter handled;
2. the reliance upon the courts by other agencies for accurate information; and,
3. the need for management of the courts, using the data they provide.

Therefore, any new system must be balanced. That is, it must meet local concerns as well as the needs of agencies to collect accurate data, thereby benefiting the entire court system.

CURRENT STATUS

In order to assist the Task Force in determining the current status of traffic ticket processing, a questionnaire was distributed to the 530 municipal courts.

Three-hundred and ninety-three (393) courts responded, and the results were computer analyzed by the use of staff and equipment provided by the "SAC" unit of the State Police. Afterward, the remaining courts that did not respond were polled by telephone by members of the Task Force to determine answers to specific questions, and in some cases to assist with completion of the entire questionnaire. Consequently, relatively complete information was gathered.

The results of the questionnaire were revealing. It was discovered that there are 112 municipal courts that already are computerized to some degree. Eighteen operate "in-house" computer systems, using either on-line or batch mode processing, and ninety-four courts have "access" to computer capability through service contractors (primarily Computil). Although these courts represent only a small percentage of municipal courts, they handle 67% of the statewide volume of traffic matters. Fifteen percent were processed by in-house system users and 52% were by Computil customers. Stated another way, approximately one-third of the municipal courts process two-thirds of the state's parking and moving matters.

As to the nature of the work handled by the courts as a whole (parking vs. moving), the following patterns appear:

1. Generally, of the almost 17-million traffic tickets issued in a four-year period ending in 1983, two-thirds were for parking matters and one-third related to non-parking.
2. The vast majority of all parking tickets issued in the state, approximately 73%, are processed through a small percentage of courts.
3. Conversely, the majority of municipal courts in the state process more moving matters than parking.

However, those courts processing significant volumes of moving matters (over 4,000 per year) are relatively few in number (81 courts, or 15%).

In view of the foregoing, the Task Force has made a series of recommendations that call for a central computer system operated by the Administrative Office of the Courts, and has made additional recommendations to ensure that each municipal court has access thereto.

The proposals of the Task Force concerning computerization received broad support from the local Advisory Committees. All of the LAC's recognized the need for and endorsed the concept of computerization in the municipal courts. There was also unanimous approval for the recommendation that the state provide funding for this purpose. The only area in which disagreement was noted concerned the proposed role of the AOC in traffic case processing. Two LAC'S disagreed with the recommendation that the AOC should become involved in this process, by acting as a "clearinghouse" for data being transmitted from the municipal courts to the Division of Motor Vehicles. It was suggested that such involvement would merely result in the imposition of an extra bureaucratic layer between the courts and the Division of Motor Vehicles.

Position 7.3.a

Computerization and the Administrative Office of the Courts

The Administrative Office of the Courts should develop a centralized computer system to serve the municipal courts and to ensure a smooth exchange of information occurs between the municipal courts and the Division of Motor Vehicles.

Commentary

It is evident that traffic case processing and enforcement in New Jersey suffer for many reasons, some of which are attributable to matters within the control of a particular agency. Currently, there is no centralization of information within the court system and no viable electronic mechanism for the exchange of information between the municipal courts and either the Administrative Office of the Courts or the Division of Motor Vehicles. This can lead to confusion and duplication of effort when 530 municipal courts attempt to provide information to or request information from the Administrative Office of the Courts and/or the Division of Motor Vehicles. In order to correct this, the Task

Force recommends that the Administrative Office of the Courts play a stronger role in the area of computerization.

One of the first steps the Administrative Office of the Courts should take is to develop guidelines for the standardization of communication including data codes and record formats. Such standardization is necessary to facilitate the exchange of information between the municipal courts and the Administrative Office of the Courts. The Administrative Office of the Courts in its new role in case processing becomes much more responsive to the courts. It will act as the buffer or clearinghouse between the individual courts and the Division of Motor Vehicles. Division of Motor Vehicles will only have to interact with one agency of similar stature, rather than 530 separate courts. It is anticipated that this will alleviate many problems experienced by both the courts and the Division of Motor Vehicles. Under the proposed schema, the courts will no longer interact directly with Division of Motor Vehicles, but rather will be responsible directly to the judiciary. The following advantages are apparent:

1. There will be a uniform processing system within the court structure.
2. The judiciary will have control over and access to its own information for oversight management, administration, forecasting, and planning.
3. Interagency policy decisions between DMV and the courts can be handled at the proper level.
4. Procedural changes that affect traffic-case processing involving both agencies can be more easily implemented.
5. Centralized data can be used to consolidate driver or registration information statewide.
6. The quality of justice will be enhanced. The current system often permits those who ignore tickets to escape punishment, which results in the uneven application of justice.

Without development of the foregoing, it is unlikely that our municipal court system will be able to meet the increased demands placed on it by burdening caseloads and requests for reports and information.

Reference

"Municipal Court Computerization", Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 7.3.a:

Position 7.3	Overview on Computerization of the Municipal Court
Position 7.3.b	Existing Computerized Courts
Position 7.3.c	Courts Using Computer Bureaus
Position 7.3.d	Computerization of the Manual Court

Position 7.3.b

Existing Computerized Courts

Municipal courts currently using in-house computers should be able to obtain and share their data with the central computer system at the Administrative Office of the Courts. Sharing of information will continue until such time as the Administrative Office of the Courts is equipped to accept those courts into the statewide system.

Commentary

There are currently eighteen (18) Municipal Courts operating "in-house" computers for traffic-case processing using either on-line or batch mode processing. These courts are high-volume processors that have already made an investment in personnel and equipment. This investment is likely to translate into a reluctance to abandon the technology currently used by those courts.

Aside from the courts' anticipated reluctance to change their methods of traffic-case processing, there are independent and compelling reasons for maintaining the status quo in those courts, at least until such time as the

Administrative Office of the Courts is in the position to provide an alternative processing method.

From the courts' point of view, there is a real need to perform local processing, such as:

1. the generation of management reports and data analysis peculiar to their municipalities;
2. the provision of financial reports as required by the municipalities; and
3. the efficient exchange of large volumes of information with local police departments.

From the systems point of view, this small group of courts processes a significant percentage of the statewide volume. These courts must be included in the statewide system in order to insure that information is transferred from the local courts to the Administrative Office of the Courts for and to the DMV in a timely fashion. It is anticipated that the municipal courts will want to become a part of the state system, as being a part provides them with the ability to transmit data to and receive data from the Division of Motor Vehicles. In addition, becoming a part of the state system will alleviate the necessity of sending hand-completed reports to the AOC.

The Task Force has attempted to balance the informational needs of the Administrative Office of the Courts with the fact that some courts have already made significant investments in computer technology. It has concluded that steps should be taken to enable the Administrative Office of the Courts to collect from these courts certain data for inclusion in the statewide system, so long as the courts continue to use their existing equipment. It is anticipated that ultimately the aforementioned courts will be totally integrated into the statewide system.

Reference

"Municipal Court Computerization," Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 7.3.b:

Position 7.3.a Computerization and the Administrative Office of the Courts
Position 7.3.c Courts Using Computer Bureaus
Position 7.3.d Computerization of the Manual Court

Position 7.3.c

Courts Using Computer Bureaus

In those courts serviced by service contractors, access will be required to the Administrative Office of the Courts' mainframe files for data entry and for inquiry purposes. This access will be accomplished through direct electronic access or by tape/disk information exchange. Service contractors will fund their own access to the Administrative Office of the Courts' mainframe, including the expense of any modification to their existing programs.

Commentary

There are currently 94 municipal courts that rely on service bureaus for the processing of their workload. Accordingly, there is a need to ensure that the information handled by these bureaus is incorporated into the Administrative Office of the Courts' central system.

Direct electronic access to the Administrative Office of the Courts' mainframe computer is quicker and more efficient than any other method of exchanging information. It also appears to be more cost efficient and will allow direct access

to court data and indirect access to the data base at the Division of Motor Vehicles.

Individual courts would have alternatives as to how they will interact with contractors and within the system:

1. Certain courts will see no need for any computers, terminals, or other forms of automation. They will be content to rely on the contractors to perform all necessary data-entry and other functions, and will be satisfied to "batch" their tickets for data-entry and to communicate with the contractor in a manual mode, as well as perform all remaining court tasks manually.
2. Other courts will be satisfied with using the service contractor to perform the initial data-entry functions only and will require electronic access to the data for inquiry or editing. This could be accomplished by linking the court via terminal to the Administrative Office of the Courts' mainframe.

Of course, some courts will see a need for on-line access to their data for inquiry and editing, and will be amenable to assuming the initial data-entry functions. This would eliminate the necessity of using the service contractor.

Service contractors would fund their own access to the Administrative Office of the Courts' mainframe, including translator programs, if necessary. They are already communicating in a tape/disk mode (with Division of Motor Vehicles) and it appears that any electronic linking would be cost-efficient and advantageous to them. Courts that select the first alternative, providing for no electronic access, have no additional costs. Courts that require linking to the Administrative Office of the Courts' mainframe for inquiry and editing should be provided with the minimum standard available to all courts at state expense.

Reference

"Municipal Court Computerization", Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 7.3.c:

Position 7.3.a Computerization and the Administrative Office of the Courts
Position 7.3.b Existing Computerized Courts
Position 7.3.d Computerization of the Manual Court

Position 7.3.d

Computerization of the Manual Courts

All manual municipal courts should be required to have a computer terminal so that they may electronically communicate with the central computer system of the Administrative Office of the Courts. When necessary and where appropriate, computer capability can be expanded and upgraded. At a minimum, the cost of the initial terminal should be borne by the State. However, any additional expense required to upgrade its system would be borne by the municipality.

Commentary

The vast majority of municipal courts (418 of the 530 courts) do not use a computer for the routine processing of their work. The reason for this is that in most cases the volume of work is not significant enough to justify the use of computers. Collectively, however, these courts process 36% of all tickets in the state and therefore, as a group, they have a significant impact upon the system. For example, these courts tend to handle more moving than parking matters, which in turn requires that they provide a considerable amount of information to

the Division of Motor Vehicles, which in turn is particularly dependent upon accurate and timely information in order to ensure that the appropriate action is taken against the defendant's driving privileges. This, coupled with the need to ensure that the central data base is accurate and complete (as recommended in Position 7.3a), makes it essential to include these courts in the system.

Concerning the financing of the system, the Task Force recognizes that in many of the smaller courts the cost of a terminal and communication lines will be prohibitive. The Task Force therefore recommends that, where appropriate, the State should bear the cost of providing a terminal. As the court's size and concomitant usage grow, it will then be in the best interest of the court and the municipality to use the services offered by the Administrative Office of the Courts fully. When this point is reached, the added expense of bringing these courts onto the statewide system will be borne by the municipality.

Reference

"Municipal Court Computerization", Committee on Traffic and Computerization, Appendix D.

Related Positions

The following Positions may be applicable in implementing Position 7.3.d:

Position 7.3.a Computerization and The Administrative Office of the Courts
Position 7.3.b Existing Computerized Courts
Position 7.3.c Courts Using Computer Bureaus

CHAPTER 8

Implementation and Funding

The Supreme Court Task Force on the Improvement of Municipal Courts has proposed significant changes for the municipal court system of this state. The total implementation process is formidable and will require a substantial degree of dedication, planning, and effort.

The first step in the process of implementing the proposed recommendations requires the drafting of the Final Report of the Task Force. The drafting of this document will be completed during the summer of 1985, allowing for the amendment, revision or augmentation of the Report in light of the comments and feedback gathered during the Judicial Conference. The revised report will be formally submitted to the Supreme Court for its consideration. The Supreme Court will then review the report and determine which programs and proposals should be adopted. Those recommendations requiring amendments to Court Rules can be addressed directly by the Supreme Court. Other recommendations will be able to be implemented through administrative directives and memoranda as developed by the Administrative Office of the Courts.

Finally, some proposals will presumably require the action of the legislature. It is anticipated that the Administrative Office of the Courts will endeavor to

provide whatever information and assistance may be necessary to ensure that the appropriate legislation is drafted and receives consideration.

The actual plan of implementation has been divided into three distinct areas: (1) administration, (2) personnel, and (3) funding. It is anticipated that the expanded Municipal Court Services Unit, as recommended in Position 1.5, will be responsible for administering the implementation of the Task Force recommendations. In addition to acting as the focal point for all policy decisions, the unit will assume responsibility for a wide range of activities. It will conduct extensive training programs for all levels of court personnel to prepare them for changes in court operations. It will also prepare the directives and develop the methodologies necessary to effectuate the recommendations, and will monitor, study, and make any needed modifications to the new programs on a continuing basis. Assisting this Unit in its endeavors will be trial court administrators, case managers, municipal court judges and court clerk/administrators. Finally, the Executive Committee of the Task Force will continue to function in an advisory capacity, guiding the Municipal Court Services Unit throughout the implementation process.

In view of the foregoing, the Task Force believes that one of the first recommendations that should be implemented is the proposal involving the expansion of the Municipal Court Services Unit. As set forth in Position 1.5, this expansion would ensure that Municipal Court Services has sufficient personnel to undertake and carry out the additional responsibilities created during the implementation phase of the Task Force project.

As indicated throughout this report, certain titles will need to be created or expanded if the recommendations of the Task Force are adopted. The positions of Presiding Judge of the Municipal Court, Case Manager for Municipal Courts, and Municipal Court Prosecutor are of paramount importance and are necessary to

accomplish the goals established by the Task Force. Accordingly, the selection process for these titles should begin immediately. As recommended in Position 1.6, the Assignment Judge of each vicinage should prepare a list of candidates to be presented to the Chief Justice so that the Presiding Judges can be appointed. Each Trial Court Administrator should take the necessary steps for the selection of a Case Manager for Municipal Courts. While some vicinages already have Municipal Court Liaisons that will be able to fill this position, others will have to recruit a Case Manager as these duties are currently being performed by Assistant Trial Court Administrators. Finally, the duties of the Municipal Court Prosecutor will be significantly expanded, and each appointing authority will need to be notified so that contracts can be modified accordingly.

In addition to these three specific titles, the Task Force has recommended several programs that will necessitate the hiring of additional personnel. It is expected that the expanded Municipal Court Services Unit will be able to assist each agency or department affected as the implementation plan progresses.

The final and most crucial area of this implementation process is funding. Without proper financing much of the work of improving the municipal courts will not be accomplished. The Task Force has identified each program that will require funding and has categorized it pursuant to the funding source (i.e., state, county and municipal government).

It has recommended that the State assume responsibility for funding the expanded Municipal Court Services Unit (at an annual projected cost of $400,000), the position of Presiding Judge-Municipal Courts ($598,500 per annum), and for the computerization of the municipal courts (costs to be based on the needs of the individual court). The Task Force has further proposed that the county government should provide funds for the position of Case Manager-Municipal Courts ($562,500 per annum statewide), as well as for the development of a Pretrial

Intervention program at the municipal level ($1,837,500 per annum statewide). It is expected that each municipality will continue to pay the salary of its Municipal Prosecutor and will also make funding available to improve court security if deficiencies are noted by the Presiding Judge. As can be seen, the cost for funding the work and recommendations of the Task Force is relatively low. The Task Force has attempted to keep costs at a minimum, so that these programs can be implemented without causing a financial hardship on any one level of government.

In order for this process to begin, the expanded Municipal Court Services Unit must promulgate a schedule which will ensure that these programs are implemented on a uniform basis. As already noted, each level of government is responsible for funding specific programs. This will require each governmental unit to include the new programs in its budget. Unfortunately, the state operates under a different budget year from that of the counties, thereby complicatin the funding/implementation process. To resolve this problem, the Task Force recommends that the programs on the county and municipal levels be implemented during the next budget cycle. This would allow for the establishment of these programs by no later than July, 1986.

With respect to the programs that are to be funded by the State, the Task Force recommends a different approach. The Municipal Courts Services Unit should be funded with the available capital already earmarked for the Administrative Office of the Courts so that it can begin operating immediately. The reason for this, as previously mentioned, is that this unit will be the foundation of the new municipal court system. Additionally, the Administrative Office of the Courts should begin funding as many Presiding Municipal Court Judges as possible during the current fiscal year. The remaining positions should be included in the 1987 budget cycle. Finally, any costs regarding

municipal court computerization should be allocated in the 1987 budget. If the foregoing funding methodology is adopted, it will allow all of the programs and recommendations made by the Task Force to be fully financed and operational by July, 1987. Further, improvements will be accomplished on a timely basis, yet at the same time each level of government will be able to anticipate and prepare for the necessary expenditures.

The Task Force has devoted over 20 months to the study of the municipal court system. The recommendations set forth in this report as well as the plans for implementation are significant and far reaching, but at the same time are manageable and capable of implementation. It is anticipated that the work of the Task Force will result in a thoroughly reformed municipal unit system, fully integrated into the judiciary of this state.

EXHIBIT 1

MINORITY OPINIONS

ROLE OF THE PROSECUTOR

Monmouth County Municipal Prosecutors Association, Inc.

June 4, 1985

Administrative Offices of the Court
CN 037
Justice Hughes Complex
Trenton, N.J. 08625

Attn: John Podeszwa, Project Director

Re: Position Paper

Dear Mr. Podeszwa:

This will confirm our conversation of June 3, 1985 wherein you indicated you are going to include the Monmouth County Municipal Prosecutors Association Position Paper as a minority opinion of the Task Force Study.

I am also enclosing for your benefit a letter of May 23, 1985 from the Passaic County Municipal Prosecutors Association adopting our position paper. Please include this too as a minority opinion.

Per our conversation and so there is no misunderstanding by minority opinion it is meant that the Task Force disagrees with this opinion and not of this body or other collective bodies.

Our Association is most vehemently against the requirements that Municipal Prosecutor's handle citizens' complaints.

Thank you for your cooperation

Very truly yours,

JAMES A. CAREY, President
Monmouth County Municipal
Prosecutors Association

JAC:kd
Enc.

Monmouth County Municipal Prosecutors Association, Inc.

April 3, 1985

Robert D. Lipscher, Director
Administrative Offices of the Courts
CN 037
Trenton, NJ 08625

Re: Position Paper

Dear Director Lipscher:

Recently the Monmouth County Municipal Prosecutors Associations's Board of Trustees met to review the Supreme Court Task Force Study concerning the role of the municipal prosecutor. Concerning the five proposals on page 29 of the Task Force Committee Report please be advised that the Municipal Prosecutors Association takes the following position:

PROPOSAL 1-MUNICIPAL PROSECUTORS REQUIRED IN EACH COURT:

MCMPA concurs with this proposal.

PROPOSAL 2-MUNICIPAL PROSECUTOR SHOULD APPEAR IN ALL CASES:

MCMPA concurs but would disagree in part with this recommendation.

PROPOSAL 3- PROSECUTION OF CIVILIAN COMPLAINTS:

MCMPA strongly opposes this proposal

PROPOSAL 4-INVOLVEMENT OF MUNICIPAL PROSECUTORS IN CROSS CIVILIAN COMPLAINTS:

The MCMPA strongly opposes this.

PROPOSAL 5-DISCOVERY IN MUNICIPAL COURT:

The MCMPA concurs with this proposal in reference to disorderly persons complaints, drunk driving and other traffic offenses which may result in incarceration or wherein there is a mandatory penalty for incarceration and wherein there is a mandatory loss of

driving privileges. It opposes discovery in routine motor vehicle cases and borough ordinances.

Attached hereto is a statement for the bases of our position concerning each of the five proposals.

Respectfully submitted,

JAMES A. CAREY, President
Monmouth County Municipal
Prosecutors Association

JAC:kld
Enc.

Monmouth County Municipal Prosecutors
Association, Inc.

POSITION PAPER

PROPOSAL 1: MUNICIPAL PROSECUTORS REQUIRED IN EACH COURT

The MCMPA basically concurs with the text of this proposal. It should not appear to the public that the Judge is presenting the state's case, i.e. is the Prosecutor as well as the Judge.

In addition to the proposed recommendations it should be pointed out that with increased penalties for motor vehicle offenses, especially drunk driving, and the large variety of disorderly persons offenses that has a jurisdictional bases in Municipal Court, preparation of the cases is necessary. Defendants are vigorously fighting drunk driving prosecution and the defense bar is in most parts knowledgable, competent and prepared. Further, even a simple speeding ticket with a K55 under State v. Wojtkowiak, 174 N.J. Super 460 (App.Div.1980) adopting and incorporating into its Opinion the trial court opinion 170 N.J. Super 55, (L. Div.1979) requires when the unit is used in a moving mode that the state produce four calibration documents plus additional proofs. The Court would be in a conflict to prepare the police officer and the case and then present it.

Accordingly we concur with Proposal 1.

PROPOSAL 2: PROSECUTORS APPEARING IN ALL CASES WHETHER THE DEFENDANT IS REPRESENTED BY AN ATTORNEY OR NOT AND AT ALL GUILTY PLEAS.

We concur that the prosecutor should be present for every case that is tried. For the reasons set forth in Proposal 1 the Judge should not appear to be an adversary to the defendant. This would hold true whether the defendant is or is not represented by an attorney. We agree in part that the Prosecutor should be available when guilty pleas are entered. However, we do not feel this should be in every case. It is the role of the Court to sentence and quite often the Court will ask the prosecutor if he takes a position on said sentencing. In disorderly persons complaints and serious motor vehicle violations such as drunk driving we believe the prosecutor should be available when pleas are being entered. However, in routine motor vehicle cases involving small fines and points it is not necessary for the prosecutor to be available and quite often the prosecutor uses that time when the Judge is doing a routine sentencing after the calendar call to do a multiple number of matters so that when the routine sentencing is complete the State is ready to proceed with the contested cases.

PROPOSAL 3: PROSECUTION OF CIVILIAN COMPLAINTS

The Task Force Study indicates that since civilian complaints may be frivilous it would be helpful if the municipal prosecutor "after a screening process" wherein frivilous complaints could be dismissed would somehow aid the Court.

It is pointed out that the first thing that would occur if every citizen knew that when he went into municipal court that the municipal prosecutor had to prosecute his case that you would increase the number of civilian complaints by 100%. What is now a minor problem would become a major problem and develop into a major backlog for the municipal courts.

Further, the "screening process" would create the same problem for the municipal prosecutor that a Judge has when he does not have a prosecutor and the citizen feels he is being personally prosecuted and tried by the Judge. It would appear that any time a prosecutor deems a complaint frivilous that he would subject himself ot a disgruntled citizen complaining to the local Mayor and Council, the County Bar Ethics Committee and the County Prosecutor's office. This would be especially true wherein the defendant may reside in the same community with the alleged victim.

Remember it is the aura of conflict we are trying to avoid and not conflict and this screening process would clearly create an aura of conflict.

In the converse, the defendant who comes to court with or without an attorney would also feel that he is being manhandled by the municipal prosecutor when the municipal prosecutor presents the case for trial. The attorney for the defendant would constantly urge the prosecutor to dismiss the complaint based on the fact that it was frivilous.

The defendant who is without an attorney and is not able to afford one but not facing a jail sentence and accordingly is not eneitled to have an attorney appointed, pro bono, (See Rodriguez v. Rosenblatt, 58 N.J. 281 (1971)) would and could feel that the municipal prosecutor is presenting the case for a multitude of reasons which have nothing to do with the case. The prosecutor could count on defendants convicted in this fashion also contacting the County Ethics Committee. Finally, think about the defendant who is not represented by counsel and now has to go to trial against an experienced municipal prosecutor. He may have a multitude of legitimate defenses. The easiest example is a written statement from a witness. Of course he, the defendant, is totally unaware of the Hearsay Rule. The prosecutor objects and the court sustains the objection and the defendant is convicted even though it very might well have been that his version were true and if he had known he had to bring his witness to court he would have been found not guilty. Examples of this nature could go on indefinitely but it is hoped that the point is perceived with just this one example.

Again it must be completely understood that this Proposal would increase the calendar and backlog the municipal courts substantially. For the reasons stated the MCMPA strongly opposes this Proposal.

PROPOSAL 4: PROSECUTION OF CROSS CIVIL COMPLAINTS

We incorporate into this statement the entire statement set forth concerning Proposal 3, Prosecution of Civilian Complaints.

This particular proposal is most disturbing.

The proposal suggests the municipal prosecutor examine the cross complaints and make a determination as to which is founded and which is unfounded and then proceed to dismiss the unfounded complaint and prosecute the remaining case. In those areas where the prosecutor deems that both complaints have merit he is to serve as counsel to the court, presenting both sides.

It is again reiterated that adoption of such a Proposal would increase civilian complaints significantly. Human nature being as it is, individuals believing that they are usually right, would feel that they have an absolute right to go into municipal court on every matter and the prosecutor would either prosecute "the bad guy" or present both sides as counsel to the court.

In those cases where the prosecutor decided to dismiss complaint A and prosecute complaint B, the prosecutor again could anticipate the individual who had the complaint dismissed against him going to the County Prosecutor and Ethics Committee. The cry of "foul", "politics", "nepitism", "favoritism", etc. would be continuous. Each individual who was prosecuted would be certain that the prosecutor knew the other complaining witness.

Further, in order for the prosecutor to make a determination he would have to discuss the case with both sides. This Proposal clearly violates Rules 23 and 26 of our Rules of Evidence. Rule 23 is the right of the accused not to be a witness against himself, specifically the Fifth Amendment of the Constitution of the United States. Rule 26 is the Lawyer-Client Privilege. Once the prosecutor discusses the incident with both sides the information would be privileged. For the prosecutor to then present the case based on this information, whether received directly from the defendant or indirectly, would violate both of these Rules of Evidence and further violate Constitutional safeguards. It simply can not be tolorated.

Further, the same trial problems would be presented when the prosecutor would serve as counsel to the court presenting both sides and midway through the trial "good guy A" as opposed to "good guy B", there being no bad guy, pulls out a letter written from the independent witness to establish the fact that "good guy B" punched "good guy A" in the nose. At this point in time the prosecutor, at the behest of his "good guy A" could move to introduce the letter and at the same time object in that it violates Rule 63 of the Rules of Evidence. If the court sustained the objection, which of course it would have to do, an innocent person could be convicted of something he did not do. If the court adjourned the matter to allow the prosecutor to subpoena the witness in or have the victim produce the witness the court then at the same time raise for the other defendant the double jeopardy argument. c.f. State v. O'Keefe, 134 N.J. Super 430 (L.Div.1975).

We hope that the point is understood. We could go on continuously with examples of this nature.

Further, Rule 2:3-2, Notice in Lieu of Complaint already allows the court in minor neighborhood or domestic disputes to issue a Notice to the person to appear before the court and if the court so determines, in camera, under "other appropriate action" endeavor to resolve the domestic dispute. This may be further expanded by new proposals which would allow a Community Dispute Resolution Committee. See the guidelines set forth in judge's work bench book, Section E-10. It is this type of offense which could come within the jurisdiction of a Community Dispute Resolution Committee or by the present Rule 7:3-2, Neighborhood Disputes.

Those that would espouse mediation in municipal courts certainly do so with a genuine desire to improve the system. However, we, as a collective body, just do not believe it is realistic. The present Notice In Lieu of Complaint and Community Dispute Resolution Committee should continue and this Proposal should not be adopted.

This does not mean that the civilian complaintant should be left to fate. In the past, and presently, in those rare instances when the municipal court judge deems it necessary for the case to be presented by the municipal prosecutor and he so requests, the prosecutor, in most instances complies. This approach works well and should be continued.

We again emphasize that this proposal would increase the number of civilian complaints in municipal courts taxing said courts to the limit.

PROPOSAL 5: DISCOVERY

The MCMPA concurs that discovery should be allowed in municipal court complaints where a defendant may be subject to imprisonment or have his license suspended for a lengthly period of time. Presently R.7:4-2(g) so states.

Previous to this rule change in 1978 discovery was not allowed. Further, State v. Roth, 154 N.J. Super 363 (App.Div.1977) held that discovery was not allowed even in drunk driving cases. It should be pointed out that at that point in time Drunk Driving Statute carried minimum sentence of sixty days. The Rule was amended after the law was amended imposing the six month minimum sentence. It is the recommendation of the MCMPA that the present Rule as set forth in State v. Utsch, 184 N.J. Super 569 (App.Div.1982) remain in tact. To require discovery in speeding tickets and other moving violations would create an impossible task for police officers, court clerks and municipal prosecutors. The case of State v. Wojtkowiak, Supra as mentioned in Proposal 1 points out the difficulties that would arise. For the State to have to produce four calibration certificates and additional documentation in a two point speeding ticket would be an undue burden on the court. We rely on the rationale of State v. Roth, Supra as it applies to minor matters. We rely on the present Rule as it applies to matters involving possible incarceration or loss of driving privileges for an extensive period of time.

Finally, we do concur with the Proposal that there should be some uniformity as to obtaining discovery. We concur that the notice for discovery should be sent to the municipal prosecutor as set forth in State v. Utsch, Supra but not necessarily carboned to the records division of the police department. It is the prosecutor's obligation for knowing what evidence must be presented and must not be presented. It should pass through his hands to the defendant and not simply a notice to him wherein police departments sent it out. Serious cases could be lost when people who do not know, nor should be expected to know, that certain documentation is needed for the prosecution of a case. Simply look at the recent case of State v. Matulewicz which recently overruled State v. Malsbury, 186 N.J.Super 91 (L.Div.1982). It may be months before each municipal prosecutor is aware of the decision and longer for the police department and never for the court clerk.

Accordingly, discovery should be limited and the request should be made directly to the municipal prosecutor who should comply as required.

CONCLUSION

This completes the position statement by the Monmouth County Municipal Prosecutors Association in reference to the Supreme Court Task Force Proposals on the role of the municipal prosecutor.

Respectfully submitted,

James A. Carey

JAMES A. CAREY, President
Monmouth County Municipal
Prosecutors Association

PASSAIC COUNTY
MUNICIPAL PROSECUTORS ASSOCIATION, INC.
363 ROUTE 23, POMPTON PLAINS, NEW JERSEY 07444
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TRUSTEES

JOSEPH A. FALCONE, COUNTY PROSECUTOR
GARY A. MATANO
BLANCHE K. GOLDSTEIN
WALTER M. D. KERN, JR.

May 23, 1985

Administrative Office of the Courts
State of New Jersey
Hughes Justice Complex
CN-037
Trenton, New Jersey 08625

Re: Supreme Court Task Force Study

Dear Sirs:

This is to inform you that at a recent meeting of the Passaic County Municipal Prosecutors Association, a vote was taken concerning the Monmouth County Municipal Prosecutor's Association position paper. At our meeting, it was agreed by all present that this Association is in full agreement with that position paper.

In addition thereto, it was voted to include our endorsement of the recent plea bargaining study and recommendations made by the Task Force.

In reading the entire Task Force study, it is noted that no mention was made concerning the possibility of recommending that municipal prosecutors be given a 3 year appointment as opposed to the 1 year appointment currently in existence in most municipalities. It is important that prosecutors be given this amount of tenure in order to allow them to become proficient in the presentation of cases before the municipal court. All too often a new prosecutor is just beginning to become proficient in this respect. However, because of political consideration he may very well lose the appointment after the 1 year span.

It is respectfully requested that this avenue be explored by the Task Force Study Team.

Very truly yours,

SUE C. NUSSBAUM
Secretary-Treasurer

GT:JM
cc: George Tosi, President
cc: Howard F. Appelt, II, Vice President

Position Paper

MUNICIPAL COURT JUDGE

PRACTICE LIMITATIONS

NOT ADOPTED BY THE TASK FORCE.

MUNICIPAL COURT JUDGE - PRACTICE LIMITATIONS

I. INTRODUCTION

Our Chief Justice has frequently stated that Municipal Court Judges are "Judges 100% of the time." Over 300 Municipal Court Judges preside in over 500 municipal courts, each having its own individual flavor and problems because of the population located within its geographical boundries. In the larger municipalities, a relatively few Municipal Court Judges are engaged full-time in judging. By ordinance there is one prime-time Municipal Court Judge in this state with limitations on his practice that prohibit him from engaging in contested litigation. The overwhelming majority of Municipal Court Judges are part-time judges with varying degrees of activity in private practice. Nowhere is there a compendium of rules, regulations, and decisions governing the limitation of private practice by Municipal Court Judges. This paper outlines these problems facing the judge-practicing attorney and attempts to resolve them.

II. THE PROBLEM BEING ADDRESSED

There is no problem involving full-time judges. They are in fact judges 100% of the time.

The prime-time judge has all the limitations upon his practice currently imposed on the part-time judge and further is barred from becoming involved

in contested litigation. Theoretically this permits the Municipal Court Judge to maintain an office practice largely devoted to business relationships, estate planning and administration, and real estate practice, but avoids conflict of scheduling between trial court appearances as an attorney and maintenance of a court schedule as a judge. This concept further eliminates from the public awareness the role shift from opposing advocate to judge. However, problems arise even from conflicting roles in the office practice, because even there, in negotiation of business transactions and real estate closings, there is a well-recognized adversarial interest.

The part-time Municipal Court Judge-attorney presents an even greater problem. The reader is referred to Chapter X of the New Jersey Municipal Court Manual, which is reproduced with this paper as Appendix A. Essentially, the Municipal Court Judge is prohibited from:

1. Practicing in any criminal, quasi-criminal, or penal matter, whether judicial or administrative in nature, in any state or federal court, including juvenile matters.

2. Representing any party in any civil action arising out of a complaint filed in the municipal court of which he is the judge or acting judge.

3. Acting as attorney for any agency or officer of the municipality or appearing before the local governing body or any agency or officer thereof.

4. Representing any enforcement officer in private legal matters when the officer is likely to appear in his court.

5. Acting as attorney for the developer of land located in the municipality in which he serves.

6. Representing the municipality or a client in a case against the municipality, and participating in any matter in which the municipality has an interest.

Many of these limitations extend to associates of the Municipal Court Judge. Reasons for disqualification of the judge are also set forth in Chapter X of the New Jersey Municipal Court Manual and refer specifically to Rule 1:12-1 and Canon 3C of the Code of Judicial Conduct.

Underlying all of these limitations and disqualifications is the mandate of impartiality and independence. Presumably, the part-time Municipal Court Judge is permitted to practice within the boundaries of the municipality in which he sits and, except as indicated above, may practice law and represent clients among the citizenry of the municipality. Further, in representing his clients, he comes in contact with attorneys representing other clients who thereafter represent still other clients before him in the municipal court. The variations are infinite, but the range of the problem can be expressed by considering the following, where counsel is either the prosecutor or defense counsel:

1. Counsel represents the mortgagee in a real-estate transaction and Municipal Court Judge represents buyer or seller.

2. Counsel represents buyer or seller in a real estate transaction in which Municipal Court Judge represents other party.

3. Under real estate Contract of Sale, counsel represents buyer or seller who does not wish to perform and Municipal Court Judge represents other party.

4. Counsel represents insurance carrier for defendant in civil action and Municipal Court Judge represents plaintiff.

5. Counsel represents party in negotiation of matrimonial property settlement and Municipal Court Judge represents other party.

6. Counsel represents party to bitterly contested matrimonial action and Municipal Court Judge represents other party.

These situations are by no means exhaustive. The problems presented by these situations are:

1. Should existing limitations on the practice of Municipal Court Judges be extended, and, if so, how far?

2. Do the existing standards for disqualification of the Municipal Court Judge due to conflict, impropriety, or partiality, or the appearances thereof, satisfactorily maintain the requisite appearance of impartiality and independence of the Municipal Court Judge?

3. To what extent should limitations of practice and bases for disqualification extend to causes or clients involving associates of the Municipal Court Judge?

These are the problems to be addressed by this paper.

III RECOMMENDATIONS OF THE SUBCOMMITTEE

The Committee recognizes that the solution to this problem is not an easy one. It has tried to balance the good of the public with the needs of the municipal judge to have a private practice from which to make a decent living. To this end the Committee recommends the following:

1) All Municipal Court Judges who are not full-time shall not become involved in litigation. This will eliminate any overt appearance of conflict wherein the Municipal Court Judge could be in a direct adversarial confrontation with the same counsel appearing in court before him and later on a private matter in Superior Court.

2) In light of the orders in most counties cross assigning all municipal court judges to all municipalities, the Committee recommends that the Administrative Office of the Courts remind the Assignment Judges and Municipal Court Judges of the requirements of Rule 1:1-1(b), which Rule 1:15-1(b) states:

> (b) Judges of Municipal Courts. An attorney who is a judge or acting judge of a municipal court shall not practice in any criminal, quasicriminal or penal matter, whether judicial or administrative in nature, except to perform the official duties of a municipal attorney of another municipality. Nor shall he act as attorney for the municipality or any of the municipalities wherein he is serving or as attorney for any agency or officer thereof; nor practice before the governing body or any agency or officer thereof; nor be associated in the practice of law, either as "of counsel" to or as partner,

employer, employee or agent of, or office associate, with an attorney who is a member of such governing body.

3) In light of the above recommendations and because there is a strong divergence of opinion on the llimitations on practice of partners of municipal court judges under Rule 1:15-4, the Committee strongly recommends the Supreme Court review these limitations generally. Note that the Rule must be re-examined in light of Recommendation #1 (above).

The Committee recognizes that the recommendations stated above will not totally eliminate the problem. The only way to totally resolve the issue would be to move for a full-time municipal judiciary. The Committee recognizes this cannot be achieved given the present structure of appointment. Nevertheless, the Committee believes it to be a goal to work towards.

CHAPTER X

JUDICIAL ETHICS, LIMITATIONS, CONFLICTS

It is the duty of all judges, including municipal court judges, to abide by and to enforce the provisions of the Code of Professional Responsibility, the Code of Judicial Conduct and the provisions of R.1:15 and R.1:17. See R.1:18. These govern the conduct of the members of the Bar and the judges of all the courts in this State. See R.1:14. Whenever a question arises as to the propriety of any situation, these sections should be consulted first as a guide to future conduct.

The following material reviews those instances in which questions most often arise. No attempt is made to review all possible circumstances. Whenever a question is raised, the aforementioned Codes and Rules should be consulted. If a question still persists, a request for a specific ruling may then be made through the Assignment Judge or the Administrative Director of the Courts.

1. LIMITATIONS ON THE PRACTICE OF LAW

It is the view of the Supreme Court that an attorney who is required by ordinance to devote full time to judicial duties shall not practice law, pursuant to R.1:15-1. The following proscriptions regarding the practice of law apply to part-time judges generally, and to municipal court judges in particular.

R.1:15-1(c) limits the law practice of a judge or an acting judge of a municipal court. R.1:15-2 applies the same limitations to an attorney who is a clerk or a deputy clerk of the court. See also Chapter I. Under these rules, municipal court judges, acting municipal court judges and attorneys serving as clerks or deputy clerks of any court are barred from practice in any criminal, quasi-criminal or penal matter, whether judicial or administrative in nature. See *In the Matter of Joseph D. Sabato*, 76 N.J. 46, (1978), in which a municipal court judge attempted to represent his son on a speeding violation in another municipal court, thereby violating R.1:15-1(c) and Canon 2 of the Code of Judicial Conduct. The limitation is statewide and applies to practice in all state and federal courts.

The limitation extends to juvenile matters pending in the Juvenile and Domestic Relations Court and criminal matters. It does not extend to civil matrimonial matters such as temporary custody and support of a family, provided no matrimonial or domestic dispute involving any members of the family has been before either the judge or acting judge of the particular municipal court.

When a complaint has been filed in the municipal court, the judge or acting judge of that court may not thereafter represent

a party in a civil action arising out of that complaint. This limitation applies even though the complaint will be heard by another judge or acting judge of the court. This pertains, for example, to negligence actions arising out of a motor vehicle accident when a traffic complaint has been filed in the judge's court. It also applies to matrimonial matters when either spouse has filed a complaint against the other spouse in the judge's court.

Under R.1:15-1(c), a judge or acting judge is barred from acting as attorney for any municipality in which he serves, or as attorney for any agency or officer of the municipality although he may serve as a municipal attorney for another municipality.

A judge may not appear before the local governing body in which he serves, or any agency or officer thereof. In both instances, the limitation extends to representing or appearing before autonomous or semi-autonomous agencies, including regional agencies of the municipality where the judge or acting judge sits. A judge or acting judge may not be associated in practice either as a partner, employer, employee or office associate with an attorney who is a member of the local governing body.

A municipal court judge should not represent an enforcement officer on private legal matters when the officer is a local officer, or is a State enforcement officer who is likely to appear as a witness in the municipal court in which the judge presides. If the judge has or had an enforcement officer as a client, he, of course, may not sit in any matter in which that officer is a witness. Since representation of police officers may interfere with the judge's ability to perform his judicial duties, such representation should be avoided. If a judge wishes regularly to represent such officers in private legal matters, it is recommended that he consider resigning his judicial position. The Supreme Court has also indicated that a municipal court judge should refrain from representation of the PBA, not only where he sits but Statewide. Associates of the municipal court judge are also precluded.

Judges should not use their position to benefit their private clients facing charges in other municipal courts. See *In the Matter of Mark Vasser*, 75 N.J. 357 (1978), and *In the Matter of Richard V. Anastasi*, 76 N.J. 510 (1978). In accordance with this directive, municipal court judges, both past and present, are proscribed from directing their office staff in their private practice to answer the telephone with the title "judge," or acquiesing in this practice. See Advisory Opinion 55, 87 N.J.L.J. 700, October 29, 1964. Judges are also cautioned against using the title "judge" in any communication other than court business.

Advisory Opinion 167, 93 N.J.L.J. 1, January 1, 1970 indi-

cates that a municipal court judge may not act as attorney for a developer of land located in the municipality which he serves. The Opinion notes that any development requires application to some or all of the following boards or persons: planning board, board of adjustment, building inspector, and the municipal engineer. A municipal court judge, in making any such application, violates R.1:15-1(c), which prohibits municipal court judges from practice before any municipal agency or officer in the municipality where he serves as judge.

The judge may appear before a local board or agency on his own behalf, as, for example, when he seeks a variance in connection with his own property.

A judge should not represent a client in a case against the municipality nor should he represent the municipality in litigation. Thus the judge should not participate in a matter in which the municipality has an interest. Accordingly, the judge should not serve on the County Tax Board.

The Supreme Court has indicated that a municipal court judge may not serve as County Counsel or County Solicitor or on his staff.

2. OTHER LIMITATIONS APPLICABLE TO ALL JUDGES

Under R.1:17-1, judges are barred from political activity of any nature, as it is essential that the judge and the judicial office remain isolated from partisan activities or partisan pressures. Such activity includes membership in political clubs or attendance at political meetings or dinners. Judges should not contribute to political parties nor to the campaign of any candidate. The Supreme Court has indicated that the provision on the Internal Revenue tax forms providing for the designation of $1.00 of taxes for the Presidential Election Campaign Fund is an exception to the prohibition against political contributions by judges. While these prohibitions on political activities and political contributions do not apply to a judge's spouse, the judge should not permit marital assets to be used for political purposes nor should he permit the marital home to be used for political purposes. The judge should not accompany his or her spouse to a political gathering of any kind or be seen as a political advisor. *In the Matter of The Application of Ellen Gaulkin*, 69 N.J. 185 (1976). This area is extremely sensitive and if there is any doubt about a contemplated activity, it is best not to become involved.

The issue of judicial involvement in casino-related activities has been considered by the Supreme Court in *Knight v. Margate*, 86 N.J. 374 (1981). *Knight v. Margate* upheld the New Jersey Conflict of Interest Law, N.J.S.52:13D-17.2, which had restricted involvement

in specific casino-related industries by all full-time members of the judiciary, including full-time municipal court judges and municipal court judges in Atlantic City, and their associates for a period of two years following their term of office. The Supreme Court also extended this prohibition to all part-time municipal court judges. It is the view of the Administrative Office of the Courts that these limitations apply to acting municipal court judges as well. R.1:15-1(c). R.1:15-4. The Administrative Office of the Courts has also indicated that the two year post-employment restriction on casino-related activity should not be extended to the partners, associates or employees of the municipal court judges or acting judges, unless such partners, associates or employees are full-time municipal court judges or judges of the Atlantic City municipal court.

The limitations on the participation of a judge in civic, professional and charitable activities are stated in Canon 5B of the Code of Judicial Conduct, which provides that a judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. In this regard, judges may attend regular Bar Association dinners. The Supreme Court has stated that part-time municipal court judges may serve as officers, trustees or committee members of State, county or local bar associations, as the benefit to the Bar outweighs the remote possibility of dominance or impropriety. As to full-time judges, such activity is not permitted. However, judges should avoid attending PBA dinners or picnics. Municipal court judges should not serve as volunteers in Probation or Parole.

Canon 5B of the Code of Judicial Conduct provides that a judge should not allow social relationships to influence his judicial conduct or judgment, "nor should he convey or permit others to convey the impression that they are in a special position to influence him." The Supreme Court has thus directed that the following guidelines be observed by all judges whether on the bench, or recalled to judicial service with regard to testimonial or retirement functions:

(1) There shall be no testimonial or retirement functions permitted honoring a judge while the judge is still on the bench unless the function is organized, sponsored and hosted by persons or an organization related to the judiciary such as a court clerks' association, a judges' association, the judges' law clerks or former law clerks, the State Bar Association, County Bar Associations, the American Trial Lawyers' Association or a similar organization.

(2) The judge so honored may accept a gift of "nominal value"

such as: a gavel or plaque presented to the judge as an outstanding lawyer or judge; a trophy or award for activities incident to a hobby; a book; a painting; a modestly priced remembrance such as a brief case or sporting equipment and similar items.

(3) The judge may accept an award of special recognition (whether for his judicial or extra-judicial activities) such as an honorary degree from a college or university or a certificate of achievement from an organization such as the Boy Scouts, provided the award is not made in connection with a fund raising event.

(4) The testimonial or retirement function when permitted may not be a fund raising event.

(5) When a judge has retired and is no longer serving as a judge, the prohibitions set forth in these guidelines are no longer applicable.

A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court;

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of his office for that purpose, nor may he be listed as an officer, director, or trustee of such an organization in any letters or other documents used in such solicitations. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events and contribute to such organizations;

(3) A judge should not give investment advice to such an organization, nor may he serve on its board of directors or trustees if it has the responsibility for approving investment decisions.

R.1:16-2 and Canon 5C(4) deal with the general prohibition against gratuities, gifts, bequests, favors or loans. A judge shall not except any gratuity or gift either directly or indirectly from any attorney or other person who has had or is likely to have any professional or official transaction with his court. R.1:16-2. The provisions of this rule extend to court employees and employers of officers serving the courts as well. Canon 5C(4) provides that neither a judge nor a member of his family residing in his household shall accept a gift, bequest, favor or loan from anyone except as follows:

(a) A judge may accept a gift of nominal value incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) A judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) A judge or a member of his family residing in his household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before him.

"Member of his family residing in his household" is defined to mean any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family who resides in his household. Canon 5C(5).

In conjunction with the prohibition against accepting gratuities in general is the strict prohibition against accepting fees or gratuities for performing marriages. See *In the Matter of James DelMauro*, 57 N.J. 317 (1971). Judges may not accept any payment for the performance of judicial duties except the salary paid to them by the municipality. If any expenses for the purchase of special forms or supplies are incurred in the performance of marriages, these expenses should be included in the court budget and borne by the municipality rather than personally by the judge. Traditionally the performance of a marriage ceremony is an important statutory judicial duty. A judge, therefore, should not decline to perform a marriage if the ceremony is scheduled to be performed at a time and place reasonably convenient for the judge.

Occasionally a judge may be subpoenaed as a witness in litigation when he has personal knowledge of relevant facts. He then has the same duty as any other citizen to testify as to the facts. He should not testify as a character witness or as an expert witness. His position as a judge would unduly and unfairly influence the weight to be given to his testimony. See Canon 2B and Commentary thereto.

Frequently, judges may become personally interested in the introduction or passage of specific legislation. Such interest, of course, is commendable on the part of every citizen. Nevertheless, a judge's position in the judicial branch of the government prohibits him from contacting members of the Legislature either directly or indirectly. Such matters, therefore, should be referred to the Assignment Judge

or the Administrative Office of the Courts for reference to the Supreme Court.

In some instances judges have questioned Legal Services attorneys as to their right to represent clients before the court. The Supreme Court is of the view that this is not the responsibility of the judge and should not be his concern whether a person represented by a Legal Service attorney is in fact eligible for such representation. The question of eligibility for representation by a Legal Services attorney is a matter for determination by those responsible for the operation of the Legal Services offices and not the court.

It is long-standing Supreme Court policy that the spouse, members of the immediate family and close relatives of a judge shall not be employed by or asked to serve in court-related offices without prior approval of the court. The only exception to this is law secretaries and law clerks. It is important to note that this policy applies to all court-related offices, including the prosecutor's office and court-related offices located in counties other than those in which the judge serves and applies equally to municipal court judges. Assignment Judges shall report the names of judges' relatives so employed, and the date of their approval, to the Administrative Director of the Courts.

State Regulation of the Division of Alcoholic Beverage Control, N.J.A.C.13:2-23.17, provides as follows:

No license shall be held by any regular police officer, any peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Law or Regulations, or by any profit corporation or association in which any such officer or person is interested, directly or indirectly, nor shall any licensee employ or have connected with him in any business capacity whatsoever any such officer or person, except that nothing herein shall prohibit a licensee from employing in a non-managerial capacity a special police officer who shall not sell, serve or deliver any alcoholic beverages.

It is the ruling of the Division of Alcoholic Beverage Control that a judge may not hold an alcoholic beverage license or be employed by any person, partnership or corporation operating a licensed alcoholic beverage business for profit. Judges may be members, officers, directors or trustees of fraternal, social or similar organizations which do not operate for private profit and which hold alcoholic beverage licenses. Of course, the judge should not sit in any case involving infractions of the liquor laws or ordinances when he is a member, officer, director or trustee of such non-profit organization.

Municipal court judges, both past and present, are proscribed from directing or acquiescing in their office staff in their pri-

vate practice answering their telephone with the designation "judge" before their names. See Opinion 55, 87 N.J.L.J. 700, October 29, 1964.

3. DISQUALIFICATION

The circumstances under which a judge must disqualify himself on his own motion from hearing a particular case are contained in R.1:12-1, which provides: The judge of any court shall disqualify himself on his own motion and shall not sit in any matter, if he

(a) is by blood or marriage the second cousin of or is more closely related to any party to the action;

(b) is by blood or marriage the first cousin of or is more closely related to any attorney in the action. This proscription shall extend to the partners, employers, employees or office associates of any such attorney except where the Chief Justice for good cause otherwise permits;

(c) has been attorney of record or counsel in the action; or

(d) has given his opinion upon a matter in question in the action; or

(e) is interested in the event of the action; or

(f) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so.

Paragraphs (c), (d) and (e) shall not prevent a judge from sitting because he has given his opinion in another action in which the same matter in controversy came in question or given his opinion on any question in controversy in the pending action in the course of previous proceedings therein, or because the board of chosen freeholders of a county or the municipality in which he is a resident or is liable to be taxed are or may be parties to the record or otherwise interested.

A party to an action has the right to move for the disqualification of the judge before trial or argument. R.1:12-2. See Advisory Opinion 375, 100 N.J.L.J. 644, July 21, 1977, which implies that a judge should disqualify himself if his partner is the brother of the municipal prosecutor. R.1:12, N.J.S.2A:15-49.

In addition to the grounds upon which a judge must disqualify himself pursuant to R.1:12-1, Canon 3C of the Code of Judicial Conduct provides the following grounds for disqualification:

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter or the judge or such lawyer has been a witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding any other interest that could be affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as, or is in the employ of or associated in the practice of law with a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a witness in the proceeding;

The degree of relationship is calculated according to the common law. The third degree of relationship test under the common law would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, cousin, nephew, or niece's husband were a party or lawyer in the proceeding. Canon 3C(3)(a) and Commentary thereto.

A judge disqualified by the terms of Canon 3 may not avoid disqualification by disclosing on the record his interest and securing the consent of the parties. Canon 3D.

4. ADJUDICATIVE RESPONSIBILITIES

Canon 3A lists the standards that apply to a judge in the performance of his adjudicative responsibilities. They require that:

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interest, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his discretion and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard

according to law, and except as authorized by law, neither initiate nor consider ex parte other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to or the subject matter of a proceeding before him if he gives notice to the parties of the person to be consulted and the nature of the advice, and affords the parties reasonable opportunity to participate and to respond.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) A judge should prohibit broadcasting, televising, recording. or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration.

(b) still and television camera and audio coverage of proceedings in accordance with guidelines established by the Supreme Court.

5. CONFLICTS REGARDING THE PRACTICE OF LAW

A. *Municipal Attorneys*

It is improper for a municipal attorney or a municipal prosecutor to represent a party in a civil action arising out of an automobile accident or a matrimonial dispute when he has prosecuted a complaint arising out of the same factual situation in the municipal court. A municipal attorney is also restricted from conducting a private criminal practice in the court of the municipality which he serves. He should also be circumspect with reference to the representation of clients in civil suits affecting the municipality. See Advisory Opinion 349, 99 N.J.L.J. 715, August 12, 1977.

Under the provisions of R.1:15-3(a), a County Prosecutor or sheriff and members of his staff shall not represent any defendant in any criminal, quasi-criminal or penal matter and thus may not represent a defendant in the municipal courts. Under paragraph (b) of this rule a municipal attorney of any municipality may not represent a defendant in the municipal court thereof except to perform his official duties, but he may represent a defendant in an inter-

municipal court if the defendant resides and the offense was allegedly committed in a municipality for which he is not the attorney. An attorney may not practice in the municipal court of the municipality in which he is a member of the governing body.

In accordance with Advisory Opinion 106, 90 N.J.L.J. 97, February 16, 1967, the County Attorney, County Solicitor, or County Counsel may not represent private clients in the municipal courts in that county. This also applies to attorneys on his staff and his law partners and attorneys employed by him. See also Advisory Opinion 204, 94 N.J.L.J. 445, May 27, 1971 and Advisory Opinion 268, 96 N.J.L.J. 1325, November 15, 1973.

Generally, a municipal attorney shall not defend an action heard in another municipality if the offense which is the subject of the action occurred in the municipality which he serves. See Advisory Opinion 370, 100 N.J.L.J. 496, June 2, 1977. He may, however, represent a defendant in an intermunicipal court if the defendant resides in and the offense was allegedly committed in a municipality for which he is not the attorney. He may not prosecute or defend a municipal employee who is a defendant in a disorderly persons offense or an indictable offense. See Advisory Opinion 394, 100 N.J.L.J. 417, May 4, 1978, and Opinion 394, 100 N.J.L.J. 417, May 4, 1978 and Opinion 400, 102 N.J.L.J. 73, July 27, 1978. If a municipal attorney represents or serves as a member of a municipal commission, he may not represent private clients before the municipal court which he serves or any municipal agency. See Opinion 374, 100 N.J.L.J. 646, July 21, 1977.

In certain limited circumstances a municipal attorney may represent a client or organization if that client or organization could be deemed autonomous in relation to the government of the municipality. Both a fire district (Opinion 292, 97 N.J.L.J. 809, October 17, 1974) and certain types of school boards (Opinion 376, 100 N.J.L.J. 698, August 11, 1977) have been deemed autonomous, but these appear to be the exception rather than the rule.

A potential for impropriety may arise when it becomes necessary for a municipal prosecutor or other member of a municipal law department to represent the interests of the municipality against its employees in municipal court actions and subsequent appeals. *Perillo et al v. Advisory Committee on Professional Ethics*, 83 N.J. 36 (1980) reviewed Opinion 423 of the Advisory Committee on Professional Ethics in a case involving the prosecution of police officers in disciplinary hearings. The Court stated that such representation would be unethical when persons reasonably familiar with the affairs of the municipality could conclude that a later conflict of interest would arise due to the close and regular cooperation between municipal police officers and municipal attorneys. See also Chapter IX.

In the event that a municipal prosecutor does not appear in

disorderly persons offenses, a law firm retained by a local enterprise frequently prosecutes these offenses, e.g., shoplifting, before the municipal court "for and on behalf of the state or municipality" pursuant to R.7:4-4(b). Such a firm shall not represent other defendants before the municipal court in question since, in the opinion of the Advisory Committee on Professional Ethics, it has a close connection with the court in view of the frequency and regularity of its appearances. R.1:15-3(b). This may be compared to the situation of a municipal prosecutor who is barred from representing defendants in the municipal court where he lives, as indicated above. Advisory Opinion No. 448, 105 N.J.L.J. 119, February 7, 1980.

B. *Associates of Judges and Independent Attorneys*

A municipal judge's associate, partner, employer, employee or office associate is prohibited from appearing in any criminal, quasi-criminal or penal matter within the county in which his court is located. In addition, where a municipal judge is a partner in a firm, that firm should not represent parties who are engaged in actions against the municipality served by the judge. Advisory Opinion 392, 101 N.J.L.J. 289, March 30, 1978.

These prohibitions do not bar these individuals from accepting appointment for the representation of indigents. R.1:15-4. They may also serve as a municipal attorney for another municipality. See Advisory Opinion 395 and Supplement, A.C.P.E. 99 N.J.L.J. 1153 (1976) and 100 N.J.L.J. 417, May 19, 1977.

For guidelines on what constitutes an association as per R.1:15-4 attorneys can refer to Opinion 387, 101 N.J.L.J. 113, February 9, 1978, Opinion 406, 102 N.J.L.J. 353, October 19, 1978, and Opinion 417, 102 N.J.L.J. 133, February 15, 1979.

The Supreme Court, as a matter of policy, has indicated that partners or associates of a municipal court judge should not represent clients in bastardy proceedings in any court in the county in which the judge is located. Such an attorney may handle criminal matters in any county other than that in which the municipal court judge is sitting or in any federal court even though the federal court may be located in that county. Although a judge or acting judge of a municipal court may not serve as a municipal prosecutor in any municipal court, his law partner or associate may do so in any other municipal court.

Independent attorneys are also subject to some limitations concerning conflicts. Advisory Opinion 404, 102 N.J.L.J. 205, August 31, 1978, indicates that attorneys who often represent municipal police officers in a municipal court should not represent lay defendants in that municipal court.

An independent attorney, when hired to defend municipal employees in suits arising out of their official duties, is similar in status to a municipal public defender, and therefore may represent other clients before this court. See Advisory Opinion 402, 102 N.J.L.J. 89, July 27, 1978.

In accordance with Advisory Opinion 265, 96 N.J.L.J. 1253, November 1, 1973, a municipal public defender paid by the municipality to represent indigent defendants charged with non-indictable offenses may properly represent other defendants before the municipal court and other bodies of that municipality. However, the Supreme Court has disapproved the practice of a municipal public defender representing a non-indigent in the municipal court he services after the defendant has been found to be unqualified for the services of the public defender.

In accordance with Advisory Opinion 79, 88 N.J.L.J. 460, July 15, 1965, an attorney for a local board or agency, including an autonomous or semi-autonomous agency, such as a municipal housing authority or municipal parking authority, may not represent private clients before the municipal court of that municipality. However, pursuant to Advisory Opinion 292, 97 N.J.L.J. 809, October 17, 1974, an attorney representing the board of fire commissioners of a municipality may represent a third party in a non-related action in the municipal court of the same municipality. In this case, the board of fire commissioners for the district was elected by ballot and not appointed. Also, the budget for the district was determined by referendum. The Committee held that the fire district pertains more to an autonomous body than an adjunct of the municipality and accordingly permitted its attorney to appear in the municipal court.

In Advisory Opinion 113, 90 N.J.L.J. 473, July 20, 1967, the Committee deemed it improper for an attorney who represented the local Patrolmen's Benevolent Association to appear in the municipal court of that municipality to represent defendants on complaints when a local police officer is the complainant or a witness. See also *State v. Galati*, 64 N.J. 572 (1974) and Advisory Opinion 320, 98 N.J.L.J. 857, October 9, 1975. Advisory Opinion 260, 96 N.J.L.J. 1129, September 27, 1973, states that neither an attorney who is legal advisor to a local Patrolmen's Benevolent Association nor members of his firm are precluded from appearing in the municipal court of the municipality when no member of the local Patrolmen's Benevolent Association is involved in any way. If such attorneys are associated with a municipal court judge, however, the Supreme Court policy against representation of the PBA extends to them as well. In Opinion 400 of the A.C.P.E. 102 N.J.L.J. 73, July 27, 1978, an attorney could not represent the Patrolmen's Benevolent Association and civilian defendants in the same municipal court.

EXHIBIT 2

PROPOSED COURT RULES AND AMENDMENTS

PROPOSED COURT RULES AND AMENDMENTS

Exhibits

2.	Rule 1:2-5.	Postponements
2.a	Rule 1:17-5.	Nepotism
2.b	Rule 1:33-2.	Court Managerial Structure
2.c	Rule 1:33-4.	Assignment Judges
2.d	Rule 1:33-9.	Review of Administrative Recommended Dispositions
2.e	Rule 1:38.	Confidentiality of Court Records
2.f	Rule 3:23-8.	Hearing on Appeal
2.g	Rule 3:28.	Pre-trial Intervention Programs
2.h	Rule 7:4-2(g).	Proceedings Before Trial
2.i	Rule 7:4-2(j).	Proceedings Before Trial
2.j	Rule 7:10-6.	Educational Requirement

POSTPONEMENTS

The following proposed Court Rule shall be incorporated into and/or reconciled with Rule 1:2-5 (Advancement of Cases for Trial or Assignment):

In the scheduling of cases for trial, hearing or argument, the following courts and classes of actions shall be given preference:

(1) Supreme Court, all matters;

(2) Appellate Division, Superior Court, all matters;

(3) Superior Court, jury trials in progress;

(4) Municipal Court, driving while intoxicated matters, with the oldest case having priority if a conflict exists between municipal courts;

(5) Superior Court, jury trials not in progress;

(6) Municipal Court, cases other than driving while intoxicated which are older than sixty days, with the oldest case having priority if a conflict exists between municipal courts;

(7) Superior Court, non-jury cases; and

(8) Depositions.

The above preferences may be altered by the Assignment Judge for good cause shown.

NEPOTISM IN THE MUNICIPAL COURT

It is recommended that the following rule be adopted:

R. 1:17-5. Nepotism

(a) No person employed in any part of a municipal court system shall be hired if he or she is related by adoption, marriage, or blood to any elected official, or other person who has appointive or hiring authority in that municipality, or to the judge of the municipal court.

(1) "Related" means any of the following relations by adoption, marriage, or blood: spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(2) Any such situation existing on or before the effective date of this rule, may continue.

(b) No court clerk or deputy court clerk of a municipal court may be appointed or designated if that person has a spouse, parent, or child who is or becomes a police officer serving on the police force in that municipality.

(1) Any such situations existing on or before August 1, 1977, may continue provided that court clerks or deputy court clerks of any municipal court should not prepare or complete the jurat on any complaint nor sign an arrest warrant nor fix bail involving any local, county, or state officer who is his or her spouse, parent or child.

COURT MANAGERIAL STRUCTURE

It is recommended that Rule 1:33-2 be amended as follows (Note: The bracketed material is to be deleted and the underlined material is to be added):

R. 1:33-2. Court Managerial Structure

(a) The Chief Justice shall divide the State into such geographical divisions as he shall deem appropriate to facilitate the efficient administration of the courts. Such geographical divisions shall be known as "vicinages".

(b) For each vicinage, the Chief Justice shall designate a judge of the Superior Court to serve as Assignment Judge. Each such Assignment Judge shall serve at the pleasure of the Chief Justice and shall report directly to him.

(c) Within each vicinage, the Chief Justice shall organize the trial court system into [four] five functional units to facilitate the management of the trial court system within that vicinage. These units shall be: Civil, Criminal Family, [and] Chancery[.] and municipal.

(d) (1) Each functional unit shall be supervised by a Presiding Judge who shall be appointed by the Chief Justice, after consultation with the Assignment Judge, and who shall serve at his pleasure. A Presiding Judge may supervise more than one functional unit. The Presiding Judge shall report directly and be responsible to the Assignment Judge.

(2) The Chief Justice may, in his discretion, appoint the Assignment Judge to serve as the Presiding Judge for one or more functional units within his vicinage.

(e) The Chief Justice shall designate a judge of the Tax Court as presiding judge, to serve at his pleasure.

HIRING/FIRING OF COURT EMPLOYEES

It is recommended that Rule 1:33-4 be amended as follows (Note: The material to be added is underlined).

R. 1:33-4 Assignment Judges

(e) Subject to uniform minimum standards and conditions promulgated by the Administrative Director, the Assignment Judge may appoint and discharge such judicial support personnel, including municipal court personnel, within the vicinage as he shall deem necessary.

MUNICIPAL COURT BUDGETS

It is recommended that Rule 1:33-9 be amended as follows (Note: the material in brackets is to be deleted and the material underlined is to added.):

R. 1:33-9. Review of Administrative Recommended Dispositions

(a) Annual Budget Recommendation--Review. If there is an impasse between the Board of Freeholders and the Assignment Judge concerning the annual budget for the judiciary, or between a municipal governing body and the Assignment Judge concerning the annual budget for any municipal court, the Assignment Judge shall, without a formal hearing, make a recommended disposition, no later than 14 days after the Board of Freeholders or municipal governing body has introduced on first reading [has adopted] the annual budget, which disposition shall become a final order unless within 10 days from the date thereof (the Assignment Judge for good cause may fix a shorter period of time) the Board of Freeholders, the County Executive, the municipal governing body, or the Municipal Administrator, as the case may be, seeks review by filing with the clerk a notice of petition for review by the Supreme Court and serving copies of the notice upon the Assignment Judge and the Administrative Director. The notice shall set forth petition's name and address and the name and address of counsel, shall identify the recommended disposition to be reviewed (a copy of which shall be attached) and state concisely the reasons for which review is sought.

PUBLIC ACCESS TO COURT RECORDS

It is recommended that Rule 1:38 be amended as follows (Note: The bracketed material is to be deleted and the underlined material is to be added):

R. 1:38 Confidentiality of Court Records

All records that are required by statute or rule to be made, maintained or kept on file by any court, office, or official within the judicial branch of government shall be available for public inspection and copying, as provided by law, except:

(a) Personnel and pension records;

(b) County probation department records pertaining to investigations and reports made for a court or pertaining to persons on probation;

(c) Completed jury questionnaires, which shall be for the exclusive use and information of the jury commissioners and the Assignment Judge, and the preliminary lists of jurors prepared pursuant to N.J.S. 2A:70-1 and 2, which shall be confidential unless otherwise ordered by the Assignment Judge;

(d) Records required by statute or rule to be kept confidential or withheld from indiscriminate public inspection;

(e) Records in any matter which a court has ordered impounded or kept confidential;

(f) Records of programs approved for operation under Rule 3:28 and reports made for a court or prosecuting attorney pertaining to persons enrolled in or under investigation for enrollment in such programs[.];

(g) Pre-sentence investigation reports;

(h) Probation records;

(i) Police investigation reports (other than routine traffic/ accident reports which have been entered into evidence during a trial);

(j) Search warrants;

(k) Computerized criminal histories used for controlled dangerous substance discharges;

(l) Records maintained pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-3 to including but not limited to complaints and temporary restraining orders;

(m) Medical/psychiatric reports.

TRIAL DE NOVO

It is recommended that Rule 3:23-8 be amended as follows (NOTE: The material in brackets is to be deleted and the underlined material is to be added).

Rule 3:23-8 Hearing on Appeal

(a) Plenary Hearing; Hearing on Record; Correction or Supplementation of Record; Transcript for Indigents. If a verbatim record or sound recording was made pursuant to R.7:4-5 in the court from which the appeal is taken, the original transcript thereof duly certified as correct shall be filed by the clerk of the court below with the county clerk, and a certified copy served on the prosecuting attorney by the clerk of the court below within 20 days after the filing of the notice of appeal or within such extension of time as the court permits. (1) In those municipal courts in which there is available a stenographic record or intelligible sound recording, appeals shall be made on the record to the Superior Court, Law Division, in the same manner, and on the same available grounds as presently provided for in relation to appeals from the Superior Court, Law Division. Right of appeal from the Superior Court, Law Division, to the Appellate Division shall be retained. (2) In those municipal courts where there is no stenographic record or intelligible sound recording, appeals shall be de novo to the Superior Court, Law Division, with the taking of all necessary testimony and presentation of evidence.

[In such cases the trial of the appeal shall be heard de novo on the record unless it shall appear that the rights of either party may be prejudiced by a substantially unintelligible record or that the rights of defendant were prejudiced below in which event the court to which the appeal has been taken may either reverse and remand for a new trial or conduct a plenary trial de novo without a jury. The court shall provide the municipal court with reasons for the remand. The court may also supplement the record and admit additional testimony whenever (1) the municipal court erred in excluding evidence offered by the defendant, (2) the state offers rebuttal evidence to discredit supplementary evidence admitted hereunder, or (3) the record being reviewed is partially unintelligible or defective.] If the appellant, upon application to the court appealed to, is found to be indigent, the court shall order the transcript of the proceedings below furnished at the county's expense if the appeal involves violation of a statute and at the municipality's expense if the appeal involves violation of an ordinance. If no such record was made in the court from which the appeal is taken, the appeal shall operate as an application for a plenary trial de novo without a jury in the court to which the appeal is taken.

PRE-TRIAL INTERVENTION

It is recommended that R. 3:28 be amended as follows (Note: the underlined material is to be added):

R. 3:28...

(b) Where a defendant charged with a penal,[or] criminal, disorderly persons or petty disorderly persons offense has been accepted by the program, the designated Judge may, on the recommendation of the person approved by the Supreme Court as program director, and with the consent of the prosecuting attorney and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed 6 months.

ROLE OF THE PROSECUTOR

It is recommended that Rule 7:4-2 (g) be amended as follows, (Note: The material in brackets is to be deleted and the material underlined is to be added):

R. 7:4-2...

(g) Depositions and Discovery. Depositions and discovery in any case [in which the defendant may be subject to imprisonment or other consequence of magnitude if convicted] shall be permitted as provided by R. 3:13-2 and R. 3:13-3 [provided that the municipality in which the case is to be tried has a municipal prosecutor]. [In all other cases the court may order depositions to be taken and discovery made in criminal actions as provided by R. 3:13-2 and R. 3:13-3.] Discovery shall be requested of the State by serving a written request upon the municipal prosecutor with a copy to the records division the appropriate police agency. In the absence of a municipal prosecutor, a motion may be directed to the municipal court for discovery.

PLEA AGREEMENTS

It is recommended that the following rule be adopted:

R.7:4-2

(j) Plea Agreements. Plea discussions and plea agreements shall be permitted in the municipal court in accordance with Rule 3:9-3 when there is a municipal prosecutor and the defendant is represented or has made a knowing waiver of counsel on the record. The municipal court judge shall not participate in any plea discussions or agreements. The plea shall be accepted by the municipal court judge in accordance with Rule 3:9-2 and Rule 3:9-3(b). The municipal prosecutor shall state, on the record, the reasons and necessity for the plea agreement and that the arresting police officer and the victim have been advised of the plea agreement. In those offenses involving a minimum mandatory penalty, when a plea bargain is reached for a defendant to enter a guilty plea to a lesser and/or amended charge, the municipal prosecutor must represent that insufficient evidence exists to warrant conviction or that the possibility of an acquittal is so great that the interests of justice warrant the plea bargain or dismissal.

Rule 7:10-6. Educational Requirement

(a) Requirements. Within 90 days of his appointment and prior to sitting, a Municipal Court Judge shall be certified as having satisfied the requirements of a prequalification education program as conducted by the Administrative Office of the Courts.

(b) Waiver. The prequalification education program requirement may be waived upon application to the Assignment Judge and the Administrative Office of the Courts.

(c) Sitting Judges. Existing municipal court judges will not be required to satisfy the prequalification education program.

(d) Attorneys. The above course shall be open to all attorneys upon application to the Administrative Office of the Courts.

EXHIBIT 3

LEGISLATION

Pretrial Intervention

In order to establish a Pretrial Intervention Program in the Municipal Courts, N.J.S.A. 2C:43-12 must be expanded and modified to include disorderly persons and petty disorderly persons offenses.

Domestic Violence Relief in the Municipal Courts

To implement the recommendations of the Task Force the Domestic Violence statute, N.J.S.A. 2C:25-1 et. seq. must be amended to include:

a. A contempt procedure modeled after the one used in Bergen County;

b. Mandatory requirement that a police officer place into custody and bring before a judicial officer any person who violates a domestic violence order;

c. Procedures for after-hour emergency relief; and

d. Require that all County Bureaus of Identification maintain a file on all Domestic Violence Complaints.

Liability of Municipal Court Personnel

The New Jersey Tort Claims Act, N.J.S.A. 59:1-3, should be amended to include all Municipal Court Judges and staff.

Preparation and Approval of Municipal Court Budgets

The Task Force recommends that N.J.S.A. 40A:4-45.3 be amended to exempt municipal court budgets from the "cap".

Eligibility Requirements, Evaluation, and Tenure of Municipal Court Judges

In order to accommodate the recommendations of the Task Force the following statute must be amended as follows:

> N.J.S.A. 2A:8-5 - Each judge of the municipal court shall serve for a term of three years from the date of his appointment and until his successor is appointed and qualified, provided, however, that if a municipality shall by ordinance require the judge of the municipal court to devote full-time to his duties or to limit his practice of law to non-litigated matters, upon reappointment to a third consecutive full term such municipal court judge shall hold his office during good behavior. Any appointment to fill a vacancy caused other than by expiration of term shall be made for the unexpired term only; provided, however, that if a municipality shall by ordinance require the judge of the municipal court to devote full time to his duties or to limit his practice of law and on non-litigated matters, the first appointment after such ordinance shall be for a full term of three years.

EXHIBIT 4

RECOMMENDATIONS ALREADY SATISFIED BY COURT RULES OR LEGISLATION

RECOMMENDATIONS ALREADY SATISFIED BY COURT RULE OR LEGISLATION

Appendix C	Tenure for Municipal Court Clerks Resolved by N.J.S.A. 2A:8-13.3.
Appendix D	Scofflaws Resolved by The Parking Offenses Adjudication Act, Chapter 14, Laws of 1985.
Appendix E	Frivolous Complaints Resolved by Court Rule 3:2 and 3:3-1(a).
Appendix E	Uniform Bail Schedule Resolved by Chapter 70, Laws of 1985 (A-701).

Supreme Court Task Force on the Improvement of Municipal Courts

APPENDIX A

POSITION PAPERS
Committee on Accountability

Professor Donald E. Kepner, Chairperson

PAGE

CALENDAR PERFORMANCE EVALUATION

INTRODUCTION

The primary aim of the Committee on Accountability is to ensure that each municipal court is responsive and accountable to the needs of the community in which it operates, and conversely, to assist each community in expanding its efforts to understand and meet the needs of its municipal court. For a court to function successfully, it is essential that a strong relationship be developed among the members of the community, municipal officials, and court personnel. From the public perspective the ideal municipal court is one that provides quality justice in a timely fashion. This is accomplished by implementing reasonable standards of calendar performance standards that are directed at improving such matters as calendar clearance, court productivity, and the implementation of speedy trial goals. These performance measures can be used as one tool to encourage the accountability of the courts. If accountability is to be required, the municipal courts should be educated as to what is expected of them, be measured against these expectations, and be called upon to explain any lack of performance.

This task of establishing performance standards is particularly important in the context of municipal courts. To a degree many aspects of these courts have escaped any kind of scrutiny, as they have never been held accountable to any clearly enunciated goals or standards. Under past administrations, the continued existence of the municipal court system was itself in question, and alternatives (such as the

regionalization of the local courts) were under consideration. It is now evident, however, that not only will the municipal courts continue to function, but that their status will be enhanced as they assume new responsibilities. Accordingly, it is imperative not only that standards of performance be promulgated, but that community and governmental officials at all levels be kept aware of how their courts adhere to those standards.

PROPOSAL

It is clear that the past several decades have witnessed a dramatic rise in the caseloads of all courts in this State. Traditional methods and procedures of court administration have not always proven to be the most effective mechanisms for handling this increased volume of cases. Judicial administrators within this State have recognized that concepts of efficiency and management must be examined and, where possible, applied to the court system if it is to continue to function effectively. As a result, during the past ten years several studies and projects have been undertaken that have made considerable progress in identifying basic standards of effective caseflow management. While judges, practitioners, and researchers may have advocated the adoption of certain of these procedures, only recently have the proposals been tested and systematically validated. As noted in a recent National publication, there is a consensus that at a minimum these principles of case management must involve the following:

"1. There should be explicit time standards for the maximum periods of time a case should take, both on an overall basis (inception to completion) and for the identifiable stages in the caseflow process.

2. Court system performance should be measured against the standards and goals for case processing, and provision should be made for feedback to participants and periodic revisions of the caseflow management system when necessary."

Several areas of concern have been identified as being central to effective court management, including matters such as calendar clearance and backlog reduction, the implementation of speedy trial goals, and the development of productivity and cost-effectiveness standards. These matters will be discussed individually.

A. CALENDAR CLEARANCE AND BACKLOG REDUCTION

Simply defined, calendar clearance is the number of cases added to the system during a given time period compared with the number of cases disposed during the same period. If a court disposes of as many cases as it has added, then it has "cleared" its calendar. The main point of 100% clearance is to avoid adding to a continually expanding backlog, or "adding fuel to the fire". As the Chief Justice said at the October 1983 Judicial Conference:

"There is a bottom line below which we cannot allow our court, your court, to fall. The test of minimum court performance is a concept called clearing the calendar. That is, for a given period disposing of at least as many cases as have been filed. It tests very simply whether we can keep up with the work the public asks us to perform... A court that doesn't clear its calendar can't even begin to make improvement, can't even begin to think about it. It simply has its hands full trying

> to survive. If your court can't even keep up with its work load it is in a crisis, a crisis that must be your first order of business."

Calendar clearance of at least 100% is a basic goal for all courts. It is measured by dividing the number of dispositions by the number of filings. Therefore, if a court disposes of 3000 cases in a month when 2700 cases were filed, the calendar clearance rate is 3000/2700 or 111%. This ratio should be computed for each of the major classes of offenses, i.e., disorderly persons, parking, DWI, etc.

Once a court has begun to clear its calendar and is no longer adding to the backlog already accumulated, it is important for it to focus its efforts in disposing of backlogged cases. "Backlog" is defined as the number of cases pending beyond the time goals established for their disposition. Therefore, if the goal for a certain type of case is 60 days (from filing of the complaint to disposition), then the backlog is the sum of all such cases in the active inventory that are already older than 60 days. The question arises as to what is a tolerable size of backlog. Surely, some cases are exceptional and require more time than others. Also, a backlog of 100 cases may be high for a small court but the norm in a very large court. For it to be a useful standard or guideline, a backlog needs to be related to the "size" of the court. A useful measurement tool employed in other jurisdictions is to compare the backlog to the average filings over a period of time such as three months. The resulting percentage can then be used to compare the court with other courts, or with state or county-wide averages to determine relative performance. When the size

of the backlog in the municipal court has been determined, procedures must be implemented to reduce the accumulated pending inventory and insure that it will not re-occur.

B. SPEEDY TRIAL

"Speedy Trial" must be included as one of the goals of every municipal court. There are several very practical reasons why swift and fair disposition of cases must be pursued. It is axiomatic that when a case is delayed, the prosecutor's case becomes weaker. Witnesses can no longer be located, their recollections fade, and evidence for one reason or another becomes unavailable. In addition, delayed justice lessens the impact of deterrence. The Chief Justice noted, "We have made substantial improvement in criminal case processing. We have eliminated much delay but we still have far to go. Criminologists believe that speedy trials are essential to deterring crime. The achievement of speedy trial goals, therefore, continues to be my highest administrative priority." To define the concept of "speedy", a survey was taken at the judicial conference in an attempt to ascertain what the judges in attendance thought were "reasonable" goals for the disposition of various cases. The following is their recommendation for each of the six categories of offenses that fall under the jurisdiction of the municipal court.

(1) Indictable offenses: 48 hours from first appearance
(2) Parking: 14 days
(3) Ordinance violations: 21 days
(4) Moving violations: 30 days
(5) Disorderly Persons/Petty Disorderly Persons: 45 days
(6) Driving While Under the Influence (N.J.S.A. 39:4-50): 60 days

It is generally estimated that 90% of all cases should be disposed within the respective time goals. The remainder would represent cases that are classified as having exceptional needs. These time goals may be implemented gradually over several phases of a statewide delay reduction project.

By necessity there must be developed a method to ascertain whether a court is achieving speedy trial goals. Perhaps the most effective way of making this determination is to take the average age of cases disposed within a certain period of time, and determine what percentage of those cases were completed within their time goal. Such a procedure would require the collection of detailed information that would facilitate calculation of the ages of each type of case. It is hoped that ultimately the work of other parts of the task force will produce such a system. However, in this interim period, currently available data allow for the estimation of the average age of disposed cases ("the turn-around time") and these data will be used.

"Turn-around time" is the average age of disposed cases, and may be useful in devising efforts to gauge "speedy" trial. To calculate turn-around time the following ratio is used: average active inventory divided by average monthly dispositions. That is, if the average active inventory is 1000 cases, and the average monthly disposition is 250 cases, the "turn-around" ratio is 1000/250. This means the average turn-around time for all cases is approximately 4 months. Accordingly, it can be assumed that if a case is filed today, it will generally take 4 months to reach disposition. As with all other measurements discussed, standards must be established for an optimum turn-around time, which will enable the figures for a given court to be compared

against both the optimum figure and a state or county-wide average. The statewide average "turn-around time" will initially be established as a standard for the first phase, and this figure will be reduced during following phases, consistent with goals that will be promulgated.

C. PRODUCTIVITY

Productivity is a measure of court efficiency. There are two main avenues through which cases are disposed in municipal courts: the Violations Bureau and in open court. Courts should be encouraged to dispose of any eligible cases through the Violations Bureau and not to use bench time for taking guilty pleas for minor ordinance infractions and similar matters. Total judge hours, both time spent on the bench and on administrative duties, will be divided into the total number of cases disposed of. This analysis should reveal relationships between the amount of time the judge devotes to court related matters and the volume of cases disposed by that court. The performance of the court can then be measured against statewide averages for all courts and in particular, for courts of similar size.

D. COST PER DISPOSITION

In this day and age, cost effectiveness has become a major concern to all, including private citizens, corporations, and government agencies. With the rapid rise of inflation and the decrease in available funding, frugality has become a way of life for both the public and private sector. As a result it becomes imperative to measure

a court's level of efficiency in terms of productivity based on a cost per case. To derive cost per case, it is necessary to compare the total number of case dispositions against the cost of court operation. However, since some cases (such as parking violation) take substantially less time than others, and since the volume of cases in each category differs from court to court, a "weighted" caseload system needs to be developed and used. This would allow the cost of operating a court to be measured in terms of a weighted caseload to obtain a cost per "weighted" case.

The weight-value system used in the AOC Budget project may be suitable for this purpose. As explained in an AOC publication, "This weighting was done after analysis of information taken from various sources, including prior studies of average time taken by Municipal Court Judges and clerical staff to process cases through the court, as well as from current information on municipal court bench time. These information sources were supplemented by interviews with various personnel with expertise in New Jersey Municipal Courts." It is felt that these weights are relatively accurate and it is clear that the weighted caseload provides a better measure of the actual work of the courts than merely counting total complaints, given the wide variation in resources required by different case-types for both judicial and clerical time. Weights have been set as follows: Parking - 1.0, Traffic - 2.6, and Non-Traffic - 9.0.

The above listed weights are multiplied by the number of dispositions for each case type and added together. When the sum is divided into the expenditures of the court, it is then possible to obtain a reasonable gauge of cost per disposition. Courts can then be compared

with each other to discern those that are most cost effective as well as those that fall below average standards of performance.

E. PRESENTATION: The Collection and Dissemination of Data

In order to establish quantitative standards of court performance a substantial amount of information must be collected statewide. It must be presented on a regular (quarterly suggested) basis and be in summary form in order for it to be functional.

It is also important to design a system that is based entirely on data already being collected in the monthly AOC reports, reports to DMV or SBI, or in municipal court budget submissions. It is envisioned that the Assignment Judge and Trial Court Administrator will receive the compiled data so that those courts under their jurisdiction can be evaluated in terms of the established goals and that those performing below average can be identified. An overall or summary index will make it possible to measure and compare courts in relation to their performance levels. Careful attention must be given to the potential misuse or misrepresentation of these data. Where necessary, summary statements of what each indicator does and does not mean should be attached to performance reports.

Once the necessary standards of performance as discussed above have been established, a system of rating the performance must be designed. It is suggested that a point system be used for this purpose. Grading will be done on either a county-wide basis or by individual courts. Goals or standards will be established in respect of the matters discussed above, i.e., for calendar clearance and backlog

reduction, speedy trial (i.e., turn-around time), productivity, and cost effectiveness (cost per disposition). In the first year of this program the goal in each category will be the existent statewide average (i.e., average turn-around time, average cost per case, etc.). Figures from each court (or county) will be compared to these average figures, and points will be assessed to the court in each category based on the individual court's performance in relation to the goal. A court meeting the goal (or that is within 20% of the goal) will receive one point in that category. If a court falls 20% or more below the established standard, no points will be awarded. Conversely, courts that not only meet but exceed the goal by more than 20% will receive two points. Points will be awarded in each category and will be added together to establish a single score for the court covering all performance standards. This will allow courts to be compared with each other as well as against statewide norms. A model of this proposed procedure is annexed hereto.

CONCLUSION

It has often been noted that the municipal court is in some ways the most important part of the state's court system, as it is the part of the judiciary with which most people come in contact. A person's treatment at the municipal level often determines his attitude towards an evaluation of the entire judiciary. It is imperative, therefore, that the municipal system be made as productive and efficient as possible, and that shortcomings and defects be identified and corrected. The purpose of this paper has been to suggest possible methods of identifying and promulgating relevant performance

standards that the individual courts can be encouraged to meet. It is hoped that such a program of evaluation and improvement will benefit the entire spectrum of municipal court operations. It should also be pointed out that efforts to improve the efficiency of municipal courts in no way imply that a concern for speedy handling should replace considerations of fairness and sensitive treatment of individuals before the court. Efficiency and judiciousness must go hand in hand if quality justice is to be provided.

MUNICIPAL COURT CALENDAR PERFORMANCE

COURT	Cost Per Weighted Case (Expend. ÷ wht. dispositions)	BACKLOG (Active Inventory÷60 days ÷ average quarterly filings)					CALENDAR CLEARANCE										TURN-AROUND TIME Active Inventory ÷ Average Monthly Disposition					DISPOSITIONS PER JUDGE HRS.		CALENDAR PERFORMANCE COURT SCORE Highest-39 Lowest - 0	
		DP/PDP	LO	DWI	MV	PARK	DP/PDP DISPOSED/ ADDED	DP/PDP % CLEARED	LO DISPOSED/ ADDED	LO % CLEARED	DWI DISPOSED/ ADDED	DWI % CLEARED	MV DISPOSED/ ADDED	MV % CLEARED	PARK DISPOSED/ ADDED	PARK % CLEARED	DP/PDP	LO	DWI	MV	PARK	NON TRAFFIC	TRAFFIC		
Absecon	$1.34	10.6%	22.2%	25.0%	7.0%	1.7%	12/15	80%	1/4	25%	2/9	22%	150/218	68%	16/14	114%	2.2mos.	3.0mos.	8.5mos.	0.0mos.	0.8mos.	10.6	7.5	22	Absecon
Atlantic City	$4.4	18.8%	17.6%	168.1%	149.2%	3.7%	344/536	64%	57/43	133%	34/46	74%	456/866	53%	3639/4171	87%	1.5	1.0	8.8	14.7	11.8	5.9	97.8	13	Atlantic City
Brigantine	$6.2	42.6%	203.8%	55.5%	151.6%	145.5%	19/23	83%	18/1	1800%	1/2	50%	112/63	177%	6/13	46%	1.8	3.1	8.0	4.6	42.5	14.5	29.75	12	Brigantine
Buena Boro.	$2.4	33.3%	20.0%	108.3%	25.2%	66.7%	18/7	257%	0/1	-100%	3/5	60%	46/68	68%	2/3	67%	1.4	0.0	5.3	2.4	1.5	2.1	7.0	18	Buena Boro.
Buena Vista	$4.2	105.8%	550.0%	85.3%	22.5%	0%	6/12	50%	3/2	150%	6/7	88%	210/244	86%	0/0	100%	8.8	4.0	8.0	1.7	0.0	2.2	33.2	15	Buena Vista
Egg Harbor City	$6.4	10.9%	25.0%	88.9%	1.0%	0%	32/11	290%	1/1	100%	6/2	300%	59/60	98%	2/7	29%	0.8	2.0	3.3	4.3	12.0	6.2	7.4	19	Egg Harbor City
Egg Harbor Twp.	$3.8	64.4%	26.5%	15.3%	45.9%	0%	43/133	32%	19/31	61%	31/25	124%	418/402	104%	60/106	57%	5.0	2.6	0.8	1.9	0.1	7.8	16.9	20	Egg Harbor Twp.
Folsom	$2.6	56.3%	0%	36.4%	3.9%	0%	2/2	100%	1/0	∞	10/3	333%	75/80	94%	0/0	100%	6.5	0.0	1.0	0.3	0.0	10.0	11.3	29	Folsom
Galloway	$2.2	11.1%	24.0%	472.2%	567.0%	17.6%	18/15	120%	6/1	600%	8/24	33%	627/743	84%	22/273	8%	1.6	1.6	16.6	3.1	16.4	11.7	73.0	17	Galloway
Hamilton	$2.4	49.10%	11.7%	80.9%	38.3%	62.5%	45/26	173%	3/4	75%	21/39	54%	644/633	102%	13/10	130%	2.0	4.3	10.7	2.6	2.6	6.4	29.4	22	Hamilton
Hammonton	$3.5	14.6%	8.3%	27.3%	8.5%	65.7%	51/54	94%	0/0	100%	7/9	77%	170/221	77%	64/60	94%	1.4	0.0	4.9	1.9	2.8	10.4	16.3	25	Hammonton
Linwood	$3.3	55.0%	3%	63.6%	31.5%	0%	10/6	166%	3/7	43%	1/4	25%	101/94	107%	7/4	175%	1.4	3.0	11.0	1.1	0.1	5.0	10.4	21	Linwood
Longport	$0.7	77.8%	66.7%	83.3%	10.9%	30.5%	2/0	∞	0/0	100%	6/3	200%	79/120	66%	46/3	1533%	4.5	0.0	2.3	2.2	0.8	2.0	21.0	21	Longport
Margate	$3.4	59.3%	22.7%	55.6%	14.6%	9.0%	8/6	133%	6/1	600%	6/6	100%	81/100	81%	56/155	36%	8.4	2.0	1.0	1.5	3.2	2.8	17.9	22	Margate
Mullica	$3.6	3.9%	0%	33.3%	0%	0%	16/17	94%	0/3	-100%	9/0	∞	235/133	176%	0/0	100%	2.7	0.0	0.9	0.0	0.0	4.8	25.6	29	Mullica
Northfield	$3.7	10.9%	14.3%	26.7%	17.4%	19.7%	25/30	83%	1/4	25%	4/1	400%	147/86	171%	73/37	197%	1.8	6.0	1.8	0.9	0.1	9.7	17.92	30	Northfield
Pleasantville	$2.8	63.4%	24.1%	92.9%	110.6%	466.7%	48/58	83%	5/13	38%	2/14	14%	156/263	59%	119/27	441%	4.1	4.2	21.5	7.8	4.1	7.9	55.4	8	Pleasantville
Somers Pt.	$2.7	0%	9.9%	0%	7.3%	31.4%	17/49	35%	4/26	15%	9/11	82%	155/183	85%	14/21	66%	3.2	5.3	1.1	0.9	8.1	7.0	35.6	18	Somers Pt.
Ventnor	$4.9	3%	111.1%	0%	8.6%	0%	44/21	209%	1/3	33%	2/2	100%	131/95	137%	106/433	71%	1.3	1.0	2.0	0.4	0.1	7.0	87.8	27	Ventnor
Weymouth Estell Manor Corbin City	$1.4	1400%	100%	322.2%	35.8%	0%	1/2	50%	1/0		3/0		55/58	94%	0/0	+100%	17.0	3.0	10.0	2.6	0.0	1.0	18.6	19	Weymouth Estell Manor Corbin City
COUNTY AVERAGE	$3.36	27.7%	29.3%	57%	70.6%	239%	761/1023	74%	130/145	89.7%	174/217	82.1%	4107/4730	86.8%	1415/5145	81.2%	2.0	2.2	5.4	3.7	10.0	6.2	38.8	21	COUNTY AVERAGE

$ Per Weighted Disposition

Average $3.36
20% ± .7
2.66 to 4.06 = 1 pt.
Less than 2.66 = 2 pts.
Greater than 4.06 = 0 pts.

Backlog

DP/PDP - 27.7% average
+ 5.5%
22.2 to 33.2 = 1 pt.
Less than 22.2 = 2 pts.
Greater than 33.2 = 0 pts.

LO - 29.3 average
+ 6.0
23.3 to 35.3 = 1 pt.
Less than 23.3 = 2 pts.
Greater than 35.3 - 0 pts.

DWI - 57% average
+ 11%
46 to 68 = 1 pt.
Less than 46 = 2 pts.
Greater than 68 = 0 pts.

MV - 70.6% average
+ 14%
56 to 84% = 1 pt.
Less than 56 = 2 pts.
Greater than 84 = 0 pts.

PARK - 239% average
+ 47%
192 to 286 = 1 pt.
Less than 192 = 2 pts.
Greater than 286 = 0 pts.

Calendar Clearance

Under 75%	0
75% - 100%	1
100% - 125%	2
Over 125%	3

Turnaround Time

Under 2 mos.	2 pts.
2-3 mos.	1 pt.
Over 3 mos.	0 pts.

Dispositions Per Total Judge Hrs.

Non-traffic - Average 10.12

Over 10.12 - 1 pt.
Under 10.12 - 0 pts.

Traffic Average 38.8

Over 38.8 - 1 pt.
Under 38.8 - 0 pts.

Key:

DP/PDP - Disorderly Persons/Petty Disorderly Persons Offenses

DWI - Driving While Intoxicated

MV - Moving Violations

PARK - Parking, Violations

L.O. - Local Ordinances, Fish and Game, Navigation, Etc.

COMMUNITY ADVISORY COMMITTEE TO MUNICIPAL COURTS

The Subcommittee on Accountability is interested in assuring that the community and the court develop interaction and that the courts are responsive to the community's needs. Therefore, it is recommended that a mechanism be established by which the community can ascertain those needs and assist the court in determining how best they can be satisfied. Among the areas that could be examined by such a committee are personnel; calendaring; condition of facilities; court relations with lawyers, the public litigants, and the police; and the overall management of the courts.

Another reason for establishing this kind of mechanism is to assist the public in learning more about the working of the court itself, perhaps eliminating some basic skepticism and adverse criticism concerning the courts.

The Committee on Accountability feels that in order to achieve these ends, a Community Advisory Committee should be considered as a link between the court and the community. This committee should be designed to assist the court with its needs and should provide a vehicle for educating local officials and the public on the operation of the municipal court itself.

One of the reasons that municipal courts need the assistance of this community group is that they are uniquely placed in the New Jersey Judicial System. The municipal courts are considered an essential part of the state's court system and are clearly under the authority of the Chief Justice and the Administrative Office of the Courts. At the same

time, Municipal Court judges are appointed by local governing authorities, who have at times exercised inappropriate authority and excessive control over these courts.

This can occur because municipal court judges are appointed for three year terms and have no tenure. With municipal court budgets coming, as they do, from the local governing authority, an additional dependency is created. There is always a danger that concerns about reappointment following a change in administration or budget battle may affect a judge's independence. It is not surprising, then, that municipal court judges and staff feel a certain alienation and uncertainty in negotiating properly for the betterment of the court's budget, personnel, facility improvement, etc. It is also no surprise that the community's perception of the court is sometimes negative. The court is criticized because of scheduling problems, appearance of the building, and treatment of those coming before the court.

Given these problems, it would be advisable to have a community group available to provide input to the courts and assist them in educating the public, when necessary. There would be a threefold purpose for this group:

1. to educate the public concerning the operation and procedure of the Municipal Court;
2. to identify the court's problems and needs and assist the court in dealing with them; and
3. to provide citizen input to the courts on community concerns.

HISTORY

Traditionally, judges and court administrators have given little consideration to the responsibility of the court to the public. It has been thought that the general public really had no interest in the court

except, perhaps, in those cases in which a person had a case pending before it. Once that case was finished, the contact was considered to be over and with it any interest in the courts.

This is so, even in light of the fact that all recent Supreme Court Justices in the state have emphasized that the Municipal Court is perhaps the most important of all courts. This is true, certainly with respect to the public, for it is in the Municipal Court that the majority of individuals get their first, and perhaps only, impression of justice and the judicial system.

It is clear that recent Chief Justices have considered this initial impression to be important. Nevertheless, specific steps have not been taken to insure public interaction with the courts and to provide for community input into the court system.

Historically, the public is both skeptical and distrusting of the courts for many reasons. One of these is lack of clear understanding of what goes on in the courts. Truly opening the courts can be expected to enlighten the public and make it sensitive to the real problems of the system.

Recently there have been suggestions to follow Chief Justice Burger's example, by going to the public. The media are now being permitted into the Municipal Courts under certain circumstances so that the public can be better informed about the judicial process. Suggestions have been made to establish permanent community education and public relations programs in which the courts would work with local schools, universities and public service organizations. The goal of these efforts would be to encourage these institutions to include in their curricula a realistic explanation of how the municipal court system operates.

Another means of letting the public know how the courts work, and why, is to assure that the media give accurate descriptions of court procedures, the court's physical appearance, its budget, and its personnel, as well as of the needs of the judiciary.

A third means of increasing interaction between the courts and citizens is to establish a formal citizen committee charged with responsibility for learning about the municipal courts and communicating that knowledge to other groups and businesses. In this way, perhaps all segments of society would come to understand the courts better and, at the same time, could feel that the courts care about them.

IMPLEMENTATION

To achieve the goal of enhanced citizen involvement in the municipal courts, the Accountability Committee recommends the creation of nonpartisan Community Advisory Committees. Such committees should be established, at a minimum, in each vicinage. Consideration should also be given to creating additional local community advisory committees where any municipality deems such an organization to be appropriate and useful. These proposed community advisory committees would be comprised of persons from the community who are politically neutral, such as members of the clergy, Chamber of Commerce, service oriented groups such as Rotary, Kiwanis, YMCA Board, representatives from Grand Jury Associations, a representative of the Police Department, and lawyers who practice in the municipal courts.

Each vicinage community advisory committee should be appointed by the Assignment Judge on the basis of nominations received from each municipal court judge and municipal governing body, as well as groups

such as the Bar Association and various civic groups. If the county already has established a county advisory group composed of various county agency representatives (as proposed in other Task Force Recommendations), consideration should be given to establishing the community advisory committees within that structure.

The community advisory committee or sub-committee would not be involved in reviewing or commenting on the daily performance of individual municipal court judges and they would certainly be prohibited from reviewing individual court decisions. Instead, the committees would be charged with examining such areas as the level of budget and personnel support required by municipal courts, problems with court workloads, and general space and operating expense requirements of the court. Each community advisory committee would report formally to the Assignment Judge or Presiding Municipal Court Judge, on an annual basis. The community advisory committees could also, at the request of the Assignment Judge, be asked to educate the public on various needs of the municipal courts or provide citizen input into any issue affecting municipal courts in the vicinage.

Community advisory committees could also serve as a crucial bridge between the lay public and the municipal court, not only by making the court needs more visible, but also by advocating specific improvements. With a properly delineated role, these committees should be an invaluable adjunct to the formal municipal court administrative and management structure being created in each vicinage.

DOMESTIC VIOLENCE RELIEF

IN

THE MUNICIPAL COURT

PROBLEM

The first year's report from the Supreme Court Task Force on Women in the Courts identified a number of issues needing the attention of the Municipal Court Task Force. One of the problems having top priority, as identified by the Task Force, was the availability of the municipal courts for emergent relief.

The relevant statute, N.J.S.A. 2C:25-14, indicates in relevant part:

a. On weekends, holidays and other times when the court is closed a juvenile and domestic relations court judge or a municipal court judge shall be assigned to issue a temporary restraining order pursuant to this act. The order shall be made by the judge of the jurisdiction where the alleged domestic violence occurred or the jurisdiction where the plaintiff resided using the same procedure now available on other emergent applications.

b. If it appears that the plaintiff is in danger of domestic violence, the municipal court judge shall, upon consideration of the plaintiff's domestic violence complaint, order emergency relief including ex parte relief, in the nature of a temporary restraining order. A decision shall be made by the judge regarding the emergency relief forthwith. An order granting emergency relief, together with all pleadings, process and other orders, shall immediately be forwarded to the sheriff for immediate service of the order for emergency relief upon the defendant.

This provision is seen as a problem because most of the Municipal Court Judges are part-time employees. Some in the very rural areas sit only once a week or once every two weeks and they are paid accordingly. In those areas these judges have a law practice to which they are committed. Therefore, some of them feel that the Domestic Violence Law and its requirements is a real imposition on them.

At the same time it is evident that police officers still do not understand and enforce the Domestic Violence law properly. For example: if there is a report of domestic violence late at night and police officers go to the scene, what usually happens is that they tell the abusing spouse (usually the husband) to go for a walk and cool off. They tell the victim that if there are still problems the next day, she should go to court and sign a complaint. The restraining order is therefore not being used as the Legislature intended.

In addition to the rather broad problem cited above regarding the lack of availability of the Municipal Court judges, the imposition on their time, and the non-compliance of the police officers with the law, the Task Force on Women also identified other issues for this committee's consideration. One of these was whether the prosecutor or appointed counsel should be available for the victims.

The suggestion from the Task Force on Women was that the Municipal Prosecutor should be available to speak to the victim and give advice as soon as the Complaint for Domestic Violence is filed. This conversation would include advice as to whether a criminal complaint should be filed simultaneously with the Domestic Violence Complaint, and the victim then would be given advice about the contempt procedure, etc. Although this committee concurs that the victim of Domestic Violence needs advice as soon as possible after the incident, the court disagrees that the Municipal Prosecutor would be the appropriate agent. The committee takes notice of a group of highly skilled professionals who are available in each county and on 24 hours call. The Family Crisis Intervention Programs were established by statute and provide support services to the Family Court. Use of this

group would solve many of the problems pointed out by the Task Force on Women.

In addition it appears that one of the recommendations to the full task force is going to be that the police officers rather than court personnel take all complaints. If that occurs, there will be even more reason for the victims to be advised and counseled by the Family Crisis Centers because of the problems described above as well as the insensitivity of some police officers.

Although the contempt proceedings are heard in the Superior Court as mandated by the law, the subcommittee felt that the Committee on Accountability should recommend that the contempt procedure that is used by the Bergen County Prosecutor's Office be recommended as a model for statewide use. Attached is a copy of the contempt procedure in use by the Bergen County Prosecutor's Office. Of course it follows that this committee is recommending that the Statute on Domestic Violence be amended to include that specific contempt procedure. The statute should give a detailed step-by-step procedure so that it is uniform throughout the state.

The Task Force on Women in the Courts also indicated that this committee should address the issue of judges treating as trival those criminal matters that occur in a domestic context.

The subcommittee submits that it is imperative that in order for the courts to be fully accountable, the judges must be educated in this Domestic Violence area so that they will treat criminal complaints involving acts of domestic violence just like all other criminal complaints. Therefore, a yearly sensitivity training program and educational program should be put into place by the Administrative Office and all Municipal Court judges should be required to attend it. In this way judges will understand that in many

instances the abuse and trauma suffered in these situations is even more severe than in other situations, and so the same serious attention should be emphasized with respect to these cases. Through the process of education, many of the biases of judges may be identified and dispensed with and the negative attitude regarding domestic violence may be changed.

Another suggestion of the subcommittee is that since the Family Court pursuant to Rule 5:1-2 may also have jurisdiction of criminal cases, and since those judges are probably more sensitive to the seriousness of the domestic crimes, etc., it should be emphasized that this jurisdiction of the Family Section should be used more frequently. Our Committee concurs and would recommend that the Family Court should hear all Disorderly and/or Petty Disorderly offenses that were signed as a result of a Domestic Violence incident.

The Task Force on Women also pointed out the multitude of problems caused by the permissive language in N.J.S.A. 2C:25-5, in which it states that a law enforcement officer may arrest a person who has violated a temporary or permanent restraining order. The Task Force indicated that because of that permissive language judges must set forth explicitly which provisions of the temporary restraining orders, if violated, will result in arrest. To address this issue our Committee recommends that the statute be amended to provide for the defendant to be placed into custody and brought before a judicial officer for a determination as to whether the defendant should be held. The suggested bail and contempt proceedings could then be put into effect.

A review of this entire area shows that there is a deficiency in the courts and the police departments with respect to the proper implementation of the compliance with the Domestic Violence Act.

The areas of noncompliance or weakness appear to be in addition to the judges' resistance to comply with emergency duty, their reluctance to accept complaints when prior complaints have been withdrawn, the discouragement of victims by police and probation officers from filing complaints until after a "cooling-off" period, and the insensitivity of court personnel on all levels regarding the Act.

The Task Force on Women also pointed out a reluctance by judges to mandate counseling. They appear to be in favor of voluntary counseling rather than mandated. This fact in and of itself shows a need for the A.O.C.'s statistical reporting format to be changed, because although its reports show that in 72% of the cases counseling was ordered, there is no way to tell from its statistics whether the counseling was voluntary or mandatory.

It is evident that there is no uniform procedure throughout the state for after-hour emergency relief or for contempt hearings and relief. It should be noted that work is being done in this area by the Domestic Violence Subcommittee of the Family Division Practice Committee. The Subcommittee is chaired by Judge Julia L. Ashbey. The Subcommittee will consider recommending uniform procedures for the administration and enforcement of the Prevention of Domestic Violence Act.

Therefore, our committee recommends that a uniform procedure in this regard be explicitly stated, in the statute. We also recommend that the Family Court should have total responsibility for Domestic Violence matters and the municipal courts be relieved of this duty.

The subcommittee also recommends that judges have access to all prior complaints (whether criminal or domestic violence in nature) and records thereof as well as a record of all previous withdrawals of complaints, whether criminal or domestic violence complaints.

At present the Municipal Court judges do not get a record of the Domestic Violence Offense Report. The law states, at N.J.S.A. 2C:25-8: "It shall be the duty of a law enforcement officer who responds to a domestic violence call to complete a domestic violence offense report. All information contained in the domestic violence offense report shall be forwarded to [the appropriate county bureau of identification and] the State bureau of records and identification in the Division of State Police in the Department of Law and Public Safety." This committee recommends that that law be amended to include this language and shall be forwarded to the Municipal Court, until such time as the Family court assume total responsibility, in the location where the offense was committed.

Since the law already indicates at N.J.S.A. 2C:25-13a1 that the court shall at the hearing consider "the previous history of domestic violence between the cohabitants," it follows that these reports should be made available to both the Municipal Court and Superior Court Judges.

Finally, the committee recommends that specific uniform guidelines be given to all police departments mandating strict compliance with the law and specifying that judges on emergent duty must be contacted immediately when a temporary restraining order is requested, specifying also that the judge must either see the victim in person or at least speak to and record the testimony and then issue the order if necessary and sign it. Training in this regard from a practical point of view must be given to all police officers toward the end of developing standard police procedure and forms promulgated by the Attorney General or the Prosecutors' Association.

To summarize, it is recommended by the Committee that:

(1) The Family Crisis Intervention Program should be available to speak to the domestic violence victim and give advice and counseling as soon as the domestic violence complaint is filed.

(2) The contempt procedure in use in Bergen County be used statewide;

(3) The domestic violence statute be amended to include the specific contempt procedure in operation in Bergen County;

(4) A yearly training program be put into place by the Administrative Office of the Courts to educate all judges to treat criminal complaints involving acts of domestic violence just like all other criminal complaints;

(5) The Family Court should have sole jurisdiction with respect to criminal cases involving domestic violence since the Judges of that court are probably more sensitive to the seriousness of domestic crimes;

(6) The statute, N.J.S.A. 2C:25-5, be amended to make mandatory that the police place into custody and bring before a judicial officer a person who violated the terms of a domestic violence order;

(7) The AOC's statistical reporting format be changed to indicate whether counseling was voluntary or mandatory;

(8) The Family Court should be contacted first when issuing of Temporary Restraining Orders and the Municipal Courts be used only as a last resort;

(9) Judges have access to all prior complaints (whether criminal or domestic violence in nature) and records of all previous withdrawals of complaints whether criminal or domestic violence complaints;

(10) Specific uniform guidelines be given to all police departments strictly mandating compliance with the Prevention of Domestic Violence Act, specifying that judges on emergent duty must be contacted immediately when a temporary restraining order is requested, that the judge must either see the victim in person or at least speak to and record the testimony, and then issue the order, if necessary, and sign it;

(11) Training of all police officers be done toward the end of developing standard police procedures and forms promulgated by the Attorney General or the Prosecutors' Association.

Office of the County Prosecutor

County of Bergen

Hackensack, New Jersey 07601

(201) 646-2300

Larry J. McClure
County Prosecutor

Dennis Calo
First Assistant Prosecutor

December 8, 1983

TO: ALL BERGEN COUNTY POLICE CHIEFS

SUBJECT: DOMESTIC VIOLENCE

Attached you will find a standard operating procedure to follow after arresting persons for contempt of civil orders entered pursuant to the Domestic Violence Act.

This procedure has been reviewed and approved by the County Judges who hear domestic violence cases. Your close attention to these guidelines will eliminate some of the confusion and difficulty we have all experienced in enforcing the contempt provisions of the Act.

I wish to draw your particular attention to that portion of the guidelines which requires the victim to sign a new Domestic Violence complaint in order to initiate civil contempt proceedings. Obtaining this signed complaint is crucial. In the absence of a complaint, a defendant could be incarcerated without a hearing date being set. When the complaint exists, however, the defendant's case can be routinely processed.

I also caution you that these guidelines relate solely to processing defendants under the civil contempt mechanism established by the Domestic Violence Act. Nothing in these guidelines has any bearing on the signing of criminal complaints under the Penal Code. It may well be that the same incident which provokes the victim to enforce an existing Domestic Violence order also results in criminal charges (such as assault). These are entirely separate options. Should the victim choose to pursue both, however, please notify the Prosecutor's Office of this fact when forwarding indictable complaints to us.

ALL BERGEN COUNTY POLICE CHIEFS
DOMESTIC VIOLENCE

Finally, please note the attached memorandum to all municipal court clerks establishing a mechanism for transporting domestic violence complaints from your municipality to the Juvenile and Domestic Relations Court, via the Sheriff's Department.

These various documents are to be filed in your Law Enforcement Policy and Procedures Manual, Section I-4. As always, if you have any questions, please contact your legal advisor.

Very truly yours,

LARRY J. McCLURE
Bergen County Prosecutor

es
Encl.

DOMESTIC VIOLENCE ACT
CONTEMPT OF COURT

The enforcement of orders issued under the Domestic Violence Act is the crucial last step in utilizing this law. Unfortunately, the statute itself does not provide a detailed enforcement mechanism, but merely states that: (1) a violation of a court order is contempt of court (2C:25-15b) and (2) if an officer has probable cause to believe that a court order has been violated, he may arrest the defendant (2C:25-5a). These short statutory references do not explain what the police are to do after taking a defendant into custody. Therefore, in the following discussion, a step by step procedure is set forth which is to be utilized by law enforcement officers in enforcing domestic violence orders issued by the Juvenile and Domestic Relations Court. (After January 2, 1984, the Juvenile and Domestic Relations Court will be known as the Family Part of the Chancery Division of the Superior Court.)

I. <u>If the violation occurs during regular court hours, Monday through Friday:</u>

(A) Arrest the defendant and then transport both the defendant and the complainant (victim) to the Juvenile and Domestic Relations Court in Hackensack by 3:30 p.m. (to allow time for processing before the court closes).

(B) Once there, the complainant will fill out a new Domestic Violence Complaint, with the assistance of the Clerk of the Court. In this complaint, the victim must specify that the relief sought is that "the defendant be held in contempt of court, having violated the prior order of Judge <u>(name)</u>, issued on <u>(date)</u> by <u>(explain how violation ocurred)."</u> The victim may request other emergency releif at that same time. (Sample attached)

(C) After this new complaint is signed, the court will be immediately alerted to your presence. The defendant and the complainant will then be brought before the judge. Bail will be set on the defendant and both parties will be informed of the date of the contempt of court hearing. At the same time, the court may also grant emergency relief, as it deems appropriate.

(D) An Assistant Prosecutor will be assigned to prosecute the contempt of court violation, and will keep you informed of the status of the case.

II. <u>If the violation occurs when the courts are closed (nights, weekends, holidays):</u>

(A) After arresting the defendant transport both the victim and the defendant to headquarters.

(B) Have the victim fill out a new Domestic Violence Complaint, as described in section I. (B) above. For this purpose, keep a supply of these forms on hand.

(C) Telephone your local judge and indicate to him that bail must be set on the contempt of court allegation.

(D) The local judge will either set bail himself or will do so in consultation with the emergent county judge. In addition he can also grant further emergency relief, if requested.

(E) If the defendant cannot post bail, he is to be incarcerated at police headquarters or at the Bergen County Jail. If

defendant is taken to the jail, make sure you present a copy of the signed Domestic Violence Complaint to the Jail.

(F) Notify your court clerk of the existence of the contempt of court complaint at the earliest opportunity on the next working day. Make certain that the Clerk's Office of the Juvenile and Domestic Relations Court in Hackensack is aware of the contents of the new complaint, the fact that bail was set, the whereabouts of the defendant, and any other pertinent details of the case.

(G) As in I. (D) above, an Assistant Prosecutor will be assigned to handle the contempt of court proceeding and will keep you notified of developments.

* * *

The above procedure contemplates that the victim of the new act of domestic violence was not seriously injured and/or does not wish to file criminal charges. If, however, the victim or the police officer signs a complaint charging an indictable offense (such as aggravated assault, 2C:12-1b), then the contempt of court violation may be added to this complaint as a separate indictable offense under 2C:29-9.

STATE OF NEW JERSEY

Juvenile And Domestic Relations Court of BERGEN County
Municipal Court of _____, _____ County

DOMESTIC VIOLENCE COMPLAINT Docket No. FV-0336-82

IN THE MATTER OF:

_____ v. _____
(Plaintiff's Name) (Defendant's Name)
Sex (M/F) F D.O.B. 12-4-42 Sex (M/F) M D.O.B. 4-17-50
(Street)
(Municipality & State) (Zip)

(CHECK BOXES AS APPLICABLE)

The undersigned complains that on [illegible] of 7/9 said defendant did commit or threatened (date)
to commit the following acts:

1 ☐ Assault 4 ☐ False Imprisonment 7 ☐ Lewdness
2 ☐ Kidnapping 5 ☐ Sexual Assault 8 ☒ Criminal Mischief
3 ☐ Criminal Restraint 6 ☐ Criminal Sexual Contact 9 ☐ Burglary
10 ☒ Harassment

in that HE VIOLATED THE FINAL ORDER DATED 1-28-82 OF JUDGE LEHMANN JJDRC and that said plaintiff's life, health or well-being is endangered by said defendant because: HE FORCED HIS WAY INTO MY APARTMENT BY COMING THRU THE FIRE ESCAPE. STARTED ARGUING HE WANTS TO COME BACK TO LIVE WITH ME. HE IS TOO VIOLENT. I AM AFRAID

Above said parties:

☐ Are married ☒ Have 1 children born of their union, to wit:
☐ Are divorced Name Age Name Age
☐ Live together Jose A. 7 months _____
☒ Previously lived together _____ _____
☐ Following children of the union are in plaintiff's custody _____
☐ Related by blood as follows _____
☐ Residence or household is jointly owned or leased by the parties
☐ Defendant has duty to support the plaintiff or minor children living in residence or household and the defendant is the sole owner or lessee of the residence
☐ Plaintiff incurred financial losses due to the described assault or other acts as follows: _____

WHEREFORE the plaintiff respectfully requests that the Court issue the following (Indicate in boxes below "E" for emergency, "F" for final and "E/F" for emergency and final order)

☒ Emergency Ex Parte AND/OR ☐ Final Order:
☐ Finding that the defendant has committed act(s) of domestic violence
☐ Forbidding the defendant from returning to the scene of the domestic violence
☐ Prohibiting the defendant from having contact with the victim or harassing the plaintiff or the plaintiff's relatives
☐ Granting possession to the plaintiff of the residence when the residence or household is jointly owned or leased by the parties
☐ Granting possession to the plaintiff of the residence when the defendant has a duty to support the plaintiff or minor children living in the residence or household and defendant is the sole owner or lessee of the residence
☐ Child support ☐ Child custody ☐ Visitation ☐ Monetary compensation
☐ Punitive damages ☐ Professional counseling
☐ Other relief as is just and equitable, to wit: THAT DEFENDANT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF RESTRAINING ORDER ENTERED BY JUDGE LEHMANN ON 1-28-82 ATTACHED HERETO BY FORCING HIS WAY INTO MY APARTMENT AT 111 [illegible] AVE. HACK. N.J.

Subscribed and sworn to me before this [illegible] day of July 19 82

[illegible] Signature of Plaintiff

I-4

QUESTIONNAIRE IN FILING OF DOMESTIC VIOLENCE COMPLAINTS

1. Have you or the defendant filed a complaint for divorce? Yes_____ No_____
2. Has a divorce been granted between you and the defendant? Yes_____ No_____
3. Do you have a lawyer? Yes_____ No_____
4. Does the defendant have a lawyer? Yes_____ No_____
5. Are you and the defendant currently living together? Yes_____ No_____
6. If you are seeking emergency relief today, have you notified the defendant, or the defendant's attorney, that you will be seeking such relief? Yes_____ No_____
7. Are you living in a residence as a tenant or an owner? Tenant_____ Owner_____
8. If you have a lease, whose name is on the lease agreement as the tenant?_____
9. Who is paying the rent?_____
10. If you own your residence, whose name is on the deed as the owner?_____
11. If there are mortgage payments to be made on your residence, who makes the mortgage payments?_____

STATE OF NEW JERSEY

COPY FOR:

[/] Juvenile & Domestic Relations Court
[/] Sheriff
[/] Police
[/] Defendant
[/] Plaintiff

BERGEN JUVENILE & DOMESTIC RELATIONS COURT
MUNICIPAL COURT
BERGEN COUNTY
DV-1336 & DV-1336/A-83 DOCKET NO.

TEMPORARY RESTRAINING ORDER UNDER
THE PREVENTION OF DOMESTIC VIOLENCE ACT
(Ch. 426, L. 1981) AS AMENDED AND NOTICE TO APPEAR

IN THE MATTER OF:

_____ v. _____
(Plaintiff's Name) (Defendant's Name)

Sex (M/F) F D.O.B. 12-4-42 Sex (M/F) M D.O.B. 4-17-50

PRESENTLY IN B.C. JAIL
(Street)

(Municipality & State) (Zip)

The Court having considered Plaintiff's complaint seeking a Temporary Restraining Order under the Prevention of Domestic Violence Act, dated July 12 & 22 19 83 and having found good cause to believe that Plaintiff's life, health and well-being are endangered by Defendant

It is on this 22nd day of July 19 83 ORDERED that:

[X] Defendant is forbidden from returning to the scene of the domestic violence;

[X] Defendant is temporarily restrained from having any contact with the plaintiff or harassing plaintiff or plaintiff's relatives in any way;

[X] Plaintiff is granted temporary possession of the residence;

[/] Defendant is directed to pay $_____, per _____ to the plaintiff for the temporary care and maintenance of the parties' minor children;

[X] Plaintiff is awarded temporary custody of the parties' minor children with defendan having the following visitation rights _____

[/] Defendant is directed to receive professional counseling as follows: _____

[X] Other THAT DEFENDANT SHOW CAUSE ON July 28 1983 WHY HE SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF RESTRAINING ORDER ENTERED BY JUDGE ZEGEMANN DATED 1-28-83 BY FORCING HIS WAY ONTO ALL MADE AVE

This ORDER is to become effective forthwith and shall remain in effect until the Juvenile & Domestic Relations Court issues a final order. A wilful violation of this ORDER is a contempt of the Court and may subject the defendant to imprisonment.

Plaintiff and Defendant are hereby given notice to appear for a hearing on this ORDER at the Juvenile & Domestic Relations Court located at Room 145 Court House (Address)
Hackensack N.J. at 9:00 AM/PM on July 28, 1983
19 _____.

7-22-83 _____
(Date) (Judge)

NOTICE TO DEFENDANT RESTRAINED BY ORDER OF THE COURT

You have a right to a hearing on this temporary order within 24 hours after filing a written request with the clerk of the court issuing the order. You also have the right to appeal this Order to the Juvenile and Domestic Relations Court of _____ County, located at _____ N.J.

RETURN OF SERVICE

[/] I hereby certify that I served the within Order by delivering a copy to the defendant personally.
[/] I hereby certify that I served the within Order by leaving a copy at the defendant's usual place of abode with _____ a member of his family over age 14.
[/] Defendant could not be served. Explain _____

HACKENSACK NO ON WEEKEND OF 7/9/83 and 7/10/83 and on 7/12/83 and pushing her on the weekend of 7/9/83 (Harassment) and biting her on 7/12/83 (assault) -Bail Set at $2,500 - cash

_____ _____
(Signature of Officer) (Name, Title and Department of Officer)

CR-3. EFF. 1-1-82, REV. 3/82 I-4

SUPERIOR COURT OF NEW JERSEY

OFFICE OF
DR. CONRAD J. RONCATI
COURT ADMINISTRATOR

BELLE SEITEL WEISZ, ESQ.
ASST. COURT ADMINISTRATOR

BERGEN COUNTY COURT HOUSE
HACKENSACK, N. J. 07601
201-[redacted] 2273

M E M O R A N D U M

TO: ALL MUNICIPAL COURT CLERKS

FROM: BELLE SEITEL WEISZ, A.T.C.A.

DATED: DECEMBER 9,1983.

SUBJECT: DOMESTIC VIOLENCE COMPLAINTS
DOMESTIC VIOLENCE TEMPORARY RESTRAINING ORDERS

* *

Effective immediately, whenever the Municipal Court Judge grants or denies a Temporary Restraining Order, th original Domestic Violence Complaint together with the Temporary Restraining Order will be picked up by the Sheriff's Officer assigned to your municipality the next morning for immediate delivery to the Juvenile and Domestic Relations Court.

This Domestic Violence Complaint and Temporary Restraining Order are to be placed in an envelope clearly labeled DOMESTIC VIOLENCE.

BSW:pc

B S W

c.c. Honorable James T. Murphy,P.J.J.D.&R.C.
Sheriff William Mc Dowell
Municipal Police Departments

DWI Case Processing

A. Scope of Investigation

The mandate to the Committee on Accountability included the following charge:

> Whether certain offenses within Municipal Court jurisdiction of specific concern to the community, such as driving while intoxicated, should have special resources earmarked for their prosecution.

After making a preliminary review of the above charge, the subcommittee appointed to review this matter reached the conclusion that our charge under the mandate involved four distinct issues: (1) should matters other than D.W.I., such as shoplifting, be considered? (2) do D.W.I. cases merit special attention? (3) if the answer to issue number 2 is "Yes", what special effort should be made to reduce the backlog, and (4) assuming the present backlog is reduced, what means should be adopted to avoid future backlogs of D.W.I. cases?

With respect to the matter of including in its study offenses other than D.W.I., the committee, early in its deliberations, made the decision that the present emergency relating to the processing of D.W.I. cases dictated that it devote its entire attention to this one topic.

The committee recognized that although measures other than the imposition of fines and imprisonment are available for such offenses as shoplifting, and that these programs are sometimes ignored by municipal court judges, public concern in this area is slight as compared to the interest of the public in the manner in which D.W.I. cases are handled. To state the matter somewhat differently, the problems that have developed in the handling of D.W.I. cases overshadow the difficulties encountered by municipal courts in disposing of other matters within their jurisdiction. Moreover, if the special techniques recommended for processing D.W.I. cases prove successful, they may be applied to other types of municipal court cases.

With respect to the issue of whether D.W.I. cases require special attention, two recent developments dictate an affirmative answer. The first of these is the directing of public attention by such organizations as MADD and RID to the danger resulting from the driving of automobiles by intoxicated persons, followed by the Legislature's enactment of stiff D.W.I. laws and increased enforcement of these laws by local and State police. The second development was the building of a backlog resulting from the refusal of municipal court judges to decide D.W.I. cases until certain legal questions involving the use of breath test machines was resolved by the New Jersey Supreme Court. Although it was suggested to the committee that the interest in D.W.I. cases is only temporary, both history and logic require the rejection of this proposition. Problems produced by excessive use of alcohol have found no permanent legal solution.

It is true that while on the one hand recent newspaper stories indicate the sale of alcohol is decreasing, other reports reveal that more young people are drinking alcoholic drinks. The fact that fewer people drink does not establish that the highways are free of people driving while intoxicated. At best, the police apprehend only a small percentage of individuals driving in violation of the D.W.I. laws.

The fact of the matter is, people driving while intoxicated do not consider themselves criminals or, for that matter violators, but rather victims of circumstance. It is not illegal to drive after drinking, only after drinking an excessive amount. While machines may measure the level of intoxication, there is no machine that predicts intoxication. All this adds up to the fact that D.W.I. is a special problem and should be treated as such.

A final argument in support of the proposition that D.W.I. cases should be treated specially is based on the proposition that between apprehension and adjudication, defendants will continue to drink and drive and be a menace to the public. Early determination of guilt is essential both to remove the driver from the road and to subject the driver, as soon as possible, to the educational program imposed as part of the sanctions against persons convicted of driving while intoxicated.

Early in its deliberations, the committee considered the matter of reducing the present backlog of D.W.I. cases. The committee was relieved of this task by the New Jersey Supreme Court through the adoption of a special program to reduce the backlog of D.W.I. cases for the entire state.

B. Adjudication of D.W.I. cases

The common factors contributing to the delay in adjudicating D.W.I. cases include the following: (1) difficulty in the scheduling of expert witnesses, (2) certification of breathalyzers, (3) playing of video tapes, (4) scheduling of police appearances, (5) requirements for discovery. One of the critical issues in contested D.W.I. cases is the determination of the degree of intoxication at the time the suspect was apprehended. Since a period of time elapses between the time the defendant is stopped and the time of the breathalyzer reading, an expert is required to extrapolate the reading to the time of operation. There are very few experts in the entire State of New Jersey. Given the importance of the reading, coupled with the delay in the test, a fair trial demands the presence of experts. The result is the granting of continuances to conform with the schedule of the experts.

The certification of breathalyzers has also been a source of problems. Traditionally, this task has been the responsibility of the State Police. A representative of that organization has advised the Committee that there are only seven people in the state qualified to test breathalyzers, which has led to delays in the adjudication of DWI trials. We were, however, advised that additional State Police personnel are to be added (perhaps five, or as many as seven), which should cure this problem. The Committee feels strongly that every breathalyzer should be tested on a monthly basis, and the addition of personnel should enable this to be done.

The use of video tapes does not present the same problem as exists with experts and breathalyzer certifications. However, playing the tape adds time to the trial, reducing the number of cases that may be heard

during a regular court session. The value of the tapes as evidence dictate their continued use. This is a price that must be paid for the responsible adjudication of D.W.I. cases.

The scheduling of court appearances for police officers in D.W.I. cases differs from the scheduling of other types of municipal court proceedings only in that more D.W.I. cases are contested, more defendants are represented by attorneys, and more expert witnesses tesify. The greater the number of key participants in the trial, the greater the number of adjournments because of absence of such persons.

Police officers may not be able to be present because of a change in their hours, vacation, conflicts between court appearances, or the press of other duties. The presence of police officers is essential at trials. If for any good reason the officer is not present, the case will be continued. Rescheduling requires some accommodation to the schedules of other parties (attorney, witnesses, defendant).

If delays in adjudicating D.W.I. cases are to be avoided, it is essential that D.W.I. cases must be handled specially and that the municipal court prosecutor must assume responsibility for insuring the presence of police officers when a case is set for trial and providing a plan for doing so with the assignment judge.

While the committee does not have data concerning the use of discovery, the application of sound trial strategy should result in an increase in the use of discovery in D.W.I. cases. A competent defense attorney will examine the video tape, the breath test results, and all police reports. In some instances, discovery may shorten the time of trial when, after examining the evidence, the defendant concedes facts

that inescapably can be established at trial. We recognize that delay in discovery exists and suggest that such delays may be avoided if some official is assigned the duty of responding to discovery requests. We recommend that the Municipal Prosecutors have this responsibility and that Rule 3:13 be amended as suggested in previous Task Force recommendations to accomplish that result.

C. Case Management Techniques

If future backlogs are to be prevented, there must be an immediate improvement in the case-management techniques for handling D.W.I. cases. It is shortsighted to treat D.W.I. as "run-of-the-mill" municipal court adjudications and to apply the usual devices for disposing of offenses triable in municipal court. In particular, attention should be directed to the arraignments.

During arraignment, defendants must be advised that they have a right to the services of an attorney and that if they cannot afford an attorney, one will be provided to them free of charge, if they are so eligible.

They must further be advised that should they choose to represent themselves (in which case a waiver of attorney should be signed) and enter a plea of guilty, that a plea of guilty has the same force and effect under the law as though they had been found guilty by the court at trial, after a fair, complete, and impartial consideration of all of the evidence that may have been presented. In other words, pleading guilty or being found guilty after a trial are one and the same. The use of a form such as the following is recommended when there has been a waiver of attorney.

I HAVE BEEN ADVISED BY THE JUDGE
THAT I MAY HAVE A LAWYER APPOINTED
TO REPRESENT ME IF I HAVE INSUFFICIENT
MONEY FOR A LAWYER. I DO NOT WANT TO
HAVE A LAWYER REPRESENT ME, BUT WISH TO
PROCEED WITH MY CASE NOW:

_____

DEFENDANT

Additionally, defendants must be advised that dependent on what their prior driving record is, the penalties assessed may vary greatly; also, that there is, at minimum, a mandatory six (6) month suspension of the defendant's driving privilege that must be imposed, and a minimum mandatory fine of $250 plus a $100 surcharge that must be imposed. An additional surcharge of $1,000 per year for each of three consecutive years must be paid as well.

A certified abstract or, in lieu thereof, a print-out of the defendant's driving record, if at all possible, should be shown to him so that he might later verify or dispute that it is accurate and that he completely understands the extent of his prior driving record.

Next, the defendant must be advised of the specific range of penalties that may be imposed for first, second, and third, or subsequent offenses within a ten year period. For example:

First Offense

For a first offense, a person may be fined from $250 to $500, his or her license may be suspended for a period of six (6) months to one (1) year, and he or she may be sent to jail for up to 30 days, be placed on probation for up to two years, or may be asked to perform community service in lieu of a jail term. Further, the defendant must be advised that if the offense was committed on or after October 5, 1984 a detainment of not less than twelve (12) hours nor more than forty-eight (48) hours to be spent during two (2) consecutive days of not less than 6 hours per day at an Intoxicated Driver Resource Center must be imposed.

Second Offense

For a second offense, the court shall impose a fine of not less than $500 nor more than $1000, and 30 days community service, and a term of imprisonment for not less than 48 consecutive hours, which term of imprisonment is not to be suspended or served on probation, nor more than 90 days and driver's license suspension for 2 years.

Third Offense

For a third or subsequent offense, the court shall impose a fine of $1000 and a term of imprisonment for not less than 180 days, except that the term of imprisonment may be lowered by service of up to 90 days community service and driver's license suspension for 10 years.

Each defendant is to be advised that:

1. He is to satisfy the screening, evaluation, referral, and program requirements of the Bureau of Alcohol Countermeasures (BAC) and of the Intoxicated Driver Resource Center (IDRC).

2. Failure to satisfy the requirements of #1, will result in a mandatory two-day term of imprisonment in the county jail and revocation or suspension of his driver's license or continuation of that suspension until the foregoing requirements have been satisfied.

3. If he is convicted of driving on the revoked list while suspended as a result of a conviction for N.J.S.A. 39:4-50 (a), he shall be subject to the penalties established by N.J.S.A. 39:3-40 for that violation. This information shall be both oral and in writing.

4. The range of penalties that may be imposed for a second and third or subsequent conviction for a violation of N.J.S.A. 39:4-50(a). This information shall be both oral and in writing.

Adjournment policy is a thorny issue complicated by the fact that most municipal judges are active practicing lawyers who deal on a professional basis with attorneys practicing in the municipal court. Moreover, the municipal judgeship is a political appointment, although not necessarily made in return for political services. However, if the municipal judge is to gain tenure (assuming the task force recommendation for tenure is adopted), there must be re-appointment. A strict policy of denying adjournments, if not applied judiciously, may create an air of arbitrariness and heavy-handedness, factors that may influence attorneys to resist the reappointment of sitting judges.

Despite these realties, every municipal judge should be cautioned that adjournment in D.W.I. cases must be granted only sparingly. The practice of the various judges in this matter should be carefully scrutinized by the vicinage municipal court presiding judge.

In many courts, the problem of conflicts with the Superior Court will be minimal because the municipal court is held in the evening. However, municipal courts holding day sessions face this problem. Postponement of D.W.I. cases because the defendant's attorney is trying cases in the Superior Court adds to the backlog problem. This is an area in which the municipal court presiding judge can be of valuable assistance. Through the assignment judge, he may establish policies and procedures that will minimize this problem.

Conceding that improved case management procedures will reduce both the delay from apprehension to adjudication and the time required for trial, the fact is that contested D.W.I. cases are time consuming, particularly when a video tape is used. Keeping the municipal court calendar current is further complicated by uneven enforcement by police both with respect to D.W.I. and other offenses. Therefore, the committee recommends that standby procedures be established for holding special sessions when the D.W.I. backlog in the municipal court is deemed unacceptable under standards approved by the A.O.C.

D. Statutes - D.W.I.

A 1983 study by the National Highway Traffic Safety Administration revealed that fifteen states impose mandatory jail sentences for first offense violations of D.W.I. laws and that thirty-nine states provide for mandatory jail sentences for second offenders. A number of states classify repeat D.W.I. offenses as felonies.

It appears that New Jersey has adopted a middle position with respect to penalties for D.W.I. law infractions. While the majority of the committee is of the opinion that the present laws should not be modified, one member of the committee considered the sanction for first offenders too harsh, suggesting that a lesser penalty for first offenders would reduce the number of contested cases. Although not formally adopted by the committee, a recommendation of one of the members was that provisions be made for limited licenses to be issued to persons who require the use of automobiles for their employment or provide transportation for the elderly and handicapped.

It is also recommended that part of the fines and penalties against violators of the D.W.I. laws be placed in a separate fund to establish an improved rehabilitation program. If there is merit in requiring participation in rehabilitation programs, there is merit in providing for adequate staffing and physical facilities for such programs.

E. Adjudication of D.W.I. Cases

1. Role of the Clerk

Since court clerks schedule cases and, in some instances, handle requests for adjournments, they play an important part in the processing of D.W.I. cases. It should be emphasized not only that D.W.I. cases are important but also that they should be given special handling, beginning with a procedure that requires that the case file be flagged so as to be easily distinguishable from files from other offenses. Some examples are color-coded file covers or special stickers. The court clerk's manual should highlight the importance of the speedy trial process in D.W.I. cases, noting that the significance of these cases requires that they not be treated in a cursory manner when considering such matters as scheduling and requests for adjournments are considered. Further, the committee recommends that detailed notes be kept, documenting the specific reasons why adjournments are granted.

2. Municipal Prosecutor

The committee considers the appointment of municipal prosecutors in all municipal courts and their prosecution of all D.W.I. cases be essential. Not only does this eliminate the impropriety of the judge trying the case and creating an air of unfairness depending on the nature and tone of his or her questions, but it also produces a fair result. The municipal court prosecutor should have the responsibility of moving cases and to contest any dilatory moves made by defendant to delay trial. Special training should be given to municipal prosecutors for the expeditious handling of D.W.I. cases. One example is to alert the prosecutors to urge that Motions to Suppress Statements should be treated as Motions to Exclude and heard by the municipal judge.

3. Sentencing Practices

Another subcommittee of the Committee on Accountability is reviewing the matter of sentencing practices. It is the position of this committee that the same considerations that govern sentencing in other disorderly persons statutes also apply to D.W.I. cases, one of the considerations being the nature of the offense, and the possibility of rehabilitation. In view of the study of the committee on sentencing, we are not reviewing this issue.

4. Enforcement of Penalties

It appears to the committee that the only situation that requires different treatment of D.W.I. cases in this area is the handling of warrants issued to D.W.I. defendants and that are ignored.

Two reasons justify special treatment of D.W.I. cases, the first being that a person caught driving while drunk will continue both to drink and to drive at least until his license is revoked. The second reason for requiring apprehension and conviction is that rehabilitation should be initiated as quickly as possible. If the guilty driver is not brought into court, he continues to pose a menace to society. Presently, the defendant remains at large until caught on another violation and a review of his record reveals the warrant for the previous offense. Follow-up must be required on ignored D.W.I. warrants.

F. Police Training

A recent U.S. Supreme Court case (Berkemer v. McCarty, 468 U.S. ___, 104 S.Ct. 3138, 82 L.Ed. 2d. 317 (1984)), suggests that Miranda warnings must be given in certain situations involving apprehension of D.W.I. offenders. The case leaves many issues unanswered. However, it is clear that special training must be provided to police to reduce the technical errors made when apprehending suspected D.W.I. violators, which can result in reversals, if not a lengthened trial. Providing grounds for objecting to the issue of summons and the admission of evidence results in preliminary motions by defendant, which delay the trial and serve as grounds for appeal. Although in many instances the conviction will be affirmed, the procedure for handling the appeal is a drain on the limited resources available for pocessing D.W.I. cases.

G. New D.W.I. Programs

It was suggested to the committee that it consider new D.W.I. programs, such as early administrative revocation. The committee made the decision that the problem of expediting D.W.I. cases is more serious than formulation of a new D.W.I. program, and directed its energy to the former. Presently, current D.W.I. programs are monitored by the National Highway Traffic Safety Administration. In addition, many state highway departments are engaged in studies.

It is appropriate to collect data concerning D.W.I. experimental programs, and to evaluate the New Jersey programs in light of the experience of the states that have adopted other procedures for dealing with this very important topic.

Public Access to Court Records

INTRODUCTION

Freedom of the press is one of the fundamental liberties guaranteed by the First Amendment to the Constitution of the United States. The Freedom of the Press must be preserved since it is fundamental for a free society to have its members acquire and disseminate information in all areas of society, provided such information does not endanger basic rights of individuals. Respect for the administration of justice, freedom of the press, and the basic rights of individuals are the three major concerns of this committee's work.

During 1984 a number of important questions were raised on the issue of public access to court records. The press in its traditional role as surrogate for the public has the right to know and must have access in order to function. The courts, especially the municipal courts and their personnel, have in the past received little guidance as to what information can be released to the press. The result has been as diverse as an outright denial of access to clearly public information to the inappropriate disclosure of confidential data.

It was the general consensus of this committee early on that Rule 1:38, entitled, Confidentiality of Court Records, needed clarification and/or revision in its application to municipal courts. Clearly the diverse groups who either wanted or were charged with supplying information needed guidance with respect to the right of inspection of court books and records; the fee to be charged, if any; the examination of evidence; and the right to privacy and respect for confidentiality.

After studying the current Rule 1:38 the committee agreed that many court records are clearly public records and must be made available upon a reasonable request by the public or the press. Docket books, subpoenas, traffic tickets, CDR Complaints, court calendars, and general correspondence such as letters of representation, notices to defendants, police officers and witnesses, as well as information from the Division of Motor Vehicles, are public records and are, therefore, disclosable under the existing court Rule.

The committee agreed that other court records are clearly confidential and must not be disclosed. Included in this group are Pre-Sentence Investigation Reports, Probation Records, Police Investigation Reports, Unexecuted Search Warrants, Court Personnel Records, Computerized Criminal Histories used for Controlled Dangerous Substance Conditional Discharges, Domestic Violence Complaints and Temporary Restraining Orders when filed under the Prevention of Domestic Violence Act pursuant to N.J.S.A. 2C:25-1 to 2C:25-16.

The problem with applying the existing Rule is primarily a result of its silence concerning the status of other highly-sensitive records such as the Application to Establish Indigency (Form 5A), Computerized Criminal History Records, victim-witness names and addresses where they to not appear on the face of the complaint as a result of a specific request for confidentiality by the victim-witness, and Psychiatric-Medical Reports that became part of the case file.

This last category of court records is used for specific purposes during the processing of a case and contains sensitive and detailed information regarding a person's financial background, his mental state of physical well-being, his prior arrest and/or convictions, and in some cases his whereabouts and private telephone number.

While it may be necessary for the court to have access to this data intelligently to adjudicate, sentence, appoint counsel, or grant a schedule of fine payments, the committee was of the opinion that these records were not disclosable and to disclose them would be violative of the right to privacy.

The list of gray-area records that are not addressed by the Rule causes major problems to those who must decide whether or not to release this information. Court Clerks who are exposed to legal action fear a charge of violation of privacy. A Court Clerk does not have the immunity that benefits a Judge, yet in most instances it is his or her decision to make. The clerk who refuses access creates a conflict with the press, which in turn increases the pressure on the clerk.

Also considered were the practical problems that accompany a request for information or access to records. Many of the smaller courts are subject to limited personnel, limited access to copy equipment, and workload conflicts. Recognition must be given to the diversified requests received at the municipal courts and the levels of difficulty involved to comply with each request. Requests range from those that require the review of readily-accessible records, such as the docket books and court calendars, to those that involve reviewing a specific case file. These latter requests must be given a reasonable and timely response during the regular business hours. Lastly, requests that require research and more time would best be handled by appointment or by a written request forwarded to the court in advance.

Consideration was given to requiring written requests or appointments on all requests, however; these options were considered cumbersome in view of news deadlines and were deemed to be necessary only for

inquiries involving research. The feasible solution appears to be that since both the press and the court desire to serve the public, they both benefit from an amicable working relationship based upon reasonableness.

The committee considered the question of the propriety of charging a fee for copy service of requested documents. N.J.S.A. 47:1A-2 "Public Records; right of inspection; copies; fees" was looked to for direction. This statute permits fees be set by law and if price has not been established by law, the statute establishes a reasonable fee schedule as of 1963.

The general consensus of the committee was that a fee may be charged but it should not be such as to chill the policy of access.

The Committee addressed the issue of whether tangible evidence in a matter before the court was accessible. It was of the opinion that once the evidence was "admitted", it became public and should be accessible with reasonable controls and limitations considering the nature of the evidence itself.

RECOMMENDATIONS

A) A directive should be developed to establish a statewide policy pertaining to public access to court records. The directive should recognize the diversified requests and levels of difficulty involved for court personnel. Specifically addressed should be those requests that involve readily accessible records (i.e., docket books and court calendars), requests that are not immediately accessible due to variations in filing, etc., which would require a reasonable arrangement to provide information within normal business hours. Lastly, requests involving extensive research by court personnel should be scheduled by appointment and/or requests forwarded in writing to the court in advance.

B) The existing court Rule should be modified to include specific lists of documents that are public and those that are confidential. Included below is the recommended list for those categories.

PUBLIC

Docket books, subpoenas, traffic tickets, CDR complaints, court calendars, general correspondence such as letters of representation, notices to defendants, police officers, witnesses, and information from the Division of Motor Vehicles.

CONFIDENTIAL

Pre-Sentence investigation reports, probation records, police investigation reports, (other than routine traffic/accident reports which have been entered into evidence during a trial), search warrants, court personnel records, computerized criminal histories used for controlled dangerous substance discharges, domestic violence complaints and temporary restraining orders filed under the Prevention of Domestic Violence Act, medical/psychiatric reports, and the application to Establish Indigency (form 5A).*

*The committee on accountability was split in its decision to recommend this form as confidential record.

C) The Standing Committee on Education should provide a training program for court personnel to promote an awareness of the needs of the public and a working knowledge of the right to privacy and confidentiality and to provide guidance concerning the public's right to access to court records.

D) An informal procedure should be established whereby an appeal can be made to the Presiding Judge or Assignment Judge when access has been denied as the result of the municipal judge's exercies of discretion. The decision of the assignment judge would be final.

NOT CONSIDERED BY THE TASK FORCE.

COMMITTEE ON ACCOUNTABILITY

Sentencing Alternatives

We incarcerate more people in the United States than any other nation in the world, including Africa and Russia when their political prisoners are excluded. Citizens, horrified and angered by a rise in the rate of crime have demanded that thier elected officials and the judiciary respond to the problem effectively. In most instances legislators and judges have resorted to "get tough" approaches to sentencing which largely consists of incarcerating more types of perpetrators, in more classifications of offenses, for longer periods of time.

This "get tough" type of response places an enormous burden on the criminal justice system and society. It leads to prison overcrowding and with it an insatiable demand to provide for more cells, and additional prisons with better facilities. Many existing penal institutions are antiquated and have inadequate facilities as demonstrated by the fact that by the end of 1982, forty states were facing court challenges related to overcrowding and inhumane conditions in their prisons.[1]

According to a 1983 study conducted by Abt Associates for the National Institute of Justice, at least 40 per cent of all inmates in state facilities in 1979 were incarcerated under conditions that failed to meet the minimum space standards of the American Correctional Association - that is, they were housed in a cell or dormitory shared with one or more other inmates with less than 60 square feet of floor

1. Gettinger, The Prison Population Boom: Still No End in Sight 9 Corrections Magazine 6-11, 47-49, 1983.

space per inmate, the equivalent of an area 5 feet by 12 feet. There were, in fact, 119 inmates for every 100 available prison spaces.[2]

These factors are principally responsible for widespread prison renovation and construction throughout the nation. In 1979 only six states were not building or planning to build new correctional facilities. The average cost for a prison bed has risen to $72,000; if interest payments on the money borrowed for prison contruction are factored in, the eventual cost is over $200,000 per bed.[3]

It costs from $15,000 to $20,000 per year for each inmate. These costs do not contemplate the hidden costs that society bears including the taxes (federal, state, and local) which are not paid by an inmate, the inmate's inability to support his family leading to dependence on public welfare and other charitable assistance programs, or an inmate's inability to pay restitution to victims whose losses, if covered by insurance, will no doubt cause a rise in premium, and if not covered, will deprive the government of revenues by virtue of a victim's tax deduction in some instances.

More important, prisons and overcrowed prisons in particular, do not provide ample opportunity for rehabilitation, job training, or counseling, but instead provide an excellent training ground for learning criminal skills and tend to depreciate the inmate's self-esteem, enhancing the possibility of recidivism.

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2. Mullen, Jackson, and Finn, "Responses to Prison Crowding" December, 1983.
3. Krajik and Gettinger, "Overcrowed Time": Why Prisons are so Crowded and What Can Be Done, 1982.

Ironically, these aforementioned factors have prompted judges to modify their normal sentencing patterns in one fashion or another to favor non-custodial dispostions. This has been accomplished thru a variety of concepts commonly referred to as "Sentencing Alternatives" which basically include:

A. Mediation/Arbritration.
B. Suspended Sentences.
C. Pretrial Intervention.
D. Probation.
E. Educational/Vocational Programs.
F. Counseling Programs.
G. Rehabilitation Programs
    1. Drug
    2. Alcohol
H. Community Service.
I. Restitution.
J. Periodic Confinement/Work Release.

A. Mediation/Arbitration is a process utilized prior to trial and is best applied to neighborhood and family disputes where cross complaints are typically filed and the gravemen of the alleged offense(s) is a verbal threat, disorderly conduct, trespass, and/or simple assault with injuries of no consequence. It allows a defendant either pro se or thru his attorney to negotiate with the victim thru the prosecutor, probation officer, contracted professional counselor, in-house professional counselor, or trained community volunteer(s) a solution to the root cause of the problem or confrontation which is the subject matter of the complaint. If the parties mutually agree

to a solution, or have resolved the dispute, the sum and substance of the resolution is put on record, in open court, and the judge then determines whether the charge(s) of the complaint(s) should be dismissed and whether court costs should be imposed and if so, upon whom and in what amount.

Presently a number of municipal courts have established mediation/arbitration panels. The authority for utilizing this extra-judicial technique is not clear. However, the committee recommends that municipal courts have authorization either through legislation or court rule to dispose of cases in this manner. There should be different models so the court can select which is most applicable for its need. If the volume of cases does not justify establishing a separate municipal unit, the court should have access to the services of another municipal or area unit. Further, the court should, with the assent of both parties, have the option of determining which case will utilize the procedure.

B. Suspended Sentence occurs post-trial upon a finding of guilty or entry of a plea of guilty. It is appropriately invoked alone when the offense charged is relatively minor, the consequences of the offense are relatively minor and/or it was the defendant's first offense and he/she otherwise has led an exemplary life.

A suspended sentence may also be invoked in combination with or contingent upon any number of other "Sentencing Alternatives" including Probation, Educational/Vocational Programs, Counseling Programs, Rehabilitation Programs, Community

Service, and/or Restitution. In this scheme a term of incarceration and/or fines is held in abeyance contingent upon compliance with one or more other "alternatives." If there is no satisfactory compliance, then the original term which was suspended may be imposed.

"Deferred Sentences" permits the court to delay disposition for a specified (short) time period to permit defendant to comply with what would be a condition of the sentence. This procedure can be particularly effective for achieving early restitution.

C. Pre-Trial Intervention (P.T.I.) is effectuated prior to trial and requires a defendant to be pre-screened to determine whether his prior criminal history, the nature of the offense, and/or the consequences of the offense will entitle him to be admitted to the program. The administrators of the program may impose certain conditions, such as attendance at a Drug Treatment Facility and/or other "alternatives." If the defendant does not wish to participate he may enter a plea and go to court for sentencing or for trial. If a defendant who enters the P.T.I. Program fulfills the conditions of the program he is released and there is no record of conviction for the offense. If the defendant does not fulfill the conditions of the program, he must go before the court and his case is placed back on the trial list and he will either go to trial or enter a plea of guilty.

Municipal Courts would utilize the same unit already operating the county P.T.I. Program for Superior Court.

This concept has been proposed by the Committee on Administration and recommended by the Task Force.

D. Probation is used after a finding of guilty or upon entry of a plea of guilty to monitor a defendant's employment, associations, residence, criminal involvement, lifestyle, and/or compliance with court directives such as collection of fines, adherence to conditions and guidelines of other "alternatives." It is the probation officer's job to advise the court by way of lodging a Violation of Probation of any breach of conditions of probation or failure to fulfill conditions of any other "alternative" program. If the defendant is found guilty of same, a conventional sentence may be imposed.

While statistics show the number of cases wherein probation has been imposed, there is no available data with respect to its effectiveness for municipal courts.

E. Educational/Vocational Programs are often used pre and post trial when the judge perceives that the defendant has turned to crime for economic reasons. He is unable to be meaningfully employed due to a lack of education and/or trade skills. Relatively young high school "drop-outs" are typically best served by such sentences because they tend to develope self-esteem and form postive attitudes toward society.

F. Counseling Programs are utilized pre and post trial where there appears to be a significant psychological/psychiatric and/or attitude problem which goes to the heart of the offense charged or is causally related to the defendants anti-social behavior and attitude. The counselling service may be provided by private practitioners at the defendant's expense, by governmental agencies, or by charitable organizations.

G. Rehabilitation Programs are imposed pre and post trial where there appears to be a specific problem, condition, and/or addiction such as Drug Abuse or Alcoholism which causes a defendant to become involved in criminal activity. Again, the rehabilitative services may be provided by private practitioners at the defendant's expense, by governmental agencies, or by charitable organizations.

H. Community Service is generally imposed after finding of guilt or entry of a plea of guilty although it may be used pre-trial as well. It requires a defendant to perform a service for the community in a public agency or private non-profit organization for a specified period of time. A community service sanction, used in lieu of fines, can help solve the long-standing problem of providing one type of justice to the rich and another type of justice to the poor. Community Service helps the offender to become aware of his responsibility to the community and to become more involved in it. It is used as a condition of a suspended sentence, or with other "alternatives".

I. Restitution may be imposed pre or post trial and requires the offender to repay the victim for property damaged or stolen, and/or for personal injury sustained. Its basic principle is: "If you have wronged someone, it is your responsibility to make it right with the person you wronged and to repay the community you have disrupted." Court ordered restitution is cost effective as a rehabilitative measure.

J. Periodic Confinement/Work Release is imposed to allow defendants to maintain their ties in the community. They keep their jobs and family contact and are able to provide support for their families. It may be applied in various fashions including "weekend," "intermittent," "non-consecutive," "night-time," and "part-time" confinement.

Of the foregoing, restitution and community service appear to have gained more public favor because they are viewed as a return to good old-fashioned justice and work ethic that insist upon accountability and accomplishment.

Restitution relieves the economic hardship visited upon victims of crime by returning to them at least a part of the value of their property or expenses, constrains the defendant to make

positive recompense for the harm he has caused imbuing him with a sense of responsibility and accountability for his acts and can reduce the burdensome costs associated with incarceration, diversion agencies, and/or social institutions such as welfare agencies. The concept of "creative restitution" holds that by relating the criminal to his victim through the renewal of the relationship to redress the original injury, both the criminal and victim benefit in a psychological sense. The criminal can feel he has, in the most concrete fashion, made amends for his conduct while the victim recognizes that the criminal can be capable of acting to remedy his acts and play a constructive role in society.

Communtiy Service is not unlike Restitution in that both are community-based supervision "alternatives" involved with payment by the defendant for the crime he or she has committed. The only real difference between the two is that Restitution payments consist of the transfer of money from the defendant to the victim; whereas, Community Service "payments" are in the form of services to society.

The services are usually rendered to public or private social welfare agencies and typically include renovating homes for the elderly, working with underprivileged youth in organized recreational programs and volunteer counselling work. More menial types of service may also be appropriate such as cleaning graffiti on public buildings, cleaning public parks and recreation areas, painting parking space lines in government lots, etc. Even if no specific skills are acquired, the offender will nevertheless gain work experience and

the responsibilities that a job incurs such as being on time, following instructions, performing his work in a satisfactory manner, getting along with supervisors and co-workers, etc. Community Service can also help an offender develop a greater sense of responsibility, both for himself and the community. The offender finds that he, and not the court or the police, is primarily responsible for carrying out his sentence. Futhermore, by doing something to benefit the community as symbolic restitution for his actions against it, the offender may feel more a part of the community than before and take greater responsibility for its welfare in the future. Additionally, a hybrid referred to as"Direct Service Restitution", where the defendant, himself repairs the physical damage he has done to the victim's property might be appropo in certain situations.

Taken together, Restitution and Community Service form a system of sanctions applicable to all types of non-dangerous, non-violent offenders - the rich, the poor, the employed, the unemployed. Given the types of offenses and offenders commonly dealt with in the Municipal Courts, in a good number of cases, the imposition of one or more "Sentence Alternatives" or combination thereof in lieu of a straight custodial sentence, would appear not only more productive but rational as well.

Notwithstanding the foregoing, there are those individuals in society who will view all "alternatives" as "slap on the wrist" propositions which allow offenders to go scot-free. These people, including judges, hold to the traditional view, "you do the crime,

you pay the time." It is unfortunate that they do not realize that incarceration (negative punishment) is always available to the courts as a last resort, and that "alternatives," as a growing array of statistics indicate, are worthy, even on a pragmatic cost analysis basis, of our sincere consideration.

While there are a number of knotty practical and legal issues raised by the creation and implementation of "Sentencing Alternatives," especially restitution and community service, this committee mindful of the statement, "A good sentence should encourage an offender to make efforts towards self-improvement that will, take him out of his losing role,"[4] respectfully recommends:

1. A cost v. benefits review be conducted on the vicinage level to determine the feasibility of utilizing the various "Sentencing Alternatives" in the Municipal Courts. An appropriate group to conduct such a review would be the vicinage management advisory team.

2. "Sentencing Alternatives" which either through experience or study have demonstrated their effectivness or potential for same, be formalized and made uniformly available to the Municipal Courts.

3. Judges be specifically informed and trained as to the appropriate and effective use of "Sentencing "Alternatives."

4. Efforts be made to educate the public regarding the value and effectiveness of "Sentencing Alternatives" programs.

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4. Challeen, "Turning Society's Losers into Winners," Judges Journal, Winter, 1980.

5. The Legislature study the feasibility of utilizing specific "Sentencing Alternatives" as substitutes for mandatory sentences in certain types of offense.

COMMITTEE ON ACCOUNTABILITY

SENTENCING ISSUES

DISPARITY IN SENTENCING THAT IS WITHOUT A RATIONAL BASIS IS VIOLATIVE OF THE FIFTH AND FOURTEENTH AMENDMENTS AND UNDERMINES THE INTEGRITY AND ESTEEM OF THE COURTS.

UNIFORMITY IN SENTENCING, INSOFAR AS IT REPRESENTS EQUALITY, IS THE OBJECTIVE TO BE ATTAINED.

Judges in the Municipal Courts are sometimes erroneously perceived by the public to be insensitive in their approach to sentencing. This is what the public believes is responsible for the seemingly disparate sentences meted out in similar cases by the different judges of the 530-odd municipal court vicinages, let alone the same vicinage.

It is impossible to gauge the extent to which this disparity in sentencing exists, particularly as there have been no comprehensive studies done on the issue as it relates to the municipal courts. The evidence that is available (such as a study on sentencing in DWI matters) is sufficient to indicate that sometimes there are different sentences imposed on defendants who, except for the fact that they are before different judges, have committed the same offense, with nearly identical factual patterns and similar personal backgrounds.

While this committee in no way supports an encroachment of judicial discretion regarding sentencing, it does respectfully suggest that in some instances disparity in sentences is neither rational nor equitable. As such, it has the capacity to undermine the public confidence in the municipal court system as a fair, impartial, and just arbiter of the law. Accordingly, the Committee feels it is imperative that disparity in sentencing should be minimized wherever possible.

The Constitution of the United States, through the Fifth and Fourteenth Amendments, mandates that neither the Federal Government nor the States shall deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The committee sincerely believes that in large measure, the disparity that does exist in sentences in "identical situations" is due not to the whim, xenophobia, inconsistency, incompetence and/or malevolence of the judges, but rather due to the fact that they do not have a common denominator in their sentencing criteria or are giving different emphasis to one or more of the same criteria.

Analyzing what would initially appear to be disparate sentences may, in fact, be illusory. For when you examine them with the naked eye, with your attention drawn only to the obvious, you are sure disparity and inequality exist. As you again examine the same situation with binoculars, you begin to see that a difference, though nominal, does exist. Finally, when you subject that very same situation to scrutiny under a microscope -- alas, you note there is a world of difference between those previously labeled "same offenses, with near identical factual patterns, committed by individuals with similar personal

backgrounds." While this is true, it still is necessary to have a common base of criteria that, as experience dictates, may be given different emphasis.

It would, therefore, appear to be beneficial to ferret out and eliminate those criteria that are improper to consider in determining sentences and to identify and categorize those that are appropriate, even in light of N.J.S.A.2C:44-1 to 8. (Authority of Court In Sentencing), which has more relevant application in the sentencing of those who have been adjudicated guilty of committing crimes rather than those who have been adjudicated guilty of Disorderly Persons Offenses, Petty Disorderly Persons Offenses, Municipal Ordinances, and/or Traffic Offenses. There is a distinct need to develop and articulate more comprehensive criteria to aid Municipal Court Judges in exercising their discretion regarding sentencing. Judges should be encouraged to use this information whenever formulating sentences.

While all would probably agree that race, religion, and/or sex should never be considered proper criteria in and of themselves, just about any and all other factors may be considered under certain circumstances, including, unfortunately, the very common and practical problem of over-populated and crowded jails.

While it is generally acknowledged that sentencing should achieve one or more of its three (3) basic objectives, to wit, to rehabilitate, to deter, and to punish, we respectfully submit that the following, while by no means exhaustive, are basic criteria that should be considered in determining which of the goals is appropriate.

I. Personal Criteria
   A. Attitude as manifested in Court
      1. Remorseful
      2. Penitent
      3. Smug
      4. Indifferent
      5. Hostile
   B. Motivation for Committing the Offense
      1. Mutually engaged combat
      2. Economic need or gain
      3. Heat of passion
      4. Retaliation
      5. Sadism
      6. "Prank"; "Lark"
      7. Diminished judgment or capacity
      8. Followed leadership of other
   C. Prior Record -- should be considered in light of the three goals of sentencing and should include evaluation of the following:
      1. Types of previous offenses committed
         a. violent or physical
         b. drug related
         c. property
         d. traffic
      2. Dates of previous offenses -- patterns
         a. no previous offenses -- "model citizen"
         b. age of defendant at time of offenses
         c. number of offenses
         d. frequency of types of offenses
      3. Sentences previously imposed
      4. History of compliance with court-imposed obligations
   D. Underlying personal conditions
      1. Drug addiction
      2. Alcoholism
      3. Psychiatric disorder
      4. Retardedness (genetic)
      5. Low intelligent quotient
      6. Illnesses
      7. Diseases
      8. Negative Domestic Influences
   E. Age
   F. Economic Status
      1. Employed
         a. type of work
         b. length of time
         c. income
         d. location
      2. Unemployed with no income
         a. length of time
         b. type of job last held
         c. circumstances of termination
            (1) voluntary
            (2) fired
            (3) layoff

3. Unemployed with income
    a. unemployment benefits
    b. disability
    c. social security
    d. public assistance
    e. investment income
4. Financial debts and/or obligations

G. Education, skills and/or training

H. Marital Status
1. Single
2. Married
3. Separated
4. Divorced

I. Credibility

J. Sincerity II. Offense Criteria

A. Deliberateness of act

B. Consequences of offense
1. nature of physical injury
2. severity of physical injury
3. value of property damage
4. value of property loss
5. potential of either 1, 2, 3, or 4

C. Mitigating circumstances

D. Force
1. Weapon
    a. firearm
    b. knife
    c. other
2. Physical
3. Verbal coercion or threat

E. Amplication effect
(the number of offenses committed during an incident as basis for a more severe cumulative sentence than would normally be imposed)

F. Volume discount effect
(the reduction of a sentence as a practical matter when it would not be feasible to impose the aggregate of sentences that would normally be imposed on an individual basis)

Of course, one more restrictive method of putting every sentencing judge on the same "wave length" to assure equality is to provide for mandatory sentence provisions in statutes.

This method may be employed in a variety of ways by the use of fines, incarceration, probation, rehabilitative programs (drug, alcohol, mental health, etc.), community service, and/or restitution in a plethora of mandatory combinations. A straight minimum mandatory sentence or one

that provides for a mandatory minimum - maximum range, e.g., the current sentencing possibilities in Driving While Intoxicated (DWI) cases, are two possibilities. Yet another variable to be considered in this scheme is to employ different ranges and/or combinations only for second, third, or more convictions for the same offense, e.g., current sentencing provisions for shoplifting. The Committee has concluded, however, that mandating penalties is neither desirable nor beneficial. The last several years has witnessed a trend towards establishing minimum mandatory penalties for many of the matters handled in municipal courts. The penalties for traffic violations have been particularly subject to legislative setting of the amounts of fines. Given that mandatory penalty provisions severely limit - if not eliminate - a judge's discretion in a given matter, those provisions have become a source of growing dissatisfaction and difficulty with the members of the municipal court bench. While recognizing that the setting of penalties is a legislative function, the Committee on Accountability recommends that a separate Committee be established to review the entire area of mandatory penalties and to consider whether municipal court judges should be allowed to exercise a greater degree of discretion in sentencing. The Committee should include representatives from all groups involved in the criminal justice system, including legislators, law enforcement personnel, judges, and members of the organized bar.

While the Committee acknowledges and applauds the "continuing judicial education" efforts by the Administrative Office of the Courts via its regularly mailed bulletins to Municipal Court Judges advising them of the most recent developments in the law (including the revision of existing statutes, the enactment of new statutes, and the handing down

of new case law on subjects of concern), we respectfully suggest that more intensive programming can and should be developed in this area and should be made a part of the AOC's ongoing training program.

All judges should be current on the law. This not only aids uniformity of sentencing but also helps assure something more fundamental that for the purpose of our discussion we have assumed to be fact, to wit, that the proper and just verdict was arrived at in the first instance.

At minimum, a handy bench reference "Sentencing Sheet" should be published and revised as the need arises, enumerating the various violations of statute that fall within the Municipal Courts' Jurisdiction and the complete penalty provisions that apply, with special emphasis on those that are mandatory.

Accurate, current, and complete criminal record sheets, commonly referred to as "Rap Sheets", are absolutely essential to achieve equality in sentencing. The "Rap Sheets" that are most commonly relied upon by sentencing judges are those that are kept by the local police departments. Unfortunately, these are generally maintained manually, often on a selective, time-permitting basis, and fall far short of complying with the aforementioned criteria. While "rap sheets" kept by other law-enforcement agencies such as the County Police, Sheriffs' Departments and State Police are generally more desirable, they are, as a matter of practicality, seldom available on a short notice basis due to the specific procedures that must be followed.

The varied post-arrest identification procedures (sometimes referred to as "slating" procedures) and arrest sheet forms of the many arresting authorities, to wit, Municipal Police, County Police, Sheriff's

Department, State Police, Port Authority of New York and New Jersey Police, College and/or University Police, Amtrak Police, Conrail Police, N.J. Transit Police, etc., further complicate collection of the same data and recording them in a uniform fashion.

Additionally, the State mandated procedure of using summonses (CDR-1) in lieu of warrants (CDR-2) effectively precludes arresting authorities from collecting data necessary to compile a criminal record sheet. In fact, since 1972, the State Police will not accept entries for arrests that are not accompanied by finger prints and other specific information including color of eyes, and have deigned to accept entries only for certain Disorderly Persons Offenses including Shoplifting, Title 24 Offenses, Prostitution, and Lewdness. This obviously severely hampers any significant attempt to establish and maintain a statewide "rap sheet" on all defendants who have been convicted of any indictable offense or found guilty of any disorderly persons or petty disorderly persons offenses throughout the State of New Jersey.

One solution to the Summons-in-Lieu-of-Warrant problem might be to slate, immediately after their court appearances, only those offenders who have either pled guilty or been found guilty at trial.

While it might be argued that the benefits to be derived from the existence of this type of expanded, statewide, criminal record sheet, to be referred to as the Uniform Judgment of Conviction Form, are far outweighed by its prejudicial effects, few would argue that it would not foster equality in sentencing.

This committee is mindful of the technical problems that exist, such as the present lack of statewide computer compatibility, the strategic problems that exist, such as the sensitive issue of information access,

or the political problem that may inhibit the slating and data-collection processes of the many arresting authorities, and it suggests that this concept is worthy of further study. With some advanced programming, as in the State of Michigan, it will be possible to retrieve from this type of centralized, uniform data recording pertinent information as to sentencing patterns, which, no doubt, would enable us to develop statistically accurate sentence guidelines, and would greatly enhance our objective of equality in sentencing.

In conclusion, the Committee respectfully recommends:

1. The establishment of a Committee including, but not limited to, Municipal Court Judges and prosecutors, representatives of the AOC, members of the defense bar, as well as others involved or interested in the criminal justice system to study the problem of sentence dissimilarity with the emphasis on developing a system to ensure the promulgation of guidelines for municipal court judges in this area.

2. Uniform Sentencing Criteria that are articulate, comprehensive, and go beyond the scope of N.J.S.A.2C:44-1 to 8 should be developed and specifically attuned to the needs of the Municipal Court. Judges should be encouraged to use this information whenever formulating sentences.

3. A further study of the feasibility of creating and maintaining a statewide criminal history-data sheet ("rap sheet") on all offenders for all state offenses, including those initiated by summons, accessible to each of the Municipal Courts.

4. More intensive efforts be put forth in the area of Judicial Education.

A. Seminars and Workshops be regularly scheduled, with attendance mandatory.

B. Municipal Court Judges continue to be advised on a regular basis by the AOC's published bulletins on recent developments and changes in the law.

C. Reference material such as a bench "Sentencing Sheet" should be published and revised as the need arises.

VICTIM/WITNESS SERVICES

The mandate presented to the Subcommittee on Accountability with regard to Victim/Witness Services was; (1) to inquire into existing victim/witness programs in New Jersey and to study their application to the municipal courts; (2) to evaluate the advisability of the development at the municipal level of various victim/witness counselling and guidance services; (3) to study the feasibility of victim input at the sentencing of municipal court defendants; and (4) to evaluate the potential of restitution to victims in municipal court dispositions.

STATEMENT OF PROBLEM AND HISTORICAL BACKGROUND

Historically, individual victims of crime have often complained that their victimization has often extended far beyond the immediate physical or emotional trauma associated with the crime itself. In many cases they have felt mistreated and abused by investigating law enforcement agencies immediately after the incident and during case preparation. Victims and witnesses have felt particularly vulnerable to intimidation and threats of retaliation for their participation in the prosecution of defendants. They have complained about repeatedly being called on to give up time from work and family obligations to participate in the various stages of a criminal prosecution. They have frequently been dismayed at the number of delays and last-minute adjournments of their cases, sometime with no consideration by authorities to their own personal inconvenience. Often they have received little or no information as to the status of the case in which they have played such a vital role. Victims have frequently not been consulted with regard to plea negotiations or the sentencing of defendants.

Finally, they have not received restitution for the financial loss, property damage, or personal injury that they have sustained. Some of these victims of crime have stated that they felt victimized by the criminal justice system to a greater extent than by the offenders themselves.

Similarly, non-victim witnesses who have initially been willing participants in the prosecution of criminal defendants with a genuine sense of civic duty have been frustrated by their own treatment at the hands of the system, and have dropped out. Both victims and witnesses have mentioned the insensitivity of some police officers, investigators, prosecutors, judges, and other court personnel as a very disheartening personal experience. Clearly the justice system cannot function without private citizens who are willing if not enthusiastic participants in the investigation and prosecution of criminal violations. In recent years, these sometimes angry and frustrated people have formed various organizations to more effectively voice their unhappiness with the present system and to work towards positive change. Some of the more prominent private victims and witness groups are NOVA (National Organization for Victim Assistance). MADD (Mothers Against Drunk Drivers), and the Crime Victims Assistance Organization.

These and similar groups have been very successful in drawing the attention of local, state, and national officials to their treatment at the hands of the criminal justice system. Most recently, in November and December, 1983, a National Conference of the Judiciary on the Rights of Victims of Crime was held at Reno, Nevada under the joint sponsorship of the National Conference of Special Court Judges (American Bar Association-Judicial Administration Division), the National Institute of Justice (U.S. Department of Justice), and the National Judicial College. A

Statement of Recommended Judicial Practices was adopted by 104 judges representing the fifty states, the District of Columbia, and Puerto Rico. This Statement provides an excellent framework for our evaluation of New Jersey's practices in handling victims and witnesses. This position paper attempts to address most of the issues considered by the Conference.

Before examining the detailed recommendations, it would probably be advisable to note that in many ways New Jersey has been a leader in addressing victim/witness concerns. For instance, we have had a system of crime-victims compensation for over ten years. Probable cause hearings, a prime source of compalints in many juristictions, have been virtually eliminated by the New Jersey Speedy Trial Program. Victim/Witness Coordinators are present in all twenty-one county prosecutors' offices providing a wide, if varying, degree of services to citizens who are involved with criminal matters pending in the upper courts. However, these services are currently unavailable to persons dealing with municipal court matters. Court ordered restitution has been recognized by our criminal statutes for many years.

Virtually no formalized victim/witness assistance services are found in our local police departments and municipal courts. Nevertheless, many individual police officers, court clerks, municipal prosecutors, and municipal judges are regularly assisting victims and witnesses on a daily basis without being particularly conscious of it.

This informal local support structure has existed for many years without direction, supervision, or any real standards or guidelines being provided. Whether or not a particular citizen who happens to be a victim or an essential witness to a traffic accident or a crime is treated with dignity, respect, and consideration depends primarily on the level of

personal sensitivity and humaneness of the person with whom he happens to come into contact.

Virtually no education of judges or court personnel in this vital area has been included in existing programs until very recently. In such a system, valid criticisms by innocent people mistreated by the system undoubtedly exist and could be expected to continue. Clearly, some planned response is necessary to improve the public image of the municipal court system in this regard.

In any evaluation of victim/witness concerns we have to examine not only what needs to be done but also who should be doing it and what the expense would be. There are clearly some victim/witness assistance functions that are not appropriate for judges and court clerks. There are also many specific recommendations that have been made by representatives of victim-witness groups that are simply not feasible because of the expense involved or because of limitations of personnel and space.

Certainly, the approximately 530 municipal courts of New Jersey cannot be expected to provide baby-sitting services, transportation or escort services, and separate witness waiting rooms, when many courts do not have adequate personnel, space, or equipment needed to perform other essential services. However, there are many other useful and appropriate assistance services that can be provided at virtually no additional expense or inconvenience to court personnel. In many cases, it is just a matter of providing education and consciousness-raising, which can have a highly visible and beneficial result in terms of the accountability of our municipal court system to our citizens.

I. INFORMATION ABOUT COURT PROCEDURES AND FACILITIES

Because nearly all municipal courts in New Jersey function with only one courtroom, detailed information about the physical layout of the court is unnecessary except in a very few large cities.

Traffic directions on scheduling notices can be very helpful, especially in large townships or in municipalities where the court is located separately from other municipal functions. In all courts, however, victims and witnesses rarely know what they are to do when they arrive at the court. Because there are usually no instructions provided in advance, most victims and witnesses are immediately intimidated by their unfamiliar role in an unfamiliar setting. All too often, the only person who is recognized may be the defendant who is seen sitting or conferring with his attorney. The victim or witness immediately feels alone, helpless, and confused. Obviously, there is a need for the judge, court clerk, municipal prosecutor, and police supervisor to establish an appropriate system for receiving these persons, instructing them as to where to locate, and when they can expect their matter to be reached.

Because the police and prosecutor rarely perform this service now, the burden usually falls on the court clerk or a court officer. The absence of clear instructions from someone in the system, may serve to accentuate the pre-existing state of apprehension and confusion. The judge's opening statement in the courtroom is an excellent opportunity to inform all persons dealing with the court about the nature of the proceedings, the rights of parties, the manner in which pleas will be taken and trials conducted, the general order of the proceedings to be followed, and the role of the victims and witnesses in the presentation of cases. Unfortunately, this opportunity is rarely seized by most municipal judges,

whose opening statements are often skimpy in context, hurried, and not designed to inform anyone but defendants.

When witnesses are subpoenaed by the police, it is very helpful to have either the officer involved in the case or a municipal prosecutor establish an early contact with the witness for the purpose of informing and reassuring this essential participant as to his role in the proceedings. An "on-call system should be in place where witnesses may not be required at all or perhaps not for several hours after the court session begins.

These procedures obviously will vary considerably and need to be individually devised to accommodate the needs and limitations of various courts. One technique is to use an "on call subpoena," that gives a phone number for the person to call prior to the return date to ensure that the case is still on. There is little if any expense involved in dealing with this problem and the benefits to the public are great. Some victims and witnesses involved in municipal court proceedings may be just as much in need of the services provided by the victim/witness assistance units of the county prosecutor's office as those whose cases are in the upper courts. Therefore, it is essential that the police, municipal prosecutors, court clerks, and judges be fully informed as to precisely what these services are. If information pamphlets exist, they should be present at the police department and the municipal court.

The sub-committee was unanimous in its judgment that it would be unwise to attempt to provide such a wide range of services directly at the municipal level. The need for referral of special situations to the county victim/witness coordinator clearly exists and should be recognized. Funding, supervision, and control should remain exclusively the

responsibility of the Attorney-General's Office and the various county prosecutors.

II. NOTICE TO VICTIMS AND WITNESSES

One of the most serious complaints of both victims and witnesses has been the difficulty in obtaining information about the status of their cases. All too often, in New Jersey as elsewhere, victims and witnesses are repeatedly inconvenienced by a lack of consideration for their need to know what is going on. The American Bar Association Guidelines for Fair Treatment of Victims and Witnesses in the Criminal Justice System specifies that access should be provided to a system providing up-to-date scheduling information, timely notice as to all court appearances of the defendant, and notice as to case disposition. On the other hand, it is the responsibility of these persons to provide the appropriate court and police officials with a current address and daytime telephone contact.

In New Jersey, the most accessible and appropriate source of this information is the court clerk. Police officers are frequently not available when information is required. Municipal prosecutors are not only often unavailable but rarely have access to the necessary files. Therefore, it should be the court clerk's function to supply this essential service. It is important that court letterheads and scheduling notices provide a complete address, telephone numbers, and hours of availability. Experienced and concerned court clerks inquire as to the work hours of all persons having business with the court. They ask about scheduled vacations, and they make sure they know how to reach people by telephone. They also respect requests to withhold personal information about victims and witnesses from defendants and their representatives. Judges and court

administrators have an important leadership role in impressing upon court personnel the necessity of considering the concerns of witnesses in both adjourning and rescheduling cases. Sensitivity to victims' and witnesses' concerns should be included in all education programs planned by the Administrative Office of the Courts for both judges and clerks. It is particularly important that Supreme Court Justices and Assignment Judges utilize every opportunity to remind municipal court judges and clerks of the importance of understanding the role of the victim and witness in a well-managed and responsive court system. It is specifically recommended that the Administrative Office of the Courts, in conjunction with the Attorney-General's Office, County Prosecutors Association, and Trial Court Administrators prepare a general information leaflet that explains in plain language the entire criminal justice process, stresses the important role of victims and witnesses in criminal and traffic matters, and informs such persons as to what they can reasonable expect from the justice system and what the system expects from them. Distribution of such a leaflet should be handled by individual police officers at the time of initial investigation, by municipal police departments in the same manner as they make available victims compensation information, and by court clerks and municipal prosecutors when the opportunity presents itself. The expense of preparing, printing, and distributing this pamphlet should be borne by the state.

III. SPECIAL SERVICES TO VICTIMS AND WITNESSES

Because of the severe budgetary and space limitations facing most municipal courts in New Jersey, many of the special services deemed advisable by the National Conference of the Judiciary on the Rights of

Victims of Crime are simply not economically feasible, but others can be provided at little or no expense and at minimum inconvenience to court personnel.

An "on-call system for witnesses has already been referred to and endorsed by the sub-committee as a high-priority item. Referral to appropriate community resources in crisis intervention situations is commonly done by concerned and caring court personnel. It is imperative that information about such community services be reviewed by the judge and court clerks when received, and filed in such a way that it is quickly retrievable when needed.

Frequently, interpreters are required, and every municipal court should be budgeted for this service. Clerks should have access to the same interpreters used in the upper courts and should know how to arrange for their appearance and compensation. A few courts have surveyed their roster of municipal employees and discovered a wide range of languages available for short-notice situations at virtually no expense. Care must be given to insure a high level of fluency, but such a survey periodically updated is recommended for all courts.

Separate waiting areas for prosecution and defense witnesses are simply not realistic expectations in most of our municipal courts, but those victims and witnesses who express to court personnel a real concern for personal safety should be immediately brought to the attention of the prosecutor and police. Frequently, a secure waiting area can be provided in such situations. In planning new and renovated facilities, particularly in the busier courts, it would be advisable for judges and court administrators to be aware of the usefulness of providing such waiting areas. Another frequently voiced concern of crime victims in the failure

to return evidence promptly. Sometimes it is possible to photograph evidence in theft and shoplifting cases so that the property can be immediately returned. When this is not possible, court clerks should be familiar with police and prosecutor's procedures for securing and returning evidence so that appropriate referrals can be made. Witness protection and transportation problems are a police responsibility, but court personnel should place concerned citizens in immediate contact with the police. Child care problems are a recurring and troublesome situation for all municipal courts. People who would not think of bringing small children to a county courthouse feel that it is permissible to do so in the municipal courts. When parties and witnesses are required to participate in a trial, all too frequently court personnel are expected to become babysitters. Not only is there interference with work responsibilities, but also there is a valid concern for potential liability.

If a court finds this to be a serious problem, the sub-committee sees no objection to an appropriate warning being placed on scheduling notices. Clerks may also find it helpful to be aware of available child care services and drop-in centers in the community. There is unanimous opposition to court personnel providing a babysitting service for persons having business with the court.

The final special service considered by the sub-committee has to do with witness fees. It is noted that the $ 2.00 witness fee provided for in the present law is almost totally ignored. There is a division of opinion as to whether witness fees should be totally eliminated for municipal court matters or, on the other hand, retained but adjusted to the same level as the per diem fees paid to jurors.

IV. RESTITUTION

Historically, nearly all municipal court judges in New Jersey have thought in terms of only four sentencing options: license revocation, fine, probation, and jail. Two more progressive options, court-ordered restitution and community service, are considered by only a small minority or the judges unless required by statute.

It is the sub-committee's position that restitution to the victims of crime is vastly underutilized in New Jersey. It is noted that at least one state, Oklahoma, has enacted legislation that restitution be given "first consideration in determining an appropriate sentence. Several others have passed laws that require the offender to make restitution in all cases unless there is an articulated reason for not doing so. In most municipal court cases involving property crimes, restitution is well within the financial capability of the defendant, and we would strongly endorse the "first consideration" concept.

Even if not enacted into law, this concept should be stressed in all judicial education programs conducted by the Administrative Office. The first thought of the sentencing judge should be: "Is this an appropriate case for court-ordered restitution?" Victims should be expected to present acceptable proof of loss and should be subject to examination under oath as to this issue. Judges should be encouraged to defer sentence in appropriate cases until satisfactory proof of loss is available. Judges may also choose to defer sentence until restitution is in fact completed.

Restitution orders should be strictly enforced and should be complied with before a clearly specified date. The concept of restitution is endorsed not only on the basis of compensating victims for their losses but also as a powerful rehabilitative measure for the defendant.

V. VICTIM PARTICIPATION

Representatives of victims groups have expressed a perception of exclusion of victims from participation in the justice system at four separate phases of a case: (1) bail determinations and pre-trial release; (2) adjournments and rescheduling decisions; (3) diversion, plea negotiation; and dismissals; and (4) sentencing. At each of these critical phases, the victims may feel that there are important considerations that should be brought to the attention of the prosecutor and judge. Frequently, they argue, decisions are made without their knowledge that seriously affect them and their families, their personal security, and their property rights. All too often, it is claimed, these decisions are made without either notice or consultation.

Our sub-committee recognizes the validity of many of these charges and notes that the court is in a unique position to insure that these decisions are not made without regard to victim's concerns.

Police officers and municipal prosecutors should be encouraged to communicate to the court at all stages of a case the position and concerns of victims. Conditions of pre-trial release may be imposed and adjusted to meet valid concerns. When a dismissal motion is to be presented by the State, the municipal prosecutor should always consult and inform a victim or witness who is present in court in advance of the motion. Judges can quite properly inquire before entertaining the motion, to make sure that consultation has taken place.

Many municipal court clerks, prosecutors, and judges give the impression in dealing with adjournment requests and rescheduling decisions that they are concerned only with the availability of documentary and physical evidence, the work schedule of police officers, and the availability of attorneys. When adjournment and rescheduling discussions are taking place before the judge, inquiry should always be made as to the convenience and

availability of victims and witnesses. Obviously, these considerations may not prevail in all cases, but the mere inquiry is an effective communication of the court's interest and concern.

Victim-impact statements are a proper part of the decision-making process in both the diversion and sentencing phases. At sentencing, victim-impact can be brought to the court's attention in many ways. All pre-sentence reports prepared by New Jersey probation departments contain a victim-impact section.

In all other significant cases, the municipal prosecutor or investigating officer should be asked about this information. In the absence of a personal representative of the State, a judge can obtain the needed information from a copy of the police report. These reports should always be available upon request at time of sentencing. In enumerating aggravating and mitigating circumstances at sentencing, the court has an excellent opportunity to review and explain the impact of the offense on the victim and on society in general.

The sub-committee would rely initially on more effective judicial education in achieving these goals of greater victim participation in the municipal court system.

VI. VICTIM AND WITNESS PROTECTION

This area is one that is commonly cited by representatives of victims and witness organizations. The consensus of the sub-committee was that while fears of retaliation and physical violence are very real, the apprehension is usually much greater than the reality. Intimidation seems to be a rather rare situation in most municipal court matters. Whenever such concerns are presented to court clerks and judges, however, they should be taken seriously and referral of the concerned person to local

police of the municipal or county prosecutor is usually advisable. All court personnel should be carefully trained to respect confidential information and to comply strictly with requests to withhold addresses, places of employment, and telephone numbers from those without a valid need to know. Any inquiries regarding such confidential information should be brought to the attention of the judge for review. Frequently, victims and witnesses wish to be informed as to the release of persons who have been held in custody. Court clerks can properly supply this information when requested, but unfortunately they do not always have prompt access to it and the concerned individuals should be so informed. Cases involving sensitive victims, particularly children or victims of sexual abuse, should be scheduled whenever possible for special sessions or at the end of regular sessions to minimize the traumatic effect of the court appearance on these persons. Such witnesses are already under intense pressure to "drop out" as willing participants in the system, and the court should do everything possible by way of scheduling to assist them. The sub-committee does not, however, support closed criminal proceedings as an appropriate remedy for this concern.

VII. JUDICIAL EDUCATION

The Statement of Recommended Judicial Practices places heavy emphasis on judicial education as a means of improving the courtroom climate for victim and witnesses. We would wholeheartedly endorse this position and commend the Administrative Office of the Courts for including the subject of victim-witness concerns in the curriculum of the Annual Judicial Orientation Seminar. This subject should always play a prominent role in

AOC judicial education programs. There is a need to incorporate such a presentation into the Court Clerk's Training Course and there is also a very real need to reach judges and clerks who have already been through these programs. The Assignment Judges are in a unique position to highlight the concerns of the court system on a recurring basis about fair treatment of all parties. Trial court administrators should recognize positive steps taken by judges and court clerks in this area in their annual evaluation reports and obviously should point out deficiences as they are identified.

Sometimes, experienced judges and clerks who feel totally familiar with the system may fail to appreciate the confusion and even fear of the average citizen who is involuntarily placed in the unfamiliar role of crime victim or an essential witness to the prosecution of a crime. Unless these judicial and clerical representatives of the court system are properly sensitive and responsive to these very real concerns, then the "Peoples Court" cannot truly serve the people as it should.

SUMMARY OF RECOMMENDATIONS

1. EXISTING SERVICES OF THE COUNTY PROSECUTOR'S VICTIMS/WITNESS ASSISTANCE UNITS TO BE EXTENDED TO MUNICIPAL CASES UPON REQUEST OF MUNICIPAL POLICE DEPARTMENT, MUNICIPAL PROSECUTOR, OR MUNICIPAL COURT JUDGE.

2. A GENERAL INFORMATION LEAFLET DESIGNED FOR CRIME VICTIMS AND WITNESSES TO BE PUBLISHED AT STATE EXPENSE AND DISTRIBUTED THROUGH MUNICIPAL POLICE DEPARTMENTS, MUNICIPAL PROSECUTORS, AND MUNICIPAL COURT CLERKS.

3. A GREATER EMPHASIS TO BE PLACED ON VICTIM/WITNESS CONCERNS AND AVAILABLE TECHNIQUES IN A O C JUDICIAL EDUCATION AND COURT CLERKS' TRAINING PROGRAMS.

4. MUNICIPAL JUDGES TO BE ENCOURAGED TO SOLICIT AND REVIEW VICTIM-IMPACT INFORMATION AT ALL APPROPRIATE STAGES OF MUNICIPAL COURT MATTERS.

5. MUNICIPAL JUDGES TO BE ENCOURAGED TO FOCUS ON THE POSSIBILITY OF RESTITUTION TO CRIME VICTIMS AS THE FIRST CONSIDERATION AT TIME OF SENTENCE.

Supreme Court Task Force on the Improvement of Municipal Courts

APPENDIX B

POSITION PAPERS
Committee on Administration

Hon. Samuel D. Lenox, Jr., Chairperson

PAGE

ABOLISHMENT OF TRIAL DE NOVO ON APPEAL FROM MUNICIPAL COURT

BACKGROUND: Provisions for trial de novo on appeal from Municipal Court decisions were instituted at least as far back in time as the 1948 revision of the New Jersey State Constitution.

Court Rule 3:23-8 sets forth the current procedure to be followed. See Exhibit #1 attached hereto.

It is safe to assume that at the time the original Court Rule providing for trial de novo was implemented in 1948, few if any Municipal Courts had sound recording devices or any other type of stenographic record. As well, it is equally unlikely that Municipal Courts had Municipal Prosecutors. It should also be kept in mind that prior to 1948 it was not required that Municipal Judges be Attorneys-at-law; and it is safe to assume that the overwhelming majority of "Police Records" or lay Magistrates were not attorneys. Currently, there are only about three non-lawyer Municipal Judges in the State. Under the circumstances in which there is no Prosecutor, no sound recording, and the Judge is not an attorney, it is understandable that a trial de novo on appeal be a preferred rule. However, thirty-five years have passed, and now almost, if not all, Municipal Courts have Prosecutors, sound recording, and Judges who are attorneys.

PRO:

1. The original purpose of a trial de novo resulted from the existence of numerous lay Judges serving municipalities.

These lay Judges, without legal training, were presumably less qualified than law trained Judges who now hear cases.

2. Originally, there was no sound recording in the Municipal Court; now all Municipal Courts have sound recording devices.

3. Abolishment of trial de novo by the Superior Court - Criminal Division will "free up" time of Superior Court Judges, who are already over burdened.

4. Superior Court - Criminal Division is currently a court of original jurisdiction, and its decisions law is binding upon neither other Superior Courts nor Municipal Courts. Trial de novo is therefore an unnecessary and meaningless stage in the process.

5. When hearing a Municipal Court appeal de novo, the Superior Court is supposed to give weight to the credibility of the witnesses as determined by the Municipal Court, but is not bound thereby. Therefore, a Superior Court Judge may substitute his or her opinion as to credibility without ever having seen the witnesses.

6. Trial de novo gives the defendant "two bites at the apple".

7. Superior Court Judges, who are charged with numerous other responsibilities, are not as familiar with Municipal Court law as are Municipal Judges, as is evidenced by the fact that the Superior Court will impose sentences that are no longer permissible even when the finding is upheld but the sentence is altered.

8. In some vicinages Superior Court Judges are frequently rotated from one area to another and lack sufficient expertise in Municipal Court law.

9. Administratively, clerks to Superior Court Judges are unfamiliar with clerical or legal requirements of the statutes.

10. Trial de novo sometimes involves expense to the municipality as a result of subpoenaing police officers. A concomitant inconvenience is incurred by witnesses.

11. A Municipal Court Judge is in a better position to assess the credibility of police officers and witnesses as they appear in court, whereas in a trial de novo witnesses do not usually appeal.

12. Trial de novo in essence says to the Municipal Court Judge: we do not trust your judgment.

13. Most Municipal Courts have Prosecutors, who relieve the Municipal Court Judge from any tendency to act in a prosecutorial fashion.

CON:

1. Superior Court Judges are better equipped to handle Municipal Court appeals as they have Law Clerks and extensive libraries at their disposal.

2. Superior Court Judges, who are more removed and independent, are in a better position to decide cases impartially as they are not subject to political, police, or public influence.

3. Superior Court Judges are of superior quality, more intelligent, and better trained, and are therefore better equipped to decide cases.

4. Defendants cannot get a fair trial in Municipal Court because Municipal Judges are too close to the police, and a Municipal Judge, absent tenure, is subject to political pressures.

5. Superior Court Judges with tenure are not subject to political pressures.

6. Since County Prosecutors represent the State in Municipal Court appeals, the State gets better representation.

RECOMMENDATION: It is recommended that Rule 3:23-8 be amended to provide:

> 1) In those Municipal Courts in which there is available a stenographic record or intelligible sound recording, appeals shall be made on the record to the Superior Court, Law Division, in the same manner and on the same available grounds as now provided for in respect of appeals from the Superior Court, Law Division. Right of appeal from Superior Court, Law Division, to Appellate Division should be retained.
>
> 2) In those Municipal Courts in which there is no stenographic record or intelligible sound recording, appeals shall be de novo to the Superior Court, Law Division, with the taking of all necessary testimony and presentation of evidence.

3:23-8. Hearing on Appeal

(a) Plenary Hearing; Hearing on Record; Correction or Supplementation of Record; Transcript for Indigents. If a verbatim record or sound recording was made pursuant to R. 7:4-5 in the court from which the appeal is taken, the original transcript thereof duly certified as correct shall be filed by the clerk of the court below with the county clerk, and a certified copy served on the prosecuting attorney by the clerk of the court below within 20 days after the filing of the notice of appeal or within such extension of time as the court permits. In such cases the trial of the appeal shall be heard de novo on the record unless it shall appear that the rights of either party may be prejudiced by a substantially unintelligible record or that the rights of defendant were prejudiced below in which event the court to which the appeal has been taken may either reverse and remand for a new trial or conduct a plenary trial de novo without a jury. The Court shall provide the municipal court with reasons for the remand. The court may also supplement the record and admit additional testimony whenever (1) the municipal court erred in excluding evidence offered by the defendant, (2) the state offers rebuttal evidence to discredit supplementary evidence admitted hereunder, or (3) the record being reviewed is partially unintelligible or defective. If the appellant, upon application to the court appealed to, is found to be indigent, the court shall order the transcript of the proceedings below furnished at the county's expense if the appeal involves violation of a statute and at the municipality's expense if the appeal involves violation of an ordinance. If no such record was made in the court from which the appeal is taken, the appeal shall operate as an application for a plenary trial de novo without a jury in the court to which the appeal is taken.

(b) Briefs. Briefs shall be required only if questions of law are involved on the appeal or if ordered by the court and shall be filed and served prior to the date fixed for hearing or such other date as the court fixes.

(c) Waiver; Exception. The appeal shall operate as a waiver of all defects in the record including any defect in, or the absence of, any process or charge laid in the complaint, and as a consent that the court may, during or before the hearing of the appeal, amend the complaint by making the charge more specific, definite or certain, or in any other manner, including the substitution of any charge growing out of the act or acts complained of or the surrounding circumstances of which the court from whose judgment or sentence the appeal is taken had jurisdiction, except that if the appeal is from a conviction for an indictable offense, the appeal shall not operate as a consent that the complaint may be amended so as to charge such an offense or a new or different indictable offense, unless the defendant agrees to such amendment.

(d) Defenses Which Must Be Raised Before Trial. The defenses of double jeopardy, lack of jurisdiction in the court, failure of the complaint to charge an offense, the unconstitutionality of the statute, regulation promulgated pursuant to statute or ordinance under which the complaint is made and all other defenses and objections based on defects in the institution of the prosecution or in the complaint must be raised by motion and determined in accordance with R. 3:10.

(e) Disposition by Superior Court, Law Division. If the defendant is convicted, the court shall impose sentence as provided by law. If the defendant is acquitted, the court shall order the defendant discharged, the conviction in the court below set aside, and the return of all fines and costs paid by the defendant. An appropriate judgment shall be entered and a copy thereof transmitted to the court below.

(f) Appearance by Prosecuting Attorney. The prosecuting attorney shall appear and act on behalf of the respondent at the hearing.

Note: Source—R.R. 3:10-13. Paragraph (b) amended by order of September 5, 1969 effective September 8, 1969; paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 29, 1977 to be effective September 6, 1977; paragraphs (a), (b) and (e) amended November 22, 1978 to be effective December 7, 1978; paragraphs (a), (b) and (e) amended July 11, 1979 to be effective September 10, 1979; paragraph (a) amended February 17, 1983 to be effective immediately.

AOC SERVICES TO MUNICIPAL COURTS

With the establishment of this Task Force, the AOC began a process to evaluate both local municipal courts and its own participation in the administration thereof.

As a first step in this process, a presentation was made and comments solicited from the Municipal Court Judges at the 1983 Annual Conference. During the discussion sessions at the conference, the Municipal Court Judges identified the following areas of concern:

1. A need for the AOC to advise the Municipal Courts immediately after legislation is passed and/or new cases are decided and to forward copies of the cases or legislation promptly.

2. AOC directives should be promulgated and dispersed in a timely fashion.

3. The AOC should play a more active role in soliciting cooperation with other state agencies.

4. The AOC should play a more active role in obtaining staff for the local municipal courts.

5. The AOC should provide greater technical assistance to the municipal courts.

6. The AOC should develop a compendium of directives, rules, and regulations and distribute them to the local municipal courts.

These other recommendations were compiled after the conference and sent to the Subcommittees established by the Task Force. The first steps in addressing these issues have already been taken.

Currently, there are position papers that recommend complete revamping of the administrative structure at the municipal court level. Each paper is predicated upon the identification and use of highly trained personnel who will effectively manage the courts from both the vicinage and local municipal level.

This paper recommends the final transitional step, i.e., a review of the AOC itself, and the role it must play in order to ensure that the recommendations made by the Task Force are both carried out and fine-tuned in the future.

HISTORICAL OVERVIEW

The Municipal Court Services Unit at the AOC was originally established in the early 1950's. Staffing this unit were two people who were charged with the responsibility of overseeing the municipal courts and developing programs and procedures to ensure consistency and equality throughout the state.

A special section on municipal courts appeared in the AOC Annual Report for the first time in 1977. Since that date, however, the space allotted to municipal court activity has increased from three paragraphs to eight pages. However, the size of the unit has increased only to three employees.

Currently, the three person Municipal Court Services Unit is charged with the responsibility of overseeing the actions of over 530 municipal courts. It is important to note that in 1983 there were over four million cases processed through our municipal court system, many of which generated questions and policy decisions that could be handled only by this tiny Municipal Court Services Unit.

In addition to answering often complex and many faceted questions from the field, the three person unit has been charged with responsibility for:

1. Providing staff and technical assistance to the Supreme Court Task Force on Municipal Court Education.

2. Overseeing the Annual Judicial Conference on Municipal Court Judges.

3. Providing staff assistance to the Municipal Court Education Committee.

4. Maintaining and revising the Municipal Court Procedures Manual (the last revision having been completed in January of 1983).

5. The dissemination of a municipal court bulletin letter to all Municipal Court Judges and other personnel.

6. Providing staff for and conducting the Municipal Court Clerks Training Seminar (held six times a year).

7. The development of new programs such as one that authorizes the use of credit cards in the municipal courts.

8. The overseeing of a pilot plea bargain program, which is currently under consideration by the Supreme Court Task Force.

9. Overseeing the implementation of the municipal court budget assistance project, a program that for the first time required all municipal courts to submit their budget to their Assignment Judge for review and approval.

10. Undertaking municipal court management studies in a number of our ten largest urban courts.

11. The development of methods to handle the influx of drinking while intoxicated cases caused by changes in legislation and the Romano v. Kimmelman case.

12. Working closely with representatives from the Violent Crimes Compensation Board to ensure that the municipal courts correctly assess and expedite the collection of the penalty imposed on defendants convicted of a violation of Title 2C.

13. The development of a municipal court visitation program, which, although conducted by the TCA's office, is overseen and reviewed by the Municipal Court Services Unit. This visitation program is divided into two parts, one of which is a review of the recordkeeping functions of the court and the second is a review of the general procedures and demeanor of the Municipal Court Judge during actual court sessions.

As can be seen, with the minimal staff allocated to this unit Municipal Court Services has been able to tackle both the ongoing requirements of our municipal courts as well as delve into experimental programs. The unit has also been able to respond to the demands of new

legislation and react to the unforeseen events that are a part of any large organization.

STATEMENT OF PROBLEM

Although the Municipal Court Services Unit has performed yeoman duty in its effort to improve our municipal court structure, it is evident that there simply has been insufficient staff to respond effectively to all the questions and problems that arise from the field, let alone plan constructively for the long-term improvement of the municipal courts and their employees. It is important that we recognize that the AOC must play a more active role. Examples of new functions are listed below.

1. The development of the presiding judge/municipal court administrator concept.

2. Guiding the development of educational opportunities to be made available to Municipal Court Judges and municipal court personnel.

3. With the recent changes in legislation and the soon-to-be released recommendations by this Task Force, the AOC must develop new programs to meet the changing needs of our courts.

4. The Municipal Court Services Unit must play a coordinating role with other members of the AOC family, e.g., Statistical Services, Legislative Services, Computer Services and Criminal Practice to assure coordinated AOC activity, avoid duplication, and maximize productivity.

5. There is a need to expand dramatically the capacity of the AOC in order to give the AOC the capability to properly plan for problems rather than being reactive to problems in the municipal courts.

6. With the development of the new Municipal Court Procedures Manual, designed to be a "living document," it will be absolutely essential for AOC to ensure a constant review and update of this document.

CONCLUSION

In conclusion, the position of this Committee on Administration is one of wholehearted support of the existing Municipal Court Services Unit. With the development of the Task Force as well as the increased visibility of the Standing Committees on Municipal Court Education and Municipal Court Practices, the AOC is obviously moving forward toward an expansion of the municipal court support function.

Currently, the existing Municipal Court Services Unit is a part of a larger unit, i.e., the Division of Criminal Practice. With the greatly expanded role of the Municipal Court Services Unit, as envisioned by the Task Force, this unit now merits elevation to a higher category within the AOC.

We therefore wholeheartedly support the plans of the AOC to create a separate division whose sole responsibility would be to service our municipal courts. It is only through the establishment of a Division of Municipal Court Services that appropriately high-level personnel can be hired to ensure both the aforementioned continuation of programs and the further development of mechanisms to meet the changing needs of our municipal courts.

CASE MANAGER

FOR

MUNICIPAL COURTS

In recent years the administrative demands of the vicinage municipal courts upon the assignment judge, trial court administrator, and their staff has dramatically increased. This is a concomitant of the ever-increasing case load burdening the municipal courts. While a case load increase may be expected to accompany the expanding population and social changes being experienced in our state, it has been magnified by other factors.

Amended legislation expanding municipal court jurisdiction, increasing law enforcement capabilities and requirements, and imposing additional duties upon the municipal courts have likewise contributed. Those laws relating to domestic violence restraints, increased drunk driving penalties and enforcement, and violent crimes victims' compensation are but examples. The volume of cases handled at the municipal court level has been further expanded by a larger number of remands of indictable offense complaints. Burdened with the preparation and trial of lengthy death penalty cases and an ever greater number of complaints filed, the county prosecutors through their case screening procedures are exercising their discretion to downgrade more offenses for trial in the municipal courts.

Pursuant to Rule 1:33-4 the assignment judge has "plenary responsibility for the administration of" the municipal courts. This function at the vicinage level involves not only matters relating to the disposition of complaints filed, but also to budget preparation and management, personnel and labor relations, reporting requirement compliance, relations with local governing bodies, implementation of new programs, responsibility for equipment and facilities, investigation and resolution of complaints and a myriad of other matters. With the increase in case load comes an increase in these administrative details. It is expected that all of this burden will be lessened with the implementation of the recommendations of this Task Force. However, this implementation will require staff assistance to those who are charged with the supervision of the vicinage municipal courts. It is anticipated that the Task Force will recommend the creation of the position of vicinage presiding judge to relieve the burden of administering the municipal courts now confronted by the assignment judge. This paper addresses the establishment of a position of assistant court administrator for the municipal courts in each vicinage. The sole responsibility of this person relates to the administration of the municipal courts, their coordination and improvement, and the provision of staff assistance to the vicinage presiding judge.

EXISTING ADMINISTRATIVE SUPPORT

The New Jersey Supreme Court is dedicated to an efficient municipal court system that will provide the highest possible quality of justice. The need has long been recognized for a combined state, vicinage, and local administration of the system to assist in achieving this goal. This support is provided by an Office of Municipal Court Services in the

Division of Criminal Practice at the Administrative Office of The Courts, and by the vicinage assignment judge and office of the trial court administrator. In most vicinages, positions of assistant court administrator or municipal court liaison, have been established to serve the municipal courts. That employee either may perform no other function or may provide administrative support to the county and state courts.

Administrative support to municipal courts has been provided since the inception of the present court system in 1948. A more comprehensive program began in February, 1974 with the impelmentation of a municipal court visitation program conducted by the office of the vicinage trial court administrator. This program will directed primarily to assuring the efficiency of the court support unit (court clerk, personnel, procedures, and facilities). The visitation program was later expanded to include an annual in court visitation to review and made recommendations relating to the judicial activities of the court. However, these programs were but additions to the broad-based assistance provided on a daily basis at the vicinage and state levels. The Supreme Court has reemphasized its continued devotion to administrative needs of the municipal court system by the establishment in 1984 of this Task Force, to study the system and recommend methods to improve its operations.

NEED FOR THE POSITION

The Task Force will propose extensive changes in municipal court practice and procedure. While the work of the Task Force has not been completed, it is apparent that implementation of the significant recommendations emanating from this study will require the efforts of

specialized and dedicated personnel. Case managers (a title already used as part of the Presiding Judge-Case Manager team on the Superior Court level) assigned exclusively to the municipal courts answers much of this need. The position is the key to effective staff support and will complement the new administrative authority provided by the establishment of the vicinage presiding judge. In those vicinages where a similar position has been established, no new employee will be required. However, the new chain of command created by the appointment of a vicinage presiding judge will change that employee's reporting requirements. This paper recommends the establishment of a new position of Case Manager-Municipal Courts in each vicinage and thus the appointment of an additional employee in those vicinages where a similar position does not already exit.

DUTIES OF THE POSITION

The proposed duties of the Case Manager-Municipal Courts basically mirror those recommended for the vicinage presiding judge, but also include additional support functions

1. Task Force The CM-Municipal Courts (CM-MC) will play a significant role in the implementation of Task Force recommendations by the local advisory committee, and act as staff to the vicinage presiding judge and the local advisory committees aiding in the coordination of their implementation efforts. The CM-MC will also assure that each municipal court has adopted the standards and goals of the Task Force and continues to operate in accordance therewith.

2. Visitations (Regular and In-Session) The CM-MC will conduct inspection visits of the municipal court clerical and administrative

operations. The inspection will include a review and report on the adequacy of the facilities provided to the municipal court operation, whether the court is adequately staffed, whether proper clerical procedures are being employed, the status of the calendar, a thorough examination of financial operations and of the sound recording equipment, and adequacy of existing computer operations, or, if there are no such services, a recommendation with respect to the court's need for computer services.

The CM-MC will also conduct regular in-session visits of each municipal court in the vicinage to review court proceedings. The in-session visit will include a determination concerning whether the proceedings were properly sound recorded and whether proper practices and procedures are being followed.

3. Sound Recording The CM-MC will provide expertise regarding the sound recording machine and its operation. In addition to visits to monitor the use of the sound recording equipment, the CM-MC will be available as needed to the municipal courts to provide services respecting sound recording equipment and procedures.

4. Training and Instructions The CM-MC will provide training and instruction of court personnel in proper clerical and administrative procedures. This includes on-the-spot training, if necessary, while making court visitations, as well as developing programs of group training and instruction. This is an especially important function in view of the comparatively high turnover of personnel in the municipal courts.

5. Special Problem Courts or Urban Courts These courts will require the special attention of the CM-MC. Studies will be needed and will be coordinated by the CM-MC in conjuction with members of the governing body, court staff, and outside consultants.

6. Liaison with Mayor and Council At the direction of the assignment judge or presiding judge, the CM-MC will be charged with the liaison responsibility between the judiciary and the executive/legislative bodies in each municipality. The CM-MC will be responsible for making the governing body aware of the municipal court's budgetary needs and assist in the presentation of the court's budget request. This will require regular communication by the CM-MC with the members of the municipal governing bodies.

7. Liaison with County Speedy Trial Program Working with the presiding judge, the CM-MC will serve as liaison between the municipal courts and the county in the coordination of the elements of the speedy trial program. The municipal courts are an integral part of the speedy trial program and the CM-MC will assure that there is an expeditious information and document flow between the municipal courts and county operations.

8. Review and Analysis of Municipal Court Reports The CM-MC will be responsible for a review of reports prepared by the municipal courts in the vicinage. This includes the monthly municipal court reports and the VCCB summary report. The CM-MC will use these reports to analyze the

court's case load and to identify calendar clearance problems, backlog problems, and relative degrees of efficiency in the use of court time.

9. Investigation of Complaints The CM-MC will be responsible for investigating complaints made against municipal court judges and clerical personnel forwarded by the Municipal Court Services Unit of the Administrative Office of the Courts. The investigation may include interviews with the judge, court personnel, listening to the tape of the proceedings, and preparation of a written report with conclusions and recommendations as to further action, if necessary. He will also receive and handle to conclusion the routine inquires and complaints not requiring formal action.

10. Liaison with Interacting Agencies The CM-MC will act as a liaison between the municipal courts and agencies that work with or have contact with the courts. These include such agencies as the Division of Motor Vehicles, State and local police, probation department, sheriff, mental health programs, mental health institutions, alcohol and drug rehabilitation programs, and many others.

11. Establish and Monitor New Programs Under the authority and direction of the vicinage presiding judge and assignment judge, the CM-MC will establish and monitor authorized programs such as community dispute resolution committees, a speedy trial program, a pretrial intervention program, and a shoplifting deterrence program.

12. Responsibility for Facilities and Equipment The CM-MC will be responsible for inspection of the facilities and equipment of the municipal courts to assure their adequacy and to assist in obtaining whatever improvements are necessary. This includes responsibility for the buildings, courtrooms, chambers, clerk's office, office equipment, furniture, and library.

13. Clerk's Meetings The CM-MC will conduct periodic meetings of court clerks to assist them and enable them to share with each other the knowledge and experience they have gained.

14. Statewide Meetings The CM-MC will attend statewide meetings of all ATCAs-MC and return to the vicinage the product of the meetings.

15. Collection of Fines and Penalties The CM-MC will work with the municipal courts to establish procedures for the efficient monitoring and collection of delinquent accounts of these defendants authorized by court order to make payment of fines and penalties in installments. This has been characterized as the most serious problem confronting the municipal courts and requires a significant effort to correct existing deficiencies.

16. Interpreters The CM-MC will be responsible for maintaing a list of qualified interpreters in all important languages and for providing the appropriate interpreter to municipal court upon request.

17. Evening, Holidays and Weekend Emergent Duty Schedules The CM-MC will develop and implement the evening, holiday, and weekend

emergency availability schedules to assure that a judge is available to every municipality at all times.

18. Conflict Cases The CM-MC will receive requests from municipal court judges to arrange the scheduling before a different vicinage judge of cases in which the judge is disqualified.

19. Assigned Counsel for Indigents The CM-MC will take over the existing program or establish an improved program for the assignment of counsel to defendants who have established their indigency status.

20. Computerization The CM-MC will be at the forefront of implementation of the proposed statewide computerization of all municipal courts.

21. Budget Preparation The CM-MC will assist individual municipal courts in the preparation of budgets that comply with the new budget directive proposed by the Task Force, and provide adequate funding necessary for the efficient operation of all court functions.

22. Standardized Policies The CM-MC will assist in the development of standardized policies and procedures to be implemented in all municipal courts.

23. Administrative Support to the Vicinage Presiding Judge The CM-MC will act in the same capacity to the vicinage presiding judge as the trial court administrator does to the assignment judge. The CM-MC

will report directly to the vicinage presiding judge and will act under his authority and in his name in the administration of the vicinage's municipal court. He will provide professional staff assistance to all municipal court judges in this capacity.

The CM-MC will complete the important link of administrative authority provided by the vicinage presiding judge and improve the day-to-day-efficiency of the municipal courts.

FUNDING

The CM-MC position should be funded by the vicinage consistent with the existing procedure for assistant court administrators. In single county vicinages the cost will be borne by the county; in multi-county vicinages the cost will be shared by the counties on the same basis now used to share the funding required for the trial court administrator's office. Because of the fiscal difficulties now confronting all counties, it is the recommendation of the committee that the assistant court administrator in each vicinage be transferred to state employment and payroll. The funds thereby released may then be utilized by the counties to employ a CM-MC where none is presently on staff and to provide funds for other office and staff expenses of the vicinage presiding judge and CM-MC. The cost of administrative support for the municipal courts will be included in the assignment judge's Superior Court budget.

CONCLUSION

The establishment of a position of Case Manager-Municipal Courts is a necessary and feasible addition to the administration of the municipal courts of the vicinage and the implementation of the recommendations of the Task Force. The importance of the municipal court system to the

citizens of the state and the administration of justice fully justifies the recommendations of this position paper.

COMMUNITY DISPUTES RESOLUTION PROGRAMS IN THE COURT

ISSUE

Should the establishment of citizen-staffed Community Disputes Resolution Committees be endorsed, encouraged, and implemented in the Municipal Courts?

BACKGROUND

The concept of alternative dispute resolution has been recognized since 1977 pursuant to Rule 7:3-2; however, it was not until the New Jersey Supreme Court established the Committee on Complementary Dispute Resolution, chaired by Justice Garibaldi, that the potential of the concept has been fully recognized.

Currently, there are various programs in operation throughout the state. Some of them are staffed by paid personnel (such as the Mercer County Informal Hearing Program) while others are staffed by volunteers (such as those prevalent in Camden and Gloucester County communities on a local basis and a program staffed by volunteer attorneys in Essex County on a county basis). Perhaps one of the oldest is the Atlantic County Neighborhood Justice Center, which is a cooperative effort between Stockton State College and the Atlantic County Bar Association. It is estimated that perhaps 200 communities in the state have available dispute mediation programs.

The purpose of this paper is to explain the dispute resolution concept as it applies to the Municipal Courts and to explore the advantages and uses of implementation throughout the state as an adjunct to the Municipal Court.

THE GARIBALDI COMMITTEE PROPOSALS

The Supreme Court Committee on Complementary Dispute Resolution Programs encourages municipal courts to establish mediation programs using one of four models: citizen panels; the Essex County Bar Association Community Dispute Resolution Model; the Justice Institute Model operating in Atlantic; or a full-time county-wide or locally-based programs patterned after mediation programs operating in Bergen, Essex, Hudson, Mercer and Middlesex Counties. Whichever model is selected, the program must adhere to a uniform set of precepts that have been developed by the committee.

The Garibaldi Committee will continue to establish a pilot program in Camden and Gloucester Counties on a local level utilizing the citizen panel model. Under the pilot, more than one municipality may comprise a joint committee depending upon caseload. All persons on these committees will be volunteers serving without compensation.

Other questions that are being considered by the Garibaldi Committee are how to train mediators effectively and efficiently; whether referral should be voluntary or mandatory; and liability of individual members and the municipality.

The Comprehensive Justice Center Project being sponsored by the Garibaldi Committee in Burlington County will make use of the citizen panel model for neighborhood disputes. There has also been significant implementation in Morris and Bergen Counties, using a local, rather than a county, body comprised of unpaid volunteers.

COMMUNITY DISPUTE RESOLUTION COMMITTEES

The primary purposes of community dispute resolution committees (CDRC) are:

1. To provide an alternate method of disposition of minor quasi-criminal offenses to relieve court backlogs.

2. To establish a flexible and open forum, not constrained by sometimes archaic rules of procedure, to enable citizens with minor problems to resolve them without the expense of legal representation and the possibility of a record of conviction.

3. To encourage local citizens to become involved in the justice system, thereby increasing their awareness and support.

TYPES OF CASES REFERABLE TO CDRC'S

The following "non-criminal" complaints are appropriate for referral to local CDRC's.

(a) Neighborhood disputes
(b) Family disputes
(c) Landlord/tenant disputes
(d) Business consumer disputes
(e) Simple harassment cases
(f) Dog complaints

(g) Simple trespass cases
(h) Noise complaints
(i) Bad check cases
(j) Ownership-of-property disputes
(k) Destruction and simple theft cases involving neighbors or relatives

All such complaints involve citizen v. citizen. The committees are "solution-oriented" and are not preoccupied as are the courts with an adversarial atmosphere to determine guilt or innocence and the imposition of a penalty. Committees allow the participants freely to disclose the real problem and assist in formulating a lasting solution. No complaints signed by a police officer or a public official are referred.

RECOMMENDATION

It is the recommendation of the Subcommittee on Administration that Municipal Courts be encouraged to implement local dispute resolution programs and that all dispute programs instituted be studied by the Garibaldi Committee to determine how mediation programming may be improved.

COMPLAINT PREPARATION

INTRODUCTION

Substantially all non-traffic complaints cognizable in the municipal courts are drafted by the Municipal Court Clerk. This paper considers the origin and propreity of placing that responsibility on the Municipal Court Clerk and concludes that the responsibility for drafting complaints should be placed exclusively on the prosecutorial authority.

STATEMENT OF PROBLEM

In most, if not all, municipal courts it is the practice for the Municipal Court Clerk to prepare, that is, actually to draft and type non-traffic complaints cognizable in the municipal court. Included in the type of complaint subject to this procedure are both indictable and non-indictable offenses. There is no specific authority placing this responsibility on the Municipal Court Clerk and one can only speculate as to the origins of the practice. Obviously, in an earlier day when the municipal court and the police department were much closer, it may have been that the Municipal Court Clerk was the logical person to perform the typing function at least, and the nature of the police-judiciary relationship could easily have expanded that function to include the selection and drafting of appropriate charges. Thus, a defendant frequently would be in a position of being tried, in his mind at least, by a court whose personnel actually charged him.

There can be little question that the charging function is a responsibility of law enforcement. To permit Municipal Court Clerks to prepare complaints, even if based on information and specific direction provided by the police, creates at least the appearance of an improper

confusion of responsibilities and probably results in the actual performance by the Municipal Court Clerk of a police function.

The current New Jersey Municipal Court Manual (January, 1983) preserves this anomaly. At page I-6 and I-7 the following is found:

> "It is important that law enforcement and police tasks be completely separate from those of the judiciary. It is, therefore, the policy of the Supreme Court that persons who perform any court duties or functions must not perform any duties or functions for the police and vice versa. The Municipal Court Clerk or any Deputy Court Clerk must be a neutral and detached judicial officer. State vs. Rutolo 52 N.J. 508 (1968). Thus, each municipal court judge is urged to take the precautions necessary to prevent any false conclusions in the public mind that the Court Clerk is an adjunct of law enforcement agencies rather than a separate and independent official."

In an apparent contradiction to the foregoing, Chapter 3 of the New Jersey Municipal Court Manual contains specific instructions with regard to the proper preparation of complaints in all non-traffic matters. The instructions obviously are intended to guide the Municipal Court Clerk in the drafting of those complaints. Similarly, on page IX-6 of the same manual, specific instructions are given the Court Clerk with respect to the preparation of complaints. There does not appear to be any specific language that directs the Municipal Court Clerk to make a judgment as to the appropriate charge. and of course, it may be argued that that is the only true charging function. Nevertheless, it is easy to see that where the Municipal Court Clerk does the drafting, that person soon is relied on in many cases at least to assist in determining the appropriate charge, and the appearance, at least, of performing this police function prevails.

It should be noted that the term authorized or empowered "to take complaints," which is found in the Court Rules (Rule 3:2) and the applicable

statutes (N.J.S. 2A:8-27), probably has contributed to the problem. There are no data that the Committee is aware of to substantiate the interpretation given to the term, but it appears that the term has been given two different treatments, both of which have resulted in the drafting of complaints by Municipal Court Clerks. In the first instance, "to take" has been interpreted to mean the actual drafting of the complaint, not just the taking of an oath. Secondly, it is very rarely the practice that the statute is followed permitting the officer in charge of the police station to take a complaint. It is generally the practice that the Municipal Court Clerk is required to appear, administer the oath, and draft the complaint. Neither the rule nor the statute requires that that function is exclusive to court personnel.

A variation on the problem exists with respect to civilian complaints. The manual presumes and the practice is that civilians look to the Court Clerk to prepare appropriate complaints for them. In view of the fact that the Supreme Court has established the policy that all complaints should be accepted in the first instance without any screening, the necessity for assisting citizens exists. If the burden of preparing complaints originated by police is properly placed in the law enforcement community and the capacity to perform that responsibility exists, there does not appear to be any reason why civilian complaints could not be handled in the same fashion.

COMMITTEE'S POSITION

The preparation and drafting of complaints by personnel of the municipal court conflicts with the established policy of separation of the judicial and law enforcement functions. A directive should be issued

directing all municipal court personnel to cease the actual preparation of complaints. Further, the New Jersey Municipal Court Manual should be immediately amended to specifically instruct Municipal Court Clerks that it is not their responsibility to draft and prepare complaints.

The Committee recognizes that the shifting of this responsibility to the police departments will have an impact on those agencies. Standards and procedures will have to be developed by the departments in order to implement this policy. The Committee further recognizes that some lead time may be necessary to allow these departments to plan to assume this responsibility. With respect to civilian complaints, it is the Committee's view that civilian access to the courts should not be stifled. Police departments should be advised that providing assistance in that regard is a proper service of law enforcement. It may be that the assumption of that responsibility will often result in earlier dispute resolution. Procedures must also be developed to assure that complaints that, for whatever reason, are not taken by the local police departments can be filed with the court.

Conflicts in Scheduling

One of the significant problems affecting case processing in municipal courts is that of "conflicts in scheduling." With the increased volume of complaints being filed and with a growing number of courts scheduling day-time sessions, the frequency of such conflicts represents a growing problem. These conflicts involve situations in which municipal court sessions are being scheduled not only at the same time as other court sessions (e.g., Municipal, Superior, and Administrative Courts), but also at the same time that other legal proceedings (e.g., depositions) are routinely held.

The honoring of adjournment requests have frequently resulted in delays in the disposition of municipal court matters. Effective and efficient case processing is not possible under such circumstances. The Supreme Court policy of disposing of drunk driving summonses within sixty days of the charge underscores the necessity for resolving this problem. The purpose of this position paper is to promulgate guidelines to be followed to avoid unnecessary delays in municipal court proceedings when a conflict in scheduling arises.

RECOMMENDATIONS

It is recommended that guidelines governing the resolution of conflicts in scheduling be established and promulgated by the Supreme Court. All judges, municipal and otherwise, and all attorneys should be made aware of those guidelines. Such a policy should make it clear that in the first instance, the responsibility for resolving scheduling conflicts resides with the judges and clerical staff of the courts involved. Only when these courts are unable to resolve the conflict should the policy require the intercession of the presiding municipal court judge or assignment judge. In these cases, each municipal court judge should be directed to refer the issue to his respective presiding municipal court judge or assignment judge for immediate resolution.

Whenever possible, conflicting schedules should be adjusted to accommodate each court's requirements with a minimum of disruption. In those rare instances in which it is not possible informally to accommodate the needs of all the courts involved, the following priorities shall be followed in determining which schedule should take precedence:

A. Supreme Court;

B. Appellate Division;

C. Superior Court - jury trials in progress;

D. Municipal Court - DWI cases * (older case has priority)

E. Superior Court - jury trials not in progress;

F. Superior Court - non-jury trials in progress;

G. Municipal Court cases (other than DWI) older than sixty days;

* (older case has priority)

H. Superior Court - non-jury; and

I. Depositions.

Of course, the foregoing is not all inclusive, and there may well be necessity for exceptions. This policy may be adopted by the Supreme Court by rule. It is anticipated that it may be appropriate to amend the current Rule 1:2-5 in order to achieve the desired end of this proposal.

*if a conflict exists

Liability Of Municipal Court Judges And Staff

This paper addresses the potential liability, both civilly and criminally, of the judges, clerks, and other staff employees working in the municipal courts of New Jersey.

In recent years there has been a dramatic increase in the number of civil and criminal actions instituted against judges and other judicial personnel at all levels. The present reading of those cases indicates that as to judges, there exists only a qualified rather than an absolute judicial immunity, and that the immunity is wholly inapplicable to the judge when his action or inaction is negligent, intentional, malicious, fraudulent, or criminal. As to court clerks and other staff members, there is no immunity, and they are subject to civil and criminal liability for any conduct outside the scope of their authority or when they are acting within the scope of authority but without good faith. The categories of liability that must be considered are the following:

1) Acts of a Criminal Nature . It is axiomatic that such acts are completely outside of any judicial immunity and subject the judge or staff members to criminal liability and disciplinary proceedings: (See In the Matter of Coruzzi, 98 N.J. 77 (1984); Matter of Coruzzi, 95 N.J. 557 (1984); State v. Coruzzi , 189 N. J. Super. 273 (App. Div. 1982), certif. den., 94 N.J. 531 (1983), concerning a conviction and removal from the bench of a Superior Court judge for bribery and conspiracy).

2) Acts Evidencing Lack of Good Faith . Judges who act under "color of law" may be liable both for civil damages and for violation of civil rights under 42 U.S.C.A. 1983 for abuse of their authority. See Gregory v. Thompson , 500 F. 2d 59 (9th Cir. 1974), concerning a judge who had a witness evicted from a courtroom and was found civilly liable for compensatory and punitive damages for lack of good faith in that he exercised his judicial function maliciously, unreasonably, and oppressively.

3) Acts Outside the Scope of Jurisdiction .

Although no civil monetary damages have yet been awarded in this area, there have been cases involving violation of citizens' constitutional rights and the imposition of injunctive or declaratory relief along with the award of attorneys fees under 42 U.S.C.A. 1983 and 42 U.S.C.A. 1988. See Pulliam v. Allen , _____ U.S. _____ (1984), concerning a judge who set bail on a noncustodial offense wherein the defendant who was unable to meet such bail was incarcerated for fourteen days, and thereafter in a civil action for injunctive relief was awarded an attorney's fee against the judge of $7,691.09.

4) Acts of Administration or Ministration .

Liability in this area may be imposed upon both judges and their staff. There is no immunity afforded to any of these officials for their acts in the exercise of their nonjudicial functions in the administration of their offices unless they act in good faith and are not abusive oppressive, malicious, or acting illegally.

See Atcherson v. Siebenmann , 458 F. Supp. 526 (S.D. Iowa 1978), concerning a judge acting administratively who compelled a probation officer to resign under duress and was found personally liable for his malicious conduct, and judgment was rendered against him for plaintiff's back pay and attorney's fees.

5) Acts Concerning Denial of Constitutional Rights .

Liability in this area is similar to that imposed for conduct performed with lack of good faith, but an absolute denial of constitutional rights even when acting in good faith may create further liability, especially if such acts were done negligently or flagrantly. See Stemp v. Sparkman , 435 U.S. 349 (1978), concerning an ex-parte application without full hearing and subsequent order for sterilization of a minor female who, upon becoming emancipated, brought an action under 42 U.S.C.A. 1983; even though the judge was found to be judicially immune, such a result may be unlikely in the future.)

As to any actions brought against a municipal court judge in New Jersey, consideration must be given to N.J.S.A. 59:1-1 to 59:12-3. (N.J. Tort Claims Against Public Entities Act), where in N.J.S.A. 59:1-3, an "employee" is defined as "any officer, employee or servant, whether or not compensated or part-time, authorized to perform any act or service for a public body in the State of New Jersey." This definition includes, therefore, municipal court judges and their staff. Further specific immunity as to discretionary acts is granted to them under N.J.S.A. 59:3-2, where it is stated that "(a) A public employee is not liable for an injury resulting from the exercise of judgment or discretion vested in him; (b) A public employee is not liable for legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature."

However, in Mancini v. Lester , 630 F. 2d 990 (3d Cir. 1980), such immunity under this section of the New Jersey statute was found not to bar a civil rights action under 42 U.S.C.A. 1983 and 42 U.S.C.A. 1988. Additionally, under N.J.S.A. 59:3-4 any acts by a judge or his staff would not be immune if they were unconstitutional, invalid, or based upon inapplicable laws. Lastly, under N.J.S.A. 59:2-10 there is no immunity to a judge or his staff for liability arising from acts or omissions that constitute a crime, actual fraud, actual malice, or willful misconduct.

On July 16, 1984, the Attorney General of New Jersey concluded that municipal court judges and their employees are basically employees of local municipalities and therefore will not be provided with a defense by his office, as is now provided to Superior Court judges and their staff, except when in the discretion of the Attorney General that defense should be provided in cases involving statewide questions of law or unique issues. Therefore, under that opinion the municipal court judges in this state are left unprotected as to representation in an action brought against them on any grounds, with or without merit. A limited survey of municipal government insurers reveals that they are reluctant to give a formal opinion as to whether personnel of municipal courts are entitled to coverage. Informally, however, most of those surveyed indicated a belief that insurance coverage is provided for liability arising from acts of negligence or administration, but not for liability arising from the performance of judicial functions or for a violation of civil rights.

Most of the agents contacted were unaware of the coverage problem, and in order to protect the carriers gave opinions that leave municipal court judges and their staffs without assurance that they are covered.

RECOMMENDATIONS :

Considering the present state of the law the following recommendations are made:

1) The New Jersey Tort Claim Act be amended to indicate that for the purpose of Chapter 10 (Indemnification) and Chapter 10A (Defense of employees) a state employee would include a judge of a municipal court or a clerk or other employee of a municipal court.

2) Until such time as the New Jersey Tort Claim Act is amended, the AOC should encourage all municipalities to pass an ordinance, similar to the attached, that would provide coverage and/or representation for the municipal court judge, court clerk, or other court employee.

3) In order to reduce the occasions when liability may be imposed upon municipal court personnel, the Administrative Office of the Courts establish and maintain a continuing judicial educational program directed to that end.

Indemnification

Point Pleasant Beach Boro.
pop. 5,629

ORDINANCE NO. 1979-10

AN ORDIANCE PROVIDING FOR THE PAYMENT OF LEGAL EXPENDITURE FOR PERSONS EMPLOYED BY THE BOROUGH OF PT. PLEASANT BEACH OR ACTING ON BEHALF OF THE CITIZENS OF THE BOROUGH OF PT. PLEASANT BEACH AND SUPPLEMENTING CHAPTER II OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF PT. PLEASANT BEACH AND CREATING A SUBSECTION 2-27

BE IT ORDAINED by the Mayor and Council of the Borough of Pt. Pleasant Beach, in the County of Ocean and State of New Jersey.

Section One: (2:27.1) Any person employed by the Borough of Point Pleasant Beach or any person acting in his or her appointed capacity on any board established by the Governing Body of the Borough of Point Pleasant Beach shall be entitled to legal representation in any proceeding whereby any official act of such employee or appointed official or representative has resulted in the institution of any litigation for punitive damages.

Section Two: (2:27-2) Any legal representation afforded to any individual in any action in which punitive damages are sought shall be at the discretion of the individual from whom said damages are sought and that individual shall be free to hire any licensed practioner of the State of New Jersey to represent them provided said person so representing agrees as follows:

a. to submit a letter in writing to the Governing Body of the Borough of Pt. Pleasant Beach indicating his or her representation.

b. to charge no more than the rate per hour established by the governing body of the Borough of Pt. Pleasant Beach payable to the then Borough Attorney.

c. To not exceed the sum of $500 as a total fee without written authorization by way of Resolution from the Governing Body of the Borough of Pt. Pleasant Beach.

d. To provide an itemized bill at the conclusion of his or her representation of the individual to the Governing Body of the Borough of Pt. Pleasant Beach

e. that no legal fee will be paid by the municipality in the event any judgment is returned against the individual from whom punitive damages are being sought.

Section Three: (2:27-3) The Governing Body agrees to pay these legal fees only if a judgment is not returned against the individual from whom punitive damages are sought.

Section Four: (2:27-4) In the event judgment is returned against the individual from whom punitive damages are sought it will be the sole responsibility of that individual to pay for both legal representation, the judgment and any other costs.

Section Five: This Ordinance shall become effective upon final passage and publication as required by law.

LIAISON WITH INTERACTING AGENCIES

There is a clear need to establish and maintain liaison with the numerous municipal, county, and state agencies that in one way or another interact with municipal courts. Aside from the ongoing necessity of exchanging information on activities, policies, and procedures that affect each other's daily operations, there is an equally important need to establish interrelationships that foster the quick identification and resolution of problems that impinge on th efficient and judicious functioning of the municipal courts.

If anything, the problem of liaison with interacting agencies has grown over time, being greatly exacerbated by the proliferation of government and service agencies' programs (i.e., drug and alcohol treatment programs, community dispute resolution programs). This phenomenon has been further complicated by the increase in size and complexity of many traditional governmental agencies with which municipal courts must deal, either directly or indirectly (i.e., the Division of Motor Vehicles and the State Police). Among the myriad agencies with which the municipal courts are in regular contact are:

- Municipal Governing Bodies and Officials
- County Prosecutor
- State Police
- Municipal Police
- Municipal Prosecutor
- County Clerk
- County Probation Department

- County Jail and Workhouse
- County Public Defender
- County Family and Criminal Case Managers
- Drug and Alcohol Treatment Units
- Community Service Units
- Family Counseling Units
- Division of Motor Vehicles
- Sheriff
- Mental Health Institutions
- Community Dispute Resolution Programs

This paper recommends a series of steps that should be taken to improve the interaction among the municipal courts and the various levels of government with which they must interact on a regular basis.

Recommendation 1: At the local level, each municipal court, through its municipal court judge, should take the initiative in identifying a single contact point with each local interacting agency.

In the simplest form, establishing liaison between interacting agencies at the municipal level may be as straightforward as identifying a regular contact in the local police agency, drug and treatment programs, and the municipal governing authority that will be responsible for addressing interagency issues raised by the municipal courts. This is particularly essential in larger jurisdictions where hours may be spent simply identifying the right person with whom to speak. It may be no less important in smaller municipalities, especially with those agencies with which the court has only intermittent contact.

Recommendation 2: In each large municipality, as defined by AOC, a single municipal justice coordinating committee, made up of representatives from local interacting agencies, must be established. All other municipalities should consider a similar committee, as necessary.

In larger, more complex jurisdictions, there is a need not only to identify agency contact persons but also to create a regular forum in which interacting agencies can discuss activities, policies, and procedures that may affect other local agencies. In many smaller communities there is a similar need to create an interagency forum. In all cases in which such a need is identified, members of the municipal justice coordinating committee should be appointed by the Presiding Municipal Court Judge on the recommendation of each respective municipal court judge. This justice coordinating committee should be the only local body created to coordinate activities among the various justice agencies, and should have such

additional functions as may be identified as requiring coordinated local agency effort by other Task Force committees and working groups.

Recommendation 3: As a means of identifying and addressing those issues involving interacting agencies at the county level, the Presiding Municipal Court Judge and Case Manager-Municipal Courts should establish regular vicinage meetings with all the municipal court judges and court clerk/administrators in the vicinage.

As a first step in assuring continuing liaison with interacting agencies at the vicinage level, the new Presiding Municipal Court Judge and Case Manager-Municipal Courts should identify a single contact person in each county-level interacting agency. The Presiding Municipal Court Judge should also initiate monthly meetings with all municipal court judges and court clerk/administrators in the vicinage, with a major agenda item of each meeting being identification of issues involving interacting agencies. A key responsibility of each Presiding Municipal Court Judge and Case Manager-Municipal Courts should be follow-up with agency contact persons to assure problem resolution. As required, contact persons from interacting agencies should be invited to meet with the vicinage municipal court judges to discuss and, where possible, resolve interagency issues.

Recommendation 4: The County Advisory Committee proposed by the Task Force Accountability Committee should serve as a neutral forum for the identification and resolution of issues involving interacting agencies.

While the monthly vicinage meetings proposed above will serve to identify issues of concern to municipal court judges and clerks, the proposed

County Advisory Committee should serve as a forum for the full range of interacting agencies and citizen groups that deal with the municipal courts. As such, these advisory committees can serve not only to identify interagency problems and issues but also to serve as a vehicle for resolving conflicts among agencies.

Recommendation 5: AOC should identify contact persons in each state-level agency and establish regular forums for the identification of interagency problems that must be addressed at the state level. A directory of state agency contact persons should be made available to all municipal courts.

As is the case at both the local and county levels, there is an immediate need to identify a single point of contact in each state agency having interaction with the municipal courts, in particular for the Division of Motor Vehicles and the State Police, in order to address those municipal court issues of statewide impact. This process should be the responsibility of the AOC. Additionally, a regular schedule of Presiding Municipal Court Judge Conferences should be planned to address municipal court problems with interacting agencies that require AOC involvement, the development of statewide policies and procedures, or state-level liaison with other agencies. A similar, regular meeting of the fifteen Case Manager-Municipal Courts should also be planned as a forum for identifying state-level problems and issues. In order to assure expeditious resolution of problems that develop between local municipal courts and state agencies, the AOC should prepare and distribute a directory of state agency contact persons identified as responsible for resolving particular recurring issues.

MUNICIPAL COURT EXPANDED-VISITATION PROGRAM

INTRODUCTION

The Subcommittee on Administration has been charged with developing position papers addressing the efficient and professional functioning of the Municipal court system. The Subcommittee has studied a host of problem situations raised by the members of the judiciary and their support staff. Many of those problems were found to be directly related to inadequate staffing, budgetary limitations, and inadequate training. Those broad areas involving the day-to-day performance of municipal court functions have been addressed in earlier position papers submitted to the Task Force. This paper is intended to supplement the earlier paper on Work Performance In Emergency Situations by developing a procedure for handling long-term and extreme crisis situations.

We propose to do this through the organizational planning and establishment of vicinage level Expanded Management Visitation Teams. These teams would lend their management expertise to courts experiencing such significant operational difficulties as would justify the Presiding Judge petitioning the Assignment Judge to implement the use of all or part of the Visitation Team. This Team would function in the office of the court clerk until the Presiding Judge is satisfied that the problems that necessitated the use of the Visitation Team have been rectified and there is no likelihood of recurrence.

STATEMENT OF THE PROBLEM

As stated in the Subcommittee's paper addressing short-term emergency situations, the municipal court system has grown at a rapid rate over the last decade. In almost every court there has been a significant increase in caseload. Equally as important, court clerks and their support staff have been burdened with ever increasing administrative responsibilities, many of which are of a technical and complex nature. Stringent, although necessary, time limitations on the performance of innumerable office functions have been created by the Administrative Office of the Courts and agencies with which courts interact. Furthermore, these new functions and concomitant time limits have been imposed upon the courts on a somewhat haphazard basis. As a result many courts have experienced difficulties in maintaining an orderly operational process. Fortunately, because of the dedication of their personnel most courts have been able to hold their own. Unfortunately, however, some courts have experienced problems of such magnitude as to require action by the assignment judge ranging from temporary shutdown to seeking the assistance of competent personnel from other courts to work in a beleaguered court until a state of normalcy resumes. While those dire situations have been relatively few, the Subcommittee believes they have arisen on a sufficient number of occasions to warrant consideration of the formation of an Emergency Management Visitation Team within each vicinage.

EMERGENCY MANAGEMENT VISITATION TEAM

The Subcommittee recommends that one of the first administrative tasks to be undertaken by the vicinage Presiding Judge be the selection of personnel to comprise the Visitation Team. It is contemplated that the Presiding Judge with the assistance of the vicinage TCA staff will interview and select those personnel within the vicinage who exhibit special expertise in their respective areas of employment. The members selected would then, upon approval of the Assignment Judge, constitute the Visitation Team. The personnel selected would include the case manager from municipal courts, administrator, a court clerk, a person with expertise in docketing and scheduling, a violations clerk, and perhaps an experienced cashier. The areas noted above are not meant to freeze the membership of the Team or its number. Rather, each viciage Presiding Judge would be responsible for establishing a Visitation Team appropriate for the particular vicinage.

The Visitation Team would constitute a reserve unit and would meet on a regular basis to formulate a detailed procedure to be followed should its services be required. While the detailed formulation of a procedure is beyond the scope of this paper, it is recommended that each vicinage Presiding Judge be responsible for presentation of a procedure within three months of the selection of the team members. The action plan must necessarily be somewhat general in terms. It would not be designated to deal with a particular court, but would have two equally important goals: that of reestablishing normalcy in the delinquent court, and that of educating personnel in the Team members' areas of expertise.

If the Team is called into action by a PJ-AJ order, the question of reimbursement for expert service rendered must obviously be resolved. The Subcommittee believes that the municipalities providing Team members' expert services to a beleaguered court must be reimbursed for those services, as it is anticipated that assistance will be required for an extended period of time. If the team members work overtime or on weekends, they should receive compensation calculated at their normal hourly or overtime rate. The municipality receiving the benefit of the Visitation Team's expertise should be required to provide such reimbursement or compensation as it would receive a direct service to its court found necessary by the Assignment Judge to upgrade operations to an acceptable level.

It would be appropriate for the court itself through the vicinage Presiding Judge to petition the Assignment Judge to request the appropriation of emergency funding by the municipality for this purpose. If unsuccessful in this regard, an order by the Assignment Judge would be appropriate.

History has, unfortunately, shown that courts do encounter real difficulties from which they cannot extricate themselves without outside help. This paper recommends the creation of a body of experts in each vicinage prepared to come to the immediate aid of such courts.

MUNICIPAL COURT FORMS

The purpose of this paper is to examine the need to review the myriad forms and reports that are required to be completed by the municipal court clerks in order to satisfy the informational needs of the agencies with which they interact. The major agencies requiring information include the Administrative Office of the Courts, the Division of Motor Vehicles, the State Police, and county and local governments.

The aforementioned agencies, each with its own priorities for information, have mandated the completion of in excess of 80 forms or reports by our municipal courts. Although some of these reports are not used in every municipal court, knowledge of each report's informational needs is required by each municipal court clerk. A listing of the major reports is included in Appendix A.

STATEMENT OF PROBLEM

Since the inception of the Municipal Court system in New Jersey, the transfer of information to interacting agencies has been recognized as essential. To accomplish this task, a number of forms were developed and promulgated to ensure uniformity when the information was transferred.

Examples of forms that are used to transfer information are the complaint summons/warrant (CDR-1 and 2) and the uniform traffic ticket.

In addition, a host of statistical reports has been developed and imposed on the municipal courts. These statistical reports included the monthly AOC report, the MF-10 financial report filed on a monthly basis,

and the MF-1 card, required by statute to notify the Division of Motor Vehicles within three days of case disposition.

In addition to the various informational requests and statistical reports, there is another category of forms that are used to assist municipal court clerks in the day-to-day functioning of their office. These in-house or locally required documents are being assigned for an in-depth review by a series of "cluster groups" staffed by municipal court clerks. The results of the cluster group review will be submitted under separate cover for inclusion in the Municipal Court Procedures Manual.

Because there are so many interacting agencies, each with its own ideas as to what it needs from the municipal court, we are now faced with the following problems:

a) A general lack of coordination between the informational needs of the agencies resulting in the same information being sent to different agencies.

b) Lack of coordination within some agencies resulting in forms unnecessarily requiring the submission of information already on file.

c) Poorly designed forms that are difficult to complete.

These problems have resulted in an unconscionable burden on the courts. It now takes a municipal court clerk two or three working days per month just to collect and supply the information required by outside agencies.

In our small municipal courts, which are not full-time, this represents a disproportionate amount of time being spent providing information.

COMMITTEE'S POSITION

It is the position of this Committee that the Administrative Office of the Courts, as a first step in resolving the aforementioned problems, promulgate a directive that indicates that no new forms or reports be imposed upon the municipal courts without the AOC review and approval. To assist the AOC in rectifying existing problems, as well as preventing future problems, this Committee further recommends that either a new Supreme Court Standing Committee be established or a Subcommittee of one of the two existing municipal court Committees on Municipal Court Education and Municipal Court Practice be created. In either case, the membership of the Committee or Subcommittee should include representatives of the AOC, interacting agencies, and the Municipal Clerks Association. The mandate of this Committee or Subcommittee would be to review all requests for information and all new documents that would be required of the municipal courts. After review of the requests, the Committee would make recommendations to the Administrative Director or Chief Justice as to whether or not the information, questionnaire, or report should be required of the municipal courts.

Secondly, the Committee recommends that the new standing Committee commence a comprehensive review of all existing documents mandated in the municipal courts. The review should not be done independently, but rather in concert with ranking representatives of the interacting agencies and the Municipal Court Clerks Association.

This review should address the following issues:

1. Whether the information being requested is needed.

2. Whether the data are important enough to justify the work necessary to collect them.
3. Whether the data are already being received by another part of the agency and if so, whether there is a need for the municipal court to resubmit.
4. Whether the information requested is available from other sources and, if so, whether there is a need for the court to replicate.
5. If there is a need to supply information, whether the form is properly designed for easy collection and transmittal. All forms should be reviewed in order to expedite the collection and transmittal of data.

In conclusion, it is apparent that the informational demands of the municipal court personnel are increasing on a day-to-day basis. It is only through the establishment of a review body, i.e., the recommended Committee or Subcommittee, that the amount of work and data being processed by the municipal courts can be coordinated to ensure that each agency's requirements are satisfied without unduly burdening municipal court personnel.

FORMS USED IN THE MUNICIPAL COURTS - STATE AND A.O.C.

1. CDR-1 Summons
2. CDR-2 Warrant
3. CDR-3 Disposition Report
4. CDR-7 Conditional Discharge Report
5. CDS Registry Form
6. Complaint (non-indictable offense)
7. Notice in Lieu
8. Uniform Traffic Ticket
9. Traffic Docket
10. Traffic Control
11. General Cash Book
12. Receipt
13. Criminal Docket
14. Violation Schedule
15. Recognizance
16. Affidavit of Ownership of Bail Deposit
17. Subpoena to Testify
18. Statement in Defense
19. Failure to Appear Notice
20. Parking Scofflaw Listing
21. Traffic Warrant
22. Form 5A (Application to Establish Indigency)
23. Order - Payment of Fines and Cost
24. Order - Payment of Fines & Cost Under NJSA 39:4-203.1 et seq
25. Order - Suspending Driver's License
26. Order - Rescinding Order Suspending Driver's License
27. Court Calendar
28. Recording Log
29. "Your Rights in the Municipal Court" English & Spanish
30. Request and Authorization for Records Disposal
31. Judicial Oath
32. Personnel Certification R.1:17-1(h)
33. Notice of Motion for Entry of Judgment
34. Judgment on Forfeited Recognizance
35. Order Transferring Proceedings
36. Transcripts for Appeal
37. Temporary Driving Permit
38. Domestic Violence Complaint (LR-44)
39. Temporary Restraining Order (LR-45)
40. Transmittal Form (LR-46)
41. Final Order - Domestic Violence (LR-47)

MONTHLY REPORT

2. ST-33 Statistical
3. ST-112 Violent Crimes
4. Fish and Game Report
5. Taxation Report
6. Marine Law Report
7. Aeronautics Report
8. Navigation Report
9. Forests and Parks
50. Neighborhood Dispute Report

DIVISION OF MOTOR VEHICLES

51. MF-1 Disposition Report
52. Transmittal & Receipt for MF-1 Forms
53. Worthless Check Form
54. MF-10 Monthly Financial Report
55. MF-10 Uninsured Violations
56. MF-10 Surcharge on DWI Cases
57. Request for Drivers Re-Examination
58. Request for Driver Record Abstract
59. Restoration Fee for Suspension of License

COUNTY

60. Monthly Financial Report
61. Calculation of Motor Vehicle Fines Due County Under Chapter 31
62. Transmittal Letter on Appeal
63. State Warrant
64. Bench Warrant
65. Commitment to Jail (Sentencing)
66. Commitment (Temporary Default of Bail)
67. Commitment (General)

COUNTY CONTINUED

68. Commitment (Temporary)
69. Commitment (For Grand Jury Action)
70. Discharge - Order to Discharge Prisoner
71. Recognizance Transmittal Notice
72. Order to Discharge Recognizance
73. a. Probation Order
    b. Follow-up for Ensuring Representation
    c. Pre-Sentence Investigation

LOCAL

74. Supplemental Violation Schedule
75. Cash Reconciliation Forms (General & Bail Accounts)
76. Resolution - Cancel Outstanding Bail
77. Postponement Notice
78. Request for Mediation by the Community Dispute Resolution Committee
79. Letter referring Complaint to Community Dispute Resolution
80. Letter Approving Assigned Counsel
81. Follow-up Letter on Delinquent Installment Accounts
82. Order to Recall Warrant

Partial Payments

THE PROBLEM

Although statistics are not readily available, it is safe to assume that there are at least hundreds of thousands of dollars that are due to the Municipal Courts of this state by way of assessed, but yet unpaid, fines, costs, and restitution. With the advent of increased minimum mandatory fines payable for such minor and common offenses as disregard of a stop sign, speeding, etc., the numbers have continued to increase. Whereas in the past the Municipal Judge had the authority to suspend either all or part of such fines listed on the violations schedule, such discretion is no longer permitted. Likewise, even in those instances in which the Judge is convinced that the defendant is unable or unwilling to pay the $25.00 VCCB penalty, it may also not be suspended. Compounding the problem further, all the more serious charges such as drunk driving, driving on the revoked list, and no insurance cases carry minimum mandatory penalties that must be imposed. It has now become commonplace for a defendant to have in excess of $1,000 in fines imposed as a result of one traffic incident.

Current law allows for the substitution of Community Service in place of fines in those instances in which a defendant has proven to the satisfaction of the court that there is no ability to pay; however, such alternative can be imposed only after the minimum fines and costs are imposed, not paid, and then upon a separate hearing. Likewise, in the event a defendant has an ability to pay, but contumaciously refuses to do so, the defendant may be sentenced to the County Jail.

Perhaps the most effective measure to insure compliance with payments of fines and costs currently available to the Municipal Court is the practice of suspension of driving privileges for failure to comply with an "order to pay." Since the implementation of this procedure, it appears that once an order suspending a defendant's driving privileges is sent by the Division of Motor Vehicles, compliance is more likely to be obtained.

Although the practice sometimes varies from court to court, generally the procedure hereinafter described is usually followed:

1. Upon the plea of guilty or a finding of guilt, defendant asserts an inability to pay the fines and costs. Defendant then is either questioned by the Judge as to income and assets, or a 5A (Indigent Form) is completed by the defendant and reviewed by the Judge and/or Court Clerk, who thereafter establishes a payment plan not in excess of six months.

Note: If the defendant is to be placed on probation, the Judge has the option of making payments collectable through the Probation Department, in which instance the payment agreement is arranged between the defendant and Probation Department.

However, assuming that there is no Probation Department involvement, after a payment plan is established by the court, the appropriate ledger and record keeping system is set up and payments are credited as collected.

In the event that the defendant fails to comply with the promised payment program, one of several things may occur: first, the defendant may be sent a reminder notice and if payments are brought up to date, there is no further court action; or, second, the defendant's license may be suspended without further notice; third, the defendant is brought back to court to explain why payments were not made in accordance with the plan; or fourth, a warrant may issue requiring bail which may or may not be sufficient to cover the outstanding indebtedness; or fifth, if payments were to have been made through Probation, a violation of probation is filed; or lastly, and perhaps most frequently, because the Clerk's office is already so backlogged or overworked, only minimal or no effort is made to collect the funds owed.

The cost to state, County and local governments is staggering when we consider lost revenue and the inefficiency of collection. Existing partial payment programs are a drain on the efficient operation of the Clerk's office as well as an ineffective method of imposing punishment.

While the desirability of partial payment programs for a number of defendants is no doubt obvious, the system has been abused.

Judges are not uniform in their setting of partial payments. There are no suggested guidelines for determining what is fair and reasonable. While one judge may be lenient and others more insistent upon receiving payments, the wise defendant pays the judge who is more insistent first if fines are owned to more than one municipality.

The 5A form is inadequate for use as a determining factor in establishing payments. It is, at best, confusing to the defendants themselves.

There are any number of defendants who owe large sums of money to various municipalities. We are not necessarily dealing with isolated instances of non-payment, nor are we necessarily dealing with defendants who have been victimized by the system. More often than not, the defendant who fails to pay, or refuses to pay, has had prior experience with a Municipal Court, or Courts, wherein he or she has learned how to beat and in fact has "beaten" the system. Those law-abiding persons who adhere to the payment programs are all too often in the minority. Such persons are entitled to a reasonable period in which to pay fines and costs. However, those who do not comply should not be allowed the indulgence of the court so that the original penalty becomes meaningless.

What we have lost sight of, in being too free with allowing partial payments, is that a fine is a <u>penalty</u> for violating a law. It must be paid and <u>not</u> at the convenience of the defendant. A penalty is meaningless if the defendant need not sacrifice in order to comply. As long as the court does not seriously enforce its orders to pay, they will remain unpaid, thereby increasing demands

on clerical follow-up and further demonstrating the courts ineffectiveness. This is not justice and the ends of justice remain unserved.

RECOMMENDATIONS

1. The ability of the Municipal Judge to suspend fines other than the VCCB penalty and costs, as previously existed under the old violations schedule, should be reinstated so that meaningless orders are not entered in cases in which defendants obviously do not have the wherewithal to pay, or the interest of justice otherwise requires.

2. Although the practice should be expressly discouraged, Judges should have authority to suspend or not impose at all the VCCB penalty (most particularly when the defendant is an out-of-state resident).

3. Provision should be made to allow suspension of a defendant's driving privileges in New Jersey if either a criminal or traffic fine is unpaid.

4. Partial payments should be expressly discouraged as a matter of policy.

5. The present 5A form should be revised so as to be less confusing to the defendant and more informative to the Court.
(A revision of the 5A will be complied by a separate forms committee.)

6. A Judge should be permitted to substitute Community Service in lieu of fines and costs at the initial hearing.

7. A standardized partial-payment-collection-procedure -- diary system and necessary forms -- should be designed, made uniform, and implemented in all courts.

8. Both experienced and newly-appointed Municipal Judges should be educated as to the nature and extent of the partial payment problem and be trained in techniques to avoid that problem or apply partial payments uniformly.

9. An accounting of all outstanding balances in each court should be required on the monthly report, to determine whether a particular court or judge needs to be given further guidance by the Assignment Judge or Presiding Municipal Court Judge so that payment plans do not swell to unmanageable proportions.

10. A uniform accounting and enforcement procedure should be devised and implemented and Municipal Auditors should be informed and educated as to the extent of the problem so that the appropriate audit recommendations may be noted.

11. Innovative programs allowing substitution of Community Service, "Earn it" program, and other methods of alternate punishment and collection should be devised and tested, and if proven feasible, encouraged.

The "Earn it" program has been established in one Quincy, Massachusetts Court and provides that defendants who are unemployed are "placed" in a job in a local business and a substantial part of earned income is paid to the court for fines, costs, and restitution. It is a cooperative program between local businessmen and the court.

12. Legislation should be considered that would allow the following in instances in which funds are due the Court:

Withholding of New Jersey Income Tax rebates.

Withholding of New Jersey Property Tax rebates.

Simplified or automatic wage garnishment procedures.

Reduction to a civil judgment of the amount of fines and costs owed, which would require the usual rate of interest on judgments and be enforceable as a civil judgment. (It should be noted that there is currently a bill pending in the Legislature that would achieve this end, but it applies to parking summonses only.)

13. All Municipal Courts should be required to use the credit card system currently available so that defendants can pay by credit card.

14. A procedure should be adopted that upon the setting of a partial payment order would empower the municipal court judge to order a defendant to surrender his driver's license, in return for which the court would issue a temporary license printed in red. Clearly stamped on the license would be an expiration date coinciding with the date by which the defendant must finish paying his obligation. If the defendant did not return to court or did not pay the full amount of the fine/court costs ordered, the red license would expire on the specified date. The defendant would thereupon be subject to additional penalties, including an additional charge of driving while on the revoked list should he/she be stopped by a police officer.

Should the defendant pay the fine and/or costs as ordered, his/her original license would be returned. This recommendation also indicates that there would be a need for the Division of Motor Vehicles to be notified upon the issuance of a red license in order to prevent the defendant from either obtaining a duplicate or a new license from the division of Motor Vehicles.

15. A procedure should be adopted to eliminate continuous reporting of unpaid fines by permitting the judge to place the case in an "inactive" status after all possible efforts have been exausted. The case so marked need not be reported.

PRESIDING MUNICIPAL COURT JUDGE

At present, the Assignment Judge of each vicinage is responsible for overall review and direction of each municipal court in his vicinage. With the expanding and diverse responsibilities being assumed by the Assignment Judge and vicinage staff, it is becoming increasingly difficult for the Assignment Judge effectively to oversee municipal court operations, much less encourage new or innovative practices. While the Assignment Judge has available less time to devote to municipal court operations, municipal courts continue to experience increasing caseloads, growing backlogs, and severe budget limitations. These pressures are coupled with recent Supreme Court directives to improve case processing, new statutory requirements that increase municipal court responsibilities, and a growing realization that more training and direction must be provided to municipal court judges and court staff.

It does not appear that these administrative pressures are likely to lessen in the future. Quite to the contrary, it can be expected that the volume and complexity of the municipal courts workload will continue to increase, along with the attention being paid to the effective administration of municipal courts. It is equally clear that much of the responsibility for addressing these issues will remain at the vicinage level.

The Municipal Court Task Force is charged with identifying ways to improve the operation of municipal courts. As a fundamental part of its role, the Task Force must develop a workable structure for providing regular direction and assistance to municipal courts, as well as a means for assuring judiciary oversight and, where required, uniformity of

operation by the 532 individual municipal courts. This proposal to designate a presiding municipal court judge for each vicinage is a major component of that proposed structure.

DUTIES OF THE PRESIDING MUNICIPAL COURT JUDGE

The Presiding Municipal Court Judge may eventually have both administrative and judicial responsibilities. However, it is recommended that, at least for the present, the primary emphasis be placed on administrative responsibilities. It is in these areas that the most crucial need exists, given the historical inattention to administrative responsibilities of the Municipal Judge. Once the administrative structure has been established, it will become much easier to expand the Presiding Municipal Court Judge's duties to include judicial functions. The administrative duties of the Presiding Municipal Court Judge should include, but are certainly not limited to:

a) Serving as a liaison between Municipal Judges and the Assignment Judge, Administrative Office of the Courts, and Supreme Court to insure promulgation of and compliance with court rules and directives;

b) Receiving all questions and/or suggestions from individual Municipal Court Judges transmitting same, when necessary, to the Assignment Judge, Administrative Office of the Courts, Supreme Court or other appropriate agency, i.e., Probation Department, Division of Motor Vehicles, State Police, and Sheriff's Office;

c) Developing, with the consent of the Administrative Office of the Courts, Supreme Court, or Assignment Judge, local Municipal

Court programs in the areas such as alcohol rehabilitation, drug rehabilitation, drunk driving, and family counseling;

d) Establishing and monitoring Community Dispute Resolution Committees;

e) Developing a Municipal Pre-Trial Intervention Program, if approved by the Supreme Court;

f) Determining which Judges within the vicinage shall hear all municipal court conflict cases, as well as when and where such cases will be heard;

g) Establishing a system to insure availability of appointed counsel in indigent cases and to establish required standards;

h) Assisting Municipal Court staff and Judges with day-to-day administrative problems;

i) Establishing a system to insure the availability of interpreters to testify in Municipal Court actions;

j) Establishing standards for the administration of local partial payment programs;

k) Investigating the desirability of centralized purchasing and contracting with outside agencies or businesses for computer services;

l) Conducting vicinage studies of municipal court computerization needs and capabilities;

m) Supervising the proposed Assistant Trial Court Administrator-Municipal Courts and support staff;

n) Supervising all Municipal Court Judges in the vicinage;

o) Developing and encouraging Municipal Judges' Education

programs both for new and presently sitting Municipal Judges;

p) Attending all required meetings of Presiding Municipal Court Judges;

q) Presiding over regular meetings of Municipal Judges in the vicinage held to update statutory and case law, discuss problems and obtain status reports on each Municipal Court in the vicinage;

r) Coordinating evening and weekend emergency availability of Municipal Court Judges;

s) Assisting in the preparation of annual individual Municipal Court budgets, and discussing matters of concern with local governing bodies, where necessary;

t) Developing standardized policies and procedures to be implemented in the Municipal Courts in such cases as bail, adjournments and postponements, use of early arraignments, and case conferences;

u) Conducting studies of caseloads and backlog in each Municipal Court and recommending methods for eliminating backlogs and efficiently processing all cases;

v) Implementing the recommendations of the Supreme Court Municipal Improvement Task Force;

w) Performing such other judicial and administrative duties and responsibilities as are designated by the Assignment Judge under authority of the Chief Justice.

These proposed administrative duties are obviously crucial and will require substantial time commitments from each Presiding Judge and

support staff. As experience with the concept of a Presiding Municipal Court Judge is gained, however, consideration should be given to expanding the Presiding Judge's role to include such judicial functions as:

a) Reviewing all County Prosecutor recommendations to downgrade, remand, or conditionally remand cases to Municipal Courts;

b) Expediting the processing of Municipal Court matters that accompany indictable cases presented to the Prosecutor;

c) Hearing all applications for bail reduction, except in capital cases;

d) Considering all denials of Pre-Trial Intervention after review by the Pre-Trial Intervention section of the Probation Department;

e) Conducting all first appearance hearings;

f) Considering all applications for temporary commitment;

g) Reviewing jail population each morning and considering each detainee to determine whether the charges may be summarily disposed of by entry of a guilty plea or dismissal (this program will be more fully outlined in a supplemental position paper);

h) Hearing conflict cases or matters in which a Municipal Court Judge has been disqualified or for which the Judge is not available; and

i) Considering applications to revoke Pre-Trial Intervention or appeals from same.

ASSIGNMENT OF PRESIDING MUNICIPAL COURT JUDGES

The assignment of each Presiding Municipal Court Judge should be made by the Chief Justice on the advice of the Assignment Judge of each

vicinage. Each Presiding Judge should be selected from among the sitting municipal court judges within that vicinage and should serve at the pleasure of the Chief Justice or until no longer actively sitting as municipal judge in one or more municipalities in the vicinage.

The committee explored a number of other appointment options, including creation of fifteen new Superior Court Judges' positions or designation of a currently sitting Superior Court Judge to function in this role. It was determined, however, given the unique responsibilities, organization, and procedures of municipal courts, that it was essential that the Presiding Judge have extensive and contemporary experience with municipal court operations.

The committee also gave consideration to the amount of time the presiding judge duties would require. Because of the requirement that each Presiding Judge be an active Municipal Court Judge, the position will be part-time by definition. Time requirements will certainly vary among vicinages, not only as a factor of the geography of each county and the number of municipal courts contained but also because of the duties required of each Presiding Judge and the various programs being conducted or developed by the respective vicinages. The committee estimated that, at least initially, a minimum of one day per week would be required of each Presiding Judge, with a maximum of three days in the busier or more complex vicinages. Over time, and with the proposed introduction of judicial responsibilities, the required time commitment can be expected to increase.

The committee further recommends that, following assignment, each Presiding Municipal Court Judge's law practice be restricted to non-litigated matters.

FUNDING

The compensation of the Presiding Municipal Court Judges should be provided by the State and include all benefits and pensions attendant to their status as State-funded judges. Each presiding judge's salary should be prorated on the basis of the number of days served and based on an equivalent annual salary of $66,500 (e.g., a judge serving as presiding judge an average of one day each week would earn $13,000 a year as presiding judge). It is estimated that approximately $750,000 in State funding would be required in the first year to compensate the fifteen Presiding Municipal Court Judges. Required staffing, office space and other support costs and services would have to be budgeted by each county.

POSTPONEMENTS

The Problem

Perhaps one of the most frequent problems confronting the Municipal Courts is that of postponements. At a recent State Court Clerks workshop/meeting on Administration, it became readily apparent that the question of postponements is one of major concern to Municipal Court Clerks throughout the state. There is no uniform, or remotely uniform, policy statewide, nor in most instances does there appear to be any uniform policy implemented in each Municipal Court. It is particularly frustrating for the court clerk to deny requests for repeated postponements, only to be overruled by the judge. When postponements are denied by the Clerk, it is disturbing to attorneys and unrepresented defendants.

Likewise, it is confusing to attorneys practicing in the Municipal Courts to be denied postponements or limited to one or two by one Municipal Court, while other courts continually postpone matters routinely upon request.

These observations, coupled with the Supreme Court's recent directive that drunk driving cases be tried within sixty days of arrest, has resulted in confusion and sometimes even ill will between attorneys, judges, and court clerks.

While it is admittedly desirable to allow flexibility as to postponement policies so that judicial discretion is not eroded, there is little reason why state guidelines could not be recommended and implemented.

As is well known, one of the advantages to the Municipal Court system is that there will not be prolonged delays between the date of the charge and the date of trial. This concept is even more obvious when it is

contrasted with the sometimes seemingly interminable wait encountered in civil trials and divorce matters in the Superior Court.

More important is the necessity to avoid delay in scheduling trials in motor vehicle matters when it is almost imperative that serious traffic offenders such as drunk drivers be brought to justice promptly.

Another concern of importance is that many municipalities insist that contested traffic cases be listed only on those days/evenings where the officer is "on duty" so as to avoid the necessity of paying court time or overtime to the involved police officers. Therefore, it frequently occurs that an officer may appear in Municipal Court only every sixty to ninety days depending upon his or her work shift. Thus, if one postponement is granted, the next scheduled date may not be for another sixty to ninety days. The foregoing is not meant to deny that there are legitimate reasons for postponements, nor does it mean to imply that it is possible to establish an ironclad, no exception, postponement policy.

The question then becomes: Should there be a statewide guideline/policy concerning postponements in the Municipal Courts? Secondly, if there are to be state guidelines, what should they be?

Proposal

It is proposed that a statewide policy or guideline be developed and implemented as to postponements in the Municipal Courts that gives due regard to the following.

1. Consideration should be given to revising the reverse side of the Uniform Traffic Ticket to include a statement of rights and minimum mandatory penalties in serious cases such as driving while under the

influence, driving while revoked, driving with no insurance, etc. This suggestion is made in an effort to minimize the necessity to grant postponements to an unrepresented defendant, who should, if charged with a serious offense, become aware of the magnitude of the penalty and be prepared to try the case or seek counsel. This would avoid the necessity for routinely granting postponements because the defendant did not know his or her rights or the seriousness of the offense. Oftentimes, if the defendant realized the serious consequences that would befall him or her if there is a guilty plea or finding, the defendant would seek counsel sooner rather than delay the case by requesting a postponement to obtain counsel.

2. Consideration should be given to scheduling cases on the next available court date regardless of whether the officer is scheduled to be in court. In this event, it would shorten the time in which a defendant who wished to pay the summons through the Violations Bureau could do so. The longer the time between the date of the offense and the court date by which the defendant must pay or appear or enter a plea, the greater the likelihood that the ticket will be misplaced and forgotten, thereby necessitating the issuance of an FTA notice.

The requirement of three days prior to the court date in the event a not guilty plea is to be entered should be maintained, but there is no logical reason to require the original court date to be one on which the officer is available. If this procedure is adopted, there are only a limited number of alternatives that are available to the defendant, as follows:

A) The defendant could pay the summons through the Violations Bureau

prior to the court date, in which event no postponement is needed.

B) The defendant who intends to plead "not guilty" can communicate with court three days prior to the scheduled date at which time the defendant would be given a new court date upon which to appear when the officer is available for court.

C) The defendant who appears in court on the scheduled date could plead guilty. In most instances the officer is not essential to sentencing.

D) The defendant who fails to give three days prior notice but appears in court on the originally scheduled date would be reminded of the three-day rule, advised of his or her rights and possible penalties, and be given a new court date for trial.

3. Each Municipal Judge should be encouraged or required to set forth in writing that court's particular scheduling or postponement policy, which should be submitted to the Presiding Municipal Judge (if approved) or Assignment Judge for comment and approval.

4. Just as efforts are presently being made to have all DWI cases completed within sixty days, there is little reason that all other offenses could not be resolved within ninety days.

5. Procedures should be implemented to insure that driver's abstracts can be obtained by return mail so that revoked or unlicensed cases need not be delayed to obtain an abstract or that sentencing be delayed.

For example, the Police Department should upon issuance of the ticket forward in writing a request to the Department of Motor Vehicles for an abstract. One method currently being used involves the use of an NCR copy postal card, which is sent by the Police Department to the Division of Motor Vehicles immediately upon issuance of the ticket.

6. Breathalyzer certifications should be kept current so as to avoid the necessity of the State requesting a postponement in its absence. The same would be true of tuning fork certifications in some instances.

PRE-TRIAL INTERVENTION IN THE MUNICIPAL COURTS

ISSUE PRESENTED

Should a Pre-Trial Intervention (PTI) program similar to that is used in the Superior Court be established in the Municipal Courts as an alternative to trial and judgment of conviction. The need for such a program was recognized in 1981 by the Superior Court Committee on Pre-Trial Intervention. In its final report (108 N.J.L.J. 485, 487) the Committee unanimously endorsed the expansion of pre-trial intervention to include non-indictable offenders, and recommended "Persons charged with non-indictable offenses (except Motor Vehicle offenses) should be eligible for Pre-Trial Intervention."

BACKGROUND AND LEGAL AUTHORITY

Early in the Pre-Trial Intervention Program experiment, non-indictable offenses were included in Bergen, Hudson, Morris, and Mercer Counties on a pilot basis. At the same time, the City of Newark established the Defendant's Employment Project, a federally funded program similar to Pre-Trial Intervention. This program appeared to be operating successfully until funding terminated and the program was discontinued.

Two other legislatively enacted programs became available for use in the Municipal Courts, namely, (a) the Conditional Discharge Program for first time drug offenders, and (b) the Alcohol Training and Rehabilitation Act, both of which are still in effect in the Municipal Courts.

Prior to the adoption of the Criminal Code, there was authority in Rule 3:28 for admitting both indictable and non-indictable offenders to the PTI program. Later legislative enactment formalized the PTI Program making it a uniform system, and all programs were limited to defendants charged with indictable offenses.

PTI in Superior Court has served to divert many defendants amenable to rehabilitation away from the traditional trial system. In addition to benefiting the defendant, the program has assisted in decreasing caseload and trial time in the Superior Court. Defendants charged with lesser offenses in the Municipal Courts have the same needs as those in the Superior Court and the caseload is an equally perplexing problem. The creation of a Municipal Pre-Trial Intervention Program would help in alleviating these problems as it has in the Superior Court.

OBJECTIVES AND BENEFITS

The objectives of a Municipal PTI Program are the same as those forth for PTI on the Superior Court level:

1. To identify and refer those defendants who are likely to respond to supervisory treatment.
2. To increase the flexibility of remedies available to deal with individual cases.
3. To allow defendants to avoid the stigma of a conviction when treatment of an underlying problem, such as alcoholism or drug addition, or psychological or marital counseling is more appropriate.

4. To provide for quick and inexpensive disposition of cases.
5. To provide the means to address the problem of congestion and backlog in the Municipal Court.
6. To provide equal justice to defendants in the Municipal Court.

Currently, since there are no provisions for Municipal Court PTI, it is not unusual for a defendant who was originally charged with a more serious indictable offense (which would have entitled him to enter a PTI Program) to have the charges administratively downgraded to a disorderly or petty disorderly offense for which there is no PTI option, thereby exposing him to a large fine, incarceration, and a conviction record. He might not have faced these consequences had the charge been treated as indictable and he had been admitted into PTI.

It is likely that a defendant who commits a minor offense such as an out-of-character simple assault will receive a greater "penalty" and a record of conviction than one who is indicted but qualifies for PTI. Although a record for disorderly/petty disorderly offenses is not considered a "crime" whereas conviction for an indictable offense is considered a crime by law, the distinction is without meaning to a layman such as a recruiter for the armed services or a prospective employer.

CRITERIA/OFFENSES TO BE REFERRED

It is recommended that the criteria for acceptance in the Municipal Court PTI Program be the same as exists on the Superior Court level. Factors to be considered include:

1. the nature of the offense;

2. the facts of the case;
3. the motivation and age of the defendant;
4. the desire of the complainant or the victim to forego prosecution;
5. the existence of personal problems or character traits that contributed to the crime that may be more effectively dealt with outside of the criminal justice system;
6. the likelihood that supervisory treatment will be beneficial;
7. the needs and interests of the victim and society;
8. the extent to which the applicant's crime constitutes part of a continuing pattern of anti-social behavior;
9. the extent to which the applicant presents a danger to others;
10. whether or not the crime is of an assaultive or violent nature; and
11. the defendant's history of use of physical violence toward others.

It is further recommended that the PTI Program include all the offenses over which the Municipal Court has jurisdiction except traffic offenses. First-time drug offenders and ATRA applicants should also be excluded as the Municipal Courts already have effective diversional programs. Even those offenses excluded from PTI pursuant to Rule 3:28 and the Guidelines, such as violations of local ordinances and health codes, should be eligible and accepted where it appears that there is an underlying problem for which a supervisory treatment program is available.

SHOULD THE PROGRAM BE CONDUCTED THROUGH A MUNICIPAL COURT ORGANIZATION OR THROUGH THE EXISTING PTI OFFICE AT THE VICINAGE LEVEL?

The Subcommittee presents in this paper alternative programs, one for the operation of a PTI program using staff and volunteers at the municipal level and the other for inclusion of Municipal Court PTI into the existing program at the Superior Court level.

GENERAL PROCEDURAL STANDARDS FOR A MUNICIPAL COURT PROGRAM

1. In an appropriate case, the defendant will be advised by the Municipal Court Judge of of the Municipal PTI Program and how to apply. This will be performed at the defendant's "rights hearing," or at his "first appearance" on disorderly or local ordinance offenses.
2. The application will be screened by persons designated by the Municipal Court Judge. The Screening Committee may include representatives from the Probation Department, Court Clerk's Office, Municipal Prosecutor, and Community Disputes Resolution Programs.
3. If the application is approved, the Judge and the Municipal Prosecutor will review and approve or deny the application.
4. If the application is denied, the case will be returned to the Municipal Court for traditional disposition. As part of the rejection procedure, the defendant will receive written reasons for rejection, and may appeal to the Superior Court within ten days. Because of the relative minor nature of the offenses,

the appeal shall be decided "on the papers submitted" and may be handled by the Vicinage Presiding Judge if so authorized by the Assignment Judge.

5. Following entry into the program, the Municipal Court PTI Program Coordinator (Probation Department, Community Disputes Resolution Committee, or other designated person or persons) will arrange the appropriate supervisory treatment for a period not to exceed six months upon terms and conditions imposed by the Judge. The Coordinator will ensure defendant's compliance.
6. If the defendant fails successfully to complete the program, the matter will be referred back to court for disposition.
7. Upon successful completion of the program requirements, the complaint will be returned to the Municipal Court with a recommendation to dismiss the complaint. With the approval of the Municipal Judge, the complaint will be dismissed.
8. The PTI Coordinator will have the authority to recommend as a condition of dismissal that community services, restitution, and/or counseling be completed.

The procedural rules adopted should be similar to those employed on the Superior Court level, but should emphasize less formality and paperwork.

A problem does arise as to how to determine whether or not a defendant previously used a PTI Program for a Municipal Court matter. However, the present PTI registry could be expanded for this purpose.

ADVANTAGES

The cost of the program recommended should be minimal and can be assumed within present Municipal Court budgets.

A Municipal Court Pre-Trial Intervention Program can be used to address the real problems of the defendant, without a time-consuming trial and concomitant record of conviction. Some defendants (for example, those charged with public lewdness "peeping tom" violations) insist upon a trial to "clear" their names because of their employment and family. Perhaps the elements of such an offense could not be proven, but it may be obvious that the defendant does, in fact, have a problem that should be addressed to prevent more serious recurrences. In such a situation the purpose of the court is better served by providing treatment and counseling.

DISADVANTAGES

1. By the very nature of the program, there may be a lack of uniformity among municipalities. This may lead to equal protection problems.
2. An informal program will generate increased work for the already overburdened staff of the municipal courts.
3. During the rejection/acceptance decision process, the judge will receive and review information that would normally be withheld from him until adjudication, i.e., prior record, staff-prepared background report. This may necessitate that should the defendant be either rejected or fail to complete the program, the case be transferred to another judge for

adjudication. This transfer process would create additional work for both the municipal court clerks and the judges.

ADVANTAGES OF ADMINISTRATION BY EXISTING SUPERIOR COURT PRE-TRIAL INTERVENTION PROGRAMS

1. PTI Programs would be automatically available to all municipal courts throughout the State.
2. The Superior Court programs have established guidelines for acceptance/rejection that, with minimal amendments, could be used for municipal court cases.
3. High quality and knowledgeable staff are already employed, thereby decreasing orientation and training time.

DISADVANTAGES OF ADMINISTRATION BY EXISTING SUPERIOR COURT PRE-TRIAL INTERVENTION PROGRAMS

1. There would be a need to increase the number of staff at the Superior Court level with concomitant increases in expense to the county.
2. Cases may take longer to process through the Superior Court program than they would take at the municipal court level.
3. Municipal court judges would lose flexibility in formulating creative diversion plans.

RECOMMENDATION

In conclusion, after careful review of the advantages and disadvantages of the Superior Court vs. Municipal Court Pre-Trial Intervention Program, the Sub-committee on Administration has concluded that the interests of justice and efficiency would be best served by

placing the responsibility for Pre-Trial Intervention into the hands of the existing Superior Court programs. Although the Superior Court programs would have to add additional staff, the Committee found that using the professionalism and knowledge of existing pre-trial intervention staff would result in a more effective and efficient program in the municipal courts.

Vicinage Advisory/Management Teams

PURPOSE

In submitting this paper the subcommittee on Administration recognizes that it has heretofore submitted in Cycle II a paper recommending the establishment of a system to effect a liaison between the municipal courts and the agencies with whom the courts interact. To some extent the recommendations of these two papers overlap, and ultimately the Task Force must consider whether the two concepts should be combined. In the event the concepts are to be adopted independently, the subcommittee recommends that the title of the group here recommended be Vicinage Management Team and that membership and the functions be limited to management personnel and functions.

Frequently there are problems or concerns that arise within the Municipal Court system that require coordination of various other departments of government on the county or vicinage level. The purpose of this proposal concerning the establishment of a county vicinage management team is to coordinate the programs and efforts of the various departments of government, in order to insure that such programs are coordinated and that relevant problems be addressed. Until now, each department such as Probation, Jail, Work Release, Municipal Court, Police, Social Services, and County Government, has acted relatively independently and has not been afforded a structural mechanism for the purposes of making the other aware of its problems and policies.

For example, in some counties, jails are enduring severe overcrowding, that may possibly be minimized or reduced through an awareness of that condition by Municipal Court Judges and the effect that may result from use of alternative sentences. Likewise, the judge should be made more familiar with alternatives to incarceration that are available to the court through the Probation Department. Futher, if sentences imposed by the courts are difficult to comply with as a result of lack of appropriate staffing of the Probation Depart- ment, the Assignment Judge should be made aware of this inadequacy so that he may negotiate with or approach the Freeholder Board for neces- sary funding.

There is currently no mechanism for these various departments to meet and discuss areas of mutual concern, and discussion occurs, all too frequently, after a crisis has arisen.

It should be noted that there is currently no organized system to inform a newly appointed Municipal Judge of the programs and procedures available on the county/vicinage level. In those instances in which there is a newly appointed judge and inexperienced clerk, the Municipal Court must learn of jail and probation procedures and programs on a catch-as-catch-can basis. In order for the system to operate more efficiently, the first order of business of the Vicinage Advisory/Management Team would be to establish an orientation program for all new court personnel and judges.

PROBLEMS

The Vicinage Management Team would concern itself with the following issues:

1) Providing an initial familiarization to Municipal Court Judges, Clerks, Probation Officers, Sheriff's Officers, and local police as to available procedures and programs relative to defendants in the Municipal Court.

2) Discussion of mutual problems as they affect relations between the courts, police, probation, and jail.

3) Jail overcrowding solutions.

4) Sentencing alternatives, including community service, restitution, probation, alcohol programs, and drug programs.

5) Jail programs such as G.E.D.

6) Vocational programs.

7) Community Disputes programs.

8) Pretrial Intervention.

9) Court Management.

10) Coordination between local police, Court Clerks, Judges, probation, and jail.

11 Transportation of prisoners between the County Jail and Municipal Court.

12) Bail.

13) Processing of Complaints.

14) Implementation of Task Force recommendations.

15) Domestic Violence (Emergent basis).

16) Presentence Reports.

17) Probation supervision.

18) Emergent availability of Municipal Court Judges.

19) Caseload and backlogs.

20) Such other responsibilities as assigned and/or directed by the Supreme Court and/or Assignment Judge.

MEMBERSHIP

The County-Vicinage Advisory Management Team may be comprised of representatives of the following:

1) Assignment Judge

2) Municipal Court T.C.A.

3) Presiding Municipal Judge

4) Probation Department

5) Office of the Public Defender

6) Sheriff's Office

7) Warden's Office

8) Local Chiefs of Police Association

9) Municipal Prosecutor

10) Municipal Public Defender

11) Defense Counsel

12) County Prosecutor

13) General Citizen Member

14) County Clerk

15) Mayor

16) Alcohol and/or Drug Program Representative

17) Municipal Court Clerk

Essentially, the foregoing has much similarity to the current Vicinage Local Advisory Committees to the Task Force, and it may well be that the same persons will consent to continue to serve on the Vicinage Management Team.

It should be understood that since each vicinage varies in size and nature of problems, latitude as to composition, duties, and frequency of meeting is desirable so that the Assignment Judge and/or Presiding Municipal Court Judge has sufficient flexibility to organize in a manner that would be most efficient for that particular vicinage.

It should be further emphasized that the recently established vicinage training groups should be encouraged to use the expertise of various probation offices and discuss ongoing problems with a Sheriff's representive, Warden, County Clerk, etc.

RECOMMENDATION

It is recommended that Vicinage Advisory/Management Teams be established in each vicinage comprised of representatives of the present Local Advisory Committees, with the ultimate goal of orientation, education, and coordination of programs and procedures involving the Municipal Court system and any problems arising therefrom.

It is futher recommended that the concepts presented in this paper be combined with those expressed in the papers on Community Advisory Committees and Liaison with Interacting Agencies, so that a single group can be formed to address all concerns.

WORK PERFORMANCE IN EMERGENCY SITUATIONS

INTRODUCTION

From time to time a municipal court may be confronted with a crisis situation in which the available personnel are unable to handle efficiently all the necessary work. This can be precipitated by an inordinately large workload resulting either from the filing of a greater number of complaints than are ordinarily received or from the creation of a large backlog of cases for some other reason. Another cause is the reduction of clerical personnel, which may result from a variety of factors, such as inadequate funding, illnesses, and job actions. This paper addresses the question of how the municipal courts can function most efficiently in such emergency situations.

To do this it is necessary to identify the important elements of the operation of a municipal court. Thereafter, priorities must be established with respect to those elements by identifying those that must be performed immediately, those that must be performed as soon as possible, those as to which in an emergency less than full performance is acceptable and those that can be temporarily eliminated. In this connection it is important to remember that while the municipal courts are public bodies serving the people within the judicial branch of government, they are also, in effect, small businesses. They are required to provide services to the public, collect revenues, and maintain financial records. To the extent possible they are expected to conduct a profitable operation. Therefore, the establishment of emergency procedures requires consideration of both the mandate to continue an effective judicial function and the need to do so in an economically efficient manner.

STATEMENT OF PROBLEM

The municipal court system in New Jersey has grown at a rapid rate in the last decade. Not only has there been an expansion of the caseload but the clerks have been burdened with additional administrative responsibilities. Time limitations on the performance of innumerable office functions have been created by the Administrative Office of the Courts and agencies with which the courts interact. New functions and concomitant time limits have been imposed upon the system on a somewhat haphazard basis. The municipal courts must comply with all time limitations. There has been no effort to list the order in which functions are to be performed in the event of an emergency in which all functions cannot be completed on time. The absence of such direction has often caused frustration and demoralization on the part of court personnel. As a result performance of the most essential work has been unnecessarily delayed. Specific instructions as to priorities and procedure will enable the staff of the municipal courts to handle emergent situations with greater confidence and ability.

RESOLUTION OF THE PROBLEM

The functions of the municipal courts can be divided categorically into pre-adjudication and post-adjudication activity. Included within the former category are such functions as indexing, docketing, processing of monies paid to the court, scheduling of cases, and issuance of failure-to-appear notices and warrants. Post-adjudicatory functions include docketing of dispositions, collection and disbursement of funds, and reports to outside agencies.

The Subcommittee determined that under its time constraints and without professional assistance we would be unable to establish in the

manner necessary a complete statement of priorities. We did identify priorities for the following functions:

(1) The immediate docketing of each case coming to the court is imperative. This creates a record and avoids the Possibility that the case may not be filed. Since this forms the basis for all action that follows in connection with the case, it is of the highest priority.

(2) The processing and early deposit of monies received is the second priority. Court personnel should concentrate on this to insure that all monies paid into court are promptly and properly accounted for and deposited. This task includes the preparation and delivery of receipts into the cash book, early deposit with the bank, and the ultimate distribution of the money to the proper agency at the time required.

(3) Post-court activities and the forwarding of indictable complaints is next in priority. This involves such matters as commitment papers, psychiatric commitments, VCCB notification.

(4) The fourth priority is the establishment of a court calendar. Cases cannot be moved by the judge unless they are scheduled. Therefore, it is essential that cases be Promptly scheduled for court. In this connection priority should be given to the scheduling of cases that are over sixty (60) days old. These cases are generally ones on which there has been a postponement from a prior listing or on which a problem was identified requiring that the first trial listing be delayed. The court clerk must also insure that all cases involving defense by affidavit, remand, and conditional discharge are placed on the calendar.

(5) As a fifth priority the court staff should address more routine activity. Failure-to-appear notices, issuance of bench warrants, "closing out" traffic matters, and similar activity fall within this category. Additionally, MF-1 cards on cases other than drunk driving or license revocation matters may be postponed until there is more available time. The forwarding of MF-1 cards is an example of a function on which a time limit is imposed (three days) where in an emergency a delay is appropriate in order to permit matters of a higher priority to be performed.

The foregoing is but an attempt to highlight and outline a methodology for crisis management. These suggestions were made without an in-depth study of the problem or its resolution. The Subcommittee

recommends that the Administrative Office of the Courts establish a committee charged with the responsibility of developing a plan for the conduct of the functions of the municipal court under emergent conditions. When this has been established, it should then become the responsibility of each vicinage presiding judge and case manager to assist the municipal courts in the development of an individual crisis management plan.

The plan developed by a committee so constituted should not be limited to the subject of priorities discussed above. The establishment of such priorities may assist a municipal court in overcoming a short-term crisis, but will merely delay the onset of an even greater Problem if the cause of the backlog will not be overcome within a reasonable period of time. Accordingly, consideration should be given to the issuance of a directive requiring early notification to the presiding judge and assignment judge of a developing problem. Standards for such notification should be established.

The study should also include consideration of methods by which temporary clerical assistance may be provided to a court until a permanent solution may be found. Methods for the assignment of personnel from another municipal court in the vicinage, the trial court administrator's office, or the Administrative Office of the Courts may be appropriate. This, of course, would involve financial reimbursement and labor relations considerations, which our Subcommittee found requires the assistance of people more qualified than our members in those areas of expertise.

Supreme Court Task Force on the Improvement of Municipal Courts

APPENDIX C

POSITION PAPERS

Committee on Budgets, Personnel and Space

Hon. Philip A. Gruccio, Chairperson

THE PREPARATION AND APPROVAL OF MUNICIPAL COURT BUDGETS

I. INTRODUCTION

Currently there is no uniformity among municipal courts for budget requests. Each municipal court of the state should submit to municipal officials a uniform budget request as well as a comprehensive record of expenditures. These data, when compared with information obtained from municipal court monthly reports, will provide a statistical base for determining the cost efficiency of the operations of municipal courts and a continuing comparative analysis of their performance compared to dollar expenditure. Attached are a Proposed Budget Directive of Municipal Court Fiscal Responsibility and a Uniform Municipal Court Budget Form for use by all municipal courts.

II. THE PROBLEM BEING ADDRESSED

An examination of budget requests being submitted by the municipal courts to the municipalities funding them reveals a wide disparity of formats. In some municipalities the funding of the municipal court is subject to the whim and caprice of the governing body. There have been instances in this state in which budgets adopted by governing bodies bear no relationship to the needs or productivity of the court. In a few instances the individual court receives funding far in excess of its needs.

Essential to the improvement of the municipal court is the maintenance of its independence. The municipal court cannot be regarded as a department of the municipality, but ideally should be an independent body responsible, essentially, to the Supreme Court and Administrative Office of the Courts for the expenditure of its monies, and not to the governing body from whom these funds are derived.

The municipal court must live within the financial limitations of the municipality in which it is located; nevertheless, it is responsible for the administration of justice within its jurisdiction and must have adequate funds to accomplish that purpose.

The Municipal Court Judge, often regarded as the department head of the municipal court, maintains his office by political appointment for a period of three years, and hence is at a disadvantage when he must request monies from those whose favor he must seek if he wishes to remain in office. The Municipal Court Clerk is appointed by the governing body. In many instances, control over personnel does not lie exclusively within the Municipal Court Judge and the Municipal Court Clerk, but is controlled by the governing body or other officials of the municipality. Likewise, expenditures by the municipal court are frequently controlled by administrators or the governing body of the municipality. Maintaining judicial independence in this environment without the assistance of higher authority is virtually impossible.

Increased revenues produced by the municipal court pouring into municipal coffers strengthens the position of the municipal court when adequate funds are requested. Yet, governing bodies, however rational their individual members may be, are faced with the problem of balancing municipal budgets.

We emphatically believe that all components of the municipality - elected officials, appointed officials, police, other enforcement persons, and the general populace - desire quality justice in their municipal court. If the municipal court is to be above politics, and Court Rule now forbids participation in politics, then the logical solution to the problem is to persuade the municipal government to

provide adequate funds to the municipal court. Equally important is introspection by the judicial system itself. Neither can be accomplished without an adequate data base.

A uniform Budget Request Form and a uniform system of reporting expenditures and appropriations, coupled with data obtained from existing monthly report forms, will permit analysis, evaluation, and comparison of the cost of the administration of justice in the various municipal courts.

Such an analysis will permit municipal governing bodies to evaluate and compare their expenditures for their respective municipal courts. Each municipal court will have information available that should lead to more efficient operation of the court. Finally, standardization of the cost of judicial administration in the municipal court should lead to greater uniformity of expenditures for the operation of the municipal courts.

When made available to the legislative and executive branches of the state government, this information should help justify relief of municipal-court funding from the current cap law restrictions. These budgetary restrictions prevent expansion and improvement of the municipal courts and hinder their ability to fulfill the expectations of the public and other branches of government.

III. RECOMMENDATIONS

The Municipal Court Task Force Subcommittee on Budgets, Personnel and Space recommends:

A. A Budget Directive making uniform within the entire state of New Jersey the procedure for preparation, submission and negotiation of

budgets for the municipal courts. A suggested Budget Directive is attached as "Exhibit A".

B. Within a reasonable time after the conclusion of each calendar year each municipal court shall report its total expenditures in each area to the Assignment Judge, who shall forward the information to the Administrative Office of the Courts to be used in compiling statistical data. This is effectuated by the adoption of a Budget Directive such as "Exhibit A".

C. The Administrative Office of the Courts shall provide for the use of the judiciary, including Municipal Court Judges, and of municipal governing bodies a statistical analysis of the information obtained from the uniform Budget Request Forms, operating cost reports, and the monthly reporting forms, so that an annual report on the operation of the municipal court will be available. This is effectuated by the adoption of a Budget Directive such as "Exhibit A".

D. Rule 1:33-9 should be amended to allow an impasse between the Assignment Judge and municipal governing body to be resolved by appeal. A Proposed Rule Amendment is attached as "Exhibit B".

E. A Municipal Court Budget Preparation Manual with uniform Budget Request Forms should be mandated by Rule for preparation of the budget request by each municipal court. A suggested Municipal Court Budget Preparation Manual with forms is attached as "Exhibit C". It is recommended that the Administrative Office of the Courts work with the Division of Local Government Services to develop approved budget forms to avoid duplication of efforts by municipal courts.

F. While not within the scope of this Task Force, it is strongly recommended that municipal court budgets be exempted from the Local

Government Cap Law N.J.S.A. 40A:4-45.1 to -3, in accordance with recently introduced Assembly Bill 230.

PROPOSED BUDGET DIRECTIVE ON MUNICIPAL COURT FISCAL RESPONSIBILITY

Preamble

The municipal courts are part of the state court system. Although frequently regarded as a department of municipal government, each municipal court is an independent branch of municipal government that requires its own budget and should be responsible for the management of its own budget if it is to maintain its independence.

Judicial independence of the municipal courts is strained, and, in many instances, threatened by the following factors: (1) the court is financed exclusively by the municipalities; (2) the municipal judge and court clerk are frequently regarded as political appointments who serve, subject to statutory restrictions, at the whim of elected officials; (3) there is a general lack of sufficient information upon which to base optimum funding for each municipal court; and (4) there is no single party responsible for fiscal accountability and judicial operations.

As in other areas of the judiciary, each municipal court must live within the financial limitations of its municipality; but on the other hand, each is responsible for the administration of justice and the integrity of the judicial system at the local level.

Section 1 PURPOSE: In order to attain cost-effective and efficient operation of the municipal courts, to discharge the duty of accountability for the

expenditure of funds at the municipal court level, and to identify costs (1) for comparisons among municipalities and (2) for determination of optimum cost effectiveness, this directive establishes the basis for development and maintenance of a uniform municipal court budget. Such a budget requires establishment of uniform budget procedures and formats to be followed by the Assignment Judge, who is responsible for management of the municipal courts at the vicinage level. This responsibility necessarily includes formulation and presentation of budgets to municipalities and reporting of appropriations and expenditures to the Administrative Office of the Courts.

Section 2 BUDGET MANAGEMENT: The Subcommittee on Budgets, Personnel and Space of the Municipal Court Task Force has prepared a proposed uniform budget form to be used by the various municipal courts in the preparation and submission of budget requests, which in turn will supply statistical information to determine cost efficiency of the administration of justice in the individual courts. Assignment Judges are expected to fulfill their managerial role in the formulation, supervision, and monitoring of the municipal court budgets by implementing the steps set forth in this directive.

Section 3 RESPONSIBILITY FOR EXECUTING DIRECTIVE: Each Assignment Judge shall have principal responsibility for executing this directive within his vicinage, assisted by the Trial Court Administrator as specified in Sections 6 and 7. Each Municipal Court Judge and Municipal Court Administrator and/or Municipal Court Clerk shall implement the directives of the Assignment Judge pursuant hereto.

Section 4 SCOPE OF THE MUNICIPAL COURT BUDGET. To achieve uniform accountability on the part of the municipal courts for the responsible management of their budgets, each municipal court shall complete and submit all budget requests upon the form that is attached hereto. In that way there will be a single municipal court budget presentation encompassing the operating costs of each municipal court.

The budgetary responsibility and superintendence of the Assignment Judge shall extend to the preparation of the budget requests of each municipal court within his vicinage.

Section 5 COURT BUDGET CYCLE: The statutes governing the cycle of municipal budgeting are applicable to the municipal courts.

Section 6 INTERNAL BUDGET REVIEW: Prior to each municipal court budget submission to its municipality, the Assignment Judge shall conduct an internal review according to the following sequence:

A. Prior to the end of September of each year, each Municipal Court Judge shall develop judicial budget priorities and allocations consistent with the requirements of his court and statewide judiciary goals. Each Municipal Court Judge preparing such a budget shall also submit the names of the Mayor, one member of the municipal governing body, and the chief financial officer of the municipality, who shall be a part of the Municipal Court Budget Committee.

B. The Trial Court Administrator, or his assistant to whom is delegated the responsibility for administering the municipal courts, shall review the municipal court budget requests no later than October 31 of each fiscal year and make a report thereof to the Assignment Judge.

C. At the conclusion of this review process, the Assignment Judge shall transmit to the Municipal Court Judge the municipal court budget for that municipality with his comments.

Section 7 BUDGET PRESENTATION AND NEGOTIATION: Each Municipal Court Judge shall be responsible for presenting his budget, with the comments of the Assignment Judge, to the local Municipal Court Budget Committee. The Trial Court Administrator or his delegate may represent the Assignment Judge at any presentations to and in negotiations with municipal

authorities as well as at other public meetings. Any amendments or supplements to the municipal court budget after its initial submission to the municipality shall be made only by the Assignment Judge or with his written consent.

Section 8 INTEGRITY OF THE MUNICIPAL COURT BUDGET. Each municipal court shall be fully accountable and responsible for the monies appropriated to it. If in November the municipal court and the municipality agree that unencumbered funds remain in the court or court-related accounts that will not be needed for the balance of the year, the municipality will advise the Assignment Judge should a need exist to transfer any portion of any estimated excess to other municipal departments. Funds not spent at the end of the year or reserved for current year expenses shall be cancelled to surplus.

Section 9 EXPENDITURE CONTROL. The Municipal Court Judge shall review all expenditures made from appropriations to the municipal court budget. All personnel changes affecting the municipal court budget shall be approved by the Municipal Court Judge who shall report the same to the Assignment Judge or his designee. The municipal court will work within existing municipal personnel and expense-control systems as much as possible, and it will work with municipal officials to obtain any needed additional reports or data.

Section 10 STATEWIDE COORDINATION: Annually the Administrative Office of the Courts shall hold a meeting of Assignment Judges and Trial Court Administrators to determine statewide municipal court management priorities. The Administrative Office of the Courts shall provide technical assistance at the municipal court level to develop and improve budgeting and management systems. Additionally, the Administrative Office of the Courts shall provide to Assignment Judges and Trial Court Administrators intermunicipal comparisons and criteria to measure effectiveness for the more efficient operation of the municipal courts.

Section 11 REPORTING BUDGET REQUESTS AND APPROPRIATIONS TO THE ADMINISTRATIVE OFFICE: Municipal appropriations for the municipal court shall be reported to the Trial Court Administrator of each vicinage upon final approval of the municipal budget. The report shall be made by March 31st of each year upon forms prescribed by the Administrative Office of the Courts. Budget summary sheets shall be submitted by the Trial Court Administrator's Office to the Administrative Office of the Courts when submitted to it by the municipal court.

Section 12 REPORTING EXPENDITURES TO THE ADMINISTRATIVE OFFICE OF THE COURTS: By February 15 of each year, except for the first full calendar year in which

this directive is in effect, the actual expenditures for the municipal court in the previous year shall be reported by the municipal court to the Trial Court Administrator of the vicinage, and then shall be submitted by the Trial Court Administrators to the shall indicate any reallocation of expenditures of monies during the year.

Section 13 EFFECTIVE DATE: This directive is effective upon date of issuance.

DATED: _____

_____

PROPOSED RULE AMENDMENT

1:33-9. Review of Administrative Recommended Dispositions

(a) Annual Budget Recommendation--Review. If there is an impasse between the Board of Freeholders and the Assignment Judge concerning the annual budget for the judiciary, or between a municipal governing body and the Assignment Judge concerning the annual budget for any municipal court, the Assignment Judge shall, without a formal hearing, make a recommended disposition, no later than 14 days after the Board of Freeholders or municipal governing body has introduced on first reading the annual budget, which shall become a final order unless within 10 days from the data thereof (the Assignment Judge for good cause may fix a shorter period of time) the Board of Freeholders, the County Executive, the municipal governing body, or the Municipal Administrator, as the case may be, seeks review by filing with the Clerk a notice of petition for review by the Supreme Court and serving copies of notice upon the Assignment Judge and the Administrative Director. The notice shall set forth petitioner's name and address and the name and address of counsel, shall identify the recommended disposition to be reviewed (a copy of which shall be attached) and state concisely the reasons for which review is sought.

The balance of the Rule, subparagraphs (b) through (g) remain the same, and are photocopied on the following page.

(b) **Withdrawal of Petition.** The notice of petition may be withdrawn by filing and serving a notice of withdrawal. In the event of a withdrawal, the recommended disposition shall become a final order.

(c) **Response to Petition.** The Assignment Judge shall, upon receiving the notice of petition for review, immediately prepare a statement in response. The Assignment Judge may request the Attorney General's assistance in the preparation of the statement which shall be filed and served within 10 days of the receipt of the petition. The Administrative Director shall, immediately upon receiving the petition for review, notify the Attorney General of the proceedings.

(d) **Submission of Petition.** Upon the filing of the statement in response, the Clerk shall immediately bring the matter to the attention of the Supreme Court. The Court may dismiss the petition, direct the prompt scheduling of argument thereon or grant the petition and refer the matter to a three-member panel designated by the Chief Justice, the Chairman of which shall be an Appellate Division Judge, sitting or retired. The panel shall consist of Appellate Division Judges, Retired Judges, Retired Justices, and such other persons deemed qualified. If argument is scheduled or the petition is granted, the Court shall, in its order, designate the Attorney General to represent the Assignment Judge, dispose of motions for stay or acceleration and shall set a time by which the panel's report is to be filed with the Court. If the petition is dismissed, the recommended disposition shall thereupon become a final order.

(e) **Proceedings Before Panel.** Proceedings before the panel shall be open to the public and shall be governed by orders of the Supreme Court. Strict rules of evidence need not be observed. A complete stenographic record shall be made. When the dispute involves an appropriation, neither party shall have the burden of proof, the test being whether the appropriation is reasonably necessary.

(f) **Panel's Report.** The panel's report which shall set forth its factual findings and recommendations shall be filed with the Clerk of the Supreme Court and copies delivered to the parties forthwith. Either party may take and file with the Clerk of the Supreme Court exceptions to the report with accompanying argument. Such exceptions shall be taken within 5 days of the filing of the report and the adversary may file a response within 5 days thereafter. Copies of each filing shall be furnished to the adversary.

(g) **Oral Argument.** Either party may submit with the exceptions a written request for oral argument. The Supreme Court may order oral argument irrespective of any request therefor.

Note: Adopted March 11, 1981 to be effective immediately. Formerly R. 1:33-5, redesignated October 26, 1983 to be effective immediately.

MUNICIPAL COURT

BUDGET PREPARATION MANUAL

Prepared by the
Municipal Court Task Force
Subcommittee on Budgets,
Personnel and Space.

EXHIBIT C

The Municipal Court Budget shall consist of the following:

1. Budget Narrative
2. Financial Support Data Summary
3. Personnel Expenses Request
4. Other Expenses Request

PROCEDURE FOR FILING

1. Municipal Court Budget shall be developed and forwarded to the Assignment Judge, with a copy to the Trial Court Administrator, no later than September 30th.

2. Trial Court Administrator will review budget and report to Assignment Judge no later than October 15th.

3. The Assignment Judge shall transmit to the Municipal Court the Municipal Court Budget no later than October 31st.

4. A meeting of the Municipal Court Budget Committee will be scheduled no later than the 2nd week of November.

5. Upon passage of the budget by the Municipal Governing body the Municipal Court Judge shall send a completed package of the enclosed forms to the Assignment Judge with a copy to the Trial Court Administrator no later than March 31st.

6. The Assignment Judge or designee shall forward a copy of the completed Municipal Court Budget package to the Administrative Office of the Courts.

BUDGET NARRATIVE

The first section of the budget shall consist of a budget narrative. The narrative shall discuss the following:

1. BACKGROUND INFORMATION

   A. Caseload Changes
      How has the workload of the court changed over the past year.
   B. Financial Picture
      What revenues have the court generated for the municipal treasury.

2. PERSONNEL JUSTIFICATION

   A. Personnel Changes
      Detail of what personnel changes are being requested.
      Who is getting an increase, being reclassified or being promoted.
   B. Reasons for Change
      Why are changes being requested. What do the changes seek to accomplish. How will they help.

3. OTHER EXPENSES JUSTIFICATION

   A. Operating Expenses
      What are the increases. Why are these increases necessary.
   B. Equipment
      What is the current status of office equipment
      What changes are being requested. What is being replaced. What new equipment is being requested. What will be needed in the future.
   C. Education/Training
      What are the expenditures for. Why are they necessary.
   D. Miscellaneous
      Detail and justify all expenses being requested in this category.

4. SPACE AND FACILITIES

   A. Current Condition
      What is the current status of the facilities being utilized by the Municipal Court
   B. Improvements
      What improvements are needed to make the operation of the court more efficient. How should the facilities be improved.

NOTE:

A copy of an excellent narrative that might be used as a model is one prepared by Judge Schneider for the East Brunswick Court. It is attached as an Appendix to this manual.

FINANCIAL SUPPORT DATA SUMMARY

CASELOAD DATA

	PARKING	TRAFFIC	NON-TRAFFIC	TOTAL CASELOAD	
				Total #	% Increase, or decrease, from last year.
1981					
1982					
1983					
1984					

REVENUES GENERATED BY MUNICIPAL COURT

	ACTUAL	ESTIMATED	
SOURCE	1982 Fines and Costs Collected	1983 Fines and Costs Collected	1984 Fines and Costs Collected
TRAFFIC			
NON-TRAFFIC			
TOTAL			

BUDGET REQUEST

	1983	1984		
	APPROPRIATION	REQUEST	APPROPRIATION	PERCENTAGE CHANGE FROM 198
PERSONNEL SERVICES				
OTHER EXPENSES				

Instructions

P E R S O N N E L E X P E N S E S

The Personnel Costs Section of the budget consists of a set of two forms:

1. Personnel Requirements Sheet

2. Personnel Detail Sheet

A. PERSONNEL REQUIREMENTS SHEET

This form is used to summarize information on personnel expenditures by position title. The following information is requested:

1. 1983 Appropriation

2. 1983 Expenditure to June 30th

3. 1984 Salary Request

4. Percentage Change from 1983 Appropriation

The above items of information must be filled in and submitted to the Assignment Judge no later than September 30th. In addition, the following information is to be added to the forms as soon as the municipal court budget is approved. A copy of the entire package must than be sent to the Assignment Judge no later than March 31st.

1. 1984 Actual Appropriation

2. Percentage Change from 1983 Appropriation

MANDATED PERSONNEL COSTS

Each court, regardless of size, shall include the following items in their 1984 Personnel Costs Budget Request, unless the items listed below are already provided for by the municipality:

A. A deputy court clerk;
B. Fees for temporary clerical assistance;
C. Fees to pay the services of an acting judge to sit when the presiding judge is disqualified and/or unavailable;
D. Fees for interpreters and expert witnesses, for payment of assigned counsel and for the expense of transcripts of preceeding for indigents appealing a conviction involving an ordinance.

Note:

Appropriation requests for municipal prosecutor and public defender should not appear in the personnel costs section of the municipal court budget. Judges should contact local officials prior to submission of the budget to assure funds for a municipal public defender and municipal prosecutor will appear elsewhere in the municipal budget. If local officials indicate no appropriation will be put in for these positions that should appear in an addendum to the municipal court budget on a special form. The issue of when a municipality should have a municipal public defender or municipal prosecutor will be dealt with in the next cycle together with standards and ratios for municipal court personnel. The Assignment Judges, in his annual letter to Municipal Officials concerning Municipal Court budgets should emphasize that funding for Municipal Court Prosecutors and salaried Public Defenders do not belong in this Municipal Court Budget.

B. PERSONNEL DETAIL SHEET

This form is to be filled out at the time the budget is being prepared. It should then be forwarded to the Assignment Judge. Once a final budget is approved any changes must be noted and forwarded to the Assignment Judge. The following information is requested:

1. Name of Judge; Designation whether the Judge is Full Time or Part Time.

2. 1983 Total Income (i.e. Total Salary for this position)

3. 1984 Salary

4. 1984 Longevity (If appropriate)

5. 1984 Total Income (i.e. Salary plus longevity for this position)

6. Approximate Number of hours per week salary based on

7. Number of years in Present Position

NOTE: If any extraordinary personnel related expenses are being requested they should be noted on the PERSONNEL RELATED COSTS DETAIL SHEET which accompanies the PERSONNEL DETAIL SHEET.

8. In addition please list the date of next appointment for the Municipal Court Judge.

Instructions

O T H E R E X P E N S E S

The Other Expenses Section of the Budget consists of two forms:

1. Other Expenses Requirements Sheet

2. Other Expenses Detail Sheet

A. OTHER EXPENSES REQUIREMENTS SHEET

This form should be used to summarize information on non-personnel related expenses required for the operation of the Municipal Court. The following information is requested:

1. 1983 Appropriation
2. 1983 Expenditure to June 30th
3. 1984 Request
4. Percentage change from 1983 Appropriation

The above items of information must be filled out and submitted to the Assignment Judge no later than September 30th. In addition, the following information is to be added to the forms as soon as the Municipal Court Budget is approved. A copy of the entire package must then be sent to the Assignment Judge no later than March 31st.

5. 1984 Actual Appropriation
6. Percentage Change from 1983 Appropriation

MANDATED OTHER EXPENSES

Each court, regardless of size, shall include requests for the following accounts in its 1984 Other Expenses budget request:

A. New equipment;
B. Maintenance of office equipment;
C. Educational training;
D. Building structure and facilities.

B. OTHER EXPENSES DETAIL SHEET

This form should be used at the time the budget is prepared. It should then be forwarded to the Assignment Judge. Once a final budget is approved any changes must be noted and forwarded to the Assignment Judge. The following information is requested:

1. Category	In general, operating expenses need not be detailed. Only detail those expenditures when they exceed $500 or represent an increase of greater than 15%. Expenditures for the Equipment, Education/Training and Miscellaneous Categories must be listed.
2. Subheading	For example, the category is equipment the subheading is typewriter, cash register, sound recording etc.
3. Make and Model Number	Detail from what vendor (e.g. IBM) and what model (e.g. Selective) the expenditure is based on.
4. Replacement/ Additional	Please indicate whether the expenditure is to replace existing equipment or for new additional equipment.

PERSONNEL REQUIREMENTS
SUMMARY

POSITION TITLE	1983 APPROPRIATION	1983 EXPENDITURE TO JUNE 30TH	1984 SALARY REQUEST	PERCENTAGE CHANGE FROM 1983 APPROPRIATION	1984 ACTUAL APPROPRIATION	PERCENTAGE CHANGE FROM 1983 APPROPRIATION
Judge						
Court Administrator						
Court Clerk						
Deputy Court Clerk						
Violations Clerk						
Clerk						
Secretary						
Court Attendant						
Sound Recording Technician						
Acting Judge						
Interpreters						
Expert Witnesses						
Temporary Clerical						
Auditors Fees						
Consultants						
Transcripts for Indigents						
Computer Operator						
Other Personnel Related Costs						
Overtime						
Extra Court Sessions						
Longevity						
Holiday						
TOTAL						

Prepared By:
Submitted By:

PERSONNEL DETAIL SHEET

POSITION TITLE NAME	1983 TOTAL INCOME*	1984 SALARY*	1984 LONGEVITY*	1984 TOTAL INCOME* (ESTIMATED)	APPROXIMATE NUMBER OF HOURS PER WEEK SALARY BASED ON	NUMBERS OF YEARS IN PRESENT POSITION	FOR JUDGES ONLY - YEAR OF NEXT APPOINTMENT
Judge							
Part Time							
Full Time							
Court Administrator							
Part Time							
Full Time							
Court Clerk							
Part Time							
Full Time							
Deputy Court Clerk							
Part Time							
Full Time							
Violations Clerk							
Part Time							
Full Time							
Clerk							
Full Time							
Part Time							
Secretary							
Full Time							
Part Time							
Court Attendant							
Part Time							
Full Time							

*From this position

POSITION TITLE NAME	1983 TOTAL INCOME	1984 SALARY*	1984 LONGEVITY*	1984 * TOTAL INCOME	APPROXIMATE NUMBER OF HOURS PER WEEK SALARY BASED ON	NUMBER OF YEAR IN PRESENT POSITION
Sound Recording Technician						
Computer Operator						
Acting Judge						
Interpreters						
Expert Witnesses						
Temporary Clerical						
Auditors Fees						
Consultants Services						
Transcripts for Indigents						
TOTAL						

* From this position

Prepared by:
Submitted by:

PERSONNEL RELATED COSTS

DETAIL SHEET

IN THE SPACE PROVIDED PLEASE INDICATE HOW
THESE FIGURES WERE ARRIVED AT:
(e.g., # of hours at a certain pay scale)

VERTIME

XTRA COURT SESSIONS

ONGEVITY

OLIDAY

Prepared By:
Submitted By:

OTHER EXPENSES
SUMMARY

	1983 APPROPRIATION	1983 EXPENDITURE TO JUNE 30TH	1984 REQUEST	PERCENTAGE CHANGE FROM 1983 APPROPRIATION	1984 ACTUAL APPROPRIATION	PERCENTAGE CHANGE FROM 1983 APPROPRIATION
OPERATING/EXPENSES						
Consumable Supplies						
Postage						
Printing						
Reference Materials/ Periodicals						
Petty Cash						
Sound Recording Tapes						
EQUIPMENT						
Typewriter						
Cash Register						
Sound Recording						
Recorders						
Other						
Copy Machine						
Computer/Word Processor						
Office Furniture						
Equipment Repair						
Calculator						
BUILDING STRUCTURE/ FACILITIES						
Rental						
Maintenance Agreements						
Telephone						
Receipting Machine						

OTHER EXPENSES CONT'D
SUMMARY

	1983 APPROPRIATION	1983 EXPENDITURE JUNE 30TH	1984 REQUEST	PERCENTAGE CHANGE FROM 1983 APPROPRIATION	1984 APPROPRIATION	PERCENTAGE CHANGE FROM 1983 APPROPRIATION
EDUCATION/TRAINING						
Judicial Education						
Dues/Memberships						
Conferences/seminars						
Travel						
MISCELLANEOUS						
Cleaning and Laundering						
Uniforms/Robes						
Car Allowance						
Other						
TOTAL						

Prepared By:

Submitted By:

OTHER EXPENSES DETAIL SHEET

CATEGORY	SUBHEADING	MAKE AND MODEL NUMBER	REPLACEMENT/ADDITIONAL

Prepared By:

Submitted By:

APPENDIX

The following appropriation is requested for a municipal prosecutor and/or public defender. It is not to be considered a request on the part of the court to increase its own budget but rather is deemed by the court to be essential to the administration of justice.

	1984 Request	1984 Appropiation
Municipal Public Defender		
Municipal Prosecutor		

The requested funds is based on the following:

_____ number of cases to be handled.

Submitted By:

1982

MUNICIPAL COURT BUDGET

TOWNSHIP OF EAST BRUNSWICK

FREDERICK C. SCHNEIDER III, JUDGE

APPROVED BY:

John C. Demos, A.J.S.C. — Date 12/3/81

1982 MUNICIPAL COURT BUDGET

A. AGENCY NARRATIVE

The East Brunswick Municipal Court is charged with the responsibility of providing specified services with respect to a limited area of jurisdiction, i.e., certain classifications of offenses committed within the territorial boundaries of the Township of East Brunswick. These offenses include the following: all traffic and parking violations of the motor vehicle law except that of causing death by auto; New Jersey Turnpike regulations; virtually all violations of the Criminal Justice Code which are classified as disorderly persons or petty disorderly persons offenses; certain crimes of the fourth degree upon waiver of the right to a trial by jury and with the consent of the County Prosecutor; certain drug offenses (e.g., possession of small amounts of marijuana and hashish), all violations of Municipal Ordinances, SPCA regulations, Fish and Game laws, Marine and Navigation laws, Weights and Measures violations paternity and bastardy cases; and employment security matters and consumer fraud cases.

The Municipal Court also provides certain services with regard to the processing of criminal offenses committed within the Township, e.g., receiving complaints, issuing arrest warrants, arraignments, preliminary bail determinations, and processing applications for the services of the Public Defender. One significant traditional function of the Municipal Court, holding probable cause hearings [illegible]ndictable charges, was removed during 1981 by directive of the Middlesex County Assignment Judge. This move was consistent with

a statewide trend towards total abolition of the probable cause hearing. This move is also a part of the speedy trial program designed to lessen criminal court case backlogs, and to accelerate disposition. Despite this move, the Municipal Court Judge still retains authority to recommend dismissal or amendment of indictable charges to the County Prosecutor.

The Municipal Court Judge has authority to issue search warrants in response to applications by law enforcement personnel and to issue temporary committment orders for the hospitalization of individuals with severe psychiatric disturbances creating a present danger to themselves or to others. A part of the Municipal Court structure is the Violations Bureau, which enables persons charged with minor violations to pay fines during normal business hours without having to appear in court personally.

In providing these services, the Judge and all personnel of the Court are responsible not only to the Mayor and Township Council, but also to the Assignment Judge of Middlesex County, and the Middlesex County Court Administrator's Officer and the State Administrative Office of the Courts. Obviously, the Municipal Court functions as an integral part of the State's judicial system. It is the Court with which most persons have direct contact, and we must be continually conscious that the impressions derived by those members of the public having business with the Municipal Court may constitute the basis for general attitudes toward the system of justice in this State. The municipal governing body is charged with the obligation of providing the essential services of the Courtat municipal expense and, of course, the Township shares in the revenue derived from the Court as provided by statute.

The East Brunswick Municipal Court, because of its location in a thriving business and residential community and because of the presence of State Highway 18 and the New Jersey Turnpike within its borders, is one of the busier Municipal Courts in the State of New Jersey. A copy of the East Brunswick Municipal Court Statistics is attached, which demonstrates the Court's activity during 1981.

The past year saw a return to normal workload patterns. Our staff was kept consistently busy throughout the year and we again used a temporary part-time employee during the spring months and then again during the fall. A high school cooperative education student worked full-time during the summer months and afternoons when school was in session.

Our full-time staff of five employees continues to handle the workload effectively. The staff consists of one Court Clerk, two Deputy Court Clerks and two Violations Clerks. There were no personnel changes during 1981 and no additional staff is requested for 1982. If there is any unusual increase in workload, we can plan to utilize temporary employees for limited periods.

The Municipal Court Judge had the opportunity of attending two weeks of special court courses at the National Judicial College during 1981. A course in "Sentencing Misdemeanants" emphasized the utilization of community service projects as a sentencing technique. Particularly useful were the videotaping of sentences being imposed by each Judge and follow-up critiques by a panel of experts. The second course was on "Traffic Court" and stressed new developments in uniform traffic laws, constitutional law

(search and seizure cases), and court mangement. The opportunity to exchange ideas with Judges from over thirty states was perhaps just as useful as the formal classroom presentations. The Judge also assisted in the training of two classes of Municipal Court Clerks from a five county area during the year.

Judge Schneider was appointed to the Supreme Court Committee on Municipal Courts in September. This committee is given the responsibility of recommending and reviewing proposed changes in Court Rules and Legislation involving the Municipal Courts.

The clerical, record-keeping, and scheduling functions of the Court remain current and we have again received a favorable evaluation from the Middlesex County Court Administrator's Office during its visitation program. The annual auditor's report contains no criticisms or recommendations. The Municipal Court continued on a five-session-per-week schedule during 1981. Regular daytime Court sessions are held Monday through Thursday, and an evening session is held on Tuesdays. Special sessions are held on Fridays as required.

Probably the most exciting innovation during the past year was the inauguration of a "Never Again" educational and deterrent program designed for individuals who have been convicted of a first offense of shoplifting. Participation in this program is part of the sentence imposed by the ourt and this is not in any way a diversionary program. An appropriate fine for a first offense is imposed and in addition the defendant is sentenced to participate in the program.

All persons included in this program are required to attend

a Saturday morning four-hour session at the Courtroom and are encourged to bring a relative or close friend with them. The Judge introduces the program by speaking generally about the shoplifting problem and discussing New Jersey's shoplifting laws and statutory penalties. Two excellent crime prevention films obtained from the Central Jersey Police Library which are designed to combat shoplifting are shown. Other speakers during each program include a store security manager or executive who discusses the impact of shoplifting and why his store prosecutes shoplifters, a police detective who discusses the criminal record that results from a shoplifting arrest, and a representative of the Middlesex County Department of Adult Corrections, who presents a vivid description of living conditions at the Middlesex County Adult Correction Center. It is hoped that this will be particularly effective as a deterrent, since repeat shoplifters face mandatory jail sentence in New Jersey. A brief presentation on the services available through mental health and counseling agencies in the Middlesex County community is included. The session concludes with group discussion involving the convicted shoplifters in which a prepared list of questions is used to highlight the important issues in dealing with the shoplifting problem. The reaction of both the participants and of various official observers has been quite positive and we expect to continue this program for the foreseeable future. We are grateful to the Assignment Judge of Middlesex County, the East Brunswick Department of Public Safety, and the County Department of Adult Corrections for their support and participation.

There is one negative aspect of this annual status report and we view it as exceptionally serious. The lack of progress on the plans for additional work space is very disappointing to my staff, which has been working for several years in a totally inadequate and overcrowded Violations Bureau Office.

The Violations Bureau was originally designed as an office for three employees. When we occupied the new quarters in 1971, we already had four full-time employees and we were able to crowd four full work-stations in the area provided. Approximately four years ago when our full-time staff was increased to five, we had to assign the additional employee to a small work table located in a corner of the office, which we were able to create only by moving the service counter and register closer to the entrance door. The high school co-op student and temporary clerical employees have no suitable place to work except a portable typewriter table and chair located in the middle of this already congested office. The impact of this situation on our ability to function is obvious, especially when one is aware that additional persons may be required to be in the office at the same time as these seven employees. These include the Municipal Prosecutor, who has no desk or office of his own, police officers or private citizens filing complaints with the court, and various other persons whose business with the court requires entry into this work area. We have no doubt that our workload will continue to increase in the foreseeable future and we implore the Township Council to take the necessary steps to provide a solution to this critical problem.

A high standard of employee morale and quality performance cannot be maintained indefinitely under the prevailing working conditions.

B. PERSONNEL SUMMARY: NARRATIVE

700-101 PERMANENT FULL-TIME SALARIES AND WAGES $84,326.00

EMPLOYEE	GRADE/STEP	BASE SALARY	LONG	ANNUAL SALARY
Geraldine Healey Court Clerk	12/5	$21,916	1315	$23,231
Kathleen Grocholske Deputy Court Clerk	7/6	$17,351	694	$18,045
Mary Nelson Deputy Court Clerk	7/5	$16,203	324	$16,527
Denise Ryan Violations Clerk I	4/5	$13,674	-	$13,674
Natalie Troicki Violations Clerk I	4/4	$12,840	-	$12,849

As indicated previously, the Municipal Court presently employs five full-time persons. We have no recommendation to increase the size of our full-time staff for 1982. Our present staff is experienced, well-trained, and proficient in its duties. We maintain a standard of productivity unmatched in Middlesex County and we have frequently pointed out that other Municipal Courts with similar annual workload statistics employ anywhere from six to nine full-time employees (e.g. Piscataway, Old Bridge, New Brunswick, Edison). The key factors in this quality performance are effective supervision, delegation of responsibility, accountability for assigned tasks, a clear understanding of primary and back-up roles within the office, a positive work attitude, and the effective use of labor-saving forms. Most of these forms were designed by the Court Clerk and Judge and have been adopted for use by numerous other Municipal Courts. It is our present plan to deal with seasonal and other workload fluctuations by using temporary employees and a co-op student.

700-102 PERMANENT PART-TIME SALARIES AND WAGES $29,542.00

(Judge Schneider)

The Municipal Court Judge is classified as a Permanent Part-Time employee although he devotes close to a full work week to his duties. He presides over regular daytime court sessions on Monday through Thursday of each week and traffic sessions on each Tuesday evening. Special sessions are scheduled Fridays as required to deal with unusually lengthy or complicated matters, e.g., zoning or housing code violations, cases involving numerous witnesses, special enforcement situations, etc. Seasonal fluctuations in certain types of cases may also result in extra sessions on Fridays, such as the pre-holiday shoplifting caseload.

The Judge also works along with the Court Clerk in performing his administrative responsibilities under the laws of this State. He may also be called upon at anytime of the day or night and on weekends to deal with applications for search warrants, bail decisions, or requests for temporary hospitalization committments. An increase of 9.5% in the Judge's salary is requested for 1982.

700-103 TEMPORARY PART-TIME SALARIES AND WAGES $13,792.00

Eugene Morris Part-time Deputy Court Clerk	$2,542
Court Attendants Special Police Officers ($7.00 hr.)	$7,000
Marisa Mazzuchetti Temporary Part-Time Clerical ($4.50 hr)	$4,250

The part-time Deputy Court Clerk, Eugene Morris, is present during all Tuesday evening Court sessions. His continued willingness to serve in this capacity makes it possible for the members of

our full-time staff to work a normal day-time work week. Mr. Morris has faithfully served in that part-time position for approximately 16 years. It is recommended that there be a 9.5% increase in his annual salary.

A Special Police Officer is assigned to duty as a Court Attendant at all Court Sessions and his pay must be provided for in the Municipal Court Budget. The Court Attendant assists in maintaining decorum in the Courtroom and is especially helpful in obtaining motor vehicle computer readouts and copies of police reports for use in the Courtroom. The Special Police Officer also serves as a backup to a regular police officer during the arraignment of prisoners, and, of course, he provides a constant visible police presence in the Courtroom. We were somewhat over-budgeted in this area for 1981, but assuming a 10% increase in bench-hours and a modest increase in the hourly rate for the special police officers, we will still require $7,000 for 1982.

As indicated previously, we must rely on temporary part-time clerical help to cope with unpredictable fluctuations in workload or an overall significant increase in workload. Obviously, this is an extremely difficult expense to predict, but when required, it is an expenditure that brings excellent return. Our experience has been that the quicker we can move on such follow-up communications as Failure to Appear Notices and the issuance of arrest warrants, the greater is the rate of response. A lower response rate in turn generates more clerical work for our staff. We are budgeting $4,250.00 in this area for 1982.

700-104 SEASONAL SALARIES AND WAGES $3,500.00

Maryann Vitelli $3.35 per hour
Co-op Clerk Typist

For the second time in three years we were unable to obtain a student co-op clerk-typist from East Brunswick High School who had both the necessary job skills and interest in a position with the Court. Therefore, we are employing a senior co-op student from North Brunswick High School who is doing an excellent job for us. We have used a co-op student in the Municipal Court for over seven years and we have been very pleased with the positive work attitudes and productivity of these students. The co-op student also works full-time during the summer months and this assists us considerably in keeping our work current during the vacation periods of our full-time staff. We maintain that the Co-op Program provides maximum productivity per dollar spent and in the past this program has resulted in some very talented young people becoming interested in permanent employment with the Township. No increase in the $3,500 figure budgeted in this area is required.

700-105 OVERTIME $5,000.00

Although we attempt to minimize overtime expenditures in the Court, some overtime is necessary because Court employees are required to come in during evening hours and over weekends to prepare jail committment papers for persons held in custody. A Clerk or Deputy Court Clerk must also sign a complaint warrant whenever that form of complaint is used. As a result of Mrs. Healeys' reclassification during 1981, she will no longer be entitled to

overtime when she personally performs these duties, but we still require the same $5,000 figure budgeted for 1981. One reason is that it is now necessary to assign a Violations Clerk to the first two hours of the Tuesday evening session to assist Mr. Morris in locating old summonses, collecting fines, and assisting persons who are unable to fill out necessary forms, such as financial affidavits, by themselves.

C. OTHER EXPENSES SUMMARY: NARRATIVE

700-219 BOOKS, SUBSCRIPTIONS AND SPECIAL ARTICLES $625.00

The maintenance of certain books and subscriptions is strongly recommended by the Administrative Office of the Courts and are essential for the proper operation of the Court. No additional subscriptions will be initiated during 1982. Our estimated cost of each item is set forth below:

N.J. Law Journal	$100.00
N.J. Lawyers Diary & Manual(2 copies)	55.00
N.J. Court Rules and Upkeep Service	70.00
Rule of Evidence	20.00
N.J. Statutes Annotated Pocket Parts	210.00
N.J. Session Law Service	40.00
New Statute Books	130.00
	$625.00

700-229 OTHER MATERIALS AND SUPPLIES $792.50

The following purchases are anticipated for 1982:

8 Ticket Control Books @ $15.00 each	$120.00
2 Criminal Docket Books @ $37.50 each	75.00
4 Traffic Docket Books @ $37.50 each	150.00
2 General Cash Books @ $32.50 each	65.00
1 Bail Cash Book @ $32.50 each	32.50
Colored File Folders	250.00
Miscellaneous Items	100.00
	$792.50

700-301 TELEPHONE AND TELEGRAPH $1000.00

The telephone bills for 1981 will probably fall between $800 to $900. Taking into consideration the possibility of a modest rate increase, we are budgeting $1000.00 for this item in 1982.

700-308 MAINTENANCE OF OTHER EQUIPMENT $319.00

The contract for maintenance and repairs on our cash

register was budgeted in the Department of Central Services in 1981. We feel that this contract is necessary, since there were approximately a dozen times during 1981 when the register failed to function and had to be repaired and have parts replaced.

700-310 PRINTING AND BINDING $1800.00

The following items must be printed by outside firms because of the specialized nature of the work required. Traffic summons books, receipt books and ordinance summons books. The 1982 Budget will be expended as follows:

10,000 Traffic Tickets	$1000.00
2,000 Ordinance Summons Books	300.00
7,000 Receipts	200.00
1982 Calendars for Tickets	175.00
Miscellaneous Outside Printing	125.00
	$1800.00

700-312 PROFESSIONAL, CONSULTANTS AND SPECIAL SERVICES $3300.00

Acting Judges (30 sessions)	$3000.00
Foreign Language Interpreters and Court Reporters	300.00
	$3300.00

Acting Judges are required during periods of illness or vacation of Judge Schneider. At present, Judges from nearby Municipal Courts serve as Acting Judges on a per-session basis. Our past experience indicates that Acting Judges are required to preside during seven (7) to ten (10) percent of the total bench hours of the Court.

We must also allocate some money for foreign language interpreters, court transcripts for indigents convicted of Municipal Ordinance Violations who desire to appeal, and for court reporters when a tape recorder breakdown occurs. The expenditures are very difficult to predict in advance, but occasionally such expenses must be borne by the court.

700-313 TRAVEL EXPENSES $200.00

The Judge and clerical staff are sometimes required to attend mandatory or recommended educational programs conducted by the Administrative Office of the Courts. Our Court Clerk also requires travel and luncheon expenses in order to attend the monthly meetings of the New Jersey State Municipal Court Clerk's Association.

700-315 TRAINING AIDS AND PROGRAMS $500.00

During 1981, Judge Schneider attended two weeks of courses at the National Judicial College, University of Nevada - Reno Law School at Township expense. No similar committment is contemplated in 1982, although he is considering enrolling in a two-day regional traffic court conference at Washington D.C. or Williamsburg, Virginia.

Mrs. Healey will again attend the New Jersey State League of Municipalities Convention in Atlantic City. $500.00 should be a sufficient appropriation for these educational programs.

BUDGET RATIO POSITION PAPER

INTRODUCTION

If there is one thing that those close to the municipal court system would unanimously agree with, it is that these courts have been - and most likely will continue to be - seriously underfunded. The Task Force on Municipal Court Improvement has repeatedly been confronted with problems that have this lack of resources at their center. The state Legislature has demonstrated its concern over this problem and has found several ways to increase funding to municipal courts by legislative action. For example, under Chapter 531, Laws of 1983, a Municipal Court Administration Fund was established to assist with DWI backlog reduction efforts. Still another example is the recent revision of N.J.S.A.39:5-41, effective January 1, 1983, which provides that when during the year the amount of fines, penalties and forfeitures for violation of Title 39 forwarded to the County Treasurer equals the amount sent to the county treasurer in 1980, all such further collections are to be sent to the municipal treasurer. When and if the municipality receives the same amount that the county received in 1980, any additional collections shall be sent ½ to the county and ½ to the municipality for the balance of the year. However, legislative attempts at increasing funding for municipal courts have often been frustrated, since the funds have not been directly allocated to the municipal courts by the local municipalities or because of Cap Law restrictions.

Previous Task Force position papers have dealt with budget issues, and have attempted to resolve part of the problem through a major revision of the budget process, including the recommendation of a budget impasse

procedure. Another paper has suggested increases in salaries of court employees. However, the question often asked regarding municipal court budgets is "how much is enough?" How does a municipal court judge decide whether and to what extent his court is underfunded? How can a Mayor and council know that the funding they are allocating to the municipal courts is not adequate enough to enable the court to administer justice properly? How is an Assignment Judge, even given the impasse procedure suggested in another position paper, to know which of his municipal courts are underfunded, and if so, by how much? And how, with over five hundred courts statewide, is the AOC or the Chief Justice to know which courts are underfunded? One thing is clear and that is that the money a court generates should never be used as a barometer of how much any municipal court budget should be. The resolution of these perplexing issues requires the analysis of budget information from municipal courts, particularly from among courts of similar size. There is clearly a need for budget ratio information that will enable these questions to be answered.

BACKGROUND

During the summer of 1982 the Administrative Office of the Courts collected budgets from all municipal courts. Data were also collected on caseloads and municipal expenditures. The data were then coded and computerized. A rating system was developed that sorted municipalities in terms of weighted caseload, so that courts of similar size could be grouped into a single category. A Statewide Municipal Court Budget Information Manual was developed and circulated to all municipal judges. This was a first attempt to provide information to the municipal courts on where each court budget stood in relation to courts of similar size. The resulting manual was admittedly complex, but to those court clerks and judges who

endeavored to understand the materials it became a useful tool in their struggle to increase funding for their municipal courts.

In order to update, simplify, and refine the information so that it might be more easily used by courts in assessing their budgetary needs, a new survey was undertaken. On August 17, 1984 the Administrative Office of the Courts sent out a survey to all municipal courts to ascertain what the average budget was for each class of municipal courts. Upon receipt, the information was computerized. The data on average budgets are classified by the size of the court, as determined by weighted caseload.[1] The weighting of the caseload of each municipal court was determined as follows: parking, weighting is at 1.0; traffic, weighting is at 2.6; non-traffic, weighting is at 9.0. Some major results of this budget survey are presented in Tables A through D, which are annexed as an Appendix to this report. Basically, the data show that there is a wide variation and disparity in the funding of courts of equal size, as defined by the weighted caseload.

SURVEY RESULTS

In Charts A through D, all courts are divided into 14 categories, based on weighted caseload. In Chart A, data presented show the average 1983 total budget appropriation, by category. Also represented are ranges of appropriation, by category. As the chart illustrates, the average 1983 total appropriation was $66,617 per court. The range extended from a low of $1,000 for one court to $3,536,855 to a court in the largest category. In Chart B the data on total appropriations were broken out by expenditure for personnel expenses versus expenditures for other expenses. These data

1 The weighting used for purposes of this report was the one developed and used by the Administrative Office of the Courts in its 1982 Statewide Municipal Budget Information Manual. (See also Appendix A).

are also broken out by category of weighted caseload. The data show that statewide there is roughly a 3.8 to 1 ratio of personnel expenses to other expenses. Chart C provides data on average cost-per-weighted case. This chart shows that generally the cost decreases as size of weighted caseload increases, which is to be expected. Clearly, the larger courts can use volume measures, such as computerization, to reduce costs, while smaller courts do not usually have access to modern technology. The data show that the average cost-per-case is $5.09 statewide. Chart D presents data on the average number of employees, broken out by part-time or full-time status. The data are presented overall and broken out by category of weighted caseload. The data show that the average court has 1.2 part-time employees and 2.9 full-time employees.

RECOMMENDATIONS

Data of the kind presented in this paper shed light on the problem of underfunding of the municipal courts. Based on what the data reveal the following steps are recommended to improve the position of municipal courts:

1. The Committee recommends that data on the budgets of all municipal courts be collected by the Assignment Judges' offices and forwarded to the Administrative Office of the Courts on a yearly basis. Actual expenditures should also be included. It is further recommended that the Administrative Office of Courts prepare annual reports based on the data collected.

2. The Committee believes that the average budget in each category of weighted caseload is low and needs to be increased.

3. The Committee recommends that the measure of "average cost per weighted" case for each size category of courts be used as a general rule of thumb to determine whether the budget of a particular municipal court is

below average. The measure of cost-per-weighted case is to be viewed as a beginning step in the long term process of determining the best measurement of budgets of municipal courts. Nevertheless, it is a measure that, as stated above, can be used as a general rule of thumb. A municipal court judge would take his weighted caseload 2 and multiply it by the average cost per case for the category in which his/her municipal court appears. For example, if a municipal court has a weighted caseload of 21000, this would be multiplied by 3.86 (average cost per case for the category). The resulting budget should be approximately $81,060.

4. It is recommended that when reviewing municipal court budgets, the Assignment Judge should use the cost per case as a minimum requirement, and that courts with budgets below average should be viewed more carefully to determine where any deficiencies are. When reviewing lower than average budgets, the Assignment Judge should carefully examine ratios of personnel to other expenses. (See Chart B)

NOTE: If the recommendations stated above are adopted, and all courts below the average were able to increase their budget to the average, the result would be an increase of between 15 to 20 percent in the annual budgets of municipal courts. That increase would be dedicated to the most underfunded courts.

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2 The Committe recognizes that the weighting system used for purposes of this report bas based on old data. The Committee believes the issue of case weighting needs further study. Furthermore the Committee believes any subsequently developed system for weightly caseloads should be periodically reviewed.

APPENDIX

CHART A

Weighted Caseload	Average 1983 Total Appropriation	1983 Range- Total Appropriation
0 - 1500	7528	1000 - 29318
1501 - 3000	16093	5409 - 39720
3001 - 4500	19153	3000 - 48173
4501 - 6000	25586	12752 - 47575
6001 - 10000	35866	18731 - 120229
10001 - 15000	46532	20869 - 86270
15001 - 20000	64292	40538 - 105735
20001 - 30000	96430	38937 - 156569
30001 - 40000	106004	54089 - 181994
40001 - 50000	129160	90559 - 180050
50001 - 60000	158942	120229 - 224136
60001 - 80000	242157	139742 - 355600
80001 - 100000	427761	274808 - 873309
Over 100000	937603	246442 - 3536855
Overall	$66617	$1000 -$3536855

Average is defined as mean.

CHART B

Weighted Caseload	Average 1983 Total Appropriation	Average 1983 Total Personnel Expenses	Average 1983 Total Other Expenses	Ratio Personnel Expenses/ Other Expenses
0 - 1500	$ 7528	$ 6416	$ 1501	4.3:1
1501 - 3000	$16093	$16093	$13104	1.3:1
3001 - 4500	$19153	$16170	$ 2983	5.4:1
4501 - 6000	$25586	$23379	$ 4319	5.4:1
6001 - 10000	$35866	$30535	$ 5365	5.7:1
10001 - 15000	$46532	$39483	$ 7048	5.6:1
15001 - 20000	$64292	$52854	$11439	4.6:1
20001 - 30000	$96430	$82824	$13605	6.1:1
30001 - 40000	$106004	$86999	$19005	4.6:1
40001 - 50000	$129160	$107124	$22036	4.9:1
50001 - 60000	$158942	$117776	$35655	3.3:1
60001 - 80000	$242157	$207735	$34422	6.0:1
80001 - 100000	$427761	$354146	$73615	4.8:1
Over 100000	$937603	$627566	$310037	2.0:1
Overall	$66617	$52485	$13888	3.8:1

Average is defined as mean.

CHART C

Weighted Caseload	Average Cost Per Weighted Case	Range - Cost Per Weighted Case
0 - 1500	$10.72	$3.13 - $31.73
1501 - 3000	$ 6.99	$2.80 - $17.69
3001 - 4500	$ 5.15	$ .90 - $11.92
4501 - 6000	$ 4.99	$2.56 - $ 9.79
6001 - 10000	$ 4.60	$2.22 - $15.71
10001 - 15000	$ 3.83	$1.65 - $ 7.46
15001 - 20000	$ 3.76	$2.31 - $ 6.70
20001 - 30000	$ 3.86	$1.52 - $ 6.05
30001 - 40000	$ 3.06	$1.70 - $ 5.65
40001 - 50000	$ 2.84	$2.00 - $ 4.02
50001 - 60000	$ 2.88	$2.15 - $ 3.81
60001 - 80000	$ 3.71	$2.15 - $ 5.58
80001 - 100000	$ 4.71	$3.22 - $ 9.04
Over 100000	$ 3.36	$2.05 - $ 5.94
Overall	$ 5.09	$ .90 - $31.73

Average is defined as mean.

CHART D

Average Number of Employees

Weighted Caseload	Part-Time	Full-Time
0 - 1500	1.7	.1
1501 - 3000	1.7	.4
3001 - 4500	1.7	.6
4501 - 6000	1.2	1.0
6001 - 10000	1.1	1.5
10001 - 15000	.7	2.2
15001 - 20000	.8	3.1
20001 - 30000	1.1	5.0
30001 - 40000	.6	5.2
40001 - 50000	.3	6.0
50001 - 60000	1.0	7.0
60001 - 80000	1.7	11.8
80001 - 100000	0	19
Over 100000	1.3	39.6
Overall	1.2	2.9

Average is defined as mean.

In order to obtain a better comparison and a more accurate grouping of municipalities, the caseload of each municipal court was weighted. The weights were set as follows:

parking	value was set at	1.0
traffic	weighting is	2.6
non-traffic	weighting is	9.0

This weighting was done after analysis of information from various sources, including prior studies of the average time taken by municipal judges and clerical staff to process cases through the court. These information sources were supplemented by interviews with various personnel with expertise in New Jersey municipal courts. It is felt that these weights are relatively accurate, although future studies will be made to further refine the states weights. In any event, it is clear that the weighted caseload provides a better measure of the actual work of the municipal courts than merely counting total complaints, given the wide variation in resources required by different case-types for judge and clerical time.

Excerpted from:
Statewide Municipal Court
Budget Information Manual
A.O.C. 1982

COURT EMPLOYEES: DUTIES, QUALIFICATIONS AND APPOINTMENT

In our constitutional democracy there are three independent, equal branches of government; The Executive, the Legislative, and the Judicial. These three branches can be found at each level of government: the federal, the state, the county, and the municipal. The proper functioning and maintenance of independence of each branch is critical, regardless of the level of government. Anything that infringes on either the proper functioning or independence of any of the respective branches of government erodes public confidence in the entire system.

In this state, the judiciary has, over time, established and maintained its independence categorically at both the state and county level. On the municipal level, however, that independence has not been fully established. The Municipal Courts' independence is compromised in at least two critical areas: the budgetary process and the court personnel system. The purpose of this position paper is to address the latter issue as it affects court clerks.

There are two distinct systems for identifying and appointing municipal court clerks in New Jersey. In approximately one-third of the state's local jurisdictions, including most of the larger municipalities, court clerks are hired through the civil service system. In these municipalities, the court clerk position is defined in standardized job descriptions, candidates are tested using standardized test instruments and selection is made from a list of eligible candidates following strictly controlled rules and procedures. At present, there is no

provision for input by municipal judges in the appointment of any court clerk covered by the system.

The vast majority of municipalities, however, do not belong to the Civil Service system and the selection and appointment of court clerks is left to a locally developed personnel system or, in some cases, traditional and wholly unsystematic hiring processes. In these non-Civil Service jurisdictions, appointments of court clerks are made by elected or appointed, non-judicial municipal officials who are not required to consult with the local municipal judge or any other judicial officer before hiring court clerks. Many, if not most, non-Civil Service Jurisdictions, have neither specific job descriptions for court clerks nor specific minimum educational, experience or training requirements for these positions that would assure the appointment or qualified municipal court employees.

In order to assure, in both Civil Service and non-Civil Service municipalities, that (1) only the most qualified people are appointed to municipal court clerk positions and (2) the independence of the judiciary is carefully protected, the Committee makes the following recommendations:

I. <u>The position of "Municipal Court Clerk should be redesignated as "Municipal Court Clerk/Administrator and removed from the Civil Service classification system.</u>

The Committee makes this recommendation in order to bring the court clerk's title and status more in line with the critical responsibilities being performed. In too many jurisdictions, the position of court clerk is treated like any other clerical position within the municipal

government. This amounts to failure to recognize the sensitive and complex administrative and legal requirements of the position.

Currently, Civil Service recognizes the position of Municipal Court Administrator and quite properly excludes it from the Civil Service system. In fact, all court clerks, no matter what the size of their jurisdiction, are administrators and should be excluded from Civil Service system under the same logic used to exclude Municipal Court Administrators.

In non-Civil Service jurisdictions, the title of Municipal Court Clerk should simply be changed to Municipal Court Clerk/Administrator.

II. Three distinct levels of "Municipal Court Clerk/Administrator should be recognized by municipalities.

Municipal Court Clerks perform different duties and have varying responsibilities depending on the size and mix of their court's caseload and on the number of functions of other employees of the municipal court. The job descriptions, duties, and qualifications required by Municipal Court Clerk/Administrators of courts of various size and complexity should vary accordingly.[1] Sample descriptions for three distinct levels of Court Clerk/Administrator are attached as Appendix A.

In essence, the description of the Municipal Court Clerk/ Administrator I emphasizes the duties of a Clerk/Administrator in a larger court in which other court employees would be delegated the responsibility of performing all daily court clerk functions. The

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1 The Committee recommends the Administrative Office of the Courts determine, after gathering current data on caseloads and employee numbers, which courts should have Municipal Court Clerk/Administrators of differing ranks.

Municipal Court Clerk/Administrator I would be the court manager, responsible for budgeting, staff training and evaluation, organization development, short and long range planning, and liaison with local, county, and state officials.

The Municipal Court Clerk/Administrator II would serve a mid-sized court with several court employees. While some functions would be delegated to these employees, given the limited size of the court staff, many court clerk functions would still be performed by the Municipal Court/Clerk Administrator II.

The Municipal Court Clerk/Administrator III would serve, either full or part-time, in a court with no other court employees. The Municipal Court Clerk/Administrator would perform all required court administration functions but would not have staff training or personnel supervision and evaluation duties and only limited responsibility for planning and organization development.

Because the duties and responsibilities of each level of proposed Municipal Court Clerk/Administrator would vary significantly, the qualifications for appointment to each position should also differ. However, every appointee to a municipal Court Clerk/Administrator's position, regardless of level, would be required to complete satisfactorily a prequalifying Municipal Court Clerk/Administrator's course, administered by the Administrative Office of the Courts, including passing a certifying examination at the conclusion of the course. The Committee recommends the test be administered every 90 days at sites throughout the state. The exception to this prequalification process will be allowed for good cause if the municipal court judge makes a request to the Assignment Judge and both he and the Administrative

Office of the Courts have no objection. If an exception is granted, the Municipal Court Clerk/Administrator shall be appointed provisionally and will be allowed 90 days to take the required course and pass the test. In addition, the minimum qualifications recommended for each position are:

Municipal Court Clerk/Administrator I: A baccalaureate degree from an accredited college and two years of municipal court or comparable office management and administrative experience. Experience may be substituted for academic credits on a year-for-year basis.

Municipal Court Clerk/Administrator II:

(i) A Baccaluareate degree from an accredited college; or

(ii) the equivalent of two years of credit from an accredited college and two years of Municipal Court experience; or

(iii) a high school diploma or its equivalent and four years municipal court experience.

Municipal Court Clerk/Administrator III: A high school diploma or its equivalent plus a total of two years of either college credit or administrative experience.

III. The appointment of Municipal Court Clerk/Administrator should be made by the municipal appointing authority from a pool of qualified candidates (as defined above).

While municipal appointment authority should be retained, the Municipal Court Judge should be actively involved in the interviewing process, and should recommend the best candidate(s) to the appointing authority. All appointments of Municipal Court Clerk/Administators should be made with the approbation of the Assignment Judge pursuant to Rule 1:33-4.

IV. Background checks should be performed for all Municipal Court Employees.

Because of the highly sensitive and complex nature of court business and the need to assure that those involved in the judicial process are above reproach, it is recommended that all municipal court employees be required to undergo a criminal records background check prior to appointment. At a minimum, this check should include the records of both the State and Federal Bureaus of Investigation. Background checks should be conducted by the County Prosecutor and submitted to the Assignment Judge for his review and certification.

V. Probationary Appointment.

All municipal court employees should be appointed first to a probationary period. The probationary term for Municipal Court Clerk/Administrators should be from 6 - 12 months. The probationary period for all other employees should be for 90 days.

VI. Court Clerks who currently hold the position should be "grandfathered" in.

The Committee recommends that court clerks currently holding the position should be "grandfathered" in and not be required to meet the above mentioned requirements except as they relate to background checks.

VII. Municipal Court Clerk/Administrators can be removed only for just cause.

The Committee has recognized the role of local authorities in the appointment process but has recommended the Municipal Court Judge be actively involved in the process and that appointments to the position be with the approbation of the Assignment Judge pursuant to Rule 1:33. Just as the committee has attempted to place in delicate balance the hiring

issue, it has determined that there needs to be a balance in termination of Municipal Court Clerk/Administrators. These employees must be protected from arbitrary termination for anything less than good cause. Therefore, the Committee recommends that the standard for firing a Municipal Court Clerk/Administrator shall be "for just cause". Furthermore the Committee recommends a requirement that: (1) the reason for dismissal shall be reduced to writing and served upon the court employee at the time of dismissal and (2) the Municipal Court Clerk/Administrator shall be given at least two weeks notice of dismissal. If the aggrieved employee is still unsatisfied with the dismissal decision and the reasons given therefore, that employee shall have the right to take a direct appeal to the Assignment Judge, who shall hold a hearing within twenty (20) days of notice. After the Assignment Judge has had opportunity to hold a hearing, if the Assignment Judge rules the dismissal is not for just cause, the employee shall be reinstated.

VIII. Tenure.

Provided that the Municipal Court Clerk/Administrators are provided with the protections from arbitrary firing as outlined above, the Committee agrees with the current statute, which provides for tenure of court clerks after 10 years.

APPENDIX A

MUNICIPAL COURT CLERK/ADMINISTRATOR I

DEFINITION:

Under the general direction of the Administrative Office of the Courts, the Presiding Municipal Court Judge, and the Assignment Judge of the Vicinage, and under the immediate direction of the Municipal Court Judge supervises and manages the various administrative and specialized clerical operations of the Municipal Court; assists the Municipal Court Judge in any area pertaining to the court's daily operation; does related work as required.

EXAMPLES OF WORK:

Supervises and is responsible for all office personnel and procedures, including administrative and finance functions of the Court Clerk's Office/Violations Bureau.

Plans and provides training for all office personnel for their respective administrative and clerical functions.

Evaluates the performance of all administrative and clerical personnel.

Prepares annual municipal court budget for approval of Municipal Court Judge.

Manages all court expenditures against approved court budget.

Assigns work to clerical and administrative personnel.

Analyzes, evaluates, and modifies office organization, as required.

Serves as liaison between Municipal Court and local/county administrators, as well as with vicinage-level judiciary managers.

Develops procedures and issues instructions related to the implementation of court rules, state statutes, and local court policies.

Directs the development of administrative programs required to establish and achieve Municipal Court objectives.

Develops requisitions and communicates with vendors, as required.

Oversees preparation of and approves all statistical reports, annual reports, and monthly reports required by the municipality, vicinage-level judicial managers and the Administrative Office of the Courts.

Supervises the establishment and maintenance of relevant records and files, including those that may be computerized.

Develops short and long-term plans for municipal court operations including plans for the introduction or expansion of automated systems.

Directs the maintenance of accounting and auditing systems with respect to court accounts, maintains property controls and inventories.

Compiles and analyzes statistical data and initiates and prepares special studies, statistical reports, and recommendations to the Presiding Judge regarding the business of the court.

Conducts special research and analysis projects as assigned or as self-initiated.

Represents the court in non-judicial matters with the municipality, public groups, news media, and the general public having interest in the administration of the court.

Maintains knowledge of advanced techniques for court administration.

Establishes, plans, organize, directs, and controls the functions and resources that affect the movement of cases to disposition.

Establishes a plan to invest specific amounts of trust funds for generation of interest to provide additional income for the municipality.

REQUIREMENTS:

An applicant must have the following:

Education/Experience

A baccalaureate degree from an accredited college and two years of municipal court or comparable office management and administrative experience. Experience may be substituted for academic credits on a year for year basis.

Knowledge

Thorough knowledge of the following: The laws, ordinances, rules, regulations, and procedures relating to the operations of the Municipal Court.

The preparation of clear, sound, accurate and informative reports.

The establishment and maintenance of needed records and files.

Training techniques, including the development and use of training materials and aids.

Judicial budget preparation and budget management requirements.

General office management and organization techniques.

Personnel evaluation procedures and methods.

General accounting and statistical recordkeeping methods.

The application of computer technology to the automation of office operations.

Ability

Ability to do the following: Read, write, speak, and understand English sufficiently to perform the duties of this position.

Communication may include such forms as American Sign Language or braille.

Analyze and interpret the laws, ordinances, rules, regulations, and procedures relating to the operation of the municipal Court.

Give suitable assignments and instructions to others and supervise their work.

Supervise the maintenance of financial records.

Obtain, store, record, distribute, and supervise the use of needed equipment materials and supplies.

Prepare clear, sound, accurate and informative reports.

Establish and supervise the maintenance of records and files.

Evaluate court and employee performance against accepted standards.

Develop and/or review plans for the automation of various office operations.

Establish short and long-range plans including the setting of objectives and monitoring of achievement.

Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodation is made to their known limitations. If the accommodation cannot be made because it would cause the employer undue hardship, such persons may not be eligible.

MUNICIPAL COURT CLERK/ADMINISTRATOR II

DEFINITION:

Under the general direction of the Administrative Office of the Courts, the Presiding Municipal Court Judge and the Assignment Judge of the Vicinage, and under the immediate direction of the Municipal Court Judge, supervises and manages the various administrative and specialized clerical operations of the Municipal Court: performs specialized administrative and clerical functions as required; assists the Municipal Court Judge in any area pertaining to the court's daily operation; does related work as required.

EXAMPLES OF WORK

Supervises and is responsible for all office personnel and procedures, including administrative and finance functions of the Court Clerk's Office/Violations Bureau.

Plans and provides in-service training of personnel and oversees staff performance.

Analyzes all facts and circumstances to determine whether any laws or ordinances within the jurisdiction of the Municipal Courts have been violated, and determines whether a formal complaint should be entertained; disseminates court related information to the public, attorneys, and officials as required.

Attests to court writs, processes, commitments, search warrants, bench warrants, and subpoenas.

Secures information for the judge by contacting witnesses, attorneys, and litigants in order to obtain such data for the court.

Prepares court calendar and coordinates all parties appearances at all Municipal Court proceedings by notifying defendant, witnesses, attorneys, police officers, etc.

Arranges for and assists the judge during court sessions.

Assists Municipal Court Judge in arraignment of defendants.

Calls and swears witnesses at trial of cases.

Stores, safeguards and maintains all exhibits admitted into evidence during trial.

Receives and disburses bail, fines, costs, and other monies paid into court and accounts therefore.

Maintains and/or supervises the filing of complaints, processes, and other court records, cash books, court dockets, traffic control sheets, copies of transcripts, statistical records, reports, and files, including the filing of all financial and statistical reports to various state and county agencies.

Supervises and directs the disposition of correspondence.

Provides general information to the public regarding court filing practices, scheduling of court cases, fines, and any other pertinent information as well as referrals to proper agencies or departments.

Superintends the physical condition of the court premises and maintains decorum therein.

If serving as the Violations Clerk, supervises and/or performs all relevant duties and related tasks.

Prepares correspondence.

Prepares or assists in the preparation and management of the Municipal Court budget.

Gives suitable assignments and instructions to assigned employees.

Supervises and/or performs the work involved in the establishment and maintenance or relevant records and files, including those files that may be computerized.

REQUIREMENTS

An applicant must have the following:

Education/Experience

Either: (i) a baccalaureate degree from an accredited college; or (ii) the equivalent of two years of credit from an accredited college and two years of municipal court experience; or (iii) a high school diploma or its equivalent and four years municipal court experience.

Knowledge

Thorough knowledge of the following: The laws, ordinances, rules, regulations, and procedures relating to the operations of the Municipal Court.

Court proceedings, including the taking of minutes of trials and entering them in dockets.

The form and use of trial calendars, writs, decisions, orders, rules, and other matters pertaining to the court.

The making of entries in ledgers and disbursement journals.

The preparation of clear, sound, accurate, and informative reports.

The establishment and maintenance of needed records and files.

Training techniques including the development and use of training materials and aids.

Judicial budget preparation and budget management requirements.

General accounting and statistical recordkeeping methods.

The general application of computer technology to the automation of office operations.

Ability

Ability to do the following: read, write, speak and understand English sufficiently to perform the duties of this position.

Communication may include such forms as American Sign Language or braille.

Analyze and interpret the laws, ordinances, rules, regulations,and procedures relating to the operation of the Municipal Court.

Give suitable assignments and instructions to others and supervise their work.

Attend court matters.

Prepare trial calendars, make out return cards, and sign letters, checks, writs, decisions, orders, rules, and other matters pertaining to the court.

Maintain or supervise the maintenance of financial records.

Obtain, store, record, distribute, and supervise the use of needed equipment materials and supplies.

Prepare clear, sound, accurate, and informative reports.

Establish and maintain or supervise the maintenance of records and files.

Assist in the development of plans for automation of various office operations.

Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodation is made to their known limitations. If the accommodation

cannot be made because it would cause the employer undue hardship, such persons may not be eligible.

MUNICIPAL COURT CLERK/ADMINISTRATOR III

DEFINITION:

Under the general direction of the Administrative Office of the Courts, the Presiding Municipal Court Judge, and the Assignment Judge of the Vicinage, and under the immediate direction of the Municipal Court Judge, performs the various managerial, administrative, and specialized clerical functions involved in the operation of the Municipal Court; assists the Municipal Court Judge in any area pertaining to the court's daily operation; does related work as required.

EXAMPLES OF WORK:

Analyzes all facts and circumstances to determine whether any laws or ordinances within the jurisdiction of the Municipal Courts have been violated; determines whether a formal complaint should be entertained; and disseminates court related information to the public, attorneys, and officials as required.

Attests to court writs, processes, commitments, search warrants, bench warrants, and subpoenas.

Secures information for the judge by contacting witnesses, attorneys, and litigants.

Prepares court calendar and coordinates all parties appearances at all Municipal Court proceedings by notifying defendant, witnesses, attorneys, police officers, etc.

Arranges for and assists the judge during court sessions.

Assists Municipal Court Judge in arraignment of defendants.

Calls and swears witnesses at trial of cases.

Stores, safeguards, and maintains all exhibits admitted into evidence during trials.

Receives and disburses bail, fines, costs, and other monies paid into court, and accounts therefore.

Files complaints, processes, and other court records, cash books, court dockets, traffic control sheets, copies of transcripts, statistical records, reports, and files, including the filing of all financial and statistical reports to various state and county agencies.

Provides general information to the public regarding court filing practices, scheduling of court cases, fines, and any other pertinent information as well as referrals to proper agencies or departments.

Superintends the physical condition of the court premises and maintains decorum therein.

If serving as the Violations Clerk, supervises and/or performs all relevant duties and related tasks.

Prepares correspondence.

Establishes and maintains relevant records and files, including those files that may be computerized.

REQUIREMENTS:

An applicant must have the following:

Education/Experience

At least a high school diploma or its equivalent plus a total of two years of either college credit or administrative experience.

Knowledge

Thorough knowledge of the following: The laws, ordinances, rules, regulations, and procedures relating to the operations of the Municipal Court.

Court proceedings, including the taking of minutes of trials and entering them in dockets.

The form and use of trial calendars, writs, decisions, orders, rules and other matters pertaining to the court.

The making of entries in ledgers and disbursement journals.

The preparation of clear, sound, accurate and informative reports.

The establishment and maintenance of needed records and files.

Judicial budget preparation and budget management requirements.

General accounting and statistical recordkeeping methods.

The general application of computer technology to the automation of office operations.

Ability

Ability to do the following: Read, write, speak and understand English sufficiently to perform the duties of this position. Communication may include such forms as American Sign Language or braille.

Analyze and interpret the laws, ordinances, rules, regulations, and procedures relating to the operation of the Municipal Court.

Attend court matters.

Prepare trial calendars, make out return cards and to sign letters, checks, writs, decisions, orders, rules and other matters pertaining to the court.

Maintain financial records.

Obtain, store, record, distribute, and supervise the use of needed equipment materials and supplies.

Prepare clear, sound, accurate and informative reports.

Establish and maintain records and files.

Assist in the development of plans for automation of various office operations.

Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodation is made to their known limitations. If the accommodation cannot be made because it would cause the employer undue hardship, such persons may not be eligible.

COMMITTEE ON BUDGETS, PERSONNEL AND SPACE

COURT SECURITY

In the past, court security was usually considered in the context of high risk or controversial proceedings in the Superior Court. However, in the last ten years or so, court security has become increasingly more important. Recently, a report of the Judiciary/Sheriff Liaison Committee to the New Jersey Supreme Court developed a model plan for court security in the New Jersey Superior Court. The Sub-committee on Budgets, Space and Personnel will attempt to set minimum standards for security in the municipal courts of New Jersey.

Background

Depending upon context, environment and purpose, "security" has many meanings. Samples of definitions follow:

Security is an intangible quality which can only be measured by its lack.

Security is the absence of security failure in the face of security threats.

Security means preventing or detecting a dangerous incident and eliminating the damages it causes.

Security provides either active or passive means to help protect and preserve an environment in which activities are not disrupted.

The key word is prevention. Responsibility for security in the courtroom varies considerably throughout the country. In the New Jersey Superior Court, responsibility for this activity has been

assigned to the Sheriff's department. The majority of municipal courts in the State use the local police departments to provide security for in-custody defendants and for taking convicted defendants into custody.

The Subcommittee recommends that the Chief of Police, or county sheriff in municipalities where there is no chief of police, should determine what provisions are necessary to provide adequate overall security for the municipal court. The recommendations of the chief, or sheriff, should be implemented by the municipality as soon as possible.

Courtroom Support

It is the recommendation of the Subcommittee that at least one individual be designated with security responsibility in the courtroom at all times during an open court session. This can be accomplished through the use of off-duty police officers, or, at the option of the court in the municipality, the position of municipal court attendants can be implemented. Briefly, a municipal court attendant will be responsible for maintaining order and discipline among prisoners, search prisoners, escort prisoners and when necessary subdue, restrain and physically remove unruly individuals from a courtroom.

Security Devices in the Courtroom

To the extent possible, each courtroom should be equipped with routine security devices. When building or renovating courtrooms, the following list of devices should be incorporated into the plans. The absence of these devices may dictate the need, to be spelled out in municipal security plans, for additional

court attendants in or around the courtroom. The following are desirable in all courtrooms: (1) walk-through or hand-held magnetometers, preferably in every courtroom, in that, every defendant, especially those that have not been detained, be subject to a screening/search prior to his/her entrance into the courtroom; (2) silent duress alarms at the bench, (the Sub-committee feels that this recommendation should be mandatory); (3) emergency lighting for the courtroom itself and at public exit routes; (4) ballistic material within the judge's bench to withstand the penetration by "off the shelf" bullets from handguns, including a .357 magnum; (5) locks and drapes (or blinds) on windows; (6) key-type blade light switches in the courtroom.

Transportation of Prisoners and Restraining Devices

Transportation of defendants in custody in municipal court is usually relegated to the responsibility of the arresting law enforcement agency. Local police departments are presumed to have responsibility in those cases where defendants are charged and arrested for contempt and held in lieu of bail. Local procedures can be deferred to for transportation.

Concerning restraining devices in a courtroom, the Sub-committee recommends that handcuffs be used in every case where the defendant is already in custody. It is also suggested that the defendant be cuffed from the rear in the efforts to avoid any possibility of using those cuffs as a weapon. Said restraining devices are to be used in any court procedure from arraignment to sentencing and anything short of trial. The use of leg irons are to be used only upon good cause shown and this

decision is to be made only by the judge; likewise, discretion is also left to the judge concerning the use of handcuffs during a trial.

As a matter of routine security, particular attention should be paid to non-detained defendants at the time of a verdict or sentencing. Search techniques and immediate segregation from the balance of the courtroom attendees should be implemented, if that person is to be immediately incarcerated.

Special Conditions

It is implicit that the presiding judge be aware of the local contingency provisions for bomb threats, hostage situations, escaped prisoners, or other emergency type situations. If provisions do not exist with respect to the above, the municipal court judge in conjunction with local safety and law enforcement personnel should design such plans and contingencies. In the event where the judge may need to exclude individuals from the courtroom because of unruly and/or disruptive behavior, municipal court judges are reminded that individuals who pose a threat to the court or the security of the public may be excluded pursuant to R. 7:4-(4)(C) and R. 1:1-2.

It is also recommended by the Subcommittee on Budgets, Space and Personnel that any innovations or future design of courtrooms and/or clerical facilities of the courts, that security be considered in such design which will be reviewed by the Administrative Office of the Courts and the Assignment Judge pursuant to the recommendations in the Subcommittee's "SPACE" position paper as finally adopted by the Task Force and Supreme Court.

ELIGIBILITY REQUIREMENTS, EVALUATION, AND TENURE OF MUNICIPAL COURT JUDGES

I. Background

The qualifications of a municipal court judge as set forth in N.J.S.A. 2A:8-7 are unchanged since 1948: the judge shall be a resident and attorney-at-law of New Jersey or a hold-over magistrate. The appointing authority differs with the form of municipal government, and, although only the Supreme Court has the power to oversee the exercise of judicial activities, there is currently no opportunity for its input into the judicial selection process.

The information derived from the responses to a Task Force survey of police chiefs points to the need to reduce the role of politics in the selection of municipal court judges. There is a perception that judges are appointed solely on the basis of politics and that their judicial findings may be made on the basis of political favoritism or pressure. Political considerations are seen to carry more weight with the appointing authority than the experience or competence of the appointee.

The consensus lists prepared during the 1983 Judicial Conference Workshops identified as an issue the need for standardization of salaries of municipal court judges. The Administrative Office of the Courts has targeted the gap between the municipal courts and the rest of the judicial family as a major problem. Local governing bodies have expressed frustration over the lack of information on comparable courts

to assist in their review of the salary and staff structure of the municipal court. There is some concern that the municipal "cap" law has had a negative impact on the selection of municipal court judges in that a governing body may shop for a lawyer with little or no experience to accept the judgeship at a reduced salary.

While a position on standardization of salaries will not be developed until a future cycle, the Committee has for this cycle determined that any standard for salaries must have as its basis minimum standards for eligibility and qualification of the municipal court judge. A centrally-administered prequalification or certification program advances the goals of uniformity of municipal court trial procedures as well as that of encouraging a minimum commitment of administrative time. Such a program creates a nexus between the municipal court judge and the rest of the judicial family and closes the distance among the municipal court judges themselves. Education and inter-communication may well be a key to the development of reliable statistics for evaluating the staffing and budget requirements of the municipal court according to its caseload.

II. Recommendations

A. Qualifications of Municipal Court Judges

The Committee recommends the establishment of minimum standards of admission and education. Such minimum standards serve the dual purpose of prequalifying the judicial appointee and implementing the goal of enhancing the public perception of the municipal court by

upgrading the image of its judges. The Committee proposes the following standards:

1. PRIOR TO HIS APPOINTMENT A MUNICIPAL COURT JUDGE SHALL HAVE BEEN ADMITTED TO THE PRACTICE OF LAW IN THIS STATE FOR AT LEAST FIVE YEARS.

The above proposal would require an amendment to N.J.S.A. 2A:8-7 to provide the minimum admission requirement.

The consensus of the Committee is that there should be a statutory minimum admission requirement for municipal court judges, just as there is a constitutional minimum admission period for Superior Court Judges and Supreme Court Justices.

The proposed five-year-minimum-admission requirement provides the appointing authority with the ability to review the practical experience and professional competence of those under consideration for the position of municipal court judge.

2. WITHIN 90 DAYS OF HIS APPOINTMENT AND PRIOR TO SITTING A MUNICIPAL COURT JUDGE SHALL BE CERTIFIED AS HAVING SATISFIED THE REQUIREMENTS OF A PREQUALIFICATION EDUCATION PROGRAM.

The above proposal would be implemented by court rule. Just as Rule 1:39 provides for the certification of attorneys as civil or criminal trial attorneys upon establishing eligibility and satisfying requirements regarding education, experience, knowledge, and skill, so also should provision be made for municipal court certification.

The Committee envisions a [2 day] program of seminars, which shall be held every 3 months, to familiarize the certification candidates with the responsibilities, including administrative requirements, of the position of municipal court judge. The education program would be

developed in cooperation with the Administrative Office of the Courts. It shall also be open to all interested attorneys. In addition to instruction in substantive legal matters and municipal court trial procedures, the course should provide a full explanation of the municipal court statistical report. Strong emphasis should be placed on the provisions of the Code of Judicial Conduct and Ethics Opinions applicable to municipal court judges.

The prequalification education program requirement may be waived upon application to the Assignment Judge and the Administrative Office of the Courts. Existing municipal court judges will be "grandfathered-in" and not required to satisfy the prequalification education program.

3. PRIOR TO HIS APPOINTMENT AND ON EACH REAPPOINTMENT A MUNICIPAL COURT JUDGE SHALL SUBMIT TO A BACKGROUND INVESTIGATION.

At the present time the municipal court judge is the only judge who is not required to cooperate in a background investigation. Supreme Court Justices, Superior Court Judges, County Prosecutors and their assistants are investigated before appointment by means of a "four-way check". Certainly the nature of the municipal court judge's position demands that he too be investigated and cleared before appointment. This confidential "four-way check" should be done on form and procedure developed by the Administrative Office of the Courts.

B. Appointment and Term of Municipal Court Judge

1. THE MUNICIPAL COURT JUDGE SHALL BE APPOINTED BY THE STATUTORILY-DESIGNATED LOCAL AUTHORITY.

The Committee has reviewed N.J.S.A. 2A:8-5 ,and notwithstanding its recommendation for tenure, infra, the Committee recommends no change of the appointing authority.

2. THE MUNICIPAL COURT JUDGE SHALL SERVE FOR A TERM OF THREE YEARS.

The Committee has reviewed N.J.S.A. 2A:8-5. While there is some argument that the term should be extended to five years in view of the Committee's prequalification and tenure recommendations, the Committee recommends no change.

C. Annual Evaluation of Municipal Court Judge

1. A MUNICIPAL COURT JUDGE SHALL RECEIVE AN ANNUAL EVALUATION PREPARED BY THE ADMINISTRATIVE OFFICE OF THE COURTS.

It is the consensus of the Committee that the municipal court judge should be evaluated annually and that the report on the evaluation should be separate from the annual report on court operations.

The annual evaluation would assist the judge in targeting and correcting potential problems of administration. A judge who grants continuances without good reason creates unnecessary extra work for court clerks and is not exercising proper control of the court calendar. A judge who is regularly late for court negatively affects the public's opinion of the municipal court. The annual evaluation of the judge is an appropriate method for ensuring that the practices of an individual judge are consistent with the efficient and proper operation of the municipal court.

D. Tenure of Municipal Court Judges

1. UPON REAPPOINTMENT TO A THIRD CONSECUTIVE FULL TERM A FULL-TIME OR PRIME-TIME MUNICIPAL COURT JUDGE SHALL HOLD OFFICE DURING GOOD BEHAVIOR.

The above proposal would be implemented by amending N.J.S.A. 2A:8-5 as follows:

> Each judge of the municipal court shall serve for a term of 3 years from the date of his appointment and until his successor is appointed and qualified; provided, however, that if a municipality shall by ordinance require the judge of the municipal court to devote full time to his duties or to limit his practice of law to non-litigated matters, upon reappointment to a third consecutive full term such municipal court judge shall hold his office during good behavior.

There are currently 14 full-time municipal court judges in New Jersey. The concept is a relatively new one. The first full-time municipal court judge was appointed in Jersey City in 1976; Newark, Paterson, Plainfield, and Atlantic City followed thereafter. The concept appears to be a sound one and is approved and recommended by the Administrative Office of the Courts for larger urban municipal courts. Those urban municipal courts for which full-time judges have been authorized by ordinance have demonstrated significant improvement.

The full-time municipal court judge is prohibited by ordinance from engaging in the private practice of law or other income supplementing endeavors.

An even newer category of municipal court judge is the prime-time judge. A prime-time judge may engage in the private practice of law but

his practice is limited by ordinance. He may not appear in court or represent clients in litigated matters. He may hold other municipal court judgeships.

It is the consensus of the Committee that full-time and prime-time municipal court judgeships, because of the limitation on private practice, enhance the public perception and actual workings of the municipal court. The full-time and prime-time municipal court judge makes a professional and a time commitment to the court and its operation that warrants tenure in those cases in which the judge is appointed to a third consecutive three year term. It is the intent of the Committee that the municipal court judges should be removed from the political arena and that the role of the part-time judge should be studied with regards to limitations and restrictions on private practice.

Under the proposed tenure provision, the local authority continues to control the appointment and reappointment of judges. If the provision is adopted, it is anticipated that some full-time or prime-time judges may not be reappointed for a third term because of the municipality's determination to avoid tenure; however, it is also considered that the certification program and annual evaluation program set forth herein may aid the tenure candidate in reappointment deliberation by the local appointing authority.

E. Salaries of Municipal Court Judge

The Committee will report in a coming cycle its recommendations regarding standards for salaries of the municipal court judge.

III. Conclusion

The municipal court judge must be considered a member of an independent branch of government, the judiciary. Although appointed by local authority, the municipal court judge, as are all judges, is answerable and accountable to the Supreme Court. The eligibility and certification programs recommended herein are necessary to implement the goal of asserting from the incipient stage of a municipal court judge's service the Supreme Court's authority to regulate the activities of the municipal court and its judge.

The recommendation for tenure for full-time and prime-time municipal judges is a further acknowledgement of these judges as members of the judiciary. At present municipal court judges are the only judges for whom there is no provision for tenure.

2A:8-5 Judge of municipal court; term of office; appointment

> Each judge of the municipal court shall serve for a term of 3 years from the date of his appointment and until a successor is appointed and qualified: provided, however that if a municipality shall by ordinance require the judge of the municipal court to devote full-time to his duties or to limit his practice of law to non-litigated matters, upon reappointment to a third consecutive full term such municipal court judge shall hold his office during good behavior. Any appointment to fill a vacancy caused other

than by expiration of term shall be made for the unexpired term only; provided, however, that if a municipality shall by ordinance require the judge of the municipal court to devote full time to his duties or to limit his practice of law to non-litigated matters, the first appointment after such ordinance shall be for a full term of 3 years.

Addendum A

COMMITTEE ON BUDGETS, PERSONNEL AND SPACE

Hiring/Firing of Court Employees

INTRODUCTION

Rule 1:33-4 delineates the duties and powers of the Assignment Judge and grants "plenary responsibility for the administration of all courts [within the vicinage], subject to the direction of the Chief Justice and by rule of the Supreme Court." In this way the Supreme Court delegates a constitutional authority embodied in Article 6, section 2, paragraph 3 of the New Jersey Constitution to the Assignment Judges. The language of the rule is similar to the language of the Supreme Court in Passaic County Probation Officers' Ass'n v. County of Passaic, 73 N.J. 247, 253 (1977) wherein the court noted that the Constitution vested in the Supreme Court "plenary responsibility for the administration of all courts in the State." The involvement of the Assignment Judge in budgetary matters has been discussed in a Position Paper entitled, PREPARATION AND APPROVAL OF MUNICIPAL COURT BUDGETS. Space and facilities are the subject of another Position Paper being prepared by the Subcommittee on Budgets, Personnel and Space. Accordingly, this Position Paper will focus upon the inter-relationship of the Assignment Judge, municipal governments, and judicial support personnel of the Municipal Court.

The problem addressed in this paper is readily defined. The response is elusive. Definition of the problem requires certain analyses, which are:

1. THE CONSTITUTIONAL AUTHORITY OF THE SUPREME COURT EXTENDS TO ALL COURTS.

Article 6, section 2, paragraph 3 provides, inter alia: "The Supreme Court shall make rules governing the administration of all courts in the State . . ." The responsibility of the Supreme Court for the overall performance of the judicial

branch of government and the implied power to enforce its rules extends to the Municipal Courts. In re Mattera, 34 N.J. 259 (1961); Passaic County Probation Officers' Ass'n v. County of Passaic, supra. The Supreme Court noted in State v. Ruotolo, 52 N.J. 508, 513 (1968) "although clerks and deputy clerks are appointed by the governing authorities, there is no question that the branch of government to which a clerk or deputy clerk is responsible is the judiciary." It is not necessary to recite all of the cases discussing the subject. A cursory reading of the decisional law interpreting this section of the Constitution will reveal the underlying concept that the administrative authority of the Supreme Court encompasses all facets of internal management of the courts.

2. WITHIN THE MEANING OF Rule 1:33-4, WHO ARE THE "JUDICIAL SUPPORT PERSONNEL" OF THE MUNICIPAL COURTS?

It is submitted that Rule 1:33-4 encompasses "judicial support personnel" of the municipal courts and that such personnel should be identified by using the following generally accepted indicia that is used in establishing an employer-employee relationship in public sector labor relations:

a. who has the substantial control and authority to select, appoint, set wages, pay and remove the employee?

b. who has substantial control and superintendence on a day-to-day basis over personnel practices?

c. who has the right to direct the work to be done and the way in which it is to be done?

The identification to some of these indicia can be found in the Court Rules. The Municipal Court Judge, subject to the approval of the Administrative Director of the Courts, has considerable control over the day-to-day working conditions of judicial support personnel in the municipal courts. The Municipal Court Judge shall fix the hours of each municipal court subject to the approval of the

Administrative Director of the Courts [R. 1:30-3(a)], as well as the hours and days the clerk of every municipal court shall be open to the public [R. 1:30-4].

However, the identification and categorization of judicial employees and their employers at the municipal level is complex. The Municipal Courts are creatures of statutes (N.J.S.A. 2A:8-1 to 55). The only statutory reference to personnel is contained in N.J.S.A. 2A:8-13, 13.1, 13.2 and 13.3. The statutory scheme provides that the governing body may by ordinance or resolution provide for a Clerk and other necessary clerical and other assistants for the Municipal Court and provide for their compensation. The Clerk may be any officer or employee of the municipality who may serve without additional compensation. The Municipal Court Judge may designate in writing an Acting Clerk or Acting Deputy Clerk who temporarily shall have the authority to perform the duties of the Clerk or Deputy Clerk in their absence. There are also tenure provisions for the Clerk.

The Committee has studied the above statutes in para materia with R. 1:33-4(e), which provides:

> "Subject to uniform minimum standards and conditions promulgated by the Administrative Director, the Assignment Judge may appoint and discharge such judicial support personnel within the vicinage as he shall deem necessary."

We also note that R. 1:33-4(a) provides that the Assignment Judge "shall be the chief judicial officer within the vicinage and shall have plenary responsibility for the administration of all courts therein, subject to the direction of the Chief Justice and by rule of the Supreme Court." The Committee feels it is clear from the above discussion that "all courts" includes municipal courts.

The Committee has carefully tried to harmonize this apparent dichotomy and considered the Constitutional mandate imposing responsibility to the Supreme Court for overall performance of the Municipal Courts, the position of the Court as expressed in its opinions and the express legislative intent that the

governing bodies employ and compensate Municipal Court personnel.

The subcommittee, therefore, recommends the following:

1. Whenever possible, comity should be afforded to the governing bodies and Civil Service statutes and recognition should be made of existing negotiation units and negotiating history. The Subcommittee recognizes the delicate balance that exists in this situation between legislative and judicial power and agrees that there should be no confrontation by the assertion of judicial supremacy at this point without good cause.
2. The term "employee" should include all employees who are necessary and integral to the operation of the municipal court regardless of authority by which they are appointed.
3. The Administrative Director of the Courts establish uniform minimum standards and conditions pursuant to the provisions of R. 1:33-4(e) that will:
   a. Establish criteria that will constitute a threshold for entry into this area by the Assignment Judge. It would be hoped that these criteria would determine the magnitude of the problem that must exist before the Assignment Judge becomes involved with personnel problems of the court. For example, a vacancy in the post of Court Clerk with no appointment being made by the governing body; or improper acts by court personnel without full appropriate action being taken by the governing body or a determination that personnel provided by the governing body are inadequate by reason of number or ability to perform Court functions. Further, these criteria will also provide statewide uniformity in their application so there will not be a distinction between vicinages simply because there are different Assignment Judges.

b. Once the Assignment Judge becomes involved pursuant to the above criteria, establish qualifications for appointment by using recognized personnel practices as discussed in the "Qualification and Appointment" section of this report and provide cause for discharge.

4. The Committee recommends that whenever the Assignment Judge does choose to intervene in personnel problems, he should be assisted by the Presiding Judge. In the absence of a presiding judge, the judge of the municipal court should be involved.

COURT EMPLOYEES SALARIES

Introduction

Over the recent years, there have been a number of studies and reviews of the efficiency and effectiveness of the municipal court system. As well, there have been numerous conferences and meetings among various State, county and municipal court officials to discuss the many problems in municipal court practice. A common thread that surfaces among these various studies and reviews is that the municipal courts are generally underfunded and employees are substantially underpaid, given the level and importance of their responsibilities. Court clerks, for example, are called upon to determine whether probable cause to issue a summons or arrest warrant exists. Clearly employees should be paid commensurately with their work and level of responsibility. Underpayment of employees in any system can lead to problems of low morale, low productivity, and occasionally temptations towards misfeasance or malfeasance in office. As such, salary level can have a substantial effect on the administration of justice.

Background

In a recent position paper on Court Employees Duties, Qualifications and Appointment, the Budget Committee, in order to ensure that municipalities employed only the most qualified people in the position of Court Clerk, recommended the following:

1. That the position of municipal court clerk be removed from the Civil Service classification system and be re-designated as municipal court clerk/administrator. The modification was recommended in order to recognize the sensitive and complex requirements of the position of municipal court clerk.

2. That three distinct levels of municipal court clerk/administrator be established. The committee developed job specifications for three levels of municipal court clerk/administrator.
3. That every appointee to the position of municipal court clerk/administrator pass a pre-qualifying course given by the Administrative Office of the Courts.
4. That the municipal court judge be actively involved in the court clerk interviewing process so that he can recommend the best candidate to the appointing authority.
5. That all municipal court employees be required to undergo a criminal record background check prior to employment.
6. That the standard for firing a municipal court clerk/administrator be for just cause with reasons reduced to writing and served upon the employee at least two weeks prior to dismissal.

In another position paper the committee considered the qualifications important for municipal court judges. The committee made the following recommendations:

1. That there should be minimum standards of character, education, and admission to the bar: (a) a judge shall have been admitted to the practice of law in the state for at least 5 years prior to employment; (b) a judge shall be certified as having satisfied the requirements of a pre-qualification education program after employment but prior to sitting on the bench; and (c) a judge shall submit to a confidential background check prior to his appointment and on reappointment.
2. Municipal court judges shall receive an annual evaluation prepared by the Administrative Office of the Courts.

3. Full or prime time judges shall hold office during good behavior upon reappointment to a third consecutive full term.

Both of these position papers sought to upgrade the quality of municipal court clerks/administrators and judges. Both of these position papers, although not addressing the issue at the time, stated that further work would be done in the area of salaries for these two key court employee positions. This position paper is in response to that mandate.

Survey of Municipal Court Budgets and Personnel

On August 17, 1984 the Administrative Office of the Courts sent out a survey to all municipal courts to find out what the average salaries were for judicial employees and to provide information for a municipal court budget information book that would serve as a crucial reference for all municipalities. Responses were received and the information on salaries for municipal court judges and municipal court clerks are contained in Appendix A (for judges) and B (for court clerks).

Municipal Court Judges

The data on salaries for municipal court judges are sorted by size of court as determined by weighted caseload. The weighting of the caseload of each municipal court was set as follows: parking, weighting is at 1.0; traffic, weighting is at 2.6; non-traffic, weighting is at 9.0.

In order to obtain comparative data on judges' salaries, an "equivalent full-time salary" figure was developed. The equivalent full-time salary was derived by dividing the annual reported salary by 52 to arrive at a weekly salary. This was then divided by the number of hours reported to be worked, resulting in an hourly rate of pay. To obtain annualized data the hourly rate was multiplied by 35 (representing full time hours per week) and then again by 52 (weeks in a year). The resulting figure is an

annual full-time equivalent salary for each judge. For municipal court judges for 1984 the annual full-time equivalent salaries were as follows:

Projected Annual 1984 Judge's Salary by Weighted Caseload[1]

1984	Less Than 6000	6000-15000	15001-50000	Over 50000
Average Salary*				
Mean	$65683	$57929	$58494	$49013
Median	$57313	$54481	$50000	$40000
Standard Range **	$27650-95550	$33500-79042	$35636-89285	$35123-68609

* Data have been annualized and do not represent actual earnings.
** The Standard Range deletes the lowest and highest 15% of salaries. Therefore this is a range that includes those 70% of salaries nearest to the average.

As can be seen from the above the average salary for judges in courts with a weighted caseload of less than 6000 is $65683; for courts with a weighted caseload between 6000 and 15000 the average salary is $57929; for courts with a weighted caseload between 15000 and 50000 the salary is $58494; and for courts with a weighted caseload over $50000 the salary is $49013. Overall the average equivalent full-time salary is around $50000. The average full-time equivalent salary of judges generally decreased as the size of court increased. As the data show, there is great disparity in salaries among courts of similar weighted caseload. For example in courts with fewer than six thousand weighted cases we see annual equivalent salaries from $27650 all the way up to $95550, and this does not even include the extremely low and high

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[1] Weighted Caseloads were developed by the Administrative Office of the Courts and published in its Statewide Municipal Court Budgeting Information Manual in October 1982. A description of weighting is contained in Appendix C.

salaries (see note on standard range). (Note that in a prior position paper the Administration Committee recommended an annual salary for presiding judges of $60000.)

Court Clerks

Once again, the salaries of clerks are sorted according to size of court and determined by weighted caseload. (Process used in weighting is contained in Appendix C and has been described above.) It should be noted that while figures we will use represent average salary ranges, the figures do not include fringe benefits or longevity.

With respect to clerks we see that the average full-time equivalent salary increases, unlike several hundred dollars for judges, as the size of the court, as determined by weighted caseload, increases. It rises from under $12000 in smaller courts, where clerks are essentially part time, to over $22000 in the largest courts, where the clerks are essentially full time. Presented below is a chart of 1984 annual full-time equivalent salaries for court clerks.

Projected Annual 1984 Clerk's Salary by Weighted Caseload

1984	Less Than 6000	Average Salary* 6000-15000	15001-50000	Over 50000
Mean	$11743	$14555	$17528	$22985
Median	$11394	$14328	$17538	$22386
Standard Range **	$7109-14840	$11145-17858	$12981-22331	$15672-28848

* Data have been annualized and do not represent actual earnings.
** The Standard Range deletes the lowest and highest 15% of salaries. Therefore this is a range that includes those 70% of salaries nearest to the average.

While the extremes show tremendous disparity, even the standard range, which lops off 15% on either end, shows a difference of about double between the lowest and highest salaries in courts of similar size.

Recommendations

1. Full-time Municipal Court Judges shall be paid at an equivalent salary of 95% of Superior Court Judges, which is $66,500.

2. For those Municipal Court Judges serving less than full-time, the Committee recommends that they be paid no less than $ 150 a session. A session includes bench and administrative time up to 4 hours. This is meant only to be a minimum guideline, not a recommendation or standard.

3. The Assignment Judge, when reviewing municipal court budgets, should, when the circumstances warrant, take appropriate action when a Municipal Court Judge is paid less than the minimum set forth above.

4. It is further recommended that the total salary for any judge on the municipal level, irrespective of whether or not he or she sits in one or more than one Municipal Court, should not exceed $ 66,500. By setting such a cap a Municipal Court Judge can be assured fair and adequate compensation for his efforts, while protecting the court from any appearance of impropriety caused by a perception of the public that a specific Municipal Court Judge is earning an excessive amount of money for the work performed. It has been our experience that the public has questioned in the past the reasonableness of a Municipal Court Judge receiving a salary far in excess of what other judges are earning. Additionally, this recommendation protects the Court from public feelings that a Municipal Court Judge is in effect being paid for working overtime, a concept that is inappropriate to members of the judicial family.

5. The Committee recognizes that there may be instances in which it is appropriate for a Municipal Court Judge to earn in excess of the recommended salary range. To accommodate such instances the Committee recommends that an exception from the range can be granted but only upon review and approval by the Assignment Judge after consultation with the Administrative Office of the Courts and upon good cause being shown and subject to approval by the Supreme Court.

6. Suggested salary ranges for municipal court clerks/administrators as developed by the Task Force were based on qualifications presented in an earlier position paper. The suggested salaries are municipal court clerk administrator III - $19,381.29 to $26,170.17; municipal court clerk/administrator II - $23,559.17 to $31,809.72; and municipal court clerk/administrator I - $28,638.84 to $38,665.08.

7. In the part-time courts in which the municipal court clerk/administrator III title would be used, we expect this salary would represent an annualized and not actual salary.

It should be noted, however, that the qualifications and salaries as recommended by the Task Force may require further review in order to ensure that the qualifications and concomitant salaries are consistent with recognized personnel standards and evaluation.

Annual Equivalent Salary and Income Data for Judges

	Weighted Caseload			
	Less than 6000	6000-15000	15001-50000	Over 50000
1983 Average Salary				
Mean	61388	54300	54788	46433
Median	52500	49134	50000	40000
Extreme	4667-259625	10500-140673	11417-121333	25268-86335
Standard Range[2]	26950-87500	30500-74375	34563-80494	34000-64422
1983 Average Income				
Mean	63188	53467	59410	48737
Median	55484	48405	52325	40000
Extreme	4667-266770	10500-140673	11417-133543	25773-90895
Standard Range[2]	26950-91000	32083-76942	35000-87497	34000-64422
1984 Average Salary				
Mean	65683	57929	58494	49013
Median	57313	54481	50000	40000
Extreme	4667-272475	11025-175000	11988-121333	15000-94276
Standard Range[2]	27650-95550	33500-79042	35636-89285	35123-68609
1984 Average Income				
Mean	67413	57981	61772	47816
Median	59698	50750	52612	40108
Extreme	4667-293825	11025-175000	11988-121333	15000-98779
Standard Range[2]	27650-96250	32500-81608	35910-96250	36373-61678

1. The Administrative Office of the Courts surveyed all municipal courts to obtain data on annual salary and income as well as number of hours per week worked. The equivalent annual salary (and income) was obtained by dividing the annual salary given by 52 (weeks in a year) and then by the number of hours worked. This figure represented the dollars per hour paid. To obtain annualized data the hourly rate was multiplied by 35 (full time) and then again by 52 (weeks in a year).

2. The Standard Range deletes the lowest and highest 15% of salary (or income). Therefore this is a range which includes those 70% of salaries (or incomes) nearest to the average.

Annual Equivalent Salary and Income Data for Court Clerks

	Weighted Caseload			
	Less than 6000	6000-15000	15001-50000	Over 50000
1983 Average Salary				
Mean	10654	13248	16624	21815
Median	10301	12826	16793	20519
Extreme	2528-43750	6364-30510	6364-24700	12548-31975
Standard Range[2]	6600-13256	10385-15766	12833-21061	14925-27970
1983 Average Income				
Mean	11291	14524	19217	24418
Median	10721	13654	18463	24025
Extreme	2528-43750	6463-38962	6364-31225	14925-44980
Standard Range[2]	7000-14333	10990-17605	14216-24181	15245-29429
1984 Average Salary				
Mean	11743	14555	17528	22985
Median	11394	14328	17538	22386
Extreme	2528-43750	6023-30510	6620-26473	13702-34214
Standard Range[2]	7109-14840	11145-17858	12981-22331	15672-28848
1984 Average Income				
Mean	12381	15064	19267	25874
Median	11833	14800	18901	23701
Extreme	2528-45500	6023-26615	6620-34214	15672-48139
Standard Range[2]	8107-15687	11633-18159	13457-25444	18000-31895

1. The Administrative Office of the Courts surveyed all municipal courts to obtain data on annual salary and income as well as number of hours per week worked. The equivalent annual salary (and income) was obtained by dividing the annual salary given by 52 (weeks in a year) and then by the number of hours worked. This figure represented the dollars per hour paid. To obtain annualized data the hourly rate was multiplied by 35 (full time) and then again by 52 (weeks in a year).

2. The Standard Range deletes the lowest and highest 15% of salary (or income). Therefore this is a range which includes those 70% of salaries (or incomes) nearest to the average.

In order to obtain a better comparison and a more accurate grouping of municipalities, the caseload of each municipal court was weighted. The weights were set as follows:

parking	value was set at	1.0
traffic	weighting is	2.6
non-traffic	weighting is	9.0

This weighting was done after analysis of information from various sources, including prior studies of the average time taken by municipal judges and clerical staff to process cases through the court. These information sources were supplemented by interviews with various personnel with expertise in New Jersey municipal courts. It is felt that these weights are relatively accurate, although future studies will be made to further refine the states weights. In any event, it is clear that the weighted caseload provides a better measure of the actual work of the municipal courts than merely counting total complaints, given the wide variation in resources required by different case-types for judge and clerical time.

Excerpted from:
Statewide Municipal Court
Budget Information Manual
A.O.C. 1982

MUNICIPAL COURT CLERK/ADMINISTRATOR I

DEFINITION:

Under the general direction of the Administrative Office of the Courts, the Presiding Municipal Court Judge, and the Assignment Judge of the Vicinage, and under the immediate direction of the Municipal Court Judge supervises and manages the various administrative and specialized clerical operations of the Municipal Court; assists the Municipal Court Judge in any area pertaining to the court's daily operation; does related work as required.

EXAMPLES OF WORK:

Supervises and is responsible for all office personnel and procedures, including administrative and finance functions of the Court Clerk's Office/Violations Bureau.

Plans and provides training for all office personnel for their respective administrative and clerical functions.

Evaluates the performance of all administrative and clerical personnel.

Prepares annual municipal court budget for approval of Municipal Court Judge.

Manages all court expenditures against approved court budget.

Assigns work to clerical and administrative personnel.

Analyzes, evaluates, and modifies office organization, as required.

Serves as liaison between Municipal Court and local/county administrators, as well as with vicinage-level judiciary managers.

Develops procedures and issues instructions related to the implementation of court rules, state statutes, and local court policies.

Directs the development of administrative programs required to establish and achieve Municipal Court objectives.

Develops requisitions and communicates with vendors, as required.

Oversees preparation of and approves all statistical reports, annual reports, and monthly reports required by the municipality, vicinage-level judicial managers and the Administrative Office of the Courts.

Supervises the establishment and maintenance of relevant records and files, including those that may be computerized.

Develops short and long-term plans for municipal court operations including plans for the introduction or expansion of automated systems.

Directs the maintenance of accounting and auditing systems with respect to court accounts, maintains property controls and inventories.

Compiles and analyzes statistical data and initiates and prepares special studies, statistical reports, and recommendations to the Presiding Judge regarding the business of the court.

Conducts special research and analysis projects as assigned or as self-initiated.

Represents the court in non-judicial matters with the municipality, public groups, news media, and the general public having interest in the administration of the court.

Maintains knowledge of advanced techniques for court administration.

Establishes, plans, organize, directs, and controls the functions and resources that affect the movement of cases to disposition.

Establishes a plan to invest specific amounts of trust funds for generation of interest to provide additional income for the municipality.

REQUIREMENTS:

An applicant must have the following:

Education/Experience

A baccalaureate degree from an accredited college and two years of municipal court or comparable office management and administrative experience. Experience may be substituted for academic credits on a year for year basis.

Knowledge

Thorough knowledge of the following: The laws, ordinances, rules, regulations, and procedures relating to the operations of the Municipal Court.

The preparation of clear, sound, accurate and informative reports.

The establishment and maintenance of needed records and files.

Training techniques, including the development and use of training materials and aids.

Judicial budget preparation and budget management requirements.

General office management and organization techniques.

Personnel evaluation procedures and methods.

General accounting and statistical recordkeeping methods.

The application of computer technology to the automation of office operations.

Ability

Ability to do the following: Read, write, speak, and understand English sufficiently to perform the duties of this position.

Communication may include such forms as American Sign Language or braille.

Analyze and interpret the laws, ordinances, rules, regulations, and procedures relating to the operation of the municipal Court.

Give suitable assignments and instructions to others and supervise their work.

Supervise the maintenance of financial records.

Obtain, store, record, distribute, and supervise the use of needed equipment materials and supplies.

Prepare clear, sound, accurate and informative reports.

Establish and supervise the maintenance of records and files.

Evaluate court and employee performance against accepted standards.

Develop and/or review plans for the automation of various office operations.

Establish short and long-range plans including the setting of objectives and monitoring of achievement.

Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodation is made to their known limitations. If the accommodation cannot be made because it would cause the employer undue hardship, such persons may not be eligible.

MUNICIPAL COURT CLERK/ADMINISTRATOR II

DEFINITION:

Under the general direction of the Administrative Office of the Courts, the Presiding Municipal Court Judge and the Assignment Judge of the Vicinage, and under the immediate direction of the Municipal Court Judge, supervises and manages the various administrative and specialized clerical operations of the Municipal Court: performs specialized administrative and clerical functions as required; assists the Municipal Court Judge in any area pertaining to the court's daily operation; does related work as required.

EXAMPLES OF WORK

Supervises and is responsible for all office personnel and procedures, including administrative and finance functions of the Court Clerk's Office/Violations Bureau.

Plans and provides in-service training of personnel and oversees staff performance.

Analyzes all facts and circumstances to determine whether any laws or ordinances within the jurisdiction of the Municipal Courts have been violated, and determines whether a formal complaint should be entertained; disseminates court related information to the public, attorneys, and officials as required.

Attests to court writs, processes, commitments, search warrants, bench warrants, and subpoenas.

Secures information for the judge by contacting witnesses, attorneys, and litigants in order to obtain such data for the court.

Prepares court calendar and coordinates all parties appearances at all Municipal Court proceedings by notifying defendant, witnesses, attorneys, police officers, etc.

Arranges for and assists the judge during court sessions.

Assists Municipal Court Judge in arraignment of defendants.

Calls and swears witnesses at trial of cases.

Stores, safeguards and maintains all exhibits admitted into evidence during trial.

Receives and disburses bail, fines, costs, and other monies paid into court and accounts therefore.

Maintains and/or supervises the filing of complaints, processes, and other court records, cash books, court dockets, traffic control sheets, copies of transcripts, statistical records, reports, and files, including the filing of all financial and statistical reports to various state and county agencies.

Supervises and directs the disposition of correspondence.

Provides general information to the public regarding court filing practices, scheduling of court cases, fines, and any other pertinent information as well as referrals to proper agencies or departments.

Superintends the physical condition of the court premises and maintains decorum therein.

If serving as the Violations Clerk, supervises and/or performs all relevant duties and related tasks.

Prepares correspondence.

Prepares or assists in the preparation and management of the Municipal Court budget.

Gives suitable assignments and instructions to assigned employees.

Supervises and/or performs the work involved in the establishment and maintenance or relevant records and files, including those files that may be computerized.

REQUIREMENTS

An applicant must have the following:

Education/Experience

Either: (i) a baccalaureate degree from an accredited college; or (ii) the equivalent of two years of credit from an accredited college and two years of municipal court experience; or (iii) a high school diploma or its equivalent and four years municipal court experience.

Knowledge

Thorough knowledge of the following: The laws, ordinances, rules, regulations, and procedures relating to the operations of the Municipal Court.

Court proceedings, including the taking of minutes of trials and entering them in dockets.

The form and use of trial calendars, writs, decisions, orders, rules, and other matters pertaining to the court.

The making of entries in ledgers and disbursement journals.

The preparation of clear, sound, accurate, and informative reports.

The establishment and maintenance of needed records and files.

Training techniques including the development and use of training materials and aids.

Judicial budget preparation and budget management requirements.

General accounting and statistical recordkeeping methods.

The general application of computer technology to the automation of office operations.

Ability

Ability to do the following: read, write, speak and understand English sufficiently to perform the duties of this position.

Communication may include such forms as American Sign Language or braille.

Analyze and interpret the laws, ordinances, rules, regulations,and procedures relating to the operation of the Municipal Court.

Give suitable assignments and instructions to others and supervise their work.

Attend court matters.

Prepare trial calendars, make out return cards, and sign letters, checks, writs, decisions, orders, rules, and other matters pertaining to the court.

Maintain or supervise the maintenance of financial records.

Obtain, store, record, distribute, and supervise the use of needed equipment materials and supplies.

Prepare clear, sound, accurate, and informative reports.

Establish and maintain or supervise the maintenance of records and files.

Assist in the development of plans for automation of various office operations.

Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodation is made to their known limitations. If the accommodation

cannot be made because it would cause the employer undue hardship, such persons may not be eligible.

MUNICIPAL COURT CLERK/ADMINISTRATOR III

DEFINITION:

Under the general direction of the Administrative Office of the Courts, the Presiding Municipal Court Judge, and the Assignment Judge of the Vicinage, and under the immediate direction of the Municipal Court Judge, performs the various managerial, administrative, and specialized clerical functions involved in the operation of the Municipal Court; assists the Municipal Court Judge in any area pertaining to the court's daily operation; does related work as required.

EXAMPLES OF WORK:

Analyzes all facts and circumstances to determine whether any laws or ordinances within the jurisdiction of the Municipal Courts have been violated; determines whether a formal complaint should be entertained; and disseminates court related information to the public, attorneys, and officials as required.

Attests to court writs, processes, commitments, search warrants, bench warrants, and subpoenas.

Secures information for the judge by contacting witnesses, attorneys, and litigants.

Prepares court calendar and coordinates all parties appearances at all Municipal Court proceedings by notifying defendant, witnesses, attorneys, police officers, etc.

Arranges for and assists the judge during court sessions.

Assists Municipal Court Judge in arraignment of defendants.

Calls and swears witnesses at trial of cases.

Stores, safeguards, and maintains all exhibits admitted into evidence during trials.

Receives and disburses bail, fines, costs, and other monies paid into court, and accounts therefore.

Files complaints, processes, and other court records, cash books, court dockets, traffic control sheets, copies of transcripts, statistical records, reports, and files, including the filing of all financial and statistical reports to various state and county agencies.

Provides general information to the public regarding court filing practices, scheduling of court cases, fines, and any other pertinent information as well as referrals to proper agencies or departments.

Superintends the physical condition of the court premises and maintains decorum therein.

If serving as the Violations Clerk, supervises and/or performs all relevant duties and related tasks.

Prepares correspondence.

Establishes and maintains relevant records and files, including those files that may be computerized.

REQUIREMENTS:

An applicant must have the following:

Experience

At least a high school diploma or its equivalent plus a total of two years of either college credit or administrative experience.

Knowledge

Thorough knowledge of the following: The laws, ordinances, rules, regulations, and procedures relating to the operations of the Municipal Court.

Court proceedings, including the taking of minutes of trials and entering them in dockets.

The form and use of trial calendars, writs, decisions, orders, rules and other matters pertaining to the court.

The making of entries in ledgers and disbursement journals.

The preparation of clear, sound, accurate and informative reports.

The establishment and maintenance of needed records and files.

Judicial budget preparation and budget management requirements.

General accounting and statistical recordkeeping methods.

The general application of computer technology to the automation of office operations.

Ability

Ability to do the following: Read, write, speak and understand English sufficiently to perform the duties of this position. Communication may include such forms as American Sign Language or braille.

Analyze and interpret the laws, ordinances, rules, regulations, and procedures relating to the operation of the Municipal Court.

Attend court matters.

Prepare trial calendars, make out return cards and to sign letters, checks, writs, decisions, orders, rules and other matters pertaining to the court.

Maintain financial records.

Obtain, store, record, distribute, and supervise the use of needed equipment materials and supplies.

Prepare clear, sound, accurate and informative reports.

Establish and maintain records and files.

Assist in the development of plans for automation of various office operations.

Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodation is made to their known limitations. If the accommodation cannot be made because it would cause the employer undue hardship, such persons may not be eligible.

POSITION PAPER - MINIMUM STANDARDS FOR MUNICIPAL COURT FACILITIES

It has been said many times throughout the work of the Task Force that the municipal court is truly the "Peoples Court". It warrants repetition in this subcommittee's position paper because the issues to be discussed strike at the heart of the Municipal Court System.

Chief Justice Wilentz has stated that "the majority of our citizens who come in contact with the courts do so through the municipal courts. It is thus from these courts that their impression about the administration of justice are shaped, whether for good or for ill. Yet, the municipal courts have not been given the attention or the resources to achieve that standard of fair and efficient justice for which we strive."

This paper's objective is to propose minimum standards in relation to the physical facilities of the Municipal Courts. Our goal as a Task Force is to foster and promote an atmosphere of dignity and respect for these courts. This goal cannot be achieved if we have courts currently in operation that are neglected and inadequate. Justice should be properly housed. Yet, our research reveals that approximately one out of five municipal courts is currently operating in physical facilities that can be termed unsatisfactory.

A citizen should not have to have his case tried in a courtroom adjoining the offices of an elected official. It is axiomatic that if you want to keep the courts out of politics, keep the politicians out of the courtroom. The hall of justice for serious deliberations of a court should be isolated from legislative and executive branches of government. Here in the State of New Jersey we have courtrooms in basements, old theaters, firehouse, and school gyms. One may also find pianos, pool tables,

and kitchens in our court facilities. Some facilities are not safe and are in need of repair and refurbishing. Adherence to fire and safety codes is questionable.

A court should be located so as to serve the greatest number of people in the present and in the foreseeable future, based upon the best estimates of present population, caseload, and anticipated growth. Yet we have Violations Bureaus in Court Clerks' homes, courtrooms that are cramped and antiquated, not to mention the absence of facilities for our handicapped.

Security, a relevant topic today, was not a consideration in the past. A separate position paper can be devoted entirely to this topic. We will identify minimum standards in this area.

Our current Municipal Court Manual has devoted little attention to the aforementioned areas.

The following section of this paper will focus on these issues and specify minimum and desirable standards for the courts' physical facilities, accommodations, and equipment.

MINIMUM STANDARDS:

As addressed in the introduction, this section will set forth proposed standards for municipal court facilities. Although ideally each municipality would have a separate courthouse designed and constructed in accordance with complex, uniform instructions, in reality we know this is not and cannot be the case. These standards are a result of a study and assessment of existing facilities and are offered as an effort to establish the required "basics" for every municipal court. While being sufficiently precise to establish a minimum level, they are meant to be broad enough to be interpreted according to individual situations. In most cases, these standards can with limited effort be easily incorporated into existing facilities.

The proposed standards are categorized into three sections: general, courtroom, and Clerk's Office/Violations Bureau. In some cases, desirable, in addition to minimum, standards will be offered.

GENERAL

Court Operation in Public Building: As provided by Rule 1:31-1, entire court operation, including the courtroom, Clerk's Office/Violations Bureau, judge's chambers, etc., must be located in a public building, preferably a municipal building or complex. In addition to providing increased security, arrangements such as these assist in maintaining the dignity of the court. Temporary facilities in schools, firehouses, private homes and the like should be avoided. Any exception from this standard must be approved by the Supreme Court.

Separation of Court Operation: Every effort must be made to reinforce the complete neutrality of the court operation. A distinct separation between police and court function must be made obvious. Separate entrances for the courts' offices must be provided. While the courtroom may be used for other municipal functions, the Clerk's Office/Violations Bureau shall be used solely for court business.

Judge's Chambers: A private judge's chambers for judges to conduct private research, hold conferences, handle correspondence, etc. must be provided. It is preferred that the chambers be located directly next to the courtroom with a private courtroom entrance.

Directional Signs: Signs indicating Municipal Court, Clerk's Office/ Violations Bureau, etc. shall be affixed on the exterior of the building housing these operations.

Public Rest Rooms: Public rest rooms must be provided.

Public Telephone: A public pay telephone must be provided and should be located in close proximity to the courtroom entrance.

Handicap Accommodations: Every effort should be made to provide accommodations for the handicapped, such as ramps, railings, etc. Courtrooms and other operations should be located on ground floors unless an elevator is provided.

Public Waiting Area: Every effort must be made to provide a public waiting area outside of the courtroom entrance.

Conference Rooms: Private rooms for attorney/client consultations should be provided. If such rooms are not available, efforts should be made to provide private areas.

COURTROOM:

It must be remembered that a courtroom is a symbolic extension of the concept of justice and the overall appearance must support this. In addition to the following standards, it is taken for granted that courtrooms must be kept clean, painted, and free of miscellaneous materials not intended for court use. Any condition rendering the courtroom unsightly or undignified must be rectified. Although it is acceptable, indeed desirable, that many courtrooms serve multi purposes as town meeting halls, council chambers, etc., the overall appearance must be that of a courtroom.

Entrances: The public must be provided a separate entrance to the courtroom, preferably from a public corridor clearly discernible from other public offices. The entrance must be labeled with a sign indicating "courtroom". As mentioned before, judges must be provided a private entrance to the courtroom.

Size: While information is available on required dimensions of courtrooms, for the purpose of a municipal courtroom, the size must be determined by individual requirements, i.e., case volume, scheduling patterns, etc. As mentioned below, adequate space for a bench and entire litigation area, in addition to a spectator area, must be comfortably provided. All participants in the courtroom proceedings should be able to see and to hear all activities.

Seating: Adequate seating for all participants including spectators must be provided. It is recommended that seats in the spectator area be stationary to avoid noise and pilferage problems.

Bench: A judge's platform and bench facing the courtroom and spectators must be provided. The height and area should appropriately express the role of the judge and the dignity of the court. The judge's eye level when he is seated should be higher than that of any other participant or spectator, standing or seated. An elevation of 12" to 20" is usually sufficient. The bench is to include an adequate work surface or desk area for books, papers, notes, etc., and should allow for adequate leg room. The judge's bench may be constructed in modular sections for ease in moving. A panic button or similar alarm behind the bench, wired to the police office, is recommended. A sample illustration of an acceptable judge's bench and clerk's station has been included.

A judge's chair must be provided, preferably movable and of the swivel type. It should be comfortable with proper arm and back support as it will be used for long periods of sitting.

Court Clerk's Station: A court clerk's work station similar to that of the judge's bench but on a smaller scale should adjoin the bench. It should be elevated above the litigation area but not as high as the bench (approx.

8"). For the sake of uniformity, the clerk's station should be located to the left opposite from the witness stand as one faces the bench. An adequate work surface must be provided. If sound recording is to be done by a separate operator, a desk or work station for this purpose must also be provided. Comfortable movable swivel arm chairs should be provided at these stations.

Witness Stand: A witness stand located next to the judge's bench and opposite the clerk's station must be provided. The stand should be elevated in the same fashion as the clerk's station (approx. 8"). A comfortable chair should be provided.

Counsel Tables: Two (2) separate counsel tables of standard table height are to be positioned in front of the judge's bench. At least two movable chairs should be provided at each.

Carpeting: All courtroom floors, including the bench and work station platforms, must be carpeted for noise reduction. In addition to carpeting, every additional effort should be made to minimize acoustical problems. Possibilities include drapes, drop ceilings,and other absorptive materials.

Air Conditioning and Heating System: Courtrooms must be adequately heated and air conditioned. These systems must be as quiet as possible to avoid interference with sound recording.

Lighting: Courtrooms must be adequately lighted.

Miscellaneous Courtroom Facilities: While not falling into a particular category, the following items must be included in each courtroom:

1. Exit signs for all exits.
2. Flags, both American and State, positioned behind bench.
3. Clock - prominent wall location.
4. Electrical Outlets - an adequate number located near anticipated power equipment placement.

5. Chalkboard - magnetic display type with arrangement for holding cut sheets or roll paper.

6. Sound Recording System in accordance with Administrative Office of the Courts guidelines. Wiring should be permanently installed.

7. Bulletin Board - located outside of courtroom for posting of court calendar and other notes.

Additional Considerations:

1. An amplification system (PA) may be required in larger courtrooms.

2. If space allows, a railing separating the spectators from the litigation area should be provided.

3. Increased security measures may be appropriate in particular courts. Devices such as metal detectors, closed circuit television, and steel reinforced benches are just a few examples.

COURT CLERK'S OFFICE/VIOLATIONS BUREAU:

As mentioned before, the municipality must provide adequate office space for a court clerk's office and violations bureau. One office, providing adequate space for both functions, may be sufficient in the average municipality. Larger operations may require separate offices. These operations must be accessible only to court personnel and may not be shared with other municipal functions. It is recommended that the Court Clerk's Office/Violations Bureau be located directly next to or in close proximity to the courtroom. If this is not the case, a small secure room next to the courtroom should be provided during court sessions for the payment of fines, etc. It must be remembered that these operations are extensions of the court and must be symbolic of the administration of justice. The following provides a list of additional minimum standards for these operations.

Entrances: Separate entrances with appropriate identifying signs must be provided. The office/offices must have locking doors, and aside from an emergency key, only court staff may have keys.

Size: As with the courtroom, the size of the office/offices must be determined by the individual requirements. Adequate space must be provided for each employee's work area in addition to record storage. Additional items are required as described below and must be taken into consideration for allocation of space. It is important that the office/offices provide a professional atmosphere.

Counter and Payment Window: A counter, clearly identified, must be provided for the payment of fines, etc. at the Violations Bureau. It is recommended that this counter be located in the public corridor. Secure windows with payment slots should be considered.

Record Storage: As mentioned, adequate space for record storage must be provided. Water and fire resistant, locking file cabinets are required. A fire proof safe should also be provided.

Miscellaneous: The following items must also be provided:

1. Adequate office furniture and equipment. At the minimum each employee should be provided a desk and chair.
2. Adequate phone lines.
3. Bulletin board positioned at the Violations Bureau for public viewing of violation's schedule and other notices.

Additional Consideration: These items may be desirable in particular courts:

1. Separate employee rest rooms.
2. Photocopier facilities.
3. Panic Button or similar alarm wired to police offices.

4. Separate docket rooms for larger courts.

5. Automated filing system.

6. Cash receipting machine and adequate space for same.

7. Computer rooms and terminal stations.

FUTURE PLANNING:

It must be remembered that the standards set forth have been proposed, for the most part, for existing facilities. In planning new or remodeled facilities, municipalities should expand upon these standards, taking into consideration available references on the planning and design of court facilities. Consideration must obviously be given to the future, i.e., increased work loads, expanded security, computerization, etc. In order to insure a uniformity of purpose, it is recommended that the Administrative Office of the Courts continue to play an active role in the design and approval of new court facilities. To accomplish this goal, the Committee recommends that the AOC either train an existing staff member or retain a consultant whose duty would include the review/approval of all municipal court renovations or new construction.

The adequacy of our Criminal Justice System and the quality and competency of such service is a function of the courts' accommodations for the public, the bench, the bar, litigants, and court personnel. This paper represents a first attempt to specify minimum standards for New Jersey Municipal Courts. The "Thou Shall" and "Thou Shall Not" section of this paper is meaningless without a system of accountability.

The Subcommittee on Budgets, Personnel and Space propose the following:

1. That the powers of the Assignment Judge pursuant to Rule 1:33-3 be expanded and/or clarified to encompass the methodologies required for change.

2. That the above duties and responsibilities be delegated to the Presiding Judge and Assistant Trial Court Administrator of Municipal Courts for monitor and control.

3. Adoption of Budgetary Impass procedures previously approved by the Task Force for the gradual upgrading of Court facilities.

4. Restructuring of current court visitation format to include minimum standards as adopted.

5. Based upon the visitation report, an accreditation process will be initiated. Subject to the Court's compliance to the minimum standards adopted, three levels of accreditation are proposed:

   a) Accredited-Excellent - indicates the facility is completely adequate to serve the public's needs.

   b) Accredited-Satisfactory - indicates the facility is generally adequate but with deficiencies that need correction.

   c) Not Accredited-indicates the facility fails to meet minimum standards and should not be used as a court in its present condition.

6. Consideration of passive and/or active sanctions proposed to facilitate compliance, i.e., withholding grant monies for the backlog reduction of DWI matters, list publication of non-accredited courts.

7. Any proposed renovation, redesign, or capital development of court facilities is to be reviewed, evaluated, and approved by the Assignment Judge and Administrative Office of the Courts before implementation. In order to insure a proper facility, it is further recommended that the AOC train an existing staff member or retain an architect who shall review all plans for renovation or new construction.

NEPOTISM IN THE MUNICIPAL COURTS

This is a position paper on nepotism in the municipal courts. The mandate presented to the Committee was to consider the problem of nepotism and ways to eliminate it from the municipal courts. The mandate included issues such as:

1. If restrictions are going to be placed on court employment of relatives of officials of the municipality, should such restrictions extend to all court employees or just those employees in sensitive positions? If only on those in a sensitive position, what is a sensitive position?

2. How should "Government Official" be defined?

3. What is the definition of a "relative"?

HISTORICAL BACKGROUND

Over the years it has occurred that some elected officials, have attempted to repay their patronage or political obligations by giving out jobs in the municipal court system. This has led, in some cases, to a turnover of court clerks and other personnel in the municipal court after each new election. Aside from the problem of turnover, this situation also led to unqualified people being placed in important positions in the municipal courts. Added to this actual problem is the apparent impropriety existing when a relative of the Mayor or other important official of the municipality is serving as an employee of the municipal court in that same municipality.

The committee believes that most of the actual problems will be eliminated by the educational requirements which the task force will now require of all municipal court personnel. Such educational requirements have been addressed in another position paper of this sub-committee. That paper also suggests tenure and/or the requirement that court personnel can only be removed for just cause.

Most municipal court judges are now approaching the job with a greater degree of professionalism. Municipal court judges are now being educated to the ethics of their judicial office and should and will disqualify themselves at any hint of impropriety or appearance or impropriety. While this should eliminate most of the actual problems of nepotism in the courts, the committee uniformly agreed that the appearance of impropriety was something that must also be seriously considered. It agreed that there should be a rule against nepotism in municipal courts, and the problems listed above were then considered and efforts made to develop solutions.

A GENERAL RULE AGAINST NEPOTISM

In order to assure not only the reality but also the appearance of the municipal court as an independent branch of government, the committee recommends adoption of a general rule against nepotism. That rule should be:

1. No person employed in any part of a municipal court system shall be hired if he/she is related by adoption, marriage or blood to any elected official, or other individual who has appointive or hiring authority in that municipality. It is recommended that any persons presently in the employ of any municipal court system be exempt from this prohibition.

2. It will be noted that a similar, although not as broad, prohibition applies also to the police department. By municipal court bulletin letter 5-6-77, no court clerk or deputy court clerk of a municipal court may be appointed or designated if that person has a spouse, parent or child who is or becomes a police officer serving on the police force in that municipality.

DEFINITIONS

It was agreed that the above rule include within it certain words and statements requiring definition. They are as follows:

1. The committee agreed that the prohibition apply to all employees of the municipal court irrespective of their titles. The committee decided to extend this prohibition to all court employees in order to prevent any appearance of impropriety in the staff of the courts.

2. The committee wished the prohibition to apply only to elected officials of the municipality and not to other employees of the municipality. However, since some appointive positions involve great authority, the term "or other individual who has appointive or hiring authority in that municipality" was also added. Again the committee

does not wish to eliminate from the court system qualified people who happen to to employees of the municipality who could not in any way affect the operation or appearance of the court system. For example, the suggested rule would not apply to the child of a person employed in the road department, as long as the candidate for a municipal court position was otherwise qualified.

DEFINITION OF RELATIVE

The definition of the word "relative" received considerable attention. To what degree of consanguinity should the rule reach in barring otherwise qualified persons from working for the municipal courts. The committee suggests the following definition: "Relative" means any of the following relations by adoption, marriage or blood: Spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, or first cousin.

IMPROPRIETY IN THE COURT

This proposed rule on nepotism as with any rule, cannot eliminate actual misconduct. It is the committees' opinion, however that this rule will help to eliminate the appearances of impropriety and foster greater public respect for the independence and fairness of the court system.

WAIVER OF THE RULE

Everyone understands that there are situations which will arise in the future that are not foreseeable at this time. It is agreed that on proper application to the assignment judge of the county who will review all of the facts and circumstances, that this rule may be

waived/or relaxed at his option, subject to approval by the Supreme Court. Both the application and waiver shall be filed by the Assignment Judge with the Administrative Office of the Courts consistent with the existing procedure for county employees.

NOT ADOPTED BY THE TASK FORCE.

MUNICIPAL COURT JUDGE - PRACTICE LIMITATIONS

I. INTRODUCTION

Our Chief Justice has frequently stated that Municipal Court Judges are "Judges 100% of the time." Over 300 Municipal Court Judges preside in over 500 municipal courts, each having its own individual flavor and problems because of the population located within its geographical boundries. In the larger municipalities, a relatively few Municipal Court Judges are engaged full-time in judging. By ordinance there is one prime-time Municipal Court Judge in this state with limitations on his practice that prohibit him from engaging in contested litigation. The overwhelming majority of Municipal Court Judges are part-time judges with varying degrees of activity in private practice. Nowhere is there a compendium of rules, regulations, and decisions governing the limitation of private practice by Municipal Court Judges. This paper outlines these problems facing the judge-practicing attorney and attempts to resolve them.

II. THE PROBLEM BEING ADDRESSED

There is no problem involving full-time judges. They are in fact judges 100% of the time.

The prime-time judge has all the limitations upon his practice currently imposed on the part-time judge and further is barred from becoming involved

in contested litigation. Theoretically this permits the Municipal Court Judge to maintain an office practice largely devoted to business relationships, estate planning and administration, and real estate practice, but avoids conflict of scheduling between trial court appearances as an attorney and maintenance of a court schedule as a judge. This concept further eliminates from the public awareness the role shift from opposing advocate to judge. However, problems arise even from conflicting roles in the office practice, because even there, in negotiation of business transactions and real estate closings, there is a well-recognized adversarial interest.

The part-time Municipal Court Judge-attorney presents an even greater problem. The reader is referred to Chapter X of the New Jersey Municipal Court Manual, which is reproduced with this paper as Appendix A. Essentially, the Municipal Court Judge is prohibited from:

1. Practicing in any criminal, quasi-criminal, or penal matter, whether judicial or administrative in nature, in any state or federal court, including juvenile matters.

2. Representing any party in any civil action arising out of a complaint filed in the municipal court of which he is the judge or acting judge.

3. Acting as attorney for any agency or officer of the municipality or appearing before the local governing body or any agency or officer thereof.

4. Representing any enforcement officer in private legal matters when the officer is likely to appear in his court.

5. Acting as attorney for the developer of land located in the municipality in which he serves.

6. Representing the municipality or a client in a case against the municipality, and participating in any matter in which the municipality has an interest.

Many of these limitations extend to associates of the Municipal Court Judge. Reasons for disqualification of the judge are also set forth in Chapter X of the New Jersey Municipal Court Manual and refer specifically to Rule 1:12-1 and Canon 3C of the Code of Judicial Conduct.

Underlying all of these limitations and disqualifications is the mandate of impartiality and independence. Presumably, the part-time Municipal Court Judge is permitted to practice within the boundaries of the municipality in which he sits and, except as indicated above, may practice law and represent clients among the citizenry of the municipality. Further, in representing his clients, he comes in contact with attorneys representing other clients who thereafter represent still other clients before him in the municipal court. The variations are infinite, but the range of the problem can be expressed by considering the following, where counsel is either the prosecutor or defense counsel:

1. Counsel represents the mortgagee in a real-estate transaction and Municipal Court Judge represents buyer or seller.

2. Counsel represents buyer or seller in a real estate transaction in which Municipal Court Judge represents other party.

3. Under real estate Contract of Sale, counsel represents buyer or seller who does not wish to perform and Municipal Court Judge represents other party.

4. Counsel represents insurance carrier for defendant in civil action and Municipal Court Judge represents plaintiff.

5. Counsel represents party in negotiation of matrimonial property settlement and Municipal Court Judge represents other party.

6. Counsel represents party to bitterly contested matrimonial action and Municipal Court Judge represents other party.

These situations are by no means exhaustive. The problems presented by these situations are:

1. Should existing limitations on the practice of Municipal Court Judges be extended, and, if so, how far?

2. Do the existing standards for disqualification of the Municipal Court Judge due to conflict, impropriety, or partiality, or the appearances thereof, satisfactorily maintain the requisite appearance of impartiality and independence of the Municipal Court Judge?

3. To what extent should limitations of practice and bases for disqualification extend to causes or clients involving associates of the Municipal Court Judge?

These are the problems to be addressed by this paper.

III RECOMMENDATIONS OF THE SUBCOMMITTEE

The Committee recognizes that the solution to this problem is not an easy one. It has tried to balance the good of the public with the needs of the municipal judge to have a private practice from which to make a decent living. To this end the Committee recommends the following:

1) All Municipal Court Judges who are not full-time shall not become involved in litigation. This will eliminate any overt appearance of conflict wherein the Municipal Court Judge could be in a direct adversarial confrontation with the same counsel appearing in court before him and later on a private matter in Superior Court.

2) In light of the orders in most counties cross assigning all municipal court judges to all municipalities, the Committee recommends that the Administrative Office of the Courts remind the Assignment Judges and Municipal Court Judges of the requirements of Rule 1:1-1(b), which Rule 1:15-1(b) states:

> (b) Judges of Municipal Courts. An attorney who is a judge or acting judge of a municipal court shall not practice in any criminal, quasicriminal or penal matter, whether judicial or administrative in nature, except to perform the official duties of a municipal attorney of another municipality. Nor shall he act as attorney for the municipality or any of the municipalities wherein he is serving or as attorney for any agency or officer thereof; nor practice before the governing body or any agency or officer thereof; nor be associated in the practice of law, either as "of counsel" to or as partner,

employer, employee or agent of, or office associate, with an attorney who is a member of such governing body.

3) In light of the above recommendations and because there is a strong divergence of opinion on the llimitations on practice of partners of municipal court judges under Rule 1:15-4, the Committee strongly recommends the Supreme Court review these limitations generally. Note that the Rule must be re-examined in light of Recommendation #1 (above).

The Committee recognizes that the recommendations stated above will not totally eliminate the problem. The only way to totally resolve the issue would be to move for a full-time municipal judiciary. The Committee recognizes this cannot be achieved given the present structure of appointment. Nevertheless, the Committee believes it to be a goal to work towards.

CHAPTER X

JUDICIAL ETHICS, LIMITATIONS, CONFLICTS

It is the duty of all judges, including municipal court judges, to abide by and to enforce the provisions of the Code of Professional Responsibility, the Code of Judicial Conduct and the provisions of R.1:15 and R.1:17. See R.1:18. These govern the conduct of the members of the Bar and the judges of all the courts in this State. See R.1:14. Whenever a question arises as to the propriety of any situation, these sections should be consulted first as a guide to future conduct.

The following material reviews those instances in which questions most often arise. No attempt is made to review all possible circumstances. Whenever a question is raised, the aforementioned Codes and Rules should be consulted. If a question still persists, a request for a specific ruling may then be made through the Assignment Judge or the Administrative Director of the Courts.

1. LIMITATIONS ON THE PRACTICE OF LAW

It is the view of the Supreme Court that an attorney who is required by ordinance to devote full time to judicial duties shall not practice law, pursuant to R.1:15-1. The following proscriptions regarding the practice of law apply to part-time judges generally, and to municipal court judges in particular.

R.1:15-1(c) limits the law practice of a judge or an acting judge of a municipal court. R.1:15-2 applies the same limitations to an attorney who is a clerk or a deputy clerk of the court. See also Chapter I. Under these rules, municipal court judges, acting municipal court judges and attorneys serving as clerks or deputy clerks of any court are barred from practice in any criminal, quasi-criminal or penal matter, whether judicial or administrative in nature. See *In the Matter of Joseph D. Sabato*, 76 N.J. 46, (1978), in which a municipal court judge attempted to represent his son on a speeding violation in another municipal court, thereby violating R.1:15-1(c) and Canon 2 of the Code of Judicial Conduct. The limitation is statewide and applies to practice in all state and federal courts.

The limitation extends to juvenile matters pending in the Juvenile and Domestic Relations Court and criminal matters. It does not extend to civil matrimonial matters such as temporary custody and support of a family, provided no matrimonial or domestic dispute involving any members of the family has been before either the judge or acting judge of the particular municipal court.

When a complaint has been filed in the municipal court, the judge or acting judge of that court may not thereafter represent

a party in a civil action arising out of that complaint. This limitation applies even though the complaint will be heard by another judge or acting judge of the court. This pertains, for example, to negligence actions arising out of a motor vehicle accident when a traffic complaint has been filed in the judge's court. It also applies to matrimonial matters when either spouse has filed a complaint against the other spouse in the judge's court.

Under R.1:15-1(c), a judge or acting judge is barred from acting as attorney for any municipality in which he serves, or as attorney for any agency or officer of the municipality although he may serve as a municipal attorney for another municipality.

A judge may not appear before the local governing body in which he serves, or any agency or officer thereof. In both instances, the limitation extends to representing or appearing before autonomous or semi-autonomous agencies, including regional agencies of the municipality where the judge or acting judge sits. A judge or acting judge may not be associated in practice either as a partner, employer, employee or office associate with an attorney who is a member of the local governing body.

A municipal court judge should not represent an enforcement officer on private legal matters when the officer is a local officer, or is a State enforcement officer who is likely to appear as a witness in the municipal court in which the judge presides. If the judge has or had an enforcement officer as a client, he, of course, may not sit in any matter in which that officer is a witness. Since representation of police officers may interfere with the judge's ability to perform his judicial duties, such representation should be avoided. If a judge wishes regularly to represent such officers in private legal matters, it is recommended that he consider resigning his judicial position. The Supreme Court has also indicated that a municipal court judge should refrain from representation of the PBA, not only where he sits but Statewide. Associates of the municipal court judge are also precluded.

Judges should not use their position to benefit their private clients facing charges in other municipal courts. See *In the Matter of Mark Vasser*, 75 N.J. 357 (1978), and *In the Matter of Richard V. Anastasi*, 76 N.J. 510 (1978). In accordance with this directive, municipal court judges, both past and present, are proscribed from directing their office staff in their private practice to answer the telephone with the title "judge," or acquiesing in this practice. See Advisory Opinion 55, 87 N.J.L.J. 700, October 29, 1964. Judges are also cautioned against using the title "judge" in any communication other than court business.

Advisory Opinion 167, 93 N.J.L.J. 1, January 1, 1970 indi-

cates that a municipal court judge may not act as attorney for a developer of land located in the municipality which he serves. The Opinion notes that any development requires application to some or all of the following boards or persons: planning board, board of adjustment, building inspector, and the municipal engineer. A municipal court judge, in making any such application, violates R.1:15-1(c), which prohibits municipal court judges from practice before any municipal agency or officer in the municipality where he serves as judge.

The judge may appear before a local board or agency on his own behalf, as, for example, when he seeks a variance in connection with his own property.

A judge should not represent a client in a case against the municipality nor should he represent the municipality in litigation. Thus the judge should not participate in a matter in which the municipality has an interest. Accordingly, the judge should not serve on the County Tax Board.

The Supreme Court has indicated that a municipal court judge may not serve as County Counsel or County Solicitor or on his staff.

2. OTHER LIMITATIONS APPLICABLE TO ALL JUDGES

Under R.1:17-1, judges are barred from political activity of any nature, as it is essential that the judge and the judicial office remain isolated from partisan activities or partisan pressures. Such activity includes membership in political clubs or attendance at political meetings or dinners. Judges should not contribute to political parties nor to the campaign of any candidate. The Supreme Court has indicated that the provision on the Internal Revenue tax forms providing for the designation of $1.00 of taxes for the Presidential Election Campaign Fund is an exception to the prohibition against political contributions by judges. While these prohibitions on political activities and political contributions do not apply to a judge's spouse, the judge should not permit marital assets to be used for political purposes nor should he permit the marital home to be used for political purposes. The judge should not accompany his or her spouse to a political gathering of any kind or be seen as a political advisor. *In the Matter of The Application of Ellen Gaulkin*, 69 N.J. 185 (1976). This area is extremely sensitive and if there is any doubt about a contemplated activity, it is best not to become involved.

The issue of judicial involvement in casino-related activities has been considered by the Supreme Court in *Knight v. Margate*, 86 N.J. 374 (1981). *Knight v. Margate* upheld the New Jersey Conflict of Interest Law, N.J.S.52:13D-17.2, which had restricted involvement

in specific casino-related industries by all full-time members of the judiciary, including full-time municipal court judges and municipal court judges in Atlantic City, and their associates for a period of two years following their term of office. The Supreme Court also extended this prohibition to all part-time municipal court judges. It is the view of the Administrative Office of the Courts that these limitations apply to acting municipal court judges as well. R.1:15-1(c). R.1:15-4. The Administrative Office of the Courts has also indicated that the two year post-employment restriction on casino-related activity should not be extended to the partners, associates or employees of the municipal court judges or acting judges, unless such partners, associates or employees are full-time municipal court judges or judges of the Atlantic City municipal court.

The limitations on the participation of a judge in civic, professional and charitable activities are stated in Canon 5B of the Code of Judicial Conduct, which provides that a judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. In this regard, judges may attend regular Bar Association dinners. The Supreme Court has stated that part-time municipal court judges may serve as officers, trustees or committee members of State, county or local bar associations, as the benefit to the Bar outweighs the remote possibility of dominance or impropriety. As to full-time judges, such activity is not permitted. However, judges should avoid attending PBA dinners or picnics. Municipal court judges should not serve as volunteers in Probation or Parole.

Canon 5B of the Code of Judicial Conduct provides that a judge should not allow social relationships to influence his judicial conduct or judgment, "nor should he convey or permit others to convey the impression that they are in a special position to influence him." The Supreme Court has thus directed that the following guidelines be observed by all judges whether on the bench, or recalled to judicial service with regard to testimonial or retirement functions:

(1) There shall be no testimonial or retirement functions permitted honoring a judge while the judge is still on the bench unless the function is organized, sponsored and hosted by persons or an organization related to the judiciary such as a court clerks' association, a judges' association, the judges' law clerks or former law clerks, the State Bar Association, County Bar Associations, the American Trial Lawyers' Association or a similar organization.

(2) The judge so honored may accept a gift of "nominal value"

such as: a gavel or plaque presented to the judge as an outstanding lawyer or judge; a trophy or award for activities incident to a hobby; a book; a painting; a modestly priced remembrance such as a brief case or sporting equipment and similar items.

(3) The judge may accept an award of special recognition (whether for his judicial or extra-judicial activities) such as an honorary degree from a college or university or a certificate of achievement from an organization such as the Boy Scouts, provided the award is not made in connection with a fund raising event.

(4) The testimonial or retirement function when permitted may not be a fund raising event.

(5) When a judge has retired and is no longer serving as a judge, the prohibitions set forth in these guidelines are no longer applicable.

A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court;

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of his office for that purpose, nor may he be listed as an officer, director, or trustee of such an organization in any letters or other documents used in such solicitations. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events and contribute to such organizations;

(3) A judge should not give investment advice to such an organization, nor may he serve on its board of directors or trustees if it has the responsibility for approving investment decisions.

R.1:16-2 and Canon 5C(4) deal with the general prohibition against gratuities, gifts, bequests, favors or loans. A judge shall not except any gratuity or gift either directly or indirectly from any attorney or other person who has had or is likely to have any professional or official transaction with his court. R.1:16-2. The provisions of this rule extend to court employees and employers of officers serving the courts as well. Canon 5C(4) provides that neither a judge nor a member of his family residing in his household shall accept a gift, bequest, favor or loan from anyone except as follows:

(a) A judge may accept a gift of nominal value incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) A judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) A judge or a member of his family residing in his household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before him.

"Member of his family residing in his household" is defined to mean any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family who resides in his household. Canon 5C(5).

In conjunction with the prohibition against accepting gratuities in general is the strict prohibition against accepting fees or gratuities for performing marriages. See *In the Matter of James DelMauro*, 57 N.J. 317 (1971). Judges may not accept any payment for the performance of judicial duties except the salary paid to them by the municipality. If any expenses for the purchase of special forms or supplies are incurred in the performance of marriages, these expenses should be included in the court budget and borne by the municipality rather than personally by the judge. Traditionally the performance of a marriage ceremony is an important statutory judicial duty. A judge, therefore, should not decline to perform a marriage if the ceremony is scheduled to be performed at a time and place reasonably convenient for the judge.

Occasionally a judge may be subpoenaed as a witness in litigation when he has personal knowledge of relevant facts. He then has the same duty as any other citizen to testify as to the facts. He should not testify as a character witness or as an expert witness. His position as a judge would unduly and unfairly influence the weight to be given to his testimony. See Canon 2B and Commentary thereto.

Frequently, judges may become personally interested in the introduction or passage of specific legislation. Such interest, of course, is commendable on the part of every citizen. Nevertheless, a judge's position in the judicial branch of the government prohibits him from contacting members of the Legislature either directly or indirectly. Such matters, therefore, should be referred to the Assignment Judge

or the Administrative Office of the Courts for reference to the Supreme Court.

In some instances judges have questioned Legal Services attorneys as to their right to represent clients before the court. The Supreme Court is of the view that this is not the responsibility of the judge and should not be his concern whether a person represented by a Legal Service attorney is in fact eligible for such representation. The question of eligibility for representation by a Legal Services attorney is a matter for determination by those responsible for the operation of the Legal Services offices and not the court.

It is long-standing Supreme Court policy that the spouse, members of the immediate family and close relatives of a judge shall not be employed by or asked to serve in court-related offices without prior approval of the court. The only exception to this is law secretaries and law clerks. It is important to note that this policy applies to all court-related offices, including the prosecutor's office and court-related offices located in counties other than those in which the judge serves and applies equally to municipal court judges. Assignment Judges shall report the names of judges' relatives so employed, and the date of their approval, to the Administrative Director of the Courts.

State Regulation of the Division of Alcoholic Beverage Control, N.J.A.C.13:2-23.17, provides as follows:

No license shall be held by any regular police officer, any peace officer or any other person whose powers or duties include the enforcement of the Alcoholic Beverage Law or Regulations, or by any profit corporation or association in which any such officer or person is interested, directly or indirectly, nor shall any licensee employ or have connected with him in any business capacity whatsoever any such officer or person, except that nothing herein shall prohibit a licensee from employing in a non-managerial capacity a special police officer who shall not sell, serve or deliver any alcoholic beverages.

It is the ruling of the Division of Alcoholic Beverage Control that a judge may not hold an alcoholic beverage license or be employed by any person, partnership or corporation operating a licensed alcoholic beverage business for profit. Judges may be members, officers, directors or trustees of fraternal, social or similar organizations which do not operate for private profit and which hold alcoholic beverage licenses. Of course, the judge should not sit in any case involving infractions of the liquor laws or ordinances when he is a member, officer, director or trustee of such non-profit organization.

Municipal court judges, both past and present, are proscribed from directing or acquiescing in their office staff in their pri-

vate practice answering their telephone with the designation "judge" before their names. See Opinion 55, 87 N.J.L.J. 700, October 29, 1964.

3. DISQUALIFICATION

The circumstances under which a judge must disqualify himself on his own motion from hearing a particular case are contained in R.1:12-1, which provides: The judge of any court shall disqualify himself on his own motion and shall not sit in any matter, if he

(a) is by blood or marriage the second cousin of or is more closely related to any party to the action;

(b) is by blood or marriage the first cousin of or is more closely related to any attorney in the action. This proscription shall extend to the partners, employers, employees or office associates of any such attorney except where the Chief Justice for good cause otherwise permits;

(c) has been attorney of record or counsel in the action; or

(d) has given his opinion upon a matter in question in the action; or

(e) is interested in the event of the action; or

(f) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so.

Paragraphs (c), (d) and (e) shall not prevent a judge from sitting because he has given his opinion in another action in which the same matter in controversy came in question or given his opinion on any question in controversy in the pending action in the course of previous proceedings therein, or because the board of chosen freeholders of a county or the municipality in which he is a resident or is liable to be taxed are or may be parties to the record or otherwise interested.

A party to an action has the right to move for the disqualification of the judge before trial or argument. R.1:12-2. See Advisory Opinion 375, 100 N.J.L.J. 644, July 21, 1977, which implies that a judge should disqualify himself if his partner is the brother of the municipal prosecutor. R.1:12, N.J.S.2A:15-49.

In addition to the grounds upon which a judge must disqualify himself pursuant to R.1:12-1, Canon 3C of the Code of Judicial Conduct provides the following grounds for disqualification:

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter or the judge or such lawyer has been a witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding any other interest that could be affected by the outcome of the proceeding;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as, or is in the employ of or associated in the practice of law with a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a witness in the proceeding;

The degree of relationship is calculated according to the common law. The third degree of relationship test under the common law would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, cousin, nephew, or niece's husband were a party or lawyer in the proceeding. Canon 3C(3)(a) and Commentary thereto.

A judge disqualified by the terms of Canon 3 may not avoid disqualification by disclosing on the record his interest and securing the consent of the parties. Canon 3D.

4. ADJUDICATIVE RESPONSIBILITIES

Canon 3A lists the standards that apply to a judge in the performance of his adjudicative responsibilities. They require that:

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interest, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his discretion and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard

according to law, and except as authorized by law, neither initiate nor consider ex parte other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to or the subject matter of a proceeding before him if he gives notice to the parties of the person to be consulted and the nature of the advice, and affords the parties reasonable opportunity to participate and to respond.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration.

(b) still and television camera and audio coverage of proceedings in accordance with guidelines established by the Supreme Court.

5. CONFLICTS REGARDING THE PRACTICE OF LAW

A. Municipal Attorneys

It is improper for a municipal attorney or a municipal prosecutor to represent a party in a civil action arising out of an automobile accident or a matrimonial dispute when he has prosecuted a complaint arising out of the same factual situation in the municipal court. A municipal attorney is also restricted from conducting a private criminal practice in the court of the municipality which he serves. He should also be circumspect with reference to the representation of clients in civil suits affecting the municipality. See Advisory Opinion 349, 99 N.J.L.J. 715, August 12, 1977.

Under the provisions of R.1:15-3(a), a County Prosecutor or sheriff and members of his staff shall not represent any defendant in any criminal, quasi-criminal or penal matter and thus may not represent a defendant in the municipal courts. Under paragraph (b) of this rule a municipal attorney of any municipality may not represent a defendant in the municipal court thereof except to perform his official duties, but he may represent a defendant in an inter-

municipal court if the defendant resides and the offense was allegedly committed in a municipality for which he is not the attorney. An attorney may not practice in the municipal court of the municipality in which he is a member of the governing body.

In accordance with Advisory Opinion 106, 90 N.J.L.J. 97, February 16, 1967, the County Attorney, County Solicitor, or County Counsel may not represent private clients in the municipal courts in that county. This also applies to attorneys on his staff and his law partners and attorneys employed by him. See also Advisory Opinion 204, 94 N.J.L.J. 445, May 27, 1971 and Advisory Opinion 268, 96 N.J.L.J. 1325, November 15, 1973.

Generally, a municipal attorney shall not defend an action heard in another municipality if the offense which is the subject of the action occurred in the municipality which he serves. See Advisory Opinion 370, 100 N.J.L.J. 496, June 2, 1977. He may, however, represent a defendant in an intermunicipal court if the defendant resides in and the offense was allegedly committed in a municipality for which he is not the attorney. He may not prosecute or defend a municipal employee who is a defendant in a disorderly persons offense or an indictable offense. See Advisory Opinion 394, 100 N.J.L.J. 417, May 4, 1978, and Opinion 394, 100 N.J.L.J. 417, May 4, 1978 and Opinion 400, 102 N.J.L.J. 73, July 27, 1978. If a municipal attorney represents or serves as a member of a municipal commission, he may not represent private clients before the municipal court which he serves or any municipal agency. See Opinion 374, 100 N.J.L.J. 646, July 21, 1977.

In certain limited circumstances a municipal attorney may represent a client or organization if that client or organization could be deemed autonomous in relation to the government of the municipality. Both a fire district (Opinion 292, 97 N.J.L.J. 809, October 17, 1974) and certain types of school boards (Opinion 376, 100 N.J.L.J. 698, August 11, 1977) have been deemed autonomous, but these appear to be the exception rather than the rule.

A potential for impropriety may arise when it becomes necessary for a municipal prosecutor or other member of a municipal law department to represent the interests of the municipality against its employees in municipal court actions and subsequent appeals. *Perillo et al v. Advisory Committee on Professional Ethics*, 83 N.J. 36 (1980) reviewed Opinion 423 of the Advisory Committee on Professional Ethics in a case involving the prosecution of police officers in disciplinary hearings. The Court stated that such representation would be unethical when persons reasonably familiar with the affairs of the municipality could conclude that a later conflict of interest would arise due to the close and regular cooperation between municipal police officers and municipal attorneys. See also Chapter IX.

In the event that a municipal prosecutor does not appear in

disorderly persons offenses, a law firm retained by a local enterprise frequently prosecutes these offenses, e.g., shoplifting, before the municipal court "for and on behalf of the state or municipality" pursuant to R.7:4-4(b). Such a firm shall not represent other defendants before the municipal court in question since, in the opinion of the Advisory Committee on Professional Ethics, it has a close connection with the court in view of the frequency and regularity of its appearances. R.1:15-3(b). This may be compared to the situation of a municipal prosecutor who is barred from representing defendants in the municipal court where he lives, as indicated above. Advisory Opinion No. 448, 105 N.J.L.J. 119, February 7, 1980.

B. Associates of Judges and Independent Attorneys

A municipal judge's associate, partner, employer, employee or office associate is prohibited from appearing in any criminal, quasi-criminal or penal matter within the county in which his court is located. In addition, where a municipal judge is a partner in a firm, that firm should not represent parties who are engaged in actions against the municipality served by the judge. Advisory Opinion 392, 101 N.J.L.J. 289, March 30, 1978.

These prohibitions do not bar these individuals from accepting appointment for the representation of indigents. R.1:15-4. They may also serve as a municipal attorney for another municipality. See Advisory Opinion 395 and Supplement, A.C.P.E. 99 N.J.L.J. 1153 (1976) and 100 N.J.L.J. 417, May 19, 1977.

For guidelines on what constitutes an association as per R.1:15-4 attorneys can refer to Opinion 387, 101 N.J.L.J. 113, February 9, 1978, Opinion 406, 102 N.J.L.J. 353, October 19, 1978, and Opinion 417, 102 N.J.L.J. 133, February 15, 1979.

The Supreme Court, as a matter of policy, has indicated that partners or associates of a municipal court judge should not represent clients in bastardy proceedings in any court in the county in which the judge is located. Such an attorney may handle criminal matters in any county other than that in which the municipal court judge is sitting or in any federal court even though the federal court may be located in that county. Although a judge or acting judge of a municipal court may not serve as a municipal prosecutor in any municipal court, his law partner or associate may do so in any other municipal court.

Independent attorneys are also subject to some limitations concerning conflicts. Advisory Opinion 404, 102 N.J.L.J. 205, August 31, 1978, indicates that attorneys who often represent municipal police officers in a municipal court should not represent lay defendants in that municipal court.

An independent attorney, when hired to defend municipal employees in suits arising out of their official duties, is similar in status to a municipal public defender, and therefore may represent other clients before this court. See Advisory Opinion 402, 102 N.J.L.J. 89, July 27, 1978.

In accordance with Advisory Opinion 265, 96 N.J.L.J. 1253, November 1, 1973, a municipal public defender paid by the municipality to represent indigent defendants charged with non-indictable offenses may properly represent other defendants before the municipal court and other bodies of that municipality. However, the Supreme Court has disapproved the practice of a municipal public defender representing a non-indigent in the municipal court he services after the defendant has been found to be unqualified for the services of the public defender.

In accordance with Advisory Opinion 79, 88 N.J.L.J. 460, July 15, 1965, an attorney for a local board or agency, including an autonomous or semi-autonomous agency, such as a municipal housing authority or municipal parking authority, may not represent private clients before the municipal court of that municipality. However, pursuant to Advisory Opinion 292, 97 N.J.L.J. 809, October 17, 1974, an attorney representing the board of fire commissioners of a municipality may represent a third party in a non-related action in the municipal court of the same municipality. In this case, the board of fire commissioners for the district was elected by ballot and not appointed. Also, the budget for the district was determined by referendum. The Committee held that the fire district pertains more to an autonomous body than an adjunct of the municipality and accordingly permitted its attorney to appear in the municipal court.

In Advisory Opinion 113, 90 N.J.L.J. 473, July 20, 1967, the Committee deemed it improper for an attorney who represented the local Patrolmen's Benevolent Association to appear in the municipal court of that municipality to represent defendants on complaints when a local police officer is the complainant or a witness. See also *State v. Galati*, 64 N.J. 572 (1974) and Advisory Opinion 320, 98 N.J.L.J. 857, October 9, 1975. Advisory Opinion 260, 96 N.J.L.J. 1129, September 27, 1973, states that neither an attorney who is legal advisor to a local Patrolmen's Benevolent Association nor members of his firm are precluded from appearing in the municipal court of the municipality when no member of the local Patrolmen's Benevolent Association is involved in any way. If such attorneys are associated with a municipal court judge, however, the Supreme Court policy against representation of the PBA extends to them as well. In Opinion 400 of the A.C.P.E. 102 N.J.L.J. 73, July 27, 1978, an attorney could not represent the Patrolmen's Benevolent Association and civilian defendants in the same municipal court.

Supreme Court Task Force on the Improvement of Municipal Courts

APPENDIX D

POSITION PAPERS

Committee on Traffic and Computerization

Hon. Betty J. Lester, Chairperson

PAGE

C O M P U T E R I Z A T I O N

COMMITTEE ON TRAFFIC/COMPUTERIZATION

REPORT ON THE STATUS OF TRAFFIC CASE PROCESSING AND PLAN FOR DEVELOPMENT OF A STATEWIDE TRAFFIC CASE PROCESSING SYSTEM

TABLE OF CONTENTS

INTRODUCTION

The primary task of the Committee on Traffic and Computerization is the development of a Master Plan for the automation of traffic ticket processing in New Jersey's 530 Municipal Courts.

Most traffic cases (approximately two thirds) are presently processed by some form of automation whether through service contractors such as Computil or the City of East Orange, or through the Court itself. Yet, courts continue to experience backlogs in processing and millions of dollars in revenues remain unavailable for collection.

Additionally, the current status of automation in courts has developed without overview planning. Each municipality or court has responded to its automation needs, if at all, with no requirement that the needs of other agencies for information (DMV, AOC, and/or other central agencies) be considered.

Collectively, the municipal courts comprise a massive network, with 530 member courts processing between 4-5 million tickets per year accounting for almost 100 million dollars in collected revenues annually. The traffic matters processed in the courts provide the data base through which driver

records are maintained and updated, and traffic and highway safety is monitored. As a group the courts are unique in that they are both a branch of local municipal government, as well as a part of the State Court System. Operational decisions such as funding and staffing are made at the local level, consistent with municipal resources and priorities; while other decisions which impact upon court operations are made at the State level either by Court Rule or AOC directive consistent with the need for uniformity in the administration of Justice.

Individually, the Courts are unique in that they range in size from large, busy courts operating in Urban settings handling hundreds of thousands of traffic tickets per year to small courts handling only a few tickets per month. Consequently, the impact of any particular court upon the statewide system varies with its volume. Obviously, the internal processing needs of the Courts will also differ dependant upon volume, as well as type of matter (parking or moving) to be processed.

Therefore, any development of a Master Plan for the computerization of the Municipal Courts must accommodate the following:

1. the current and future needs of the courts as they relate to internal processing giving consideration to their differences in terms of volume and type of matter handled;
2. the reliance upon the courts by other agencies for accurate information; and,
3. the need for oversight management of the courts utilizing the data they provide.

This must be accomplished while balancing valid local concerns in terms of resources available to accomplish a result which may be perceived as primarily benefiting outside agencies, with the needs of these agencies to collect accurate data for the benefit of the entire system.

CURRENT STATUS

I. Introduction

In order to determine the current status of traffic ticket processing, a questionnaire was distributed to the 530 municipal courts,[1] Three-hundred and ninety-three (393) courts responded and results were computer analyzed utilizing staff and equipment provided by the SAC unit of the State Police. Subsequently, the remaining courts were polled by telephone by members of the Committee to determine answers to specific questions and in some cases to assist with completion of the entire questionnaire. Consequently, rather complete data was available.

Statistics concerning volumes were obtained from the most recent report published by the AOC for the ten months beginning September 1, 1982 to June 30, 1983. Although the report does not cover a full year, neither the relationship among figures reported for traffic and parking cases in individuals courts, nor the relationship of volumes among the courts, varied significantly when compared to figures for the

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1. See Appendix

last full year reported (September 1, 1981 to August 31, 1982). Additionally, as the courts are constantly changing, many responses which accurately reflected the courts status at the time of reponse are now known to be different. These changes have been accounted for where they were considered to be significant.

In analyzing the data received, the Committee realized that the total number of responses by the courts to any particular question was not significant. Rather, it appeared that courts responding to any particular question were likely to be similarly situated in terms of volumes or nature of matters handled. For example, courts handling large volumes of traffic cases were more likely to indicate difficulty in case processing then were their smaller counterparts and courts handling percentagewise more moving matters were more likely to report difficulty in processing areas requiring communication with the DMV.

Consequently, all courts were again reviewed and classified according to common patterns that were detected in either total volumes and/or volumes of parking vs. moving matters processed.

Courts were also classified according to volumes of moving matters processed as follows:

CLASS		VOLUME	NO. OF COURTS
Class A	-	8,000 +	28
Class B	-	4,000 - 8,000	53
Class C	-	less than 4,000	449

All questionnaire responses were again analyzed, and discussions which follow utilize the above classifications to highlight the varied nature of the Courts to better identify problems peculiar to courts dependant upon these differences. Problem solving must follow a similar pattern.

Several patterns are apparent from an analysis of the data in this manner:

1. The majority of Municipal Courts (293 or 55%) fall into the Class IV category and handle less than 250 traffic matters per month.

   Typically, these smaller courts hold sessions weekly, bi-weekly or monthly; have few employees other than the Judge and Clerk, which employee(s) are part-time.

2. At the other extreme a small number of Municipal Courts (31 or 6%) process large volumes of traffic matters.

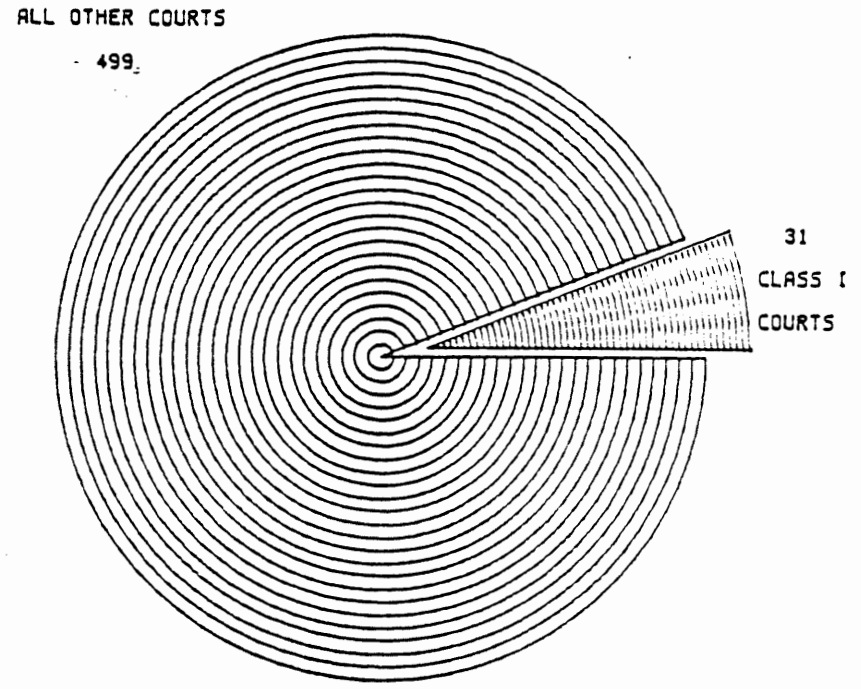
The Courts in the Class I group process in excess of 3,000 tickets per month, and in some instances such as Newark or Jersey City, between 30,000-40,000 per month.

These courts as a group process approximately 57% of the statewide volume; have an average of ten (10) employees; numerous court sessions per week; and many administrative problems. The following graph illustrates this point:

THE NUMBER OF CLASS I COURTS

IN RELATION TO

ALL 530 MUNICIPAL COURTS



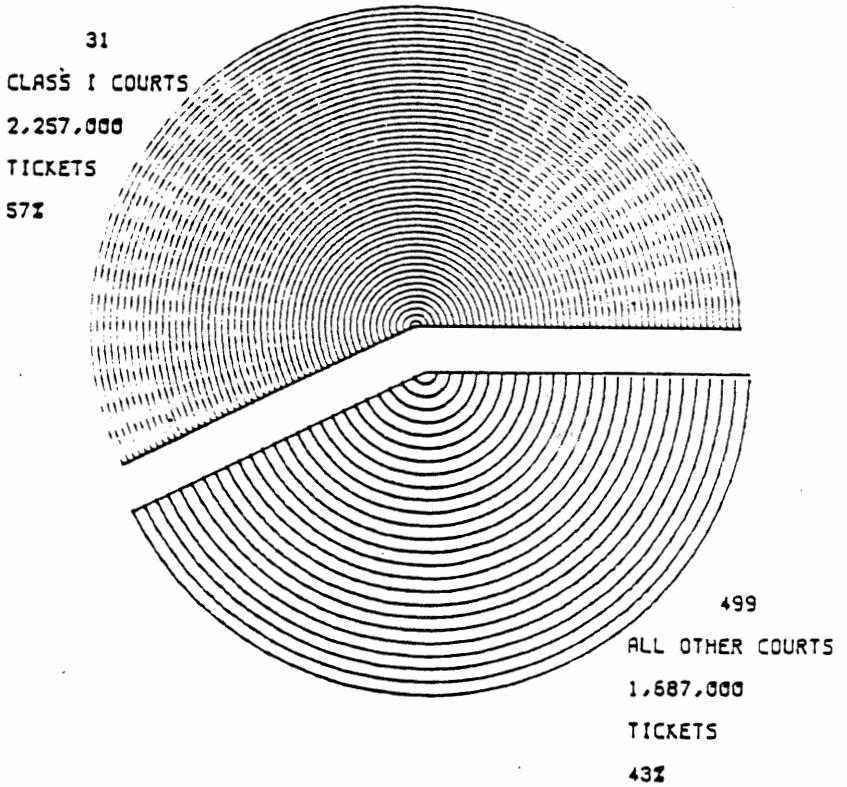
PREPARED BY: THE COMMITTEE ON TRAFFIC AND COMPUTERIZATION

THE NUMBER OF PARKING TICKETS PROCESSED BY CLASS I COURTS

IN RELATION TO

THE NUMBER OF PARKING TICKETS PROCESSED

BY ALL OTHER MUNICIPAL COURTS



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Volume Classification (cont'd)

3. In between the extremes falls the remaining 206 courts (Class II & III)

   These courts as a group process approximatley 1/4 of the statewide volume; tend to have one or more full-time employees; weekly and in some instances daily court sessions.

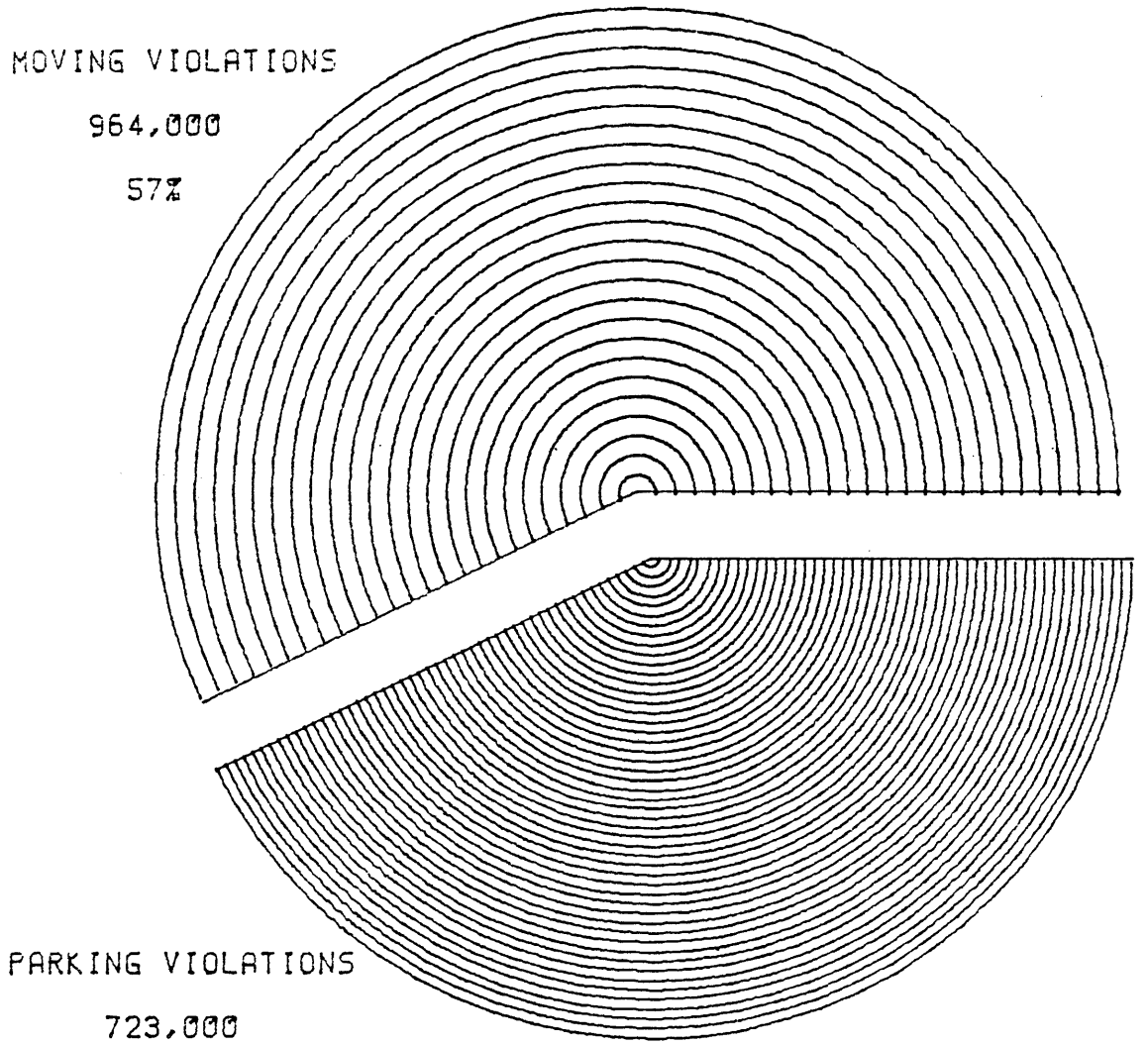
As to the nature of work handled by the courts as a whole (parking vs. moving) the following patterns appear:

1. Generally, of the almost 17-million traffic tickets issued in the four year period ending in 1983, 2/3 were for parking matters and 1/3 related to non-parking.
2. The vast majority of all parking tickets issued in the State, approximately 73%, are processed through the small percentage of courts falling into the Class I designation.
3. Conversely, the majority of municipal courts in the state process more moving matters than parking. (See following chart)

   However, those courts processing significant volumes of moving matters (above 4,000) are relatively few in number (81 Courts or 15%).

DISTRIBUTION OF MOVING AND PARKING VIOLATIONS

PROCESSED BY CLASS II, III AND IV COURTS



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III. Computerization

Of the 530 Municipal Courts, presently only eighteen (18) Courts operate "in-house" computer systems utilizing either on-line or batch mode processing.[1] Another ninety-four (94) courts have "access" to computer capability through Service Contractors (primarily Computil). Courts having "in-house" systems or "access" to computers, represent a small percentage of Municipal Courts. However, 67% of the statewide volume of traffic matters reported for the 10 month period ending June 30, 1983, was processed in Courts utilizing computers[2]. Fifteen percent (15%) by inhouse system users and 52% by Computil customers.

The following graph compares courts that use automated systems with courts that process manually.

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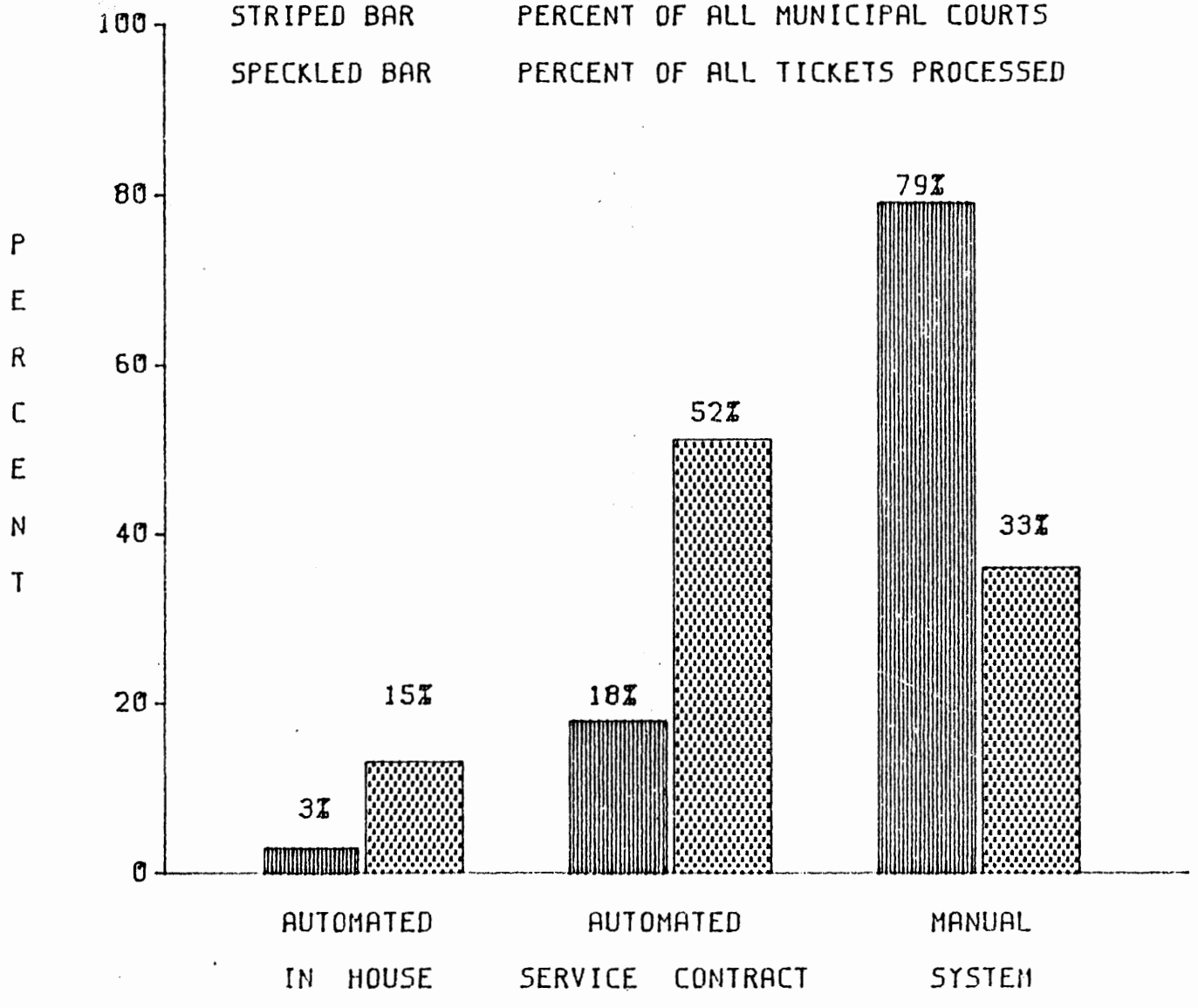
1. including Jersey City as of 10/84.
2. totals amended to reflect correct Newark statistics (+ 114,000).

COMPARISON OF COURTS THAT USE AUTOMATED VERSUS MANUAL PROCESSING SYSTEMS

PREPARED BY: THE COMMITTEE ON TRAFFIC AND COMPUTERIZATION

STRIPED BAR PERCENT OF ALL MUNICIPAL COURTS

SPECKLED BAR PERCENT OF ALL TICKETS PROCESSED



This fact is alarming when compared with the following facts:

1. 1 out of 4 traffic tickets in the state of New Jersey are not adjudicated.

   [In a report supplied by Computil for 89 courts it was serving as of 4/19/84, 1,478,642 parking tickets on its system and 211,201 moving matters were reported as not adjudicated for period up through 10/83.]

2. Courts utilizing computers report the greatest problems with traffic case processing.

Generally, with regard to computer equipment presently utilized or available in municipalities the following facts were revealed through responses to questionnaires and telephone survey:

1. among "in-house" systems, IBM mainframe or mini-computers or IMB compatible equipment was primarily utilized.
2. equipment available in municipalities (although not utilized by the courts) showed no particular pattern. Equipment ranged from main frame equipment to personal computers with a wide range of brands and model numbers.

The significance of these facts and the underlying

problems will be discussed in greater detail in the sections which follow, however, it is clear at this point that if past experience is a true indicator, increased machine capability alone will not solve the problem.

ISSUE IDENTIFICATION

I. Introduction

The Committee has analyzed the subject of traffic case processing from the vantage point of the Courts themselves; the DMV; and the AOC.

The primary means of analyzing the municipal courts was a comprehensive questionnaire which was mailed to all municipal courts in the State.

The primary means of analysis regarding the DMV involved a review of the agencies internal processes and interface with the DMV by that agencies representative to the Committee.

II. The Courts

The Municipal Courts as a group presently experience a variety of problems associated with the receipt, processing for adjudication, and disposition of traffic cases, which must be accommodated.

Responses to the three hundred and ninety three Questionnaires returned by the Courts reveal that computerized Courts are experiencing much more serious processing problems than manual Courts.

The following chart and graph indicate by Class and method (Computer vs. Manual) the response of the Courts indicating difficulty in traffic case processing.

Questionnaire responses by Class Category

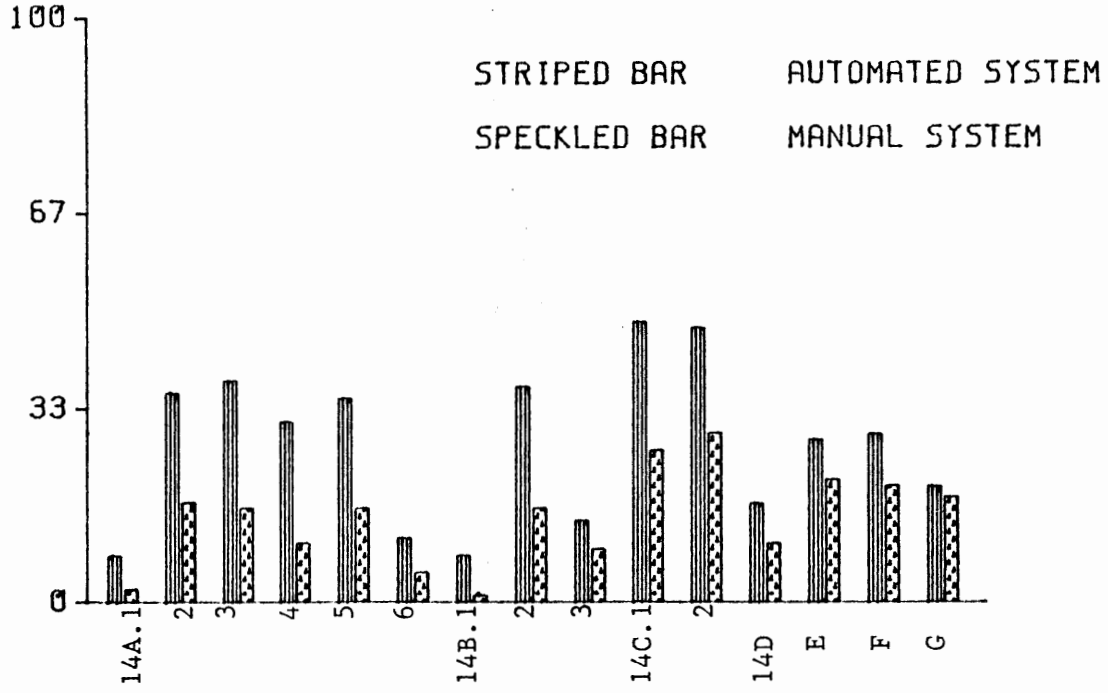
Percentage of Responding Courts in Category indicating Problem

	TOTAL	I	II	III	IV	COMPUTER	MANUAL
No. of Courts Responding	393	27	24	123	219	87	305
A. Data Entry							
1. Hardware	4%	15%	8%	6%	0%	8%	2%
2. Personnel	21%	41%	29%	32%	12%	36%	17%
3. Illegibility/	21%	41%	33%	35%	15%	38%	16%
4. Errors	15%	26%	38%	18%	10%	31%	10%
5. DMV Look Ups	20%	30%	38%	21%	17%	35%	16%
6. Other Agency Delay	6%	19%	4%	6%	5%	11%	5%
B. Disposition Maintenance							
1. Inadequate Hardware	3%	11%	4%	5%	0%	8%	1%
2. Inadequate Personnel	21%	41%	29%	28%	13%	37%	16%
3. Filing	10%	7%	8%	15%	7%	14%	9%
C. Installment							
1. Follow Up Notices	31%	52%	54%	41%	20%	48%	26%
2. Manual File	32%	52%	33%	42%	24%	47%	29%
D. Mail Payments	11%	22%	8%	15%	8%	17%	10%
E. 2nd Notice (FTA's)	22%	30%	25%	33%	16%	28%	21%
F. Warrants	22%	33%	25%	29%	16%	29%	20%
G. MF-1 Cards	18%	19%	13%	26%	14%	20%	18%

PERCENT OF PROBLEMS ENCOUNTERED WHILE PROCESSING VIOLATIONS

AUTOMATED VERSUS MANUAL SYSTEMS

PERCENTAGES ONLY INCLUDED THOSE COURTS RESPONDING TO QUESTIONAIRE



87 OF 112 COURTS USING AUTOMATED SYSTEMS RESPONDED

305 OF 418 COURTS USING MANUAL SYSTEMS RESPONDED

PREPARED BY: THE COMMITTEE ON TRAFFIC AND COMPUTERIZATION

Analysis:

The majority of Courts utilizing computers reported turn-around times between the receipt of a summons from the issuing authority and entry on computers of 1 to 7 days with 49% of the group reporting turn-around within 3 days, which is fairly consistant with data processing industry standards. It should be noted that this result was achieved fortuitously in the absence of pre-set standards.

Overall, inadequate hardware to perform data entry was not reported as a significant problem by the Courts. This result is not surprising since the majority of the Courts handle volumes capable of efficient manual processing.

Unusable data due to either illegibility or errors, inadequate personnel and DMV-look-ups were the problem areas of data entry most frequently cited by the Courts.

Illegibility of summonses was perceived as a greater problem in the three (3) higher volume categories (between 33-41%) than in the smallest courts (12%). Again, computerized Courts identified illegibility as a problem twice as often as their manual counterparts. A similar response was received with regard to errors on summonses.

This is probably due to the fact that computerized Courts are reliant upon the original summons or a copy thereof, as a data entry source document. Illegible documents cannot be entered on systems without time consuming manual verifications. Similarly, errors on summons (which may not initially be apparent) hamper DMV-look ups, result in improper notifications, and require time consuming correction processes.

Inadequate personnel was deemed a greater problem in the Class I Courts than in smaller Courts, and percentage wise twice as many computerized courts cited personnel as a problem than courts performing data entry/recording manually.

The higher volume and computerized courts indicated a greater problem with DMV-look ups (the process through which names and addresses are requested for parking tickets).

Installment Case Maintenance, was by far the processing difficulty most experienced by the Municipal Courts.

Almost 1/3 of all Courts experience difficulty with follow-up notices or cumbersome manual files relating tc Installment Case Maintenance. The problem was more pronounced in the larger Courts

and/or computerized courts with more than 50% reporting this as a problem. For a detailed discussion on this subject see this Committee's Position Paper entitled "Installment Payments."

As would be expected, since the vast majority of Courts perform traffic case processing manually, approximately 80% of the Courts responding indicated that FTA's and Warrant notices were generated manually.

FTA and Warrant noticing procedures are probably the most time consuming and nonuniformily applied functions included within traffic case processing. As previously indicated[1] a Courts inability to proceed through this process swiftly and efficiently, or at all, impacts negatively upon revenue collection, as well as the instigation of the suspension process.

Of the Courts utilizing computers, seventy-seven (77%) indicate that second notices (FTA's) and Warrant notices are generated upon request from the Violations Bureau only, rather than as a result of any automatic routine process.

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1. Traffic Case Processing Paper - Second Cycle.

The mailing functions associated with FTA's and Warrant were performed primarily by the Court through the Violations Bureau even in those Courts that are computerized or serviced by a contractor.

Of those Courts utilizing computers, 52% indicate inadequate personnel to handle clerical functions associated with processing and mailing as the primary factor impacting upon the decision to notice.

Proper utilization of existing computer capabilities should alleviate most clerical functions associated with mailing notices.

Also, indicative of underutilization of existing capabilities (or perhaps administrative policies that do not take into consideration that many Courts are computerized) is the fact that approximately 60% of the Courts utilizing computers <u>also</u> report maintaining Traffic Docket Books and/or Traffic Ticket Control records <u>manually</u>.

III. DMV

The Department of Motor Vehicles (DMV) is the sole agency within the State responsible for maintaining driver histories of moving violations committed within the State's borders whether by resident or non-resident drivers. Based upon the information available, a variety of actions may be taken against a resident driver including: 1) the assigning of "points" (which may ultimately impact upon a driver's ability to renew license or registration privileges and/or insurance rates); 2) license and/or registration suspension; 3) mandatory educational programs.

Another major function of the Division of Motor Vehicles is to process nonresident violator compact notices. The nonresident violation compact applies to those circumstances where an out of state resident living in a compact state has not appeared in a New Jersey court to answer a traffic citation. The municipality then requests the Division of Motor Vehicles to advise the home state to suspend the license until compliance is received.

As its sole source of information to accomplish the above, the DMV is absolutely and totally reliant

upon information provided to it by the 530 Municipal Courts, the vast majority of whom (whether computerized or not) communicate through a complicated assortment of paper transactions including the following:

1. MF-1 card (report of disposition). This card is completed for each moving matter disposed of either by adjudication or bail forfeiture.
2. MF-10 form (disposition of fines + forfeitures). This report indicates all fines and forfeitures collected by the Courts and distributable to the State for all traffic tickets.
3. Failure to Appear (FTA) - DMV is notified of each instance in which a New Jersey resident fails to appear in response to a moving violation which ultimately results in a notice of suspension. Before concluded, this process may involve as many as 8 separate communications between the Court, the citizen and DMV. (See Appendix for Flow Chart).
4. MF-4 card - notice by Superior Court of disposition of appeal from Municipal Court, so that the original entry may be deleted, modified or affirmed.

The DMV does not maintain histories as described above with regard to parking tickets received by a particular driver, however, as a "service" to the Municipal Courts, the DMV will notice drivers of an impending license and/or registration suspension for failure to appear in response to five (5) or more parking tickets issued within a three (3) year period of time (i.e. Scofflaw). Again, the DMV takes action totally reliant upon information supplied by 530 entities communicating manually.

Additionally, the processing of scofflaw cases requires the DMV to supply names and addresses (look-ups) for parking tickets which identify plate numbers only. All but 18 Courts make this request manually, listing only a few entries per request form; responses are in-turn supplied by DMV manually.

In order to determine problems associated with the above described interface between the Courts and the DMV, representatives to the Committee from the DMV conducted a review of the agencies internal processes related to Municipal Court activity. Courts were also polled and issues were discussed with municipal court clerks during the Municipal Court Clerks convention in November, 1983.

Problem areas identified fell within the following categories:

-Administrative - Clerical

Generally, problems in this area related to untimely transmittal of information, errors in transmission including incomplete information, and illegibility of handwritten forms.

Specifically, the culprits appear to be the MF-1 and MF-10 processes. Transmittal sheets which accompany MF-1 cards (summary which serves as an accounting cross check) often list dispositions for which no card is supplied. The reverse is also true.

DMV reports a rejection rate due to illegible, incomplete or incorrect MF-1 data of approximately 25%.

N.J.S.A. 39:5-42 requires the Courts to forward MF-1 data to the Division of Motor Vehicles within three days of disposition, however, a large number of courts are seriously delinquent in this area, including for a variety of reasons, courts that utilize computers.

The failure of many courts to separate and report fines falling into the categories for MF-10 reporting is also a problem.

The combined effect of these problems is an inaccurate data base and inaccurate financial data on DMV's end.

-Administrative - Judicial

Apparently judges are imposing less than minimum fines and/or revocations where mandatory penalties apply. Additionally, license suspensions imposed as part of a judge's sentence are not able to be accommodated by DMV procedures although not legally improper.

For example, when an individual has both an automobile and a motorcycle license and he commits a violation while operating a motorcycle, a Judge will sometimes request that only the motorcycle privileges be suspended. From DMV's perspective this violates the 'one license' concept which proposes that your driving behavior and attitude are consistent no matter what type of vehicle you are driving. Therefore, your privileges are considered in total and not separately.

-Procedural

When a Court finds an individual guilty and assesses a fine, often an installment payment plan is permitted. As payments are made, the court reports the payments to DMV on the MF-1 disposition report. The result is a duplicate posting of violation because DMV has no way of knowing that violation has already been posted. The reporting format must therefore, be changed.

From DMV's vantagepoint, the Courts appear to be unclear with regard to bail forfeiture procedures. When bail is forfeited, often Courts process same for posting as a conviction. This confusion may be caused by a combination of the following:

1) MF-1 forms are designed to accommodate "dispositions" either by virtue of a finding of guilty, not guilty or <u>bail forfeiture.</u> While a bail forfeiture would not be considered an adjudication (hence disposition) in the Court atmosphere, it is not difficult to understand why by virtue of its inclusion on this form, the Courts would think that DMV does.

2) Furthermore, policy included in the AOC manual states: "It is important to note that if the defendant has posted bail upon execution of the warrant or otherwise, and the defendant fails to appear or answer within 30 days after it was posted or on the date specified by the court, the court shall declare a forfeiture of the bail and mark the case closed. Thus the amount of the bail should be indicated on the warrant and unless the judge otherwise orders, the amount of bail in parking cases should be the amount of the penalty indicated on the violations bureau schedule plus $15.00. If the defendant does not appear as indicated, the bail is forfeited and the case marked closed."

The confusion caused by the anomaly of the "closed" case was discussed at length in a prior paper of this committee entitled Traffic Case Processing at page 14.

The short term license suspension is reported by DMV to be problematic due to the timing of the information

exchange. By the time the court responds to DMV and DMV posts the suspension, the beginning and ending dates have many times passed.

The Courts are apparently sometimes failing to notify the Division of Motor Vehicles when individuals who have been suspended for failure to appear do appear and pay their fines. These individuals often remain suspended and are subsequently cited for driving while suspended.

IV. A.O.C.

Rule 1:33-1 states that:

> "The Chief Justice of the Supreme Court shall be responsible for the administration of all courts in the State. To assist him, he shall appoint an Administrative Director of the Courts to serve at his pleasure, who shall report directly to him."

Rule 1:33-3 delineates the responsibilities of the Administrative Director as follows:

> "The Administrative Director of the Courts shall be generally responsible for the enforcement of the rules, policies and directives of the Supreme Court and the Chief Justice relating to matters of administration. At the direction of the Chief Justice and the Supreme Court, he shall promulgate a compilation of administrative rules and directives relating to case processing, records and management information services, personnel, budgeting and such other matters as the Chief Justice and Supreme Court shall direct. He also shall perform such other functions and duties as may be assigned him by the Chief Justice or by rule of the Supreme Court."

The Committee has not undertaken an analysis of the problems confronting the A.O.C. in the administration of the Municipal Court structure. It does appear, however, that there are general statements that can be made with regard to impediments that the agency has faced in the discharge of its responsibilities with regard to traffic case processing.

Probably the largest single factor hampering the administration of the Municipal Courts has been the derth of reliable information. Unfortunately, the organizational structure of the Courts makes information gathering difficult. Five hundred and

thirty (530) points of contact must be made to collect information and/or to accomplish the simplest of goals. Layer on top of this problem a lack of technology to even facilitate this communication and the problem is compounded.

Even in those instances where some data has been collected, for reasons often beyond the control of the individual courts, it is often unreliable or at best untimely. While courts are generally able to record their own transactions in some simplistic fashion, they often lack the resources and expertise required to accomplish reporting in a fashion as required by the A.O.C.

Until recent years, dialogue between the A.O.C. and the courts has been sporadic and often adversarial. This has, again, probably been due to the lack of information available to each of the actors of the impact of decisions made by each upon the other.

Additionally, the AOC has been hampered in assuming the role of spokesperson for the Courts in their dealings with the DMV. In many instances the Courts deal directly with the DMV and often must resolve problems without AOC involvement. More often than not this is to the courts disadvantage, since individually they have no ability to impact upon DMV policy decision which may be presenting a local or systemic burden.

The AOC should analyze and establish the perameters of information necessary to be recorded by the courts, specifically as it relates to traffic case processing. It should utilize technology in the collection of data once recorded (which it may then analyze as it sees fit); and should assume responsibility for implementation of future requirements.

PROBLEM SOLVING

Short Term

I. Backlog Clearance

All Municipal Courts have to varying degrees, an inability to either process, adjudicate, or collect every ticket issued in their jurisdiction. The result of these difficulties translates into backlogs and hence, lost revenues. Long term solutions to problems associated with processing and adjudication have been discussed in previous position papers of this Committee.

Prior to and in preparation for conversion to any mechanized system certain housekeeping chores should occur to ensure that the Courts begin with as clean a slate as possible. In other words, short term solutions to existing backlogs of non-adjudicated tickets must be addressed.

The Committee studied statistics for a four (4) year[1] period in order to determine the magnitude of the backlog problem in the Courts. It was felt that this period was adequate in length for statistical purposes to get a true picture and minimize the effect of issuance and disposition overlapping. It was also felt that as time passes, the ability to adjudicate or collect unpaid traffic tickets diminishes and

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1. Actually, 3 years and ten months.

therefore, an effort to handle unpaid tickets issued prior to September 1, 1979, would be substantially more difficult than efforts to dispose of those issued thereafter. It was also recognized that the impact of the parking ticket scofflaw procedure (5 or more tickets within a 3 year period resulting in suspension proceedings thru DMV) and parking ticket record destruction procedure (3 years after close out) should be realized within the four years.

The statistical data for all figures contained in this analysis was obtained from the AOC publications entitled Proceedings in the Municipal Courts for the years commencing September 1, 1979, 1980, 1981 and 1982. The basic data studied was the number of tickets issued in the jurisdiction and the number of tickets disposed of by the Courts. By definition, any ticket issued that is not adjudicated by the Court, paid thru the Violations Bureau, or otherwise reported as disposed, is a backlogged ticket and remains unpaid.

During the period studied, almost 17 million traffic tickets were issued in New Jersey. About 2/3 of the tickets were for parking and 1/3 related to non-parking traffic matters. During this same

period, more than 13 million tickets were disposed of by the 530+ municipal courts leaving almost 4 million unadjudicated. This realization that 1 out of every 4 tickets issued in the State is unadjudicated and remains unpaid summarizes the extent of the problem.

The following chart illustrates the Statewide disposition ratio for non parking matters for each of the four years.

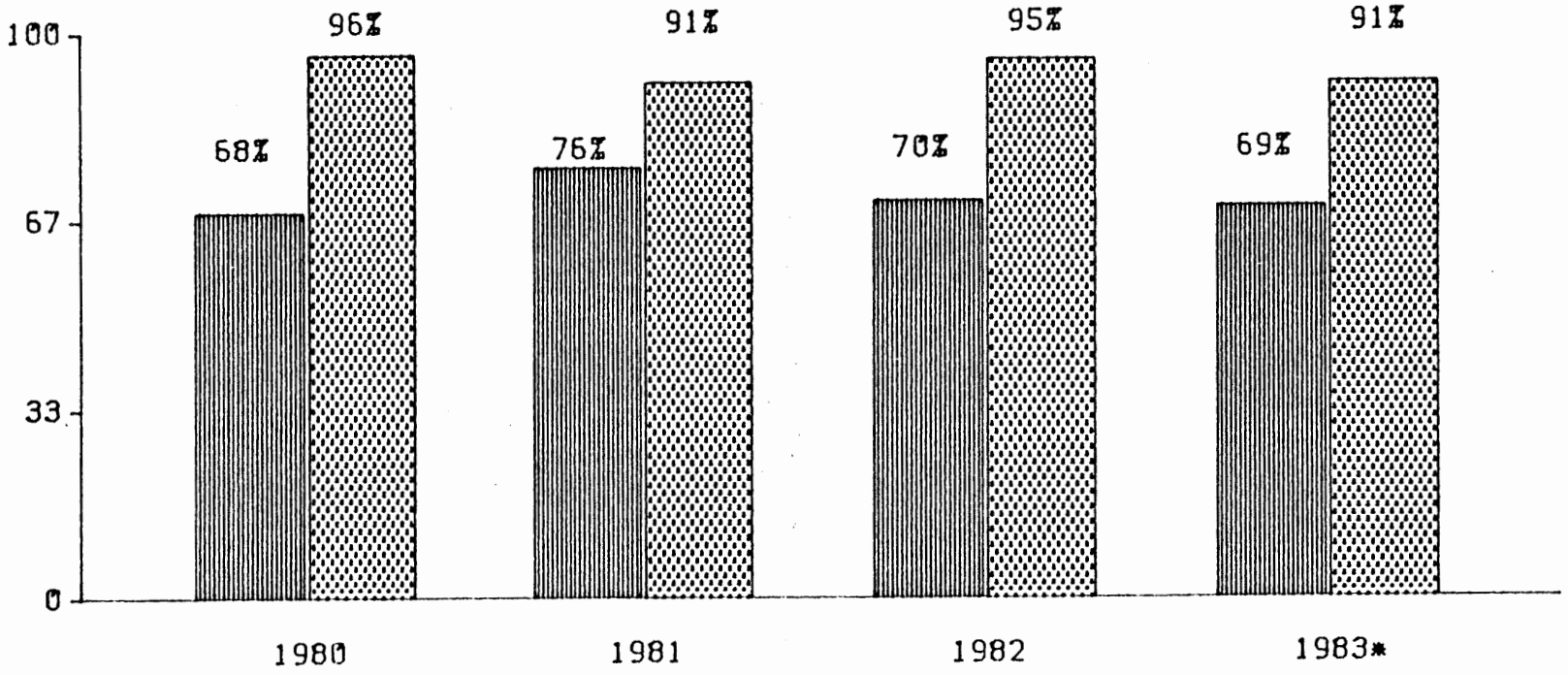
Year Ending	Tickets Issued	Tickets Disposed of	Balance	Ratio Disposed/Issued
1980	1,220,000	1,170,000	50,000	96%
1981	1,402,000	1,278,000	124,000	91%
1982	1,296,000	1,226,000	70,000	95%
1983	1,336,000	1,213,000	123,000	91%
TOTAL	5,254,000	4,887,000	367,000	93%

The following chart illustrates the Statewide disposition ratio for Parking matters for each of the four (4) years:

Year Ending	Tickets Issued	Tickets Disposed of	Balance	Ratio Disposed/Issued
1980	2,724,000	1,856,000	868,000	68%
1981	2,975,000	2,270,000	706,000	76%
1982	2,965,000	2,081,000	884,000	70%
1983	2,871,000	1,978,000	893,000	69%
TOTAL	11,536,000	8,185,000	3,351,000	71%

COMPARISON OF DISPOSITION RATIOS BETWEEN PARKING AND MOVING VIOLATIONS

FOR A FOUR YEAR PERIOD



STRIPED BAR DISPOSITION RATIO PARKING

SPECKLED BAR DISPOSITION RATIO MOVING

*(10 MONTHS)

PREPARED BY: THE COMMITTEE ON TRAFFIC AND COMPUTERIZATION

A comparison of the data presented above illustrates the wide disparity between disposition experiences in parking and non-parking matters. The 93% disposition ratio for non-parking matters is either acceptable or at least close to any realistic disposition criteria.

It is, therefore, concluded that short-term programs in the area of non parking matters are not practical in terms of the coordination efforts, and resources which would be required to accomplish same. However, recommendations previously suggested in other position papers (and later in this paper) both as to processing and enforcement can result in an improvement of the adjudication ratio for non parking and parking matters.

Further, analysis illustrates that:

1. the problem of backlogs is much more pervasive with parking tickets than with non parking matters, and
2. the statewide statistics are disproportionately contributed to by relatively few Courts.

Although there are about 530+ municipal courts in New Jersey, relatively few of them handle significant quantities of parking matters. The "25 Courts" in

municipalities where the largest numbers of parking tickets are issued, handle 2/3 of all the parking matters in the State. The "other 500+ Courts" handle only 1/3 of all the parking tickets issued in the State. More importantly, the adjudication rate for the "top 25 Courts" was only 61% for parking tickets while the other "500+ Courts" reported an adjudication rate of 90%.

The following chart illustrates the experience of the "top 25 Courts" as compared to the "other 500+ Courts" during the four (4) years studied:

	Tickets Issued	Tickets Disposed of	Balance	Ratio Disp./Iss.
"the top 25 Courts"	7,654,000	4,682,000	2,972,000	61%
"the (other) 500+ Courts"	3,882,000	3,503,000	379,000	90%
Statewide Total	11,536,000	8,185,000	3,351,000	71%

The conclusion to be drawn from this illustration is that the process is working reasonably well for "the other 500+ Courts" who do not handle a large volume of parking tickets. However, the mechanism is less successful in most of "the top 25 Courts" who are handling the largest

volume of parking tickets. Put another way, the system works worst for those who need it most.

To put things into perspective, 89% of all unadjudicated parking tickets in the State (2,972,000 of 3,351,000) are attributable to the top 25 Courts. It should also be noted that generally, the higher the issuance rate, the lower the adjudication rate reported.

Following is a listing (in descending order) of the 25 municipalities that issued the largest numbers of parking tickets during the four years studied with an analysis of their disposition experience (# of tickets issued in thousands):

Municipality	County	Tickets Issued	Tickets Disposed	Ratio Disposed/Issued	Balance
1.Jersey City	Hudson	1,554	624	40%	930
2.Newark1	Essex	1,033	616	60%	417
*3.Union City	Hudson	488	217	44%	271
o4.Hoboken	Hudson	326	139	43%	187
*5.Paterson	Passaic	303	210	69%	93
o6.East Orange	Essex	294	165	56%	129
*7.Irvington	Essex	276	153	55%	123
*8.Bayonne	Hudson	272	241	89%	31
*9.Elizabeth	Union	271	176	65%	95
10.West New York	Hudson	267	172	64%	95
*11.Hackensack	Bergen	223	177	79%	46
12.Trenton	Mercer	218	155	71%	63
*13.Atlantic City	Atlantic	207	123	59%	84
*14.Princeton Boro.	Mercer	205	172	84%	33
15.New Brunswick	Middlesex	192	120	63%	72
*16.Passaic	Passaic	186	115	62%	71
*17.Summit	Union	175	161	92%	14
18.Perth Amboy	Middlesex	171	137	80%	34
*19.Fort Lee	Bergen	171	113	66%	58
*20.Montclair	Essex	161	134	83%	27
*21.Camden	Camden	149	126	85%	23
*22.Kearny	Hudson	139	105	76%	34
o23.Bloomfield	Essex	128	112	88%	16
*24.Ridgewood	Bergen	123	112	91%	11
o25.Orange	Essex	122	107	88%	15
TOTAL		7654	4682	61%	2972

*=Using Computil services as of May, 1984.
0=Using City of East Orange processing services as of December, 1983.
1. Totals amended to reflect correct Newart Statistics (+114,)

Conclusion:

Any interim backlog program will be most efficient if:

1. it concentrates on parking matters
2. addresses processing as well as collection backlogs
3. focuses initially on those municipalities among "the top 25" that have the lower disposition ratios. If the resources exist to extend the effort beyond these courts, the same method of identifying backlog tickets can be used in descending order of volume to maximize impact of the program.

It must be noted that 19 of the 25 Courts are using service contractors for processing. At least four (4) of the remaining Courts also use computerized processing. Therefore, in many instances, the noticing process may have already been accomplished, but did not result in disposition or collection. In other instances, there may be resource problems such as data entry, etc., which make noticing an impossibility where computers are presently utilized, and hence, impact upon disposition experiences.

Therefore, any short term effort should provide

to the Courts that which is not available to them now. There is no universal panacea that will be successful in all of the Courts that are experiencing disposition difficulties, such as referring backlogged tickets to a service contractor for noticing or processing. Rather, assistance in disposition efforts, particularly as they relate to processing, must be tailored to meet the needs of the individual Courts as follows:

1. Priority should be given to issuing all 2nd notices and warrants "on the system" which for any reason had not been sent. Two approaches seem feasible. First, Courts presently utilizing service contractors, would require them to issue all eligible notices.

   Similarily, Courts which are self computerized would be required to present a plan to clear all overdue notices.

   For this suggestion to be feasible, Courts must be supplied with the resources to perform the related clerical functions. Ideally, there should be few, if any, clerical functions associated with mechanized notices, however, for the limited purpose of

backlog clearance, retaining same may be advantageous. For example, many Courts will require assistance with payment processing. It may be advantageous to manually prepare envelopes for the following reasons:

1. visually identifiable, self-addressed, return envelopes could be included, to be utilized by the citizen for payment;
2. a revised notice clearly stating the amount due and encouraging mail payment, could be inserted. Identifiable mail payments in turn are more amenable to off-site processing. Such an exercise will additionally afford an opportunity to experiment with improved forms as recommended in a previous paper to correct present deficiencies in notice design.

   Alternatively, forms technology is available and commonly used to accomplish each of the processes described. No changes in software programs would be necessary. However, forms design and acquisition is likely to be costlier and more time consuming.

Certain administrative decisions would facilitate the backlog clearance, namely:

- determining an acceptable age of tickets to be targeted and establishing criteria for the uniform disposition of old tickets.
- for the limited purpose of backlog clearance, it may be advisable to consider waiving the technical requirement that tickets which are otherwise eligible for warrant proceed first through the 2nd notice stage.

2. Tickets which have not been entered or recorded on any system require the most effort, and hence, tend to be <u>least</u> attractive to service contractors. To enhance the attractiveness of this category of backlog to a qualified vendor, tickets should probably be farmed out enmass with an attractive collection percentage permitted on a scale dependent upon age.

II. Required Enhancements-Processing and Enforcement

The need for the following enhancements in some instances has been touched upon in previous papers of this committee, but responses to the questionnaire underscored the need for further discussion.

Personnel requirements in the data processing environment

Proper staffing and personnel matters are being addressed by the Committee on Budgets Personnel and Space. Recommendations of this committee concerning uniform budget preparation and review responsibility should ensure that personnel needs are routinely reviewed.

However, should the Task Force adopt a course of action which will create a system of computer operations statewide, and particularly if data entry is to be performed locally, analysis of proper levels of staffing in a data processing environment should be considered now.

Even if a decision were made to maintain status quo, there is value to such an exercise considering the following:

1. present computer users tend to be the higher volume courts; and,

2. these courts are reporting data processing problems associated with inadequate personnel.

The integrity of information produced by any future system will depend, in large part, upon information being processed in a timely fashion. It will be important not only that uniform standards of performance be promulgated, but also that adequate staffing levels and time be allocated to process within the standards set, the work load of the Court, if future backlogs are to be avoided.

Simply put: How many employees working, how many hours must be dedicated to insure that 1,000 tickets per day (issuance rate) and 200 dispositions per day (payments) are processed within 48 hours (standard).

This Committee recommends that the Committee on Budget, Personnel, and Space consider the issue of adequate data processing personnel, job descriptions, and titles for those courts who now or will in the future, operate computers or participate in the statewide network.

Installment Case Maintenance

This Committee's questionnaire revealed that processing problems associated with Installment

Payments were widespread among all types of Courts. It was found to be the problem most often indicated by large Courts as well as smaller Courts and by automated Courts, as well as manual Courts. Therefore, the Committee decided to analyze the problem fully and has separately prepared a companion position paper on this issue with specific recommendations calling for uniform criteria, and improved manual or automated systems, as well as better enforcement tools and procedures.

DMV Look-ups

The Courts have historically relied upon the DMV to provide the names and addresses of a defendant when a parking ticket is issued to an unattended vehicle and the only identifier is the License Plate Number (look-up). Not suprisingly, the questionnaire revealed that the larger Courts had a bigger problem with this contact with the DMV than the smaller volume courts, as the large bulk of parking tickets issue out of these Courts. However, the Courts with computer capabilities, whether internal or through service contractors indicated this contact point with DMV to be a problem more than twice as often as the manual Courts. This is troublesome because the automated courts ostensibly have the ability to communicate in a more efficient manner. The manual

Courts, of course, must submit the request by form with a limited number per page. In turn, DMV must respond in a manual form.

The committee's long term recommendation is that a direct electronic linking be established between the Municipal Court and the DMV.

Under any current method of processing, and in any conceivable futuristic computerized system, there are and always will be tickets which cannot be processed because of the inability of DMV to match the data provided by the Courts with the data in its file. Hopefully, however, the number of "No hits" will be significantly decreased with the implementation of better systems and mechanization.

Presently, the biggest processing problem associated with "No hits" is the lack of a clear mechanism either by Court Rule or AOC policy, which would provide for the appropriate disposition of such tickets. It appears that Courts are currently dealing with these matters in a variety of ways.

It is recommended that a uniform procedure for disposition of "No hits" be developed and promulgated.

Summary of Prior Recommendations

Recommendations suggested in other position papers of this Committee, both as to processing and

enforcement are summarized as follows:[1]

1. A standard policy must be developed to govern the <u>return</u> of tickets to the Court by all complainants. The lack of any such guidelines has allowed a proliferation of local practices to flourish, often creating substantial delays in case processing.

2. Although questionnaire responses indicated turnaround between summons receipt and data entry within acceptable standards, it should be noted that this result was achieved fortuitously and in the absence of pre-set standards.

   Therefore, uniform standards for data entry and disposition maintenance must be promulgated and monitored by the AOC.

3. The Uniform Traffic Ticket should be revised in an attempt to produce a format which is not only consistent with present Court requirements, but, which would be conducive to use in an automated system of operation.

4. The "Court Appearance Date" should be deleted from the ticket, with the duty of setting court dates being assigned to the court alone.

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1. Traffic Case Processing Paper - Second Cycle

5. All Mandatory Court Appearances should continue to be indicated by the officer with dates scheduled only by the Court.

6. The tickets should be amended to advise the defendant of his duty to contact the Court within ten days to either pay the required fine or advise the Court of his intention to contest the matter.

   Defendants who do not respond should be renotified. Failure to respond should result in the appropriate enforcement action for either parking or non parking matters.

7. The AOC should consider grouping the offenses payable pursuant to the Statewide Violations Bureau Schedule into a limited number of groups or classes with a uniform penalty for all offenses within the category.

   By consolidating penalties, this information could be included on the summons itself and could thereby be supplied to the defendant at the time the ticket is issued.

8. It is recommended that the current system of <u>parking</u> ticket enforcement be abandoned and replaced with a more immediate and direct method of enforcement thru DMV. Upon failure to answer any parking summons, the DMV should be requested to "flag" any license or

registration application or renewal pending the satisfaction of outstanding summonses.

The concept of flagging is differentiated from revocation or suspension in that no affirmative response from DMV is required. They would refuse to renew or accept applications until the parking ticket was satisfied.

It should be noted that this mechanism of enforcement is not predicated upon personnel (i.e. police accomplishing arrests) to be effective. Rather, its effectiveness relies upon well designed systems and automated interaction between the Courts and DMV. It is contingent upon the enhancement of DMV computer capabilities and the proposed electronic linking of DMV and the Courts.

Alternative enforcement methods such as Booting, Towing, Collection Agencies or Warrants should be reserved for repeat offenders (perhaps 3 or more unanswered summonses).

Procedurally, the concept of whether a warrant should remain active until enforcement should be clarified and uniformly applied. It appears to be a viable secondary enforcement mechanism.

It is also recommended that a service contractor be utilized on a state wide basis to both process and collect out of state parking tickets.

9. It is recommended that the concept of the "close-out" should be abandoned. Conceptually, it is neither uniformly understood nor applied, and inhibits aggressive collection procedures.

   However, it is recommended that no substantive changes be made in the enforcement mechanism for <u>non parking</u> matters relating to residents. Present procedures appear to be both logical and effective.

   It is also recommended that the current enforcement mechanism relating to non-resident moving matters also be retained. As a backup mechanism, a service contractor could be utilized on a statewide basis as a collection agent.

10. Any future traffic enforcement system will undoubtedly require noticing.

    Modern uniform forms must be designed for use both internally and/or by service bureau contractors to obviate the necessity for manual functions presently being performed by Courts who are presently, or in the future

will utilize computers.

11. Almost all municipal courts have either a de facto or de jure violations bureau. Present statewide policy permits and promotes the disposition of most matters through such a bureau by a plea of guilty, a waiver of trial, or payment of a uniform penalty (either by mail or in person). It is the consensus of the Committee that this method of handling traffic cases is an efficient practice and should be continued. It is as effective as any alternative system utilized in other jurisdictions. Any problems with violations bureaus are not systemic, but rather seem to result from a lack of personnel or inefficient office procedures and/or equipment at the local level.

    Their role should be further expanded as follows:

    A. Violations bureaus should be allowed to handle an increased variety of offenses. In particular, they should be permitted to accept proof of valid documents with appropriate safeguards (i.e. license, insurance, registration) thereby allowing for the. disposition of matters which would

otherwise require the attention of the prosecutor and/or judge.

B. The use of a certification as permitted by Court Rules in lieu of notarized affidavit should be encouraged by change of the Form by the AOC. In addition, the use of such certification should be extended beyond hardship cases.

PROPOSED COMMUNICATION NETWORK

From the lengthy in depth analysis which has preceeded, it is evident that traffic case processing and enforcement in New Jersey suffers for many reasons, some of which are attributable to matters within the control of a particular agency. Where appropriate recommendations have been made to address these issues. However, the Committee has concluded that the primary problem is systemic. There is no centralization of information within the Court system and no viable mechanism for the interchange of information between the Courts and either the AOC or the DMV.

The cornerstone recommendation of this committee is that a central data bank of information relating to traffic case processing be established with the ability to transmit and receive data electronically with all municipal courts. The logical residence of this centralized data file is the AOC mainframe. The result will be a network providing for the efficient and economical interchange of information between Agencies and will permit a real enhancement of traffic case processing and revenue collection.

This recommendation has tremendous impact upon the roles of the parties involved. The AOC's role in traffic case processing becomes much more active and significant. It will act as the buffer or

clearinghouse between the individual Courts and DMV. The DMV will be able to deal with one Agency of similar statue rather than 530 separate courts. The Courts will not interact directly with DMV, but rather will be responsive to the Judiciary. The following advantages are apparent:

1. There will be a uniform processing system within the Court structure.
2. The Judiciary will have control over and access to its own information for oversight management, administration, forecasting, and planning.
3. Interagency policy decisions between DMV and the Courts can be handled at the proper level.
4. Procedural changes that affect traffic case processing involving both agencies can be more easily implemented.
5. Centralized data can be utilized to consolidate driver or registration information statewide.
6. The quality of justice will be enhanced. The present system often permits those who ignore it to escape punishment resulting in uneven justice.

Of maximum concern in any plan to interchange information is the integrity of the database, therefore, proper training of personnel in both CRT

use and basic record keeping skills is imperative. A comprehensive training package should be developed through the AOC.

A second factor to be considered is the critical area of security. Any system involving an interchange of information has security risks. The committee has considered these risks and has made certain decisions relating to the ultimate design of the system because of these considerations. However, the committee recognizes that security considerations are paramount in program design which is beyond the expertise of this Committee.

Prior to the development of software programs, the Committee recommends that the AOC undertake the development of guidelines for standardized communication including data codes[1] and record formats[2] which for the purpose of discussion will be referred to by the acronym CARS (Court ASCII Record Standard). The development of such standards are imperative where a communication network is envisioned. The ASCII (American Standard Code for Information Interchange) is referred to for the purpose of discussion in as much as the industry trend appears to be toward the utilization of this

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1. a data code can be simply described as the combination 0 and 1 used to uniquely describe a letter, number or symbol.
2. record format can be simply described as the order, length and position of data.

universal code.

During the process of software development, the possibility of a software that would be "portable"[3] to a large number of users should also be investigated, anticipating future demands by the courts for local processing capability.

The discussion which follows attempts to give recognition to the varying nature, needs and concerns of the Courts as well as provide the element of flexibility necessary to provide a smooth transition to the new system while minimizing resistance.

A flow chart included as the last page of this section visually summarizes the proposals.

I. Manual Users

Discussion

The vast majority of Municipal Courts (418 of the 530 Courts) do not use computers for processing, either directly or thru service contractors. In most cases, the volume of cases is not significant enough to justify the use of computers to perform processing functions. However, collectively these courts do process 36% of all tickets in the State and therefore, as a group impact significantly upon the system.

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3. written in languages readily adaptable to usage with a variety of hardware.

Additionally, these courts tend to handle more moving matters which in turn requires more interaction with the DMV. The DMV is particularly dependant upon accurate and timely information in this area.

For these reasons the Statewide System will benefit from the inclusion of these courts in the network. On the other hand, it is likely that there will be substantial resistance to the expense involved in any mandate regarding the installation of computer equipment and the corollary necessity that personnel be hired or trained to operate it.

Recommendation

All manual Municipal Courts should be required to electronically communicate with the AOC mainframe computer. Access codes and/or operator codes would be assigned to each Court by the AOC and access would be limited only to that courts files. The minimum hardware requirement could be realized through use of a "dumb" terminal and modem, at a minimum cost.

Systems could be upgraded when and where appropriate by use of intelligent terminals, personal or mini computers. Electronic printers would be optional.

Funding

Minimum criteria should be provided at the State's sole expense. Clear and precise criteria must be established for upgraded systems and any additional expense would be borne by the municipality.

II. Computer Users

Discussion

There are currently eighteen (18) Municipal Courts operating "in-house" computers for traffic case processing utilizing either on-line or batch mode processing.

These courts are high volume processers who have in self-defense made an investment in personnel and equipment over the years, which investment is likely to translate into a reluctance to abandon that which they now have.

Aside from the courts likely reluctance to change, there are independant and compelling reasons for maintaining the status quo in these courts which will benefit the Statewide system as well as the Courts until such time as the AOC is in the position to provide an alternative processing method.

From the Courts point of view, there is a real need to perform local processing, such as:

1. the generation of management reports and data analysis peculiar to their municipality;

2. the provision of financial reports as required by the municipality; and,
3. the ability to exchange in an efficient manner large volumes of information with local police departments.

Local processing may be a less costly processing alternative for these Courts than a proposal for on-line communication with the AOC mainframe, since utilization of telephone lines for periodic transmission is feasible and less costly. Additionally, high volume case processing is particularly vulnerable to any system down-time experienced. Local processing would tend to insulate these users from the disruption in work flow that would otherwise be experienced should they be required to operate on-line.

From the systems point of view, this small group of courts process a significant percentage of statewide volumes, which is already in an automated format, therefore capturing their data with as little disruption as possible is beneficial.

As reported previously, the computerized courts utilize primarily IBM or IBM compatable equipment and with few exceptions primarily mainframes. In spite of this equipment similarity, it is recognized that record formats and data codes for communication protocal probably differ among these users. The

differences must be taken into consideration where a communication network is envisioned.

Recommendation

In order to facilitate an early and easy entry into the Statewide system for current Computer Users "translator" programs should be considered. These programs could translate all outgoing data to comply with the CARS standard as well as translate all incoming data from the CARS standard to the local format.

It is the Committee's position that the AOC should explore the feasibility of translator programs. If translator programs prove to be not feasible, the Committee recommends that the AOC develop software programs which would replace the existing software currently being used by the computerized courts.

This solution could not only salvage local processing for current high volume computer users, but also permits in futuro conversion to local processing in Courts, where necessary, utilizing a variety of equipment which may be locally available.

Funding

The expense and development of any software programs and any equipment incidental thereto, should be funded by the State.

III. Service Contractors

The Committee recognizes that Service Contractors (primarily Computil) now handle 51% of all tickets processed in the State by servicing 94 Courts. Many of these Courts are larger courts with significant volumes of tickets. The primary role of the Contractor is to perform data entry as well as certain other processing functions relieving the court from these personnel intensive tasks.

If contractors are to continue to perform these functions, they must be permitted access to the AOC mainframe files for data entry purposes and for inquiry. This access could be accomplished through direct electronic access or by tape/disk information exchange.

Tape/Disk communication is slower and awkward, but does provide more security than direct electronic access. Currently, Tape/Disk interchange of data is permitted between the Contractors and DMV in some situations.

Direct electronic access to the AOC mainframe is quicker and more efficient. It also appears to be more cost efficient. However, it would also allow direct access to Court Data and indirect access to DMV data to non-court personnel. Systems access limited to initial data entry and inquiry is a less sensitive approach, however, editing functions

(voids, error corrections, etc.) would have to remain with the Court.

Individual Courts would have alternatives as to how they would interact with contractors and within the system:

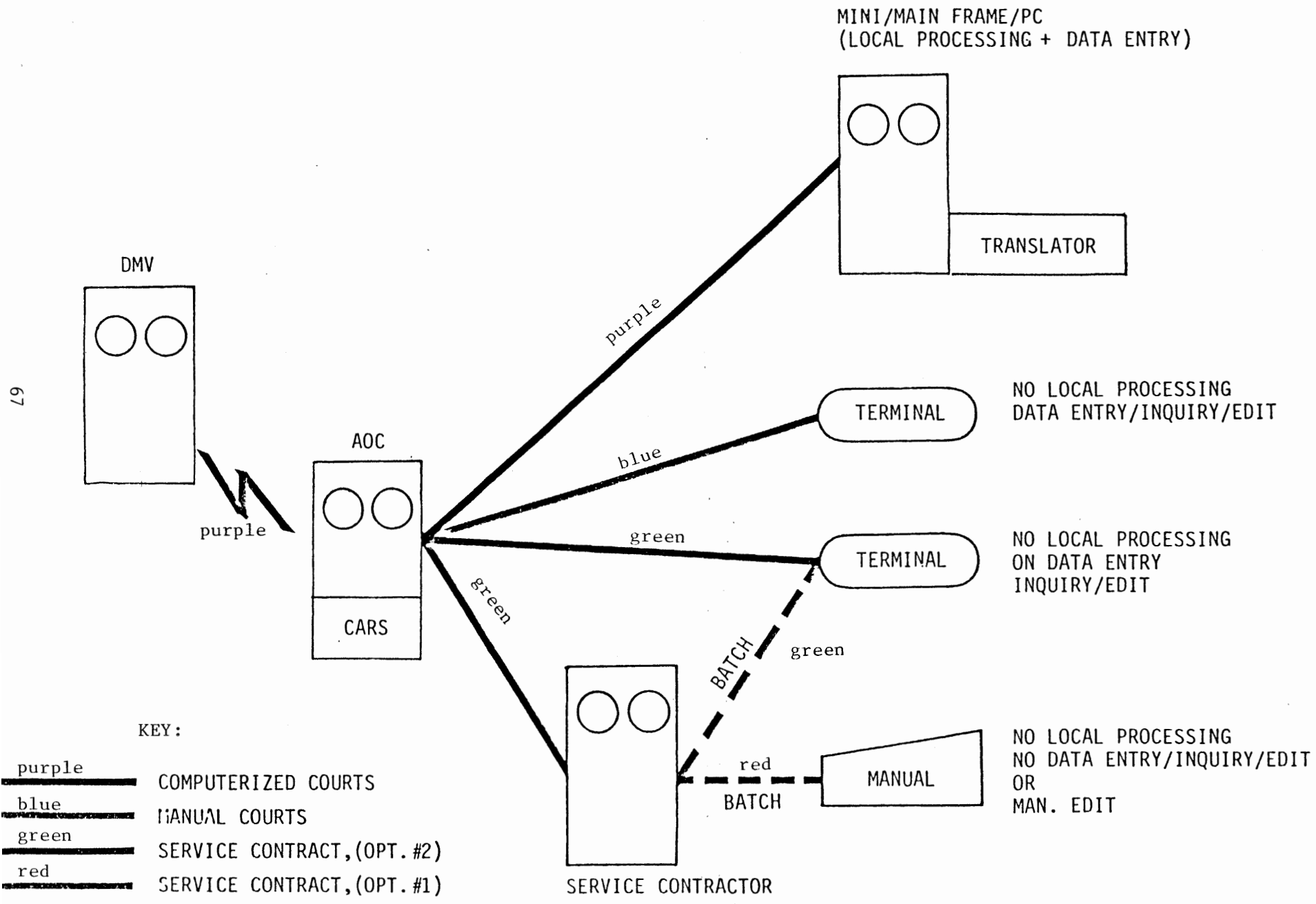
1. Certain courts will see no need for any computers, terminals or other forms of automation. They will be content to rely upon the contractors to perform all necessary data entry and other functions and will be satisfied to batch their tickets for data entry and communicate with the contractor in a manual mode as well as perform all remaining court tasks manually.
2. Other Courts will be satisfied with utilizing the Service Contractor to perform the initial data entry functions only and will require electronic access to the data for inquiry or editing. This could be accomplished by linking the court via terminal to the AOC mainframe.

Of course, some courts will see a need for on-line access to their data for inquiry and editing and will be amenable to assuming the initial data entry functions. This would eliminate the necessity of using the Service Contractor.

Funding

Service Contractors would fund their own access to the AOC mainframe including translator programs, if necessary. They are already communicating in a tape/disk mode (with DMV) and it appears that any electronic linking would be cost efficient and advantageous to them. Courts that select the first alternative providing for no electronic access have no additional costs. Courts that require linking to the AOC mainframe for inquiry and editing should be provided with the minimum standard available to all courts at State expense.

PROPOSED COMMUNICATION NETWORK



IMPLEMENTATION

While collecting the data necessary to complete the preceeding sections of this report, the Committee detected several patterns which may be of assistance in approaching the future implementation of computerization, specifically:

1. A relatively small number of counties process a large percentage of all traffic cases in the State (see following graph).
2. A relatively small number of courts within these same counties contribute greatly to total county volume.

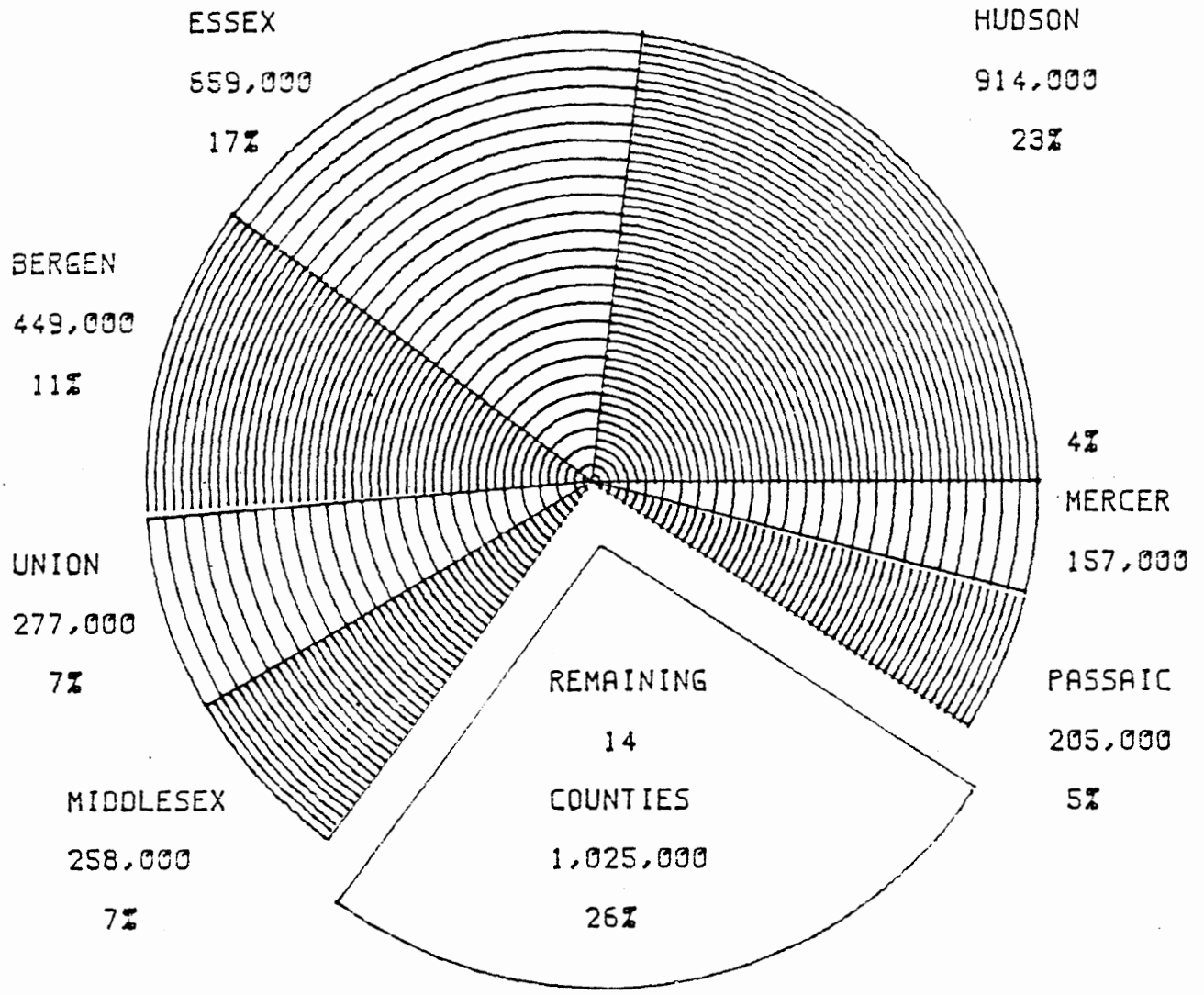
   The top 25 Courts for traffic case processing (and uncollected revenue) are included in this group, as are those courts presently operating "in house" computer systems.
3. There is a great degree of overlappage in the county and court groups described above with courts processing significant volumes of moving violations.

Recognizing that implementation may have to be accomplished in stages, this information should suggest an approach where the maximum impact can be realized most expeditiously. .

TOTAL NUMBER OF TICKETS PROCESSED IN THE TOP 7 RANKED COUNTIES

AS A PERCENTAGE OF STATEWIDE TOTALS

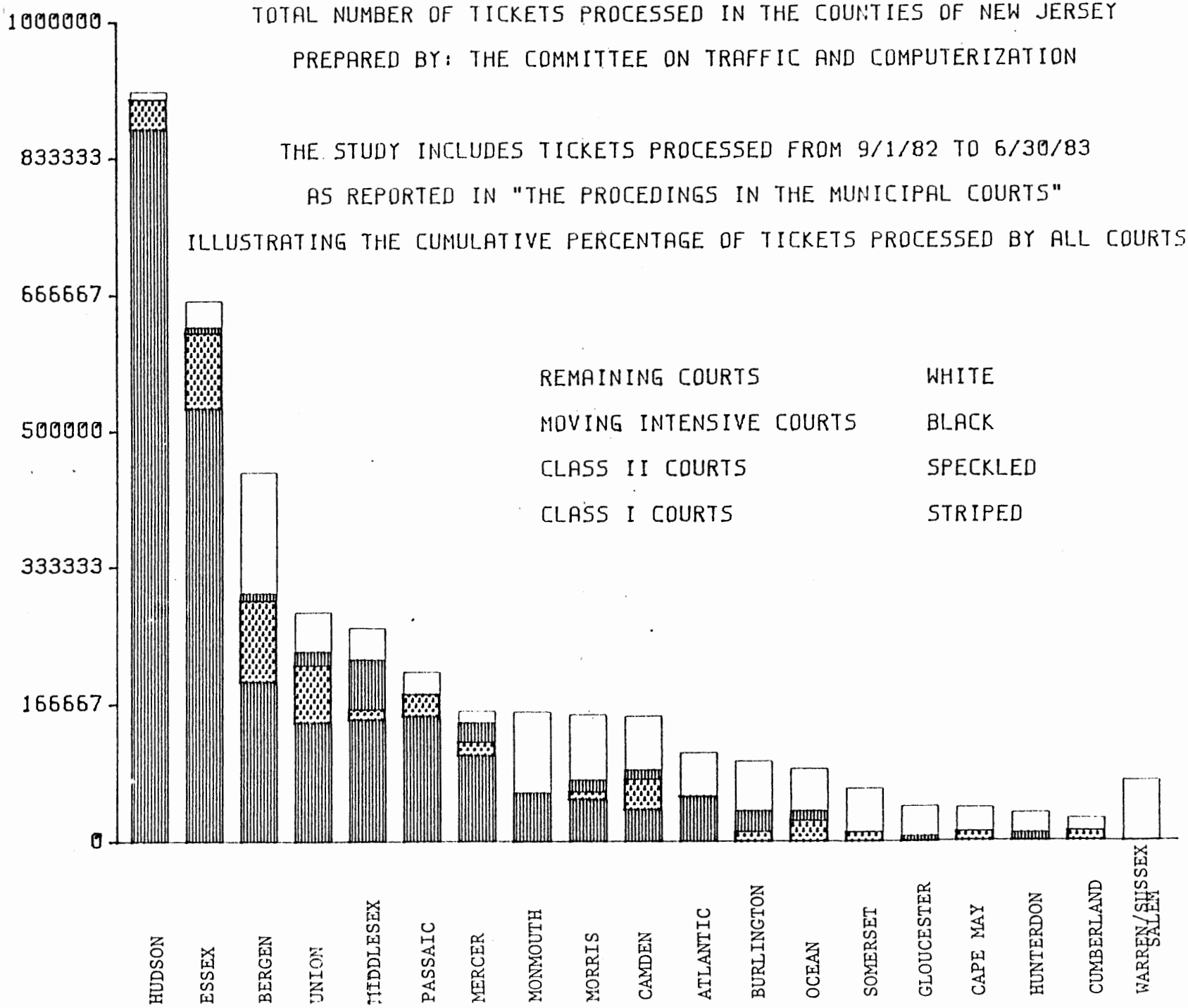
AS REPORTED IN "THE PROCEDINGS IN THE MUNICIPAL COURTS"



THE STUDY INCLUDES TICKETS PROCESSED FROM 9/1/82 TO 6/30/83

PREPARED BY: THE COMMITTEE ON TRAFFIC AND COMPUTERIZATION

The following graph illustrates the cumulative percentage of traffic matters in each county handled by Class I, Class II, and moving intensive courts. The supporting chart which follows also indicates the individual courts in the groups; the top 25 Courts; and those courts utilizing in house computers.


TOTAL NUMBER OF TICKETS PROCESSED IN THE COUNTIES OF NEW JERSEY
PREPARED BY: THE COMMITTEE ON TRAFFIC AND COMPUTERIZATION
THE STUDY INCLUDES TICKETS PROCESSED FROM 9/1/82 TO 6/30/83
AS REPORTED IN "THE PROCEDINGS IN THE MUNICIPAL COURTS"
ILLUSTRATING THE CUMULATIVE PERCENTAGE OF TICKETS PROCESSED BY ALL COURTS
REMAINING COURTS WHITE
MOVING INTENSIVE COURTS BLACK
CLASS II COURTS SPECKLED
CLASS I COURTS STRIPED
1000000
833333
666667
500000
333333
166667
0
HUDSON
ESSEX
BERGEN
UNION
MIDDLESEX
PASSAIC
MERCER
MONMOUTH
MORRIS
CAMDEN
ATLANTIC
BURLINGTON
OCEAN
SOMERSET
GLOUCESTER
CAPE MAY
HUNTERDON
CUMBERLAND
WARREN/SUSSEX
SALEM

KEY: I = CLASS I COURTS (A) = 4, or more moving %'s are cumulative

II = CLASS II COURTS (B) = 8, or more moving c = In-house computer

* = TOP 25 COURTS ALL NUMBERS EXPRESSED IN THOUSANDS

COUNTY/TOTAL VOLUME		COURT			TOTAL VOLUME	% COUNTY TOTAL
1) HUDSON - 914,	I.	JERSEY CITY*		(B)	436,	
		UNION CITY*		(A)	111,	
		HOBOKEN*			90,	
		BAYONNE*		(B)	70,	
		W. NEW YORK*			58,	
		NORTH BERGEN			38,	
		KEARNY*		(A)	33,	
		SUP.CT.(CIV)	c		30,	(866,) 95%
	II.	HARRISON	c		18	
		SECAUCUS	c	(A)	11,	
		WEEHAWKIN		(A)	11,	(906,) 99%
2) ESSEX - 659 [Total Amended to Reflect Correct Nwk. Statistics (+114,)]	I.	NEWARK*	c	(B)	266,	
		IRVINGTON*		(B)	78,	
		E. ORANGE*		(B)	69,	
		MONTCLAIR*		(B)	45,	
		BLOOMFIELD*	c	(A)	36,	
		ORANGE*			35,	(529,) 80%
	II.	BELLEVILLE			26,	
		MAPLEWOOD			13,	
		MILLBURN			10,	
		NUTLEY			12,	
		S. ORANGE			17,	
		W. ORANGE	c	(B)	15,	(622,) 94%
		CEDAR GROVE		(A)	6,	(628,) 95%

COUNTY/TOTAL VOLUME	COURT			TOTAL VOLUME	% COUNTY TOTAL
3) BERGEN - 449,	I. HACKENSACK*		(A)	49,	
	FORT LEE*		(A)	48,	
	TEANECK		(A)	30,	
	RIDGEWOOD TWP.*			32,	
	RUTHERFORD	c	(A)	32,	(191,) 43%
	II. SUP.CT. (CIV)	c	(B)	16,	
	FAIRLAWN		(A)	10,	
	CLIFFSIDE PARK			14,	
	ENGLEWOOD	c		12,	
	GARFIELD			12,	
	LODI			10,	
	LYNDHURST			13,	
	PALISADES PARK BORO			12,	(290,) 65%
	PALISADES INTERSTATE		(A)	5,	
	SADDLEBROOK		(A)	6,	(301,) 67%
4) UNION - 277,	I. ELIZABETH*		(B)	98,	
	SUMMIT*			47,	(145,) 52%
	II. RAHWAY		(A)	16,	
	UNION TWP.		(A)	15,	
	PLAINFIELD	c		17,	
	WESTFIELD			21,	(214,) 77%
	CLARK		(A)	6,	
	LINDEN	c	(A)	9,	(229,) 83%

COUNTY/TOTAL VOLUME	COURT		TOTAL VOLUME	% COUNTY TOTAL
5) MIDDLESEX - 258,	I. NEW BRUNSWICK*	(B)	64,	
	PERTH AMBOY*		51,	
	WOODBRIDGE c	(B)	31,	(146,) 57%
	II. EDISON	(B)	14,	(160,) 62%
	MADISON	(A)	5,	
	MILLTOWN	(A)	5,	
	NORTH BRUNSWICK	(A)	9,	
	PISCATAWAY	(B)	9,	
	EAST BRUNSWICK	(A)	9,	
	SAYERVILLE	(A)	9,	
	S. BRUNSWICK	(A)	6,	
	S. PLAINFIELD	(A)	6,	(218,) 85%
6) PASSAIC - 205,	I. PATERSON*	(B)	99,	
	PASSAIC*	(B)	52,	(151,) 74%
	II. CLIFTON	(A)	15,	
	WAYNE	(A)	12,	(178,) 87%

COUNTY/TOTAL VOLUME	COURT		TOTAL VOLUME	% COUNTY TOTAL
7) MERCER - 157,	I. PRINCETON*		55,	
	TRENTON* c	(B)	48,	(103,) 66%
	II. HAMILTON	(B)	16,	(119,) 76%
	HOPEWELL TWP.	(A)	5,	
	WASHINGTON TWP.	(A)	6,	
	EWING	(A)	7,	
	EAST WINDSOR TWP.	(A)	6,	(143,) 91%
8) MONMOUTH - 156,	I. NONE			
	II. NONE			
	COLTSNECK	(A)	5,	
	EATONTOWN	(A)	8,	
	FREEHOLD TWP.	(A)	6,	
	HOLMDEL	(A)	5,	
	HOWELL	(A)	7,	
	MANALAPAN	(A)	5,	
	MIDDLETOWN	(A)	9,	
	TINTON FALLS	(A)	7,	
	WALL TWP.	(A)	6,	(58,) 37%
9) MORRIS - 153,	I. MORRISTOWN		32,	(32,) 21%
	II. PARSIPPANY TROY HILLS	(B)	19,	
	ROXBURY	(B)	9,	(50,) 39%
	MT. OLIVE	(A)	6,	
	DENVILLE	(A)	8,	(64,) 48%

COUNTY/TOTAL VOLUME	COURT		TOTAL VOLUME	% COUNTY TOTAL
10) CAMDEN - 151,	I. CAMDEN*	(A)	38,	(38,) 25%
	II. CHERRY HILL	(B)	19,	
	PENNSAUKEN TWP.	(B)	10,	
	WINSLOW TWP.	(B)	8,	(75,) 50%
	GLOUCESTER TWP. c	(B)	12,	(12,) 57%
11) ATLANTIC - 106	I. ATLANTIC CITY*		55,	(55,) 51%
	II. NONE			
	GALLOWAY	(B)	8,	
	HAMILTON	(B)	8,	
	EGG HARBOR TWP.	(B)	8,	(24,) 75%
12) BURLINGTON - 96,	I. NONE			
	II. MT. LAUREL	(B)	11,	(11,) 12%
	BURLINGTON TWP.	(A)	5,	
	MANSFIELD TWP.	(B)	8,	
	BORDENTOWN TWP.	(A)	6,	
	WEST HAMPTON	(A)	7,	(76,) 38%

COUNTY/TOTAL VOLUME	COURT			TOTAL VOLUME	% COUNTY TOTAL	
13) OCEAN - 87,	I. NONE					
	II. DOVER	c	(B)	24,	(24,)	28%
	BRICK TWP.		(A)	6,		
	LAKEWOOD	c	(A)	6,	(36,)	42%
14) SOMERSET - 63,	I. NONE					
	II. BRIDGEWATER TWP.		(B)	11,	(11,)	17%
15) GLOUCESTER - 41,	I. NONE					
	II. NONE					
	DEPTFORD TWP.		(A)	5,	(5,)	13%
16) CAPE MAY - 40,	I. NONE					
	II. OCEAN CITY		(A)	11,	(11,)	27%

COUNTY/TOTAL VOLUME	COURT			TOTAL VOLUME	% COUNTY TOTAL
17) HUNTERDON - 33,	I. NONE				
	II. NONE				
	HUNTERDON INTER.		(A)	9,	(9,) 27%
18) CUMBERLAND - 26,	I. NONE				
	II. VINELAND	c	(B)	11,	(11,) 43%
19) WARREN - 26,	I. NONE				
	II. NONE				
20) SUSSEX - 24,	I. NONE				
	II. NONE				
21) SALEM - 23,	I. NONE				
	II. NONE				

A P P E N D I X

COURT _____

COUNTY _____
(Name)

COURT CODE _____

1. Do you have a Violations Bureau*?
   - ☐ Yes
   - ☐ No

   *(Violations Bureau equals separate organizational structure the staff of which is either solely or primarily dedicated to the function of traffic summons processing).

2. Indicate below under the appropriate heading, the number of employees presently utilized in traffic summons processing according to title.

TITLE	NUMBER OF EMPLOYEES Civil Service	Non Civil Service
A. Court Clerk	_____	_____
B. Deputy Court Clerk	_____	_____
C. Docket Clerk	_____	_____
D. Clerk Typist	_____	_____
E. Cashier	_____	_____
F. Account Clerk	_____	_____
G. Violations Clerk	_____	_____
H. File Clerk	_____	_____
I. Assistant Violations Clerk	_____	_____
J. Data Control Clerk	_____	_____
K. Other	_____	_____

3. Type of system under which you currently process traffic summonses. (Check as many as applicable)
   - A. **Outside Service Bureau**
     - ☐ Manual
     - ☐ Batch
     - ☐ On-Line
   - B. **Processed Internally**
     - ☐ Manual
     - ☐ Batch
     - ☐ On-Line

4. Does your Court currently utilize computers for the processing of traffic summonses?
   - ☐ Yes
   - ☐ No

5. If response to No. 4 was yes, indicate by what Company/Entity services are provided. (Check as many as applicable)
   - A. ☐ Computil
   - B. ☐ City of East Orange
   - C. ☐ Other:_____ (Specify)

6. Below is a list of leading vendors of computer main frames. Does the municipality in which your court sits, own and/or lease any of these main frame computers? (Check as many as applicable).

		Own	Lease
A.	IBM	☐	☐
B.	Digital (DEC)	☐	☐
C.	Hewlett Packard	☐	☐
D.	Sperry/Univac	☐	☐
E.	Honeywell	☐	☐
F.	N.C.R.	☐	☐
G.	Wang	☐	☐
H.	Burroughs	☐	☐
I.	Datapoint	☐	☐
J.	Other:_____ (Specify)	☐	☐
K.	None		☐

7. Below is a list of leading vendors of MINIS, MICRO and PC Computers. Does the municipality in which your court sits, own and/or lease any of these MINIS, MICRO or PC computers? (Check as many as applicable).

			Own	Lease
A.	☐	IBM	☐	☐
B.	☐	Digital	☐	☐
C.	☐	Hewlett Packard (HP)	☐	☐
D.	☐	Sperry/Univac	☐	☐
E.	☐	Honeywell	☐	☐
F.	☐	N.C.R.	☐	☐
G.	☐	Wang	☐	☐
H.	☐	Burroughs	☐	☐
I.	☐	Datapoint	☐	☐
J.	☐	Apple	☐	☐
K.	☐	Tandy/Radio Shack	☐	☐
L.	☐	Other:_____ (Specify)	☐	☐
M.		None		

8. Are any of the following functions relating to traffic summons processing performed on computers?

	Yes	No	
A.	☐	☐	New Summons Data Entry
B.	☐	☐	Summons Disposition Maintenance
C.	☐	☐	Monthly Financial Reports
D.	☐	☐	Traffic Ticket Control
E.	☐	☐	Supplemental Notices (2nd Notices, Warrants)
F.	☐	☐	Docketing
G.	☐	☐	Statute/Ordinance File Maintenance
H.	☐	☐	Calendaring
I.	☐	☐	Required Statistical Reports (AOC)
J.	☐	☐	Daily Cash Reports
K.	☐	☐	Installment Accounting
L.	☐	☐	Scofflaw Listing
M.	☐	☐	MF-1 Cards
N.	☐	☐	Summons Master Filing Inquiry
O.	☐	☐	None of the above
P.	☐	☐	Other: _____ (Please Specify)

9. Do you currently maintain a Traffic Docket Book manually?
   - ☐ Yes
   - ☐ No

10. Do you currently maintain a Traffic Ticket Control Record manually?
   - ☐ Yes
   - ☐ No

11. If your Court utilizes a computerized system of processing, what is the approximate lapse of time between summons received by the Court and summons entry on computers? (Check one)
   - ☐ 1-3 days
   - ☐ 4-7 days
   - ☐ 8-14 days
   - ☐ 15-25 days
   - ☐ 26-45 days
   - ☐ More than 45 days

12. By what method does the local police authority determine the existence of outstanding warrants on traffic tickets: (Check as many as applicable)
   - A. ☐ Terminal Interface with Court's traffic system
   - B. ☐ Direct access to the Court's terminals
   - C. ☐ Computer listing
   - D. ☐ Warrants listed and forwarded manually
   - E. ☐ Other

13. Upon execution of traffic warrants (arrest), by which of the following methods are the Courts records updated: (Check one only)
   - ☐ Police enter dispositions via terminal interface
   - ☐ Police notify court; court responsible for record update

14. Are you experiencing processing difficulties in any of the following areas of traffic processing? (Check as many as applicable)
   - A. ☐ **New Summons Data Entry**
     - ☐ Inadequate hardware
     - ☐ Inadequate personnel
     - ☐ Illegibility of summons information
     - ☐ Errors on summonses
     - ☐ DMV look-ups
     - ☐ Other agency delay
   - B. ☐ **Disposition Maintenance**
     - ☐ Inadequate hardware
     - ☐ Inadequate personnel
     - ☐ Filing
   - C. ☐ **Installment Case Maintenance**
     - ☐ Follow-up notices
     - ☐ Cumbersome manual file
   - D. ☐ **Processing Mail Payments**
   - E. ☐ **Second Notice Processing (FTA's)**
   - F. ☐ **Warrant Processing**
   - G. ☐ **MF-1 Cards**

15. By which of the following methods are "Second Notices" FTA's traffic summonses generated: (Check as many as applicable).
   - A. ☐ Automatically, by computer contractor
   - B. ☐ By computer contractor upon request from Violations Bureau only
   - C. ☐ Manual follow-up
   - D. ☐ Other: _____ (Specify)

16. By which of the following methods are "Second Notices" on traffic summonses mailed: (Check one)
    - ☐ 1 Mailed directly by computer contractor
    - ☐ 2 Forwarded by computer contractor to violations bureau for mailing
    - ☐ 3 All preparation and mailing performed manually in violations bureau
    - ☐ 4 Other: _____ (Specify)

17. By which of the following methods are "Warrant Notices" on traffic summones generated: (Check as many as applicable).
    - A. ☐ Automatically, by computer contractor
    - B. ☐ By computer contractor, upon request from violations bureau only
    - C. ☐ Manual follow-up
    - D. ☐ Other: _____ (Specify)

18. By which of the following methods are "Warrant Notices" on traffic summonses mailed: (Check one only)
    - ☐ 1 Mailed directly by computer contractor
    - ☐ 2 Forwarded by computer contractor to violations bureau for mailing
    - ☐ 3 All preparation and mailing performed manually in violations bureau
    - ☐ 4 Other: _____ (Specify)

19. If "Second Notices" and "Warrant Notices" are generated upon request from violations bureau only, which of the following factors contribute to the decision to request: (Check as many as applicable).
    - A. ☐ Inadequate personnel to handle clerical functions associated with processing † mailing
    - B. ☐ Requests controlled by available bench time for scheduling
    - C. ☐ Notices issued at the convenience of computer contractor
    - D. ☐ Other: _____ (Specify)

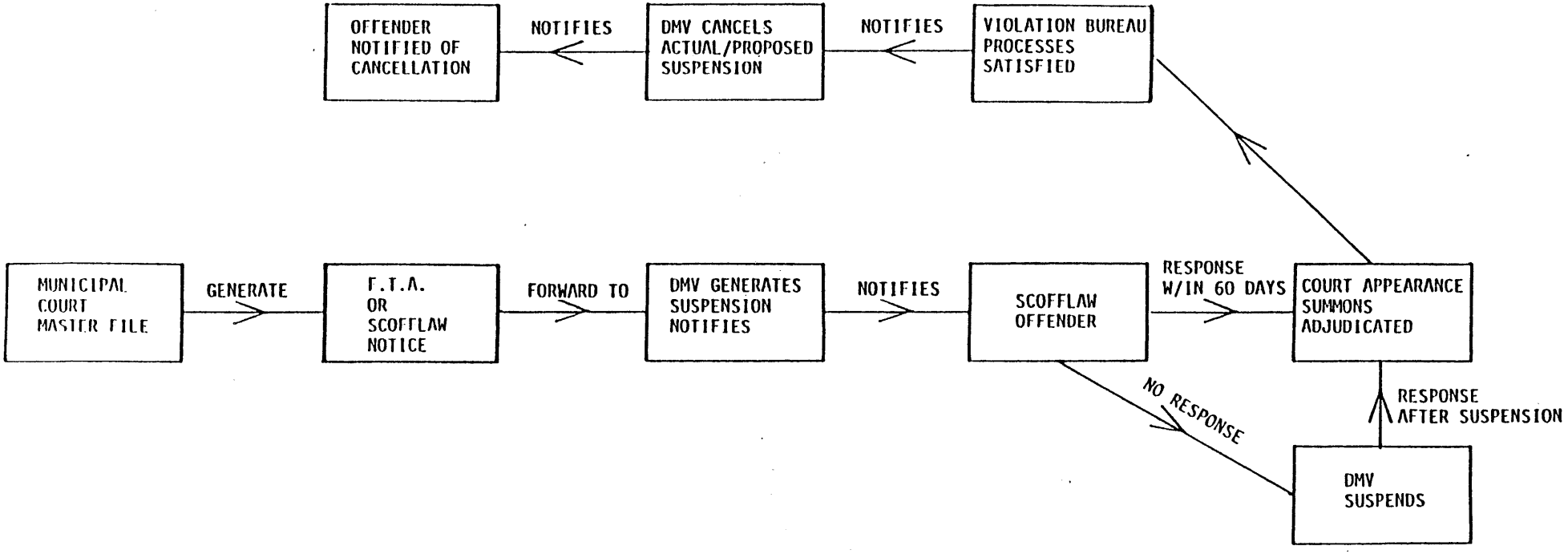
20. Are you currently utilizing the "Failure to Appear" process requesting Division of Motor Vehicles suspend license and registration privileges on individuals with five (5) or more outstanding parking summonses?
    - ☐ Yes
    - ☐ No

21. What role, if any, does your local Police Department play in pursuing Scofflaw Offenders: (Check as many as applicable).
    - A. ☐ Notice
    - B. ☐ Arrest
    - C. ☐ Towing Program
    - D. ☐ Booting Program
    - E. ☐ No Action Taken
    - F. ☐ Other: _____ (Specify)

22. Please complete the following table:
NUMBER OF TICKETS ON SYSTEM/RECORDED

	PARKING			NON-PARKING		
	1981 & Prior	1982	1983 (Prior to Oct)	1981 & Prior	1982	1983 (Prior to Oct)
A. At Warrant Stage						
B. At 2nd Notice Stage (FTA)						
C. Recorded-No Notices Sent						
D. Not Recorded						
E. (Uncollected)						

PRESENT LICENSE AND REGISTRATION SUSPENSION PROCESS



COMMITTEE ON TRAFFIC/COMPUTERIZATION

Installment Payments

The responses to this Committee's questionnaire on Traffic Case Processing indicated that problems relating to Installment Case Maintenance, either relating to follow-up notices or a cumbersome manual file, were by far the most prevalent processing difficulty. The problem appears to be widespread among all types of courts whether large or small, among traffic-intensive courts and parking-intensive courts. Inherent in the processing problems are collection problems.

Following is a summary of the law and policies that guide this area:

1. The 1971 Supreme Court decision of State v. DeBonis, 58 N.J. 182, held that "[i]f a defendant is unable to pay a fine at once, he shall upon showing of that inability, be afforded an opportunity to pay the fine in reasonable installments consistent with objective of achieving the punishment the fine is intended to inflict." Id. at 199.

   The case further holds that a fine is intended to punish, and that imprisonment upon nonpayment of fine is substituted punishment and not a device for collection. Only if a defendant who is afforded an opportunity to pay in installments fails to make the payments can he be recalled for sentence reconsideration, which can then be a reduction or suspension of the fine, modification of the installment plan, or a jail term. However, a defendant may not be incarcerated for such nonpayment unless it clearly appears that he is able to pay but unwilling to do so.

2. N.J.S.A. 2C:46-1 to -5 substantially morrors the Court's findings in State v. DeBonis.

3. The AOC Municipal Court Manual requires: "If a defendant states that he is unable to pay the fine all at once, the judge shall question the defendant regarding his ability to pay the fine and shall have the defendant complete in full an application to Establish Indigency (5A)."

There are no published guidelines for the judge to use in his determination of indigency, nor are there any clear criteria to use to correlate "an inability to pay in full at once" with an establishment of indigency. It is often fruitless to order an indigent defendant to make installment payments. Conversely, many persons who are clearly not indigent need only time to make the payments. They simply do not have sufficient liquid assets with them.

4. N.J.S.A. 2A:8-31.1 provides for substituted punishment for defendants who default in payments by placing them in a municipal work program. The program is not available until after default.

5. N.J.S.A. 39:4-203.2 provides for suspension of a defendant's drivers license for failure to comply with an installment payment order. This statute applies only to moving traffic matters, not to parking matters or criminal cases.

Discussion

With the advent of large minimum mandatory penalties relating to many traffic offenses and mandatory penalties relating to all 2C violations (primarily the VCCB penalty), the use of installment payment orders has

mushroomed. Compounding the problems are the increased penalties for the more serious traffic matters such as No Insurance, Revoked, or DWI.

The current system requires that in every instance in which a defendant states that he is unable to pay in full at once, the judge question the defendant regarding his ability to pay the fine, and require the defendant to complete in full an application to establish indigency. It appears that it is at this early stage that most problems occur and at which they can be avoided:

1. If the court concludes that a defendant is unable to pay in full at once but is able to pay in installments, it is meaningless to have him complete the 5A form (Establishing indigency).
2. If, after questioning the defendant and review of the 5A form, the court concludes that the defendant appears to be indigent, there is no way to verify the information. It must be understood that unlike a bail application in which a phone call can be made to verify employment, there is no readily available mechanism by which to discover if the defendant is unemployed or has money in banks but is not disclosing these facts. Assuming the court is satisfied that the defendant is indigent, the court is obligated to order the defendant to make payments in installments (if the penalty is mandatory) even though it may be obvious to both the court and the defendant that the penalty can not and will not be paid. There are no available alternatives.
3. The 5A form is a borrowed form. It was designed to deal with eligibility criteria for Public Defender representation. It is not designed to solicit the appropriate information to assist the

court in determining whether the defendant should be permitted installment payments and what the amount and frequency of the payment should be.

Assuming that the relevant information is gathered, there are no established criteria to assist the court in arriving at a fair determination. The judge must rely upon his own senses of what is appropriate, and this must result in a lack of uniformity among the Municipal Courts.

4. Once the installment order has been made, a mechanism is required to monitor the status of the case. This Committee's questionnaire has revealed that with few exceptions, there are no automated systems monitoring these cases. The manual systems in use, even if well designed, are extremely time consuming if used properly. If poorly designed or not properly administered, the follow-up system is ineffective.

An effective manual system must provide for cross-indexing by name, docket number, and due date. It must provide for the required follow up (that is, notice to defendant that payment has not been received), and if there is no proper response to the notice (payment or motion for reconsideration or order), it must provide that an arrest warrant will issue. Of course, records must be made of payments and the required financial reporting must be made.

The end result of the courts inability to accomplish the above appears to be too much latitude offered to defendants in payment compliance. The DeBonis decision has been expanded far beyond

its original scope. The original intent was to deal with a narrow situation long since forgotten -- that a defendant who does not have the ability to pay a fine in full at once should not be incarcerated. It is impossible to ascertain who could pay in full at once and the court is obligated to permit installment payments almost according to the dictates of the defendant. The system no longer recognizes the concept inherent in DeBonis: "to pay the fine in reasonable installments consistent with the objective of achieving the punishment the fine is intended to inflict."

RECOMMENDATIONS

1. The A.O.C. should establish criteria for installment payments with an appropriate form to be uniformly applied.
2. Criteria should be established for indigency that would permit the Municipal Court judge to suspend mandatory money penalties and impose other penalties such as Community Service at the initial hearing.
3. Suspension of Driving Privileges should be permitted for the failure to abide by any traffic installment order, whether addressed to a moving or parking violation. The proposed flagging system (set forth in this Committee's Traffic Processing Paper) will make this concept technologically feasible.
4. All Municipal Courts should be permitted or required to accept credit card payments in lieu of installment payments when feasible.

5. Service Bureau Contractors should be required to provide an installment payment package to the courts they service. Other computerized courts should be required to meet similar criteria.
6. An effective, uniform, simplified manual system should be developed to monitor installment payments in courts that are not computerized.

REVENUES AND FUNDING

The Committee on Traffic and Computerization is charged in its mandate with determining how more efficient traffic case processing through automation or computerization is to be financed. The mandate recognizes that initial financing may be needed from the State, but that such an investment can yield an enormous return.

In order to respond to this mandate, the committee has examined the relationship between revenue collections of the Municipal Courts and the distribution of these revenues among the State, County and Municipality. Particular attention has been paid to two recent pieces of legislation, which have dramatically impacted both upon the amount of revenues collected (increased penalties for many Motor Vehicle Offenses, effective 9/1/82) and the distribution of revenues collected (the revision of N.J.S. 39:5-41, providing for the municipality to share in the distribution of penalties formerly distributed to the County).

An attempt has also been made to identify the historical philosophy behind revenue distribution as well as its current status and future trends.

It appears that an analysis of this type has never been attempted before and that the data needed have never been compiled. It was recognized that to gather and analyze the necessary data for every municipal court in the State was beyond the ability of this committee. Therefore, it was determined that a representative sampling be taken. The Trial Court Administrators of Essex, Mercer, and Ocean Counties gathered

the required information from the municipal courts within their vicinages and forwarded it to the committee. These three Counties were selected because they were representative geographically; in size and number of municipalities; in rural, urban and suburban mix; and were comprised of both "seasonal"/ and "full-time" municipalities.

REVENUES COLLECTED[1]

The following chart shows the total revenues collected in each of the three counties for all traffic matters for the years 1981, 1982 and 1983, with the dollar and percentage increases over the two year period.

	1981	1982	1983	$ INCREASE	2 YEAR % INCREASE
ESSEX	6,996,000	7,846,000	9,246,000	2,250,000	32%
MERCER	2,773,000	3,129,000	4,543,000	1,770,000	64%
OCEAN	2,531,000	3,340,000	4,377,000	1,846,000	73%
TOTAL	$12,300,000	$14,315,000	$18,166,000	$5,866,000	48%

This chart illustrates the significant increase in revenues collected by the municipal courts in 1983 as compared to 1981. Logically, a major contributing factor to the large increase in revenues was the increase in penalties for Title 39 Motor Vehicle offenses, effective September 1, 1982. Thus, 1982 was a transition year in which the impact

1 Data not received from two small Ocean County municipalities and therefore not included.

was partially felt, while 1983 was the first full year in which the increase was realized.

Of the three counties Studied, Essex County experienced a smaller percentage increase in total traffic revenues collected as compared to Mercer and Ocean. An analysis of the individual court statistics within Essex reveals that this is attributable to the fact that a very large portion of revenues in Essex are realized from enforcement of local parking ordinances, penalties for which did not increase during the period. Generally, however, the dramatic increases in revenues were broadly based, with few exceptions.

Based upon projections of the Statewide statistics published in the report entitled Proceedings in the Municipal Courts (Sept. 1982-June, 1983),published by the Administrative Office of the Courts (A.O.C.), it is estimated that New Jersey Municipal Courts collected (relating to all traffic matters) about $94,000,000 in 1983 as compared to approximately $63,646,000 in 1981, an increase of 48%. Of this amount, an estimated $75,000,000 related to Title 39 violations, while approximately $19,000,000 related to Municipal Ordinance Violations (primarily parking).

REVENUE DISTRIBUTION

Simply stated, the traditional revenue distribution scheme for traffic matters provided for distribution of revenues as follows:

1. Municipality - All Court costs, not to exceed $15; additional penalties attributable to late payment of fines; and fines relating to municipal ordinances (usually parking).

2. State - All fines where the complainant is a State Police Officer or other state official.

3. County - All fines relating to all Title 39 offenses where the complainant was not a State Police Officer or other state official. Included are fines attributable to summonses issued by municipal police officers.

The revision of Title 39:5-41, effective January 1, 1983, provided that fines collected pursuant to Title 39, formerly payable to the county, would be limited to an amount not to exceed county distributions in base year 1980. Revenues collected in excess of this amount are distributed to the municipalities until the amount so distributed equals the amount received by the county. Thereafter, all revenues received are distributed half to the County and half to the Municipality.

To appreciate fully the impact of this legislation, it should be noted that Title 39:5-41 does not affect the distribution of revenues to the State. Consequently, the State fully benefits from increases in Title 39 penalties effective September 1, 1982.

The following chart illustrates how revenues collected by the Municipal Courts for traffic offenses were distributed in 1981 (the last full year before Title 39 penalty increases and revision of the distribution scheme per Title 39:5-41) and 1983 (the first full year following both changes) in the three counties.[2]

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2 An analysis of each individual county is included in the Appendix

	1981		1983		
3 COUNTY TOTALS:					
		% Share of Total Collections		% Share of Total Collections	%Revenue Increase Since 1981
STATE	1,074,000	9%	2,488,000	14%	132%
COUNTY	3,551,000	29%	4,598,000	25%	29%
MUNICIPALITY	7,675,000	62%	11,052,000	61%	44%
TOTAL	12,300,000	100%	18,166,000	100%	48%

The ostensible effect of Title 39:5-41 would have been to decrease the counties' percentage share of total revenues collected primarily to the benefit of the municipalities.

As predicted, the counties' percentage share did, in fact, significantly decrease; however, any expected correlary increase to the municipalities' percentage share was not realized.

The counties' percentage share has slipped by 4% from 29% in 1981 to 25% in 1983; the revenues distributed to the counties increased by 29%. The municipalities' percentage share decreased by 1% from 62% in 1981 to.

61% in 1983, although revenues distributed to the municipalities actually increased by 44% in 1983 as compared to 1981.

The State's percentage share has increased from 9% in 1981 to 14% in 1983, while the revenues distributed to it have more than doubled during this period, increasing by 132%.

This result can be explained as follows. The State Police issue about 1/3 of the tickets for moving (non-parking) violations in the state. Prior to September 1982 (the effective date of the increased penalties), the typical total penalty for many moving violations such as careless driving, speeding, or disregard of a traffic signal was between $20 and $25, with court costs of $10 being[3] included. Thus, the municipality received between 40% to 50% of the total penalty with the balance being distributed to the State. After the increased penalties in September 1982, the typical penalty for the same offenses became $60, the municipality still retains $10 as court costs, with the balance of $50 being distributed to the State.

To summarize, when penalties were lower, court costs represented about half of the total penalty collected; when penalties increased, with court costs remaining frozen at $10, these costs obviously now represent a smaller percentage of the total penalty (about 17%).

Assuming the representiveness of counties surveyed, and applying the statistical conclusions arrived at to annual projections of statewide

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3 By statute, court costs in traffic matters may not exceed $15. However, when a traffic matter is paid thru the Violations Bureau, court costs are limited to $10 by the Statewide Violations Bureau Schedule.

statistics, it is now possible to project a Statewide Summary of Revenue Distribution.

STATEWIDE REVENUE DISTRIBUTION PROJECTIONS

	1981		1983		
		% Share of Total Collections		%Share of Total Collections	% REVENUE INCREASE SINCE 1981
STATE	5,660,00	9%	13,160,000	14%	132%
COUNTY	18,272,000	29%	23,500,000	25%	29%
MUNICIPALITY	39,714,000	62%	57,340,000	61%	44%
TOTAL	63,646,000	100%	94,000,000	100%	48%

It should be noted that municipal revenue figures utilized above include revenues collected as a result of enforcement of local municipal ordinances (primarily parking). This is due to the fact that available A.O.C. statistics do not distinguish between collections associated with Title 39 offenses and equivalent municipal laws.

However, enough information is available to conclude that even when municipal ordinance revenues are excluded from consideration, the result remains the same: the percentage share distributed to the State increased significantly, the percentage share distributed to the county decreased significantly, and the percentage share distributed to the municipality remained about the same.

While the aforementioned analysis of the revenue distribution scheme provides a necessary overview, it is also important to consider how the structure affects individual courts. The following chart illustrates the divergence of revenue distribution among municipalities (in 1983).

Municipality	% to STATE	% to COUNTY	% to MUNICIPALITY
Princeton Borough	1%	12%	87%
Hopewell Township	62%	17%	21%
Jackson Township	26%	54%	20%
Seaside Park	0%	23%	77%
Eagleswood	82%	0%	18%
Maplewood	1%	26%	73%
Roseland	53%	9%	38%

The divergence in distribution experiences among the above listed municipalities is due primarily to two factors:

1. the issuing complainant (e.g. Hopewell has State Police Barracks within its borders, hence, fines to the State, with the municipality retaining costs only), and
2. whether tickets are issued under equivalent local ordinances rather than Title 39 (e.q., as in Princeton Borough, hence, fines and costs to municipality).

A similar analysis explains why Essex County municipal courts distribute 70% of revenue to the municipalities, while Mercer (54%) and Ocean (49%) distribute significantly less to the municipalities. Essex is an urban area in which large volumes of parking tickets are issued under local ordinances (4 of the 15 courts with the highest volume of parking

tickets issued are located in Essex). On the other hand, State Police activity in Ocean County may explain a larger percentage distribution share to the State as compared to other counties surveyed.

The lack of consistency and predictability in the distribution scheme is troublesome. There should be a higher degree of uniformity in the distribution of revenues without regard to the philosophy behind the distribution scheme.

THE PHILOSOPHY OF REVENUE DISTRIBUTION RELATING TO TRAFFIC MATTERS

I. Historical

Prior to 1983, the philosophy of distribution of revenues relating to traffic matters could best be summarized as follows. The municipality received all revenues relating to local ordinances. Monies collected for violations of Title 39 were distributed to the State if issued by a Trooper or other State Officer (apparently relating to the necessity of reimbursing the State for law enforcement activity). If a Title 39 ticket was issued by any other agency, including a municipal police officer, the revenues were distributed to the county for "road repair". Of course, in either instance the municipality was entitled to retain "court costs" (apparently meant to reimburse the municipality for the expense incurred in the judicial process if not the law enforcement process). The court costs permitted by statute (N.J.S. 22A:3-4) may have historically borne

some relationship to real court processing costs, but it is doubtful whether this has been the case in the recent past.

II. Since 1983

The 1983 revision of N.J.S.39:5-41 signaled a change of approach to the historic revenue distribution scheme, in that it provides for municipal sharing of fines previously payable solely to the counties, and further indicates that funds so distributed shall represent "a fund for general municipal use and to defray the cost of operating the municipal court".

III. Current and Future

There appears to be a precedent in legislative philosophy toward earmarking penalties collected for specific purposes. There are many legislative examples of penalties or fees designated for utilization for enforcement or administration in specific areas, for instance:

1. N.J.S. 39:4-50 provides for $100 surcharge on DWI convictions to be used for an enforcement program and for administration expenses.
2. P.L. 1983, Chapter 383, Uniform Fire Safety Code, provides for fees relating to enforcement.
3. N.J.S. 2C:43-3.1 provides for additional penalties to be imposed for all convictions to be used by the Violent Crimes Compensation-Board in satisfying claims, and for administrative costs.

4. N.J.S. 39:6B-3 provides for all revenues collected relating to driving without insurance to be deposited to a specific fund administered by DMV, to be used for enforcement of the compulsory motor vehicle law and for administration expenses.

This "earmarking" concept can be applied to the funding of municipal courts generally or at least to the concept of additional funding for computerization and/or automation.

DISCUSSION

In summary, the legislative scheme now provides for the distribution of Title 39 revenues to the three governmental agencies for the following purposes:

1. to the municipality for general use (revenue sharing) and to defray the costs of operating the municipal courts (since 1983),
2. to the State in apparent recognition of the expense of law enforcement (when a State Trooper or official is the complainant), and
3. to the county for road repair or maintenance.

While a specific legislative intent indicates a desire to provide funds to defray the cost of operating the municipal courts, the legislation stops short of: 1) actually directing that any specific portion of funds collected be utilized for municipal court purposes, or 2) directing that any increases in retentions generated by N.J.S.A. 39:4-51, be budgeted to the courts, or 3) allowing additional funds

retained by municipalities, to the extent used for municipal court purposes, to fall outside limitations of the Local Government Cap Law.[4]

Therefore, for the reasons stated above, although the municipalities are a major beneficiary of increased penalties through the revised distribution scheme provided for by N.J.S.A. 39:4-51, it does not appear that under present circumstances there is any incentive to change historical patterns of neglect of the courts generally, or to use any significant portion of these increased revenues to improve traffic case processing through automation or computerization, specifically.

Distribution schemes must contain an element of predictability to the municipalities. Put another way, future distribution schemes must attempt to come closer to reimbursing municipal courts for real costs associated with traffic case processing. Otherwise, there will be no guarantee that amounts retained by individual municipalities will in fact be adequate to fund court operations, assuming municipalities can be convinced to embrace the philosophy that some designate portion of revenues retained be allocated to court operations.[5]

Alternatively, consideration should be given to seeking the amendment of current statutory limitations (N.J.S.2A:3-4) on court costs in traffic matters ($15), particularly as they relate to the more serious offenses (e.g.,drunken driving, and other moving violations requiring

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4 Advisory Opinion of the Attorney General, June 9, 1983.

5 In 1983, statewide revenues generated by the Municipal Courts are projected to be $94,000,000. Based on past experience, approximately 20% of these revenues or $18.8 million were received in court costs. This amount is only 65% of the 1982 expenditure level (the last year for which figures are available). Clearly, the existing assessments for court costs are inadequate to cover the operational expenses of municipal courts, much less provide for necessary improvement and expansion of operations.

mandatory court appearances) more accurately to reflect the true costs associated with processing.

These cases cannot be handled administratively through the Violations Bureau. Because the penalties are more severe in all respects (monetary, chance of suspension of license, and possibility of jail term), they are often contested, thereby greatly affecting bench time and other court personnel time, and therefore tend to represent a greater burden upon court resources.

At a minimum, consideration should be given to amending the Statewide Violations Bureau Schedule to permit full taxing of court costs at current statutory limits (i.e. $15 costs) for every offense

Currently, the Statewide Violations Bureau Schedule limits court costs to $10. Particularly in those instances in which the minimum fine is $50, costs should be increased to $15, making the penalty $65 rather than $60. The offenses referred to are the more common moving violations, such as speeding, careless driving, improper turns, etc., and account for a large percentage of the more than 900,000 traffic (non-parking) matters handled thru the violations bureau. This change can be accomplished administratively by AOC action without disrupting the current distribution scheme.

Each of the two proposals relating to court costs could account for between $2-$4 million in additional revenues for distribution to the municipalities without disturbing revenues being distributed to the State or county.

Assuming the status quo with regard to present distribution schemes, funding for traffic case processing must be a priority to assure that collection efforts go forward to the maximum extent. This committee's

mandate recognized that "many millions of dollars are lost in revenues by virtue of scofflaws".

Reported statistics regarding unpaid summonses statewide are indicative of some reluctance on the part of the public, for probably a variety of reasons, to come forward voluntarily. Indeed, to some extent, this response could be described as a conditioned reflex. The public perception in many areas of New Jersey may well be that the processing of traffic summonses is handled in an atmosphere of confusion and inefficiency.

The result has been that while many law abiding citizens attend to their summonses as they receive them, many more are deciding to take their chances with being completely "overlooked" by the system, or at least temporarily "lost" amidst the confusion, anticipating that there would be no immediate consequences associated with non-compliance.

The solution, therefore, calls for a change in this atmosphere of confusion and inefficiency and hence the public perception of the collection process. The mandate goes on to say "perhaps nowhere else in the Judiciary is it so clear that a small investment in automation can yield such an enormous return".

While individual municipalities may not on their own be inclined to expend monies towards automation and/or computerization for the more efficient conduct of their courts' business, the State has a vested interest financially, as it is a major beneficiary of revenues collected: administratively as the Municipal Courts are part of the State Court system; and with regard to public safety as increased enforcement will promote highway safety. Therefore, the State should provide the initial funding for automation and/or computerization of the municipal courts,

and assure that the necessary resources are available thereafter to the Courts to guarantee continued efficiency in traffic case processing.

Like the prudently run business that reinvests an adequate portion of profits into the business to provide for current needs and to assure profitability in the future, the municipal court system must be permitted to reinvest an adequate share of revenues collected into the court system to provide for current efficiency and future viability.

RECOMMENDATIONS

1. The initial funding for increased automation and/or computerization should come from the State.
2. The AOC should amend the Statewide Violations Bureau Schedule to permit the full taxing of court costs permitted by Statute (i.e. $15) and a recommendation should be made that the current statutory limitation on court costs be increased for the more serious motor vehicle violations requiring a court appearance, which impact greatly on court resources.
3. Delivery of adequate funding to the municipal courts to provide for continuous efficient operations must be assured, and not left to municipal discretion.
4. The current distribution scheme for Title 39 revenues should be reevaluated and at a minimum recommendations should be made to provide for more uniformity in distribution of revenues to the municipalities and, if necessary, to provide that an adequate portion of the revenues collected be "earmarked" for municipal court operations prior to any other distributions pursuant to the legislative philosophy. The revenues collected must be recognized

as the basis of funding for court operations, and as such must receive priority in the distribution scheme.

APPENDIX I

ESSEX

			1983		
	% Share of Total Collections			% Share of Total Collections	%Revenue Increase Since 1981
STATE	413,000	6%	787,000	9%	91%
COUNTY	1,497,000	21%	1,965,000	21%	31%
MUNICIPALITY	5,098,000	73%	6,481,000	70%	27%
TOTAL	$6,996,000	100%	9,246,000	100%	32%

Note that while the revenues collected increased significantly (32%) and that the revenues distributed to the municipality increased by 27%, the percentage share of revenues distributed to the municipality actually decreased by 3% from 73% in 1981 to 70% in 1983. The amount of revenues received by the county increased by 31%, while its percentage share remained the same (21%). The State's percentage share rose from 6% to 9%, while the revenue received increased by 91%.

APPENDIX II

MERCER

	1981		1983		
		% Share of Total Collections		% Share of Total Collections	% Revenue Increase Since 1981
STATE	338,000	12%	737,000	16%	118%
COUNTY	484,000	35%	1,364,000	30%	39%
MUNICIPALITY	1,441,000	52%	2,429,000	54%	69%
TOTAL	2,773,000	100%	4,543,000	100%	64%

Note again that the State's percentage share rose from 12% in 1981 to 16% in 1983 while the revenues distributed to it increased by 118%. The municipalities' percentage share did increase by 2% as the revenues distributed to them rose by 69%. While the counties percentage share decreased significantly from 36% in 1981 to 30% in 1983, the revenues distributed to them in 1983 actually increased by 39% as compared to 1981.

APPENDIX III

OCEAN

	1981		1983		
		% Share of Total Collections		%Share of Total Collections	% Revenue Increase Since 1981
STATE	323,000	13%	964,000	22%	198%
COUNTY	1,070,000	42%	1,269,000	29%	19%
MUNICIPALITY	1,136,000	45%	2,142,000	49%	89%
TOTAL	2,531,000	100%	4,377,000	100%	73%

Here, the State virtually tripled its revenues (up 198%) while its percentage share increased from 13% in 1981 to 22% in 1983. The municipalties percentage share increased by 4% while the actual revenues distributed to them increased by 89% in 1983 as compared to 1981. The counties' percentage share decreased dramatically from 42% in 1981 to 29% in 1983, yet the revenues distributed to them actually increased by 19%.

TRAFFIC CASE PROCESSING

The primary mandate of the Committee on Traffic and Computerization is the development of a Master Plan for automation of the Municipal Courts. Important considerations are internal processing within the individual court and the court's ability to communicate/receive information from DMV (and a central source such as AOC).

The charge of the committee is to document and analyze current traffic-case-processing methods employed in the Municipal Courts, and to evaluate these methods as they relate to both current and future needs.

The analysis includes an evaluation of current case-processing methods associated with the receipt, processing for adjudication, and disposition of all cases filed, as well as an analysis of the current Rules and procedures under which the courts operate, in order to identify impediments to efficient processing and effective revenue collection.

AN OVERVIEW OF TRAFFIC CASE PROCESSING

1. Parking

ISSUANCE - Complaints are made upon a uniform traffic ticket form (approved by AOC). In virtually all instances, the complainant is a law enforcement officer who issues the ticket on the spot by completing the ticket form and serving same by leaving a copy on the windshield of the vehicle. The violation alleged may be either under Title 39 or local ordinance and is usually payable without court appearance. The original copy of the ticket issued should then be immediately delivered to the Municipal Court for processing.

RECORDING - Immediately upon receipt the Municipal Court should record (DOCKET) the ticket. In computerized systems, the assignment of docket number may be automatic. As the name and address of defendant would usually not yet be known, the only other information entered is usually plate number, offense, date of offense, and complainant information.

ADJUDICATION - The ticket can be paid usually without court appearance, or in the alternative the defendant can contest the charge resulting in a trial and a disposition in court. In those instances in which the defendant has not responded, the court must employ FOLLOW-UP PROCEDURES.

DMV LOOK-UP - In most instances, the court is unaware of the name or address of the defendant. This information is obtained from the DMV upon the court's request.

FAILURE TO APPEAR NOTICE (FTA) - The defendant is notified of the ticket and given a second opportunity to pay the penalty (or request a court appearance). It should be noted that the sending of an FTA to out-of-state residents is discretionary with the court. However, there is no look-up mechanism and, therefore, no effective follow-up system. If the notice remains unanswered, it must proceed to warrant.

WARRANT - When the warrant issues, the court may notify the

defendant, in writing, giving the defendant the opportunity to respond. However, "if the warrant is not executed within 30 days, the Clerk should mark the case 'closed' on the records".

SCOFFLAW - If the court identifies that a defendant has accumulated five or more unanswered parking tickets within the State within a three year period, it may request DMV to suspend/revoke this defendant's driving or registration privileges.

2. Non Parking

ISSUANCE - As with parking tickets, non-parking complaints are made upon a uniform traffic ticket. The great majority of tickets issued are for Title 39 Violations, however, there are instances of "moving" local ordinance violations. The complainant is usually a law enforcement officer (about 1/3 are issued by the State Police and the balance by other law enforcement agencies, including the local municipal police; relatively few complaints are made by private citizens). In virtually every instance, the defendant is given a copy of the ticket at the scene of the incident. In most instances, the ticket can be paid without court appearance (there are exceptions by court Rules). The issued ticket should be delivered immediately to the Municipal Court for processing.

RECORDING - Handled the same as parking tickets except that the defendant's name, address, and driver's license number are usually known and recorded on the ticket.

ADJUDICATION - Procedures are substantially similar as with parking cases except that contested cases and court appearances (mandatory or otherwise) are more common. Scheduling of cases and notifications to parties is more extensive. In those instances where the defendant has not responded, the court must employ FOLLOW-UP PROCEDURES:

FAILURE TO APPEAR NOTICE (FTA) - A second notice (FTA) is usually sent, giving the opportunity to pay the penalty or to request a court appearance. The FTA notice is mandatory for an out-of-state resident, but discretionary for residents.

If an out-of-state resident fails to respond within 30 days, the Court must mark the case "closed" and notify DMV. (In turn, DMV will notify the Motor Vehicle Division of defendant's home state, and pursuant to an interstate agreement, action will be taken against the defendant's driving or registration privileges in the home state. 33 states are party to the agreement).

WARRANT - When warrant issues, the court may notify defendant in writing. If the warrant is not executed in 30 days, DMV is notified and requested to suspend/revoke the defendant's license or registration privileges, and the court marks the case as closed. Warrants are not used for non-resident defendants.

DISCUSSION-TRAFFIC CASE PROCESSING

CASE PROCESSING

ISSUANCE - Tickets may be issued by a variety of law enforcement authorities within the municipality (e.g., institutional police such as universities or colleges, Port Authority, Amtrak, County, State or Municipal). Eventually, all must submit the original copy (white) of the issued tickets to the municipal court in their jurisdiction for processing.

Practices vary among the enforcement agencies as to the timing of their delivery of the tickets to the court. Factors that may affect this timing are proximity to the court, hand delivery vs. mailing, and review practices within the agency itself.

Delay in receipt of the ticket will affect the court in a number of ways other than delayed data entry. Delayed delivery affects spacing and planning of work and creates serious processing problems when a defendant pays (or attempts to pay) a ticket prior to its receipt or recording by the court.

<u>It is recommended that the AOC promulgate minimum delivery criteria to be uniformly followed</u>.

RECORDING - The uniform traffic ticket is not the best document to increase legibility and minimize errors. At best, it appears that the document is an accommodation between the need of the issuing officer to issue at the incident site and the need of the court to have an original complaint for adjudication. It

appears that even manual processing needs were a secondary consideration. The document is ill-designed as a modern data entry source document.

The vital information to be recorded is scattered throughout the document and does not appear in logical data entry order. Spaces for printing by the officer are too small and unrestricted. The model form for data entry purposes would place all vital information at one location, preferably the top of the form, in a logical sequence for data entry. Spaces would be boxed to restrict one bit of information (letter or number) in a box and would be large enough to be optimally legible.

It is recommended that the uniform traffic ticket be redesigned to accommodate current needs and uses. Other delays in data entry are due to inadequate personnel and poorly defined priorities and office procedures.

To some extent, these problems are budgetary and will, therefore, fall within the scope of the mandate or charge of other Committees. However, better management or administrative training and documentation of procedures in the form of a manual are realistic goals.

ADJUDICATION - The uniform traffic summons provides a space to be completed entitled "Court Appearance". According to the language appearing at various locations on the ticket, this date will affect the following events.

-Date of Mandatory Court Appearance.

-Date of a discretionary Court Appearance.

-Date by which payment must be made to the Court through the Violations Bureau, if permitted.

-Date by which the Court must be notified by the defendant of an intention to contest.

1. Court Appearance Date (Mandatory/Discretionary)

In all situations, scheduling of the initial appearance is controlled by the officer issuing the summons. Sometimes the date selected reflects knowledge of the courts schedule or policies (i.e., schedule for next available court date), but often it is predicated upon the officers' availability or preference. This policy, coupled with the infrequency with which some Courts sit, results in distant first appearances and hence delayed adjudication. This effect is currently being realized with regard to DWI (Driving While Intoxicated) cases.

Policies and procedures regarding the initial court appearance date vary among the courts either treating same as a trial date or an arraignment date. Variations can occur according to which party or parties, has appeared, the expectations of the parties and the length of the courts calendar.

This lack of uniformity among the courts leads to differing expectations among the parties as to what will occur on the first appearance date. The officer, who has likely scheduled the matter for his convenience, appears, ready and expecting to proceed with trial. The defendant probably appears not knowing what to expect and will minimally be frustrated if his expectation was to proceed with trial and that turns out not to be the court's policy. Attorneys who do not have specific

knowledge regarding the policies of a particular court are unable to predict what will occur for their clients. The variations relating to the expectations of the police officer, the defendant, attorneys, and court policy are endless.

Under the circumstances described above, it is clear that. 1) court has no real control of its calendar, which results in court sessions being conducted in a crowded, undignified atmosphere, or judge and staff time underutilized; and 2) variations in policies lead to the frustration of law enforcement, the public, and the bar. In short, the practice appears to serve no one well.

2. Notice Date of Intention to Contest

The ticket advises the defendant that he must notify the court of an intention to contest prior to the court appearance date (usually 3 days prior). The court must either arrange for the matter to be ready to proceed or reschedule the case for trial.

This places the burden of coordination of the availability of the defendant, the officer, and the calendar upon Court staff, through the mechanism of numerous phone calls and mail receipts and responses, all under the time pressure of a return date arranged by someone else. 3. Date by Which Payment Must Be Received

By reference, the Court Appearance date is the date by which payment must be made, if payable through the Violations Bureau. Since the Court Appearance date is set by the issuing officers according to differing criteria, there is no uniform time period within which uncontested tickets are expected to be paid. Furthermore, the ticket does not reflect all types of matters nor the amount that may be paid thru the

Violations Bureau. This places a burden on the defendant to solicit, and the court to provide, additional information, thereby contributing to further delays in payment.

RECOMMENDATIONS

The Court Appearance date attempts to perform too many functions and thus contributes to problems in each of the functions. It does not assure the occurrence of predictable events.

1. No Court Appearance Date should appear on the ticket. The ticket should require payment within 10 days if payable through the violations bureau, or notice must be received within the same 10-day period of an intent to contest.

   All Mandatory Court Appearances should continue to be indicated by the officer with dates scheduled only by the court.

   Defendants who do not respond should be renotified to pay the summons or advise that they will contest within 10 days. Failure to respond should result in the appropriate enforcement action for either parking or non-parking matters.

2. The AOC should consider grouping the offenses payable pursuant to the Statewide Violations Bureau Schedule into a limited number of groups or classes, with a uniform penalty for all offenses within the category.

The uniform traffic ticket should contain a space for the officer to indicate the appropriate class; penalties according to class should be pre-printed on the defendant's copy of the summons.

With the exception of speeding and weight violations (in which the penalties are determined according to the amount by which the respective limits are exceeded), there are only eight different penalties set forth in the current Violations Bureau Schedule. Four of them ($20, $25, $30 and $35) are within $15 of each other, leaving room for further consolidation. The other monetary penalties on the Schedule are $60, $110, $160 and $200.

This practice would facilitate payment by the defendant and relieve the courts of the burden of providing such information to the public.

NO RESPONSE PROCEDURES

1. Look-Ups

As discussed previously, courts rely upon DMV to provide the name and address of a defendant when a ticket is issued to an unattended vehicle (virtually all parking matters). A number of problems and delays involving interaction between the courts and DMV arise at this contact point. They are currently being studied and will be analyzed in more detail as this committee progresses towards a recommended Master Plan.

Under any current method of processing, and in any conceivable futuristic computerized system, there are and always will be tickets that cannot be processed because of the inability of DMV to match the data provided by the courts with

the data in its file ("No hits"). The number of "No hits" should be significantly decreased, however, with the implementation of better systems and mechanization.

Currently, the biggest processing problem associated with "No hits" is the lack of a clear mechanism either by Court Rule or AOC policy that provides for the appropriate disposition of such tickets. It appears that courts are currently dealing with these matters in a variety of ways.

It is recommended that a uniform procedure for disposition of "No hits" be developed and promulgated.

2. Failure to Appear Notices (FTA)

Rule 7:6-3 provides for FTA notices to be sent as follows:

1. Residents
   - A. Parking - required
   - B. Non Parking - Discretionary
2. Non Residents
   - A. Parking - not required - (there is no viable procedure to identify the defendant.)
   - B. Non Parking - required

As expected, many courts that process tickets manually experience delays in FTA processing due to insufficient personnel. However, even in courts in which FTAs are generated by computer (either service contractor or internal), they are often not sent timely because of inadequate personnel to handle the clerical functions associated with processing and mailing. Many computerized courts are not fully using their computer capability by virtue of

the fact that they continue to handle envelope stuffing, addressinq, or postinq manually.

Any future traffic enforcement system will undoubtedly require noticing. As the Municipal Courts move towards a Master Plan for computerization, use of full computer capability must be provided for, and modern forms and systems must be developed to keep pace with computer capabilities.

In the meantime, modern forms must be designed for use both internally and by service bureau contractors to obviate the necessity for manual functions currently being performed by courts using computers.

3. Close-out and Warrants

Pursuant to Rule 7:6-3 if a warrant issued as a result of a defendant's failure to answer a traffic summons remains unexecuted after 30 days, the Court shall mark the case "closed" on its records.

The "closed" case is an anomaly in the court atmosphere, where matters are generally viewed as either adjudicated/non-adjudicated or disposed of/not disposed of.

While it is not entirely clear what closing a case accomplishes, it is clear that such action constitutes neither an adjudication nor a disposition.

There is no history to which we may refer. However, presumably the fiction of the "closed" case developed as a result of the following considerations.

1) the practice of dismissing cases on which there has been no response after some fixed period of time would tend to reward the violator who is able to avoid process; and

2) the practice of not doing anything at all results in the court, which has used every procedure currently available in pursuit of the violator, being saddled with the derogatory "backlog" of uncollected tickets.

In fact, the AOC Municipal Court Manual suggests that "Certain specific procedures must be promptly followed to avoid a backlog of unanswered summonses".

The fact remains, however, that regardless of what designation is used, "closed" tickets remain both unanswered and uncollected. Paradoxically, the procedure of close-outs, if followed precisely, assures that tickets not collected within 60 days will for all intents and purposes be abandoned in a period of time in which no other institution would consider a debt uncollectible.

This abandonment is real for the following reasons. Local police are hard pressed to give attention to parking warrants, particularly in the municipalities in which ticket issuance volumes are the highest; further, jail crowding situations make arrests for traffic warrants an unattractive priority. Consequently, warrants are often held by police and routinely returned to the courts after the passage of 30 days with little or no effort made to execute them.

Additionally, courts operating manually, which represent the majority, are hard pressed to identify the existence of five or more

tickets per defendant in their own municipalities, let alone the state, and also report that the majority of their citizens rarely reach the magic number five.

Consequently, the courts collection efforts will for all intents and purposes end with the close-out procedure within 60 days of the issuance of a ticket.

It is recommended that the concept of the "close-out" should be abandoned. Conceptually it is neither uniformly understood nor applied, and it inhibits aggressive collection procedures. However, it is recommended that no substantive changes be made in the enforcement mechanism for non parking matters relating to residents. Current procedures appear to be both logical and effective.

Procedurally, this concept of whether a warrant should remain active until enforcement should be clarified and uniformly applied. It appears to be a viable secondary enforcement mechanism.

It is also recommended that the current enforcement mechanism relating to non-resident moving matters also be retained. As a back up mechanism, a service contractor could be used on a statewide basis as a collection agent.

4. Scofflaws

The law permits suspension proceedings when a defendant fails to answer five or more summonses in the state within a 3 year period ("SCOFFLAW"). Practically speaking, the only efforts at

enforcement are aimed at identifying a plate # that has accumulated five or more tickets in a municipality. There is no current system that attempts to cross-index different plate #'s registered to the same defendant or summonses issued among different municipalities.

While better use of computerization will improve the scofflaw function, the inherent flaw in the program remains--a defendant is permitted to accumulate up to four parking tickets during a three-year period and remain immune from suspension proceedings. As previously indicated, many municipalities recall warrants issued on parking matters after 30 days.

Often there is little effort to execute the warrant within the 30 days and it can also be argued that there is insufficient time to proceed.
Warrants that are executed are usually coincidental to a record check or other arrest. In any event, the cost of execution probably far exceeds the amounts collected. In the meantime, the DMV takes no action and the court is satisfied to consider the case "closed".

In support of the following recommendation, which calls for reconsideration of the enforcement structure relating to parking matters, it should be noted that according to the AOC annual publication entitled Proceedings in the Municipal Courts for the four year period ending June 30, 1983 (actually three years and ten mos.),

11,536,000 parking complaints were filed, of which 8,185,000 were disposed of. Thus, parking complaints disposed of during the period represented only 71% of the number of parking complaints filed, as compared to a 93% disposition rate for non-parking matters during the same period.

It is recommended that the current system of parking ticket enforcement be abandoned and replaced with a more immediate and direct method of enforcement through DMV. Upon defendant's failure to answer any parking summons, the DMV should be requested to "flag" any license or registration application or renewal pending the satisfaction of outstanding summonses. Because of the imminent enhancement of DMV computer capabilities and the proposed electronic linking of DMV and the courts, this concept is now a potential reality. The suggestion of flagging either license or registration is predicated on future cross-indexing abilities, as all registrations require the Drivers License # in the application.

Alternative enforcement methods such as booting, towing, collection agencies or warrants should be reserved for repeat offenders (perhaps three or more unanswered summonses).

The potential impact upon DMV should be considered realistically and not with current statistics regarding the number of parking matters that are ignored. It is strongly felt that once members of the public perceive that they

can no longer ignore parking tickets with impunity, they will respond.

The probability is that the major impact upon the courts would be increased processing of payments rather than "close outs". The police would be eliminated from the parking ticket enforcement process. Perhaps this would increase their effectiveness in the execution of warrants for non-parking matters (or possibly for repeat parking offenders).

It is also recommended that a service contractor be used on a state wide basis both to process and to collect out-of-state parking tickets.

SUMMARY OF RECOMMENDATIONS

1. Development of standard policy for return of tickets to court by the State Police complainants and other law enforcement officers.

2. Revision of Uniform Traffic Ticket to facilitate interpretation by Court personnel responsible for entry, including a format that would be conducive to an automated system of operation.

3. Court Appearance Date should be deleted from the ticket. Response should be required within ten days of issuance. The authority to schedule court appearances should rest with Municipal Courts only.

4. Defendant's ticket should indicate the amount of payment required by means of division of offenses into categories, which would be checked by the officer.

5. A uniform procedure for disposition of tickets issued to unidentifiable defendants ("No hits.")

6. The "close out" concept should be abandoned.

7. The present enforcement procedure for resident defendants on non-parking matters should be continued. Rule 7:6-3 should be revised to reflect a more definitive policy regarding how a warrant should be treated at the end of 30 days referred to in the Rule.

8. The present enforcement procedure for non-resident defendants on non-parking matters should be continued.

9. The current enforcement procedure for resident defendants on parking matters should be replaced. The Division of Motor Vehicles should be vested with authority to deny the issuance of a vehicle registration or license where, through a centralized reporting network, it is disclosed that outstanding traffic offenses exist against either the license plate number or defendant.

10. Alternate enforcement methods for resident defendants on parking matters should be reserved for repeat offenders.

THE VIOLATIONS BUREAU

Traditionally, all traffic matters were deemed to be criminal in nature proceeding to a guilty plea or trial under basically criminal rules of procedure, which required a court appearance.

The first "traffic violations bureaus" were established about 50 years ago, in response to the realization that the courts could not keep pace with the mandatory court appearance requirement in light of the massive number of tickets being issued.

Generally, the term "traffic violations bureau" is meant to identify that part of a court established to handle the administrative functions of traffic case processing.

Typically, it consists of court staff who may, under the direction of the judge or court, accept a motorist's written appearance, waiver of trial, plea of guilty, and payment of a pre-set penalty for scheduled nonhazardous traffic offenses.

According to the report entitled Proceedings in the Municipal Courts (Sept. 1, 1982-June 30, 1983), approximately 4,500,000 traffic summonses are being issued per year statewide. This report further indicates that 94% of all parking tickets, and 65% of all non parking traffic tickets disposed of by the Municipal Courts, were handled by the "violations bureaus", without the necessity of a court appearance by the defendant.

As the "violations bureaus" handle such a large percentage of all traffic matters without the necessity of other court action, their current structure must be both identified and analyzed, and consideration should be given for improving their current structure,

if necessary, as well as identifying and analyzing alternative approaches.

I. The Current Structure

Pursuant to Rule 1:2-1, of the Rules Governing the Courts of the State of New Jersey (Rule (s)), trials and other matters in all courts shall be conducted in open court unless otherwise provided by Rule or statute. Rule 7:4-2 and-4, which specifically relate to the municipal courts, requires the defendant's presence at arraignment and during every stage of trial. The only exception are matters paid in full according to a pre-set schedule through the Violations Bureau.

Rule 7:7-1 permits a municipal court to establish a Violations Bureau if it is determined that the efficient disposition of the court's business and the convenience of defendants so requires. The municipal court judge may designate a person as a violations clerk to accept appearances, waiver of trial, pleas of guilty,and payments. The activity of the Violations Bureau shall be conducted only at such location (preferably in a public building) as has been designated by the court and approved by the Administrative Director of the Courts (Rule 7:7-2).

Once a court has elected to establish a violations bureau, it is required to designate the offenses that fall into the authority of the violations clerk (subject to the approval of the assignment judge) and to publish the schedule of penalties for public view at the Violations Bureau (Rule 7:7-3).

Eight offenses are specifically excluded from the authority of the violations clerk pursuant to Rule 7:7-3 as follows:

(1) non-parking traffic offenses requiring an increased penalty for a subsequent violation;

(2) offenses involving traffic accidents resulting in personal injury;

(3) operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug, or permitting another person who is under such influence to operate a motor vehicle owned by the defendant or in his custody or control;

(4) reckless driving;

(5) careless driving where there has been an accident resulting in personal injury;

(6) leaving the scene of an accident;

(7) driving while on the revoked list;

(8) driving without being licensed.

Additionally, when the summons is marked to indicate that a court appearance is required, payment may not be made to the violations clerk even though the offense is on the schedule of penalties (Rule 7:7-4).

Survey data and informal inquiry including a review of the Lawyer's Diary appear to indicate that approximately 50% of the municipal courts in New Jersey have not formally established a Violations Bureau and/or designated a Violations Clerk.

Paradoxically, the AOC report entitled Proceedings in the Municipal Courts indicates that with only two exceptions, every municipal court in the State reports having disposed of traffic matters through a violations bureau. The two exceptions reported no activity for the period.

Further, every municipal court appears to use a uniform

statewide Violations Bureau Schedule of Title 39 penalties regardless of whether it has formally established a Violations Bureau.

Additionally, the Administrative Office of the Courts has promulgated two policies that together tend to foster the practice of dispositions of traffic matters without the necessity of court appearance, namely:

(1) the promulgation of a uniform statewide Violations Bureau schedule of penalties for Title 39 offenses, and,

(2) promulgation of a uniform statewide traffic ticket that advises defendants that payment may be made by mail without the necessity of an appearance.

In summary, the current practice in New Jersey appears to be a uniform statewide policy that permits the disposition of every traffic offense (other than the 8 exceptions listed in Rule 7:7-3) by plea of guilty, waiver of trial, and payment of a uniform penalty in every municipal court either by mail or in person without the necessity of a court appearance. This is the practice even in courts that do not have a violations bureau.

The current practice in New Jersey appears to rival in its simplicity any alternative approach to the handling of traffic matters without the necessity of court appearance. At a minimum, statistics indicate that the system (as practiced) is efficient, measured by the standard of relieving the court process, in that 94% of all parking and 65% of all non-parking traffic dispositions are diverted in this fashion. It should be noted that disposition experience would be higher if Court Rules did not exclude certain atters from violations bureau authority.

II. Alternatives to the Current Structure

Because of the sheer volume of traffic matters, it is recognized that "in court" dispositions of all traffic matters would be impractical if not impossible. The "concept" of the Violations Bureau approach can be described as the allowance for out-of-court dispositions by administrative methods.

This "concept" is equally applicable in jurisdictions in which traffic offenses are civil actions, whether they are within the jurisdiction of the executive branch or other administrative agency, rather than the judiciary as in New Jersey.

In other words, regardless of how the adjudicative "in-court" function relating to traffic matters is handled, the "concept" of out-of-court dispositions remains the same.

As discussed previously, in New Jersey, contested traffic matters, whether parking or non-parking, are heard by the judiciary under basically criminal rules of procedure.

In other systems that provide for adjudication by persons other than judges, contested proceedings are conducted by officials holding such titles as hearing officer (usually lawyers), judicial officer (i.e., referee, usually law trained), or variations of these titles, performing quasi-judicial functions.

In each instance, certain characteristics of judicial proceedings are retained.

Professor Robert Force, in an assessment of problems facing administrative adjudication, concluded:

> "Regardless of whether administrative agencies will be judicial to some degree, or whether courts will function more like administrative agencies, it appears inevitable that traffic adjudication will be handled in a manner which incorporates some of the attributes of both."[1]

Evaluators who have compared the two concepts find no significant differences between them.

At first glance, the administrative agency approach appears to be less costly primarily because judges would tend to earn more than hearing officers. However, if the hearing officers were lawyers, and if the current salary gap between hearing officers and judges continues to decrease, the major basis for cost savings is eliminated. If the municipal courts were not eliminated outright, or minimally if those positions were devoted primarily to traffic case adjudication, then the costs related to hearing officers would be in addition to judicial salaries and might result in increased costs rather than cost savings.

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[1] R. Force, "Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers," in Arthur Young & Co., Effective Highway Safety Traffic Offense Adjudication, Vol.3 at 97-186 U.S. Department of Transportation, Highway Traffic Safety Admin. (1974)

It is safe to conclude that successful traffic court processing will be more dependent upon how well the individual components, administrative and judicial, are managed rather than under whose authority these functions are performed. In conclusion, the current system in New Jersey, for administrative dispositions of certain traffic matters through the Violations Bureau, under the direction of the judiciary, appears to be as efficient as any alternate approach used in other jurisdictions. Any perceived lack of efficiency does not appear to be systemic but rather due to a lack of personnel, inefficient office procedures, and/or inadequate automation.

Other work groups of this committee are studying in greater detail the efficiency of the Municipal Courts in their traffic collection efforts. This effort relates primarily to the "out-of-court" processing system. However, there are certain advantages to the less formal atmosphere of the quasi-judicial, or administrative, contested proceeding that deserve discussion.

Examples are parking matters handled by court appearance, currently handled in a manner similar to serious traffic matters and criminal matters although the possible penalties are minimal (usually a fine between $5 and $20). Consideration should be given to a liberalization of this process to permit the Judge <u>in a courtroom proceeding</u> to handle parking matters in a less formal manner (similar to a civil hearing officer proceeding utilized in other jurisdictions) when appropriate.

Many appearances by police officers, as well as formal trials and hence, adjournments, could be avoided if the judge were permitted to conduct a summary proceeding using where appropriate any documentation in proper form, in order to determine relevant facts and thereafter adjudicate the matter.

Other changes to be considered that may result in efficiencies are:

1. Courts may authorize their violations bureaus to accept proof of valid operator's license, valid insurance, or registration submitted by motorists charged with failure to produce any of these documents. Of course, proper procedures would need to be carefully implemented to assure controls.

2. Consideration could be given to a relaxation of Rule 7:6-6 (Defense by Affidavit) either procedurally to permit a Certification instead of notarized affidavit (pursuant to Rule 1:4-4b) or substantively so as to liberalize its use other than in hardship cases. This appears to be the only simplification of the practice possible.

RECOMMENDATIONS

1. The current practice permitting payment of penalty without court appearance in every instance permitted by the Statewide Violations Bureau Schedule in every municipal court in the State should be continued. The Court Rules should be amended to reflect the practice.

2. Handling of traffic matters should remain under judicial control.

3. Consideration should be given to a relaxation of the procedures relating to adjudication of parking matters by the Court.

4. Consideration should be given to a relaxation of Rule 7:6-6 to

   A. permit certification in lieu of notarized affidavit (procedural);

   B. enlarge the instances in which the court may proceed "on the record in open court" with information, data, or testimony (affidavit or certification) now limited to "hardship".

Supreme Court Task Force on the Improvement of Municipal Courts

APPENDIX E

POSITION PAPERS
Committee on Trials

Hon. William H. Walls, Chairperson

PAGE

CASE MANAGEMENT

The Municipal Court should constantly strive towards a just, prompt, and economical resolution of all of its matters. Although many factors may affect the court in achieving this goal, not the least of these is directly related to the creation, maintenance, and availability of court records. Therefore, the fundamental purpose of these courts can be frustrated by inadequate or ineffective record keeping.

For the purposes of this report, the Municipal Court should be regarded as an information-processing system used to receive, create, maintain, use, distribute, long-term store and eventually destroy court information. A wide variety of equipment, supplies, and procedures is available to achieve management goals. The problems to be solved concern the proper management of new records, and the maintenance of old ones, to improve the productivity and effectiveness of the court. The Court Clerk is delegated the responsibility of exerting controls to establish and maintain the system. The records that are created by the court arise out of some complaints that are submitted by the public, but mostly are in the form of traffic tickets or CDR-1 and CDR-2 complaints originating in the Police Department. Each of these records must be separately docketed and processed. Most important, for the records to be used, they must first be located. Problems with locating records generally are caused by misfiling: either the document is placed in the wrong file, or the file is placed in the wrong location. Therefore, it is essential to use a filing system that reduces the possibility of misfiling and ensures retrieval within acceptable time limits. Furthermore, the court

must recognize that a constantly growing volume of records cannot be accommodated in a limited storage space, and must look to provide adequate filing cabinets and space. To help improve retrieval time, closed and/or inactive records must be segregated from active records.

To initiate a case management system the court clerk must prepare an analysis of the information flow, such as where the information comes from, who needs it, what is done with it, and what happens as a result of it, and then propose solutions that will meet the court's needs. Obviously, the specific response to problems must be different in a high-volume court versus a low-volume court, or in a computerized court as opposed to a manual court. The court clerk or the person most familiar with the court's needs should implement a solution that integrates the staff, the machines, and the procedures to achieve specific goals.

After the court clerk has prepared this analysis of the actual flow of information, beginning with the source, the entry point, the functions, and the procedures used in processing certain categories of records, methods can be introduced for streamlining. For example, in expediting the flow of high-volume moving-traffic violations, they should be separated out by infraction, then tagged with color coded labels on those that require special treatment, such as violations of N.J.S.A. 39:4-50 DWI, N.J.S.A. 39:3-40, driving while suspended, and N.J.S.A. 39:6B2, driving without insurance, or separated by a different color code label on those in which court appearance is mandatory, or color coded by status of the case, with the color changing as the case moves through the system. Whether all, none, or one of these solutions

might be effective is a decision that must be based on needs, objectives, and individual circumstances in each court. If in making this analysis the court clerk determines that new equipment is necessary, then the analysis should be taken one step further to specify how this equipment will be used and what manual steps its implementation will eliminate.

In those cases in which a court appearance is scheduled there must be a commitment by the Municipal Court judge to control caseflow, case scheduling, and case tracking. In each instance, the judge should have a formal written policy on continuances for "court appearance required" cases that includes a commitment to a future date certain. In every instance, provision should be made to track cases by age, and to flag those that exceed established time standards. The goal to be achieved is the maximum scheduling of the judge's bench time, balanced against over-scheduling. In order to avoid the latter, the court must keep accurate records of calendar outcome, to be used to revise time estimates in line with experience factor. The judge must be committed to the speedy disposition of all backlog, and must establish such standards for the court. If scheduling of cases and coordinating appearances of counsel, witnesses, and parties is a problem, these should be worked out in advance by a planning session with all of the people involved and obtaining their cooperation. If such scheduling involves the attorney's appearance before the Superior Court, the Assignment Judge should be apprised of the situation and the proposed solution, in order to avoid such conflicts.

As a way to focus attention on the court's needs and to establish priorities, it is necessary first to define each element of court processing, and measure it against the goals of the Court. To accomplish

this the court should formulate a case overview, using matrix formats to summarize case load by types according to their common characteristics. Suggested types are disorderly persons offenses, moving traffic violation, parking violations, etc. Within each group, the Municipal Court judge must set the priorities. For instance, within moving traffic, the judge could decide that emphasis is to be placed on DWI cases, next on driving on the suspended list, and then on uninsured motorist (all mandatory minimum sentences), to be followed by all other violations in the group. The matrix allows the judge to have a graphic view of case load and case type. The matrix will display the breakdown in each type, and the judge should use this information for calendar control. (See Appendix "A").

If the judge makes a determination that certain types of cases require more than standard treatment, these cases must be tagged and flagged at their initiation for direct court control. Such careful attention will produce an atmosphere that encourages the cooperation of counsel and the parties. The best candidate for such treatment is the DWI case, in which careful tracking will discourage dilatorious practices. The judge must be ever attentive to all proposed techniques that may inhibit early resolution. For example, at present these cases are being bogged down by the requests for the appearance of an expert witness, and

the Municipal Court can permit such an appointment. (See Township of Wayne v. Kosoff, 73 N.J. 8, 14-15, (1977). A specific Rule to this effect sets up guidelines would be of great assistance to the court.[1]

The procedural manual that is being developed for the Municipal Courts should include guidelines for acceptable time frames and goals for efficiency.

In summary, it is essential for each municipal court to develop a method for the timely review of its caseload. This paper presents one methodology, which can be modified to fit the data reporting needs for a wide variety of municipal courts, and it is therefore recommended that each municipal court develop and adopt a case management system based on these guidelines. It is further recommended that to the extent possible, each court promulgate a written adjournment policy, which should be reviewed and approved by the vicinage Presiding Judge.

It is to be emphasized that this process is not designed to add additional paperwork to be imposed on the local court clerks by the Administrative Office of the Courts, but rather to establish an internal management structure for ongoing information to the municipal court judge to expedite caseflow.

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[1]Such as Rule 5:3-3 dealing with examination by experts in the Family Part, which states: "Whenever the court, in its discretion, concludes that disposition of an issue will be assisted by expert opinion, and whether or not the parties propose to offer or have offered their own experts' opinions, the court may order any person under its jurisdiction to be examined by a physician, psychiatrist, psychologist or other health or mental health professional designated by it and may appoint an expert to report and recommend as to any issue. The court may also require a social investigation by a probation officer or other person at any time during the proceeding before it."

APPENDIX "A"

COURT CASE INVENTORY

WEEKLY or MONTHLY TALLY	A	B	C	D	

A DISORDERLY PERSONS OFFENSES

TIME REFERENCE:	JUDGE'S PRIORITY	AGE	SERIOUSNESS OF OFFENSE	TYPE	REPR.AT

B MOVING VIOLATIONS

TIME REFERENCE:	JUDGE'S PRIORITY	DWI	RECKLESS	CARELESS	SUSP.

C PARKING VIOLATIONS

TIME REFERENCE:	JUDGE'S PRIORITY	HANDICAPPED	FIRE HYDRANT	METER

D CASES FOR DIVERTION

TIME REFERENCE:	JUDGE'S PRIORITY	SEC'T. #27	DISPUTE

CONDUCT OF TRIALS

Pursuant to the mandate by the Supreme Court's Municipal Courts Task Force, guidelines of the duties and responsibilities in municipal court trials should be addressed. The Task Force seeks uniformity in municipal proceedings without impairing or impeding judicial discretion. A recommitment to traditional responsibility by trial participants may achieve this desired result.

Recommendation 1: Municipal Court trial practice should conform, as nearly as possible, to those procedures practiced in the higher courts and to the framework provided by the Municipal Court Manual.

In the courtroom, the municipal judge is deemed the primary manager of the proceedings. As such, each judge should try as nearly as possible to adopt or to conform the trial practice to the procedures followed in the higher courts. Although the conduct of municipal court trials is not specifically governed by court rules, the Municipal Court Manual sets forth guidelines for conduct of trials and provides the framework for this paper.

Every judge is responsible for the orderly conduct of the court pursuant to Judicial Canon 3A(2). Courtroom decorum should always reflect the integrity of the court. Equity and veracity are goals of justice that every judge should seek in the courtroom.

Witnesses appearing for municipal court trials are to be treated respectfully to avoid the appearance of collusion and impropriety. Police officers appearing as witnesses should not be afforded special privileges.

Recommendation 2: Witnesses or others requiring interpreting should have access to trained, professional interpreters.

Witnesses or others who require an interpreter should have one available. Because interpreters may be appointed in Superior Court, N.J.S.A. 2A:11-28, municipal courts should also use interpreters. Please note that legislation may need to be enacted to accomplish this goal. Currently, municipal courts solicit interpreters from the audience when necessary. Similar to the Registry of Interpreters for the Deaf, N.J.S.A. 2A:11-28.1, a list of language interpreters should be made available to all courts. The Administrative Office of the Courts should be responsible for compiling a list of interpreters within various communities who are trained and certified as language and sign interpreters to be utilized in municipal courts. Use of family and friends during court proceedings should be replaced with the above method. N.J.S.A. 2A:11-29 authorizes payment for interpreters in any county other than those with a population of more than 800,000 inhabitants. Judges shall fix fee schedules with approval by the Board of Chosen Freeholders. If interpreters are needed, counsel or a party in the case should give the court at least 24 hours notice.

Recommendation 3: Each defendant must be informed of his/her rights prior to trial, by an oral presentation rendered from the bench.

It is the responsibility of the municipal court judge to inform each defendant individually of his rights prior to the hearing. In cases not involving consequences of magnitude, it shall be sufficient that the defendant has been so advised of his rights by an approved general announcement of those rights at the commencement of the court session and that the defendant acknowledges orally and individually that he has

been so advised of his rights, that he understands them, and that after having been offered the right to have them repeated by the court at time of trial, he waives that right. The court must decide prior to each hearing which cases involve consequences of magnitude.

Recommendation 4: With few specific exceptions, trials, motions and applications, arraignment, and sentencings should be open to the public.

The public may not be excluded except as otherwise provided by rule or statute. Rule 1:2-1. Municipal courts, within their discretion, may exclude the public in certain matters. In 1978, Rule 7:4-4(c) was amended to exclude any persons not directly interested in matters involving domestic relations, bastardy cases, sexual offenses, school truancy, or parental neglect. Appropriate scheduling of sensitive cases not involving those type of matters may obviate the need to exclude the public.

Recommendation 5: Municipal court session should be held at scheduled times.

The length of court sessions may vary throughout the State. However, the times scheduled for court sessions within any court should be constant. Ready accessibility to the courts mandates that scheduled times upon which the public can rely should be posted and maintained. Sessions should begin promptly on schedule to minimize unproductive lapses of time.

FRIVOLOUS COMPLAINTS

The subject of this issue paper is methods for handling frivolous complaints. While there does not appear to be a large number of these complaints, the problems caused by them are out of all proportion to their number. It appears that nearly every committee on the Municipal Court has considered this issue at one time or another. The Supreme Court Committee on Criminal Practice has a subcommittee looking into the issue at this time.

(1) Filing of Complaint

One frequent proposal to alleviate the problem of frivolous complaints is the imposition of some restrictions on the filing of complaints. It is often proposed that court clerks be given the power to refuse complaints considered baseless. While this method would certainly reduce the number of frivolous complaints, it would also reduce citizens' access to the courts. The Supreme Court has been committed for many years to the proposition that any person may file a complaint. (See Municipal Court Bulletin Letter #170, May 1970; New Jersey Municipal Court Manual, January 1983, III-1.) Therefore, it is not clear whether we can re-examine this issue. It would, however, be useful to amend Rule 3:2, either making it clear that any person may file a complaint or making it clear that the court clerk has discretion as to whether to receive complaints. The Committee supports the first option.

(2) Process on Complaints

Assuming that any person may file a complaint and that as a result some frivolous complaints will be filed, two problems remain. First, what process, if any, can issue upon these complaints, and second, whether there is an expeditious manner of disposing of them. The case of State v. Ross, 189 N.J. Super 67 (App. Div. 1983), makes it clear that no process may issue on a complaint if there is no probable cause to believe that an offense was committed and the person complained against committed it. The Committee proposes an amendment to Rule 3:3-1(a) to reflect that case. As a result of such an amendment, if a complaint is frivolous in that it does not constitute probable cause, while the complaint would be received by the court, neither a summons nor a warrant would be served on it.

(3) Disposition of Complaints on Which No Process is Issued

The last remaining question is how a complaint should be handled where no process is issued on it. Clearly, some sort of procedure or hearing need be constructed. The purpose of such a procedure would be to determine whether in fact there was sufficient probable cause to allow process to be issued, or in the alternative there was no such probable cause and the complaint should be dismissed. The issues to be decided in the construction of this procedure are, first, who should get notification, and second, whether a hearing should be held in open court or whether the judge should decide the matter on the papers. It appears that the appropriate parties to get notification of the pending complaint are the

complainant, defendant, and appropriate prosecuting agency. The notice should indicate that there is a complaint; that no process has issued on it; and that if no probable cause is found, the complaint will be dismissed. The second issue is harder. If there is to be a hearing, the process for disposing of frivolous complaints will be relatively cumbersome. On the other hand, if there is to be no hearing, then it is not certain that a person who files a complaint and who is not learned in the law and, therefore, fails to state facts that would constitute probable cause, can really be said to have had an opportunity to file a meaningful complaint. A rule change to implement this procedure should be a new subsection (f) to Rule 3:3-1.

RULE CHANGES EFFECTIVE

SEPTEMBER 10, 1984

RULE 3:2. COMPLAINT: CONTENTS, SERVICE

The complaint shall be a written statement of the essential facts constituting the offense charged made upon oath before a judge or other person empowered by law to take complaints. Whenever practicable a copy thereof shall be served on the defendant at the time of service of the summons or execution of the warrant. The clerk or deputy clerk shall accept for filing any complaint made by any person.

Note: Source -- R.R. 3:2-1(a)(b)[.]; amended July 26, 1984 to be effective September 10, 1984.

RULE 3:3. [WARRANT OR] SUMMONS OR WARRANT UPON COMPLAINT

3:3-1. Issuance

(a) [Warrant or] Summons or Warrant. A summons or [An] arrest warrant [may] shall be issued by a judge of a court having jurisdiction in the municipality in which the offense is alleged to have been committed or in which the defendant may be found, or by the clerk or a deputy clerk of that court, only if it appears to such judge, clerk or deputy clerk from the complaint, or from an affidavit or deposition taken under oath, that there is probable cause to believe that an offense has been committed and that the defendant has committed it. [The warrant may issue to any officer authorized by law to execute it.] A summons may issue instead of a warrant, as provided in subsection (b), or if the defendant is a corporation. A warrant may issue to any officer authorized by law to execute it. Instead of detaining a person arrested without a warrant, the officer may give such person a summons as provided in Rule 3:4-1(b).

(b) ... no change

(c) ... no change

(d) ... no change

(e) ... no change

(f) Procedure When No Warrant or Summons is Issued. When pursuant to subsection (a) of this Rule neither a warrant nor summons is issued on a complaint, the judge shall, after notice to the defendant, complainant, and appropriate prosecuting agency, determine whether there is probable cause for the issuance of a summons or warrant. If no such probable cause is found, the complaint shall be dismissed.

Note: Source - R.R. 3:2-2(a)(1)(2)(3) and (4); paragraph (a) amended, new paragraph (b) adopted and former paragraphs (b) and (c) redesignated as (c) and (d) respectively July 21, 1980 to be effective September 8, 1980; paragraph (b) amended and paragraph (e) adopted July 16, 1981 to be effective September 14, 1981; paragraph (b) amended July 22, 1983 to be effective September 12, 1983[.]; caption and paragraph (a) amended and paragraph (f) adopted July 26, 1984 to be effective September 10, 1984.

HANDLING OF INDICTABLE COMPLAINTS

The current system of referring indictable complaints to the Superior Court level only to have about 1/3 returned after several months creates numerous problems for municipal courts. The argument by municipal courts and by municipal prosecutors is that too much time passes before an indictable matter is returned to the municipal court either by way of a downgrade or by way of a remand of disorderly persons offenses that have followed an indictable now disposed of at the county level. The time lapse in downgrade or remand creates an inability to prosecute a case due to either lack of interest on the part of the complaining witness or inability to gather evidence and witnesses for trial after a substantial period of time has elapsed. An additional difficulty in the past has been that the downgraded offense is not necessarily consistent with the facts that created the indictable offense. To some extent, degrees of offense as now set forth in Title 2C have eliminated some of this problem, but other problem areas still exist. Also, municipal courts need administratively to match remanded cases to existing files, and this, especially where cases are downgraded to lesser or related charges, can consume substantial time and resources.

One of the more difficult and complex issues facing the municipal courts is the proper role of these courts as to indictable offenses.

Currently, the practice is to file all indictable complaints in the municipal courts. At a 'first appearance' shortly after filing, the court advises defendants of their various rights, including an indigent's right to have counsel appointed and availability of PTI. Most counties still allow for probable cause hearing in municipal courts, although this procedure is rarely invoked due to insufficient prosecutorial and defense resources. After the first appearance, or probable cause hearing if requested, the complaint and any remaining related paperwork are sent to the county.

At the county level, the prosecutor screens all cases to determine whether they should be presented to the grand jury for indictment.

Indictable complaints that are referred by a municipal court to the County Prosecutor pursuant to Rule 3:4-3 may be disposed of by the County Prosecutor in a variety of manners short of indictment or accusation. These forms of non-indictable disposition are as follows:

1.) Termination of the complaint by administrative dismissal.

2.) Referral of the matter to the originating municipal court by administrative dismissal with referral (sometimes call "remand" or "downgrade") of the indictable complaint back to the municipal court for hearing as a lesser included disorderly offense.

3.) Dismissal of the indictable complaint by a grand jury.

4.) Dismissal of the indictable complaint by a grand jury with referral back.

5.) By waiver under N.J.S.A. 2A:8-22 - a seldom - used procedure by which certain indictable offenses (notably, thefts under $500.00) may, by written consent of the county prosecutor and the defendant, be heard in the municipal court, which becomes vested with authority to sentence the defendant with the indictable - level penalites of the applicable statute upon judgement of conviction.

Currently in New Jersey, only 50% of persons with indictable complaints are ultimately indicted. Nearly one third of those charged with indictable offenses are remanded to the municipal courts, by the prosecutor or grand jury, for handling as disorderly persons complaints. Statewide data are as follows.

Prosecutorial Screening (7/1/83 to 3/31/84)

Number of person with indictable complaints files	48,291
Number (%) of these cases:	
a) Administratively dismissed.....	5,455 (11.3%)
b) Downgrade & remand.....	8,984 (18.6%)
c) Pre-indictment decision (PTI or Section 27).....	1,122 (2.3%)
d) No bills: Dismissed or remanded to municipal court by Grand Jury.....	8,135 (16.8%)
Total number (%) of persons for which no indictment was obtained.....	23,696 (49.1%)

Table A presents a county-by-county comparison of the percentage of defendants charged with indictable complaints that were ultimately remanded to the municipal courts, either by the county prosecutor or grand jury.

It is clear that there is significant variation among the counties, with the percentage of defendants remanded ranging from zero in Somerset County to 59.5 percent in Burlington County.

TABLE A

Remands as a Percent of Indictable Charges

(7/1/83 to 12/31/83)

COUNTY	Remands/Indictable Charges
ATLANTIC	50.19
BERGEN	35.48
BURLINGTON	59.51
CAMDEN	31.37
CAPE MAY	30.74
CUMBERLAND	21.41
ESSEX	35.39
GLOUCESTER	23.67
HUDSON	51.31
HUNTERDON	2.46
MERCER	18.93
MONMOUTH	29.33
MORRIS	26.44

Table A continued

OCEAN	38.36
PASSAIC	20.12
SALEM	22.76
SOMERSET	0.00
SUSSEX	12.33
UNION	29.80
WARREN	16.98
TOTAL	30.61

*Some of these cases are remanded to the Central Judicial Processing unit, which disposes of remanded defendants who plead guilty. Only those remanded defendants who plead not guilty are returned to the court of origin for disposition.

Recommendations and Alternatives

Recommendation 1 :

A specific and formal relationship and line of communication should be developed between county and municipal prosecutors in all counties.

Formal and regular communication between the municipal and county prosecutor would benefit both prosecutorial representatives. In one instance, the municipal prosecutor could be used for screening, in order to inform the county prosecutor of those indictable complaints that could be recommended for downgrading to a disorderly persons offense and should be handled in the municipal court. If lines of communication were set in place, complaints that should be handled as disorderly persons complaints at the municipal court level, and not as indictable offenses, could be quickly identified. If downgraded, a defendant could enter a plea of guilty at first appearance and be sentenced at that time or, in the instance of a not guilty plea, the matter set for trial in short order, leading to the disposition of a case in much less time than would be required if the complaint were forwarded to the county prosceutor for formal review.

The converse may be true as well with the county prosecutor consulting the municipal prosecutor in terms of downgrade or remands of indictable complaints that have been forwarded to the county prosecutor. Facts may well exist that are known to the municipal prosecutor or the local police and that may aid the county prosecutor in determining if a downgrade or remand should take place. Although many counties may indicate that such a procedure exists, in most situations it is in name only, becuase it is likely either the county or the municipal prosecutor has not used such a system in its most effective manner.

Recommendation 2 :

The Attorney General and County Prosecutor should review the various alternatives to the current system and should promote procedures that expedite prosecutorial screening.

Experiments over the last several years by prosecutors have developed some promising alternatives to the current systems.

In Somerset County, indictable complaints are not filed in Municipal Courts, but are directly filed by the prosecutor with the Superior Court. If the prosecutor screens the case and determines it should be handled by the municipal court, then it is filed originally in the municipal court and disposed of there. This system, known as "direct filing", both expedites the screening process and reduces the double-handling and other problems associated with downgrades and remands.

In Hudson County, a system known as Central Judicial Processing (C.J.P.) has been in successful operation for several years. This concept includes a full time municipal judge who sits at the County level, and who conducts first appearances under Rule 3:4-2 on all indictable cases within 24 hours of arrest. The court is staffed by a full-time public defender and an experienced assistant prosecutor with full screening authority. Police reports accompany every case, and screening is done on the spot. Downgraded cases are disposed of at the same time, or remanded to municipal court of original filing (at defendant option).

In Middlesex County, a most progressive system was developed in 1982 in which an experienced assistant prosecutor, assigned to cases from specific municipalities, screens all cases very soon after receipt. However, beyond just screening as to downgrade or dismisal, this prosecutor also reviews cases for diversion or early disposition by accusation.

Surely there are many ways to reduce the time from arrest to screening and to ultimate remand of cases to municipal courts. Some county prosecutors have for years maintained procedures that expedite the remand process. Given all of these useful procedures, it may now be time to expand statewide compliance.

Recommendation 3 :

Consideration should also be given to studying the types of cases resulting in remand (drug possession, simple assault, etc.) and to considering either legislatively changing jurisdiction to that of the municipal courts or expanding authority for the municipal courts to originally proceed on these cases by waiver of indictment under N.J.S.A. 2A:8-22.

PLEA AGREEMENTS IN MUNICIPAL COURTS

Historically, the New Jersey courts have moved conservatively and cautiously in the areas of plea bargaining and sentence bargaining.[1] Plea bargaining in criminal cases became formalized in an Administrative Memorandum dated December 11, 1970. See 94 N.J.L.J. Index Page 1; State v. Korzenowski, 123 N.J. Super. 454, 456 (App. Div. 1973), certif.den., 63 N.J. 327 (1973). The Memorandum was eventually codified and evolved with amendments into what is now Rule 3:9-3.

It has long been the "understanding" among municipal court judges and lawyers appearing in the municipal courts that plea bargaining is not permitted. The origins of the "understanding" are unclear despite the apparent knowledge of all parties as to its existence. Some of the origins may be as a result of a memorandum in 1974 issued by the Administrative Office of the Courts. While not appearing to be all encompassing in its

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[1] Plea bargaining is distinguished from sentence bargaining. A plea bargain concerns a guilty plea by a defendant to a lesser or amended charge or one or more charges in exchange for the dismissal or merger of one or more other outstanding changes, either related to the same incident or different incidents. Sentence bargaining concerns a recommendation to the court by the State and/or defendant of a specific sentence, maximum or minimum sentence, or jail or probation.

scope and directed mostly to violations of then N.J.S.A. 39:4-50 (a) and (b), it became interpreted as all-encompassing.[2] The Supreme Court through the AOC reaffirmed its municipal court plea-bargaining position in 1975.[3]

Although never fully stated or explained, the reasons for the "no plea bargaining" edict in the municipal courts included the potential for abuses when there was no direct supervision over an extensive number of municipal courts. This problem became exacerbated when the municipal courts, even as late as the 1960's and early 1970's, were not required to maintain a stenographic record or sound recording device. Also during this same period, most municipal courts did not have a prosecutor and even fewer had a public defender.

It is clear that the municipal courts have become more professional. Many of the deficiencies previously found do not now exist. Municipal courts are now courts "of record", required to maintain sound recording devices and logs. Most have prosecutors and many even have public defenders.

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[2] "Bulletin Letter", #3-74 contained the following statement: No plea agreements are permitted in municipal courts on non-indictable offenses. A judge may not accept a plea of guilty to a lesser charge where it appears that a violation of N.J.S.A. 39:4-50(a) or (b) may have occurred. In such cases, the judge should hear the matter. Where a judge is not satisfied that the prosecution has proven a case under (a), he may find the defendant guilty of (b) as a result of the hearing.

[3] "Bulletin Letter #9/10-75 stated: The Supreme Court has recently reaffirmed its policy prohibiting plea bargaining in the municipal courts. The roles in Part III dealing with plea bargaining (Rule 3:25A) are not applicable to the municipal courts. Refer to the item Plea Bargaining in Municipal Court Bulletin Letter #3-74, page 2.

It has been recognized, without condoning the practice, that plea bargaining has informally existed in the municipal courts for some time without abuse; however, the New Jersey Supreme Court and the AOC have declined to approve the practice.

More recently, the 1982 Report of the Supreme Court's Committee on Municipal Courts endorsed the Report of Subcommittee on Plea Agreements in Municipal Courts. That report recommended that plea bargaining be permitted in the municipal courts pursuant to certain guidelines, one of which was that there be an indication "on the record" of the concurrence of the arresting police officer or complainant. A significant minority was of the view that concurrence should not be required. As a result of this report, the Supreme Court approved an experimental plea-bargaining program in certain municipal courts. This pilot program was unfortunately of short duration with guidelines that to some extent were impractical and unmanageable.[4]

In August, 1984, the Supreme Court again indicated its refusal to permit plea bargaining in the municipal courts. Especially in light of today's climate it is surmised that this position resulted, in part, from plea bargaining on drunk driving summonses. As a practical matter, in the area of motor vehicle violations, there are three principal areas in which

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[4]Unfortunately, the pilot plea bargaining program was activated at the same time as the attack on the breathalyzer instrument resulting in the stay order in Romano v. Kimmelman. Due to the stay order, the statistics related to drunk driving during the plea bargain program could not be considered accurate since only weaker cases or refusal cases were being moved to trial.

three principal areas in which plea bargaining would exist -- drunk driving (N.J.S.A. 39:4-50), (2) uninsured (N.J.S.A. 39:6B-2), and (3) driving while suspended (N.J.S.A. 39:3-40). The aforementioned are all offenses calling for where certain minimum mandatory penalties. Plea bargaining in other areas of motor vehicle offenses are almost non-existent, with the only plea bargaining really being "merger" of offenses occurring as a result of the same incident. To prohibit plea bargaining in the three areas set forth previously would make any plea bargaining in the municipal courts a non-entity. On the other hand, the seriousness of the offenses in the three categories should not be underestimated.

To preserve the integrity of those serious offenses involving minimum mandatory penalties while recognizing the basic considerations for the use of plea bargaining in the municipal courts, it is recommended that plea bargaining be permitted in the municipal courts pursuant to certain guidelines. The guidelines should include the following:

1. The disclosure of all plea bargain agreements before the municipal judge shall be fully placed on the record.
2. The reasons and the necessity for the plea bargain agreement shall be fully placed on the record.
3. A factual basis for the entry of the guilty plea shall be taken from the defendant.
4. The prosecutor shall indicate "on the record" that the arresting police officer and the victim have been advised of the plea agreement.

5. Plea agreements shall take place only in those courts in which there is a municipal prosecutor and a defendant is represented or has made a knowing waiver of counsel on the record. In courts in which there is no prosecutor, no plea agreements will be permitted.

6. In those offenses involving a minimum mandatory penalty, where a plea bargain is reached for a defendant to enter a guilty plea to a lesser and/or amended charge, the municipal prosecutor must represent that insufficient evidence exists to warrant conviction, or that the possibility of an acquittal is so great that the interests of justice warrant the plea bargain or dismissal.

The above should be done within the guidelines of Rule 3:9-3 as modified for purposes of incorporating the above. The committee realizes that certain plea agreements entered into between counsel may prove unacceptable to the court. Because the factual basis for the plea would have already been placed before the court, the municipal judge will have to disqualify himself or herself. However, the committee does not feel this will happen so frequently as to produce a procedural burden.

Therefore, it is the recommendation that the following rule be adopted: Rule 7:4-2...

(j) Plea Agreements. Plea discussions and plea agreements shall be permitted in the municipal court in accordance with Rule 3:9-3 when there is a municipal prosecutor and the defendant is represented or has made a knowing waiver of counsel on the record,

except that the municipal court judge shall not participate in any plea discussions or agreements. The plea shall be accepted by the municipal court judge in accordance with Rule 3:9-2 and Rule 3:9-3(b). The municipal prosecutor shall state, on the record, the reasons and necessity for the plea agreement and that the arresting police officer and the victim have been advised of the plea agreement. In those offenses involving a minimum mandatory penalty, when a plea bargain is reached for a defendant to enter a guilty plea to a lesser and/or amended charge, the municipal prosecutor must represent that insufficient evidence exists to warrant conviction, or that the possibility of an acquittal is so great that the interests of justice warrant the plea bargain or dismissal.

PROPOSED BAIL PROCEDURES

As part of its general mandate, the Trial Subcommittee of the Supreme Court's Municipal Court Task Force has considered bail setting practices within the State and discerns certain apparent trends. Specifically, such trends indicate an apparent disregard of the limited constitutional constraints of bail, improper application of the ten-percent cash bail program, and the sometimes indiscriminate authority of municipal court personnel in setting bail. Responses to formal and informal surveys and discussions with municipal court judges reveal the above.

From earliest law the purpose of bail has been to assure the presence of the defendant at judicial hearings.

Bail should not be used as a panacea for other administrative problems. Survey responses disclose occasions on which bail is set so unrealistically high as to prevent the accused from posting it, the purpose being to protect the community. Bail is a critical component of the criminal justice system; as such "it is not to be denied merely because of the community's sentiment against the accused nor because of an evil reputation." Carbo v. United States, ___ U.S. ___, ___ L.Ed. 2d 769, 773 (1962). Currently, New Jersey does not authorize, much less favor, the use of bail as a means of preventive detention.

Preoccupation with potential defaults resulting from the ten-percent cash bail program discourages many judges from using this approved mechanism as an alternative approach to bail. The ten percent program is a complete alternative. Another program involves the court assessing

bail that is later used to satisfy fines (such as contempt of court) of the accused without an in personam hearing. Such procedures violate the Fifth Amendment right to confront one's accusers, denies the accused due process, and undermines the adjudicative system. Prevention of bail defaults and ready ability to collect fines, although valid concerns of a municipality, are beyond the purpose of bail.

Another trend in municipal courts is the indiscriminate setting of bail by municipal court clerks and police. The Court Rules permit such activity only in the absence of the judge. Thus, court personnel should not be authorized to perform this duty ordinarily.

Although most judges readily acknowledge the purpose of bail, many have independently expanded its application by broadly interpreting the rules. This problem of expansive bail procedures may be current within the municipal court system. Of the forty responses received, at least half expressed the use (either in their court or that of others) of bail for purposes other than to assure the presence of the accused at all stages of the proceedings. For example, high bails have been set in one township for every repeat offender to assure difficulty in raising the same in order to protect society. Also, a complaint was filed with the Administrative Office of the Courts when unpaid fines were assessed against the posted bail. Costs of court and contempt charges have been reduced against the posted bail also. The following discussion analyzes these problems and suggests alternatives.

A. THE PURPOSE OF BAIL

New Jersey courts have long recognized the purpose of bail as a means to assure the presence of the accused at all proceedings prior to

and including trial. State v. Casavina, 163 N.J. Super. 27 (App. Div. 1978). State v. Tucker, 101 N.J. Super. 380 (Law Div. 1968); Further, bail may be used to secure the release of an accused from imprisonment pending disposition of the charge. State v. Rice, 137 N.J. 593 (Law Div. 1975), aff'd, 148 N.J. Super. 145 (App. Div. 1977), rev'd, 165 N.J. Super. 421 (App. Div. 1979), on remand, 170 N.J. Super. 454 (Law Div. 1979).

Although the court has broad discretion in dispensing bail, everyone in New Jersey, with a certain exception, is entitled to bail. Article One, paragraph eleven, of the 1947 New Jersey Constitution guarantees:

> All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great.[1]

Inherent therein is the recognition of the presumption of innocence and the practical thrust that an accused released on bail should thereby be able to develop his case if he is at liberty to contact witnesses, gather supportive evidence and freely consult with counsel; "the traditional right to freedom before conviction permits the unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction." United States v. Edwards, 420 A. 2d 1321, 1330 (D.C. App. 1981).

Guidelines for determining bail are clearly enumerated in Rule 3:26-1(a), incorporated and made applicable to municipal courts by Rule 7:5-1. Determinations should be based upon the defendant's

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1 To date, no constitutional equivalent is recognized in the United States Constitution. United States v. Edwards, 420 A. 2d

1) residence,
2) employment status,
3) family status
4) prior record,
5) likelihood of conviction,
6) community reputation,
7) mental condition and reputation, 8) offense and its gravity,
9) references, and
10) risk of flight.

State v. Johnson, 61 N.J. 352, 364-365; Rule 3:26-1(a). These parameters suggest that the court examine each individual accused, determine the likelihood of his/her return to all court proceedings, and assess bail accordingly.

Bail should not be applied to outstanding fines of the accused until an in personam adjudication of guilt occurs. The present practice of using bail as a source of fines is improper, especially when the money has been posted for one purpose by someone other than the accused. In such cases, the accused is not fined, but rather the surety is penalized -- an unfavored result. Similarly, fines assessed against an accused posting his own bail impose a penalty on the absent person. The setting of excessive bail is prohibited by the Eighth Amendment.

> The amount of bail should not be excessive-even though the controlling test is not the defendant's financial capacity. His indigency although requiring consideration, because inevitably bail discriminates against the poor, cannot of itself outweigh the nature of the crime. On the other hand, an excessive bail requirement should not be utilized as a means of confining the accused until trial. The amount of bail, where serious offenses...are involved, is not an easy decision. But in reaching it, the constitutional right to bail and the presumption of innocence cannot be overloaded.
> [State v. Johnson, supra, 61 N.J. at 365.]

1321, 1330 (D.C. App. 1981); Blunt v. United States, 322 A. 2d 579, (D.C. App. 1974).

B. BAIL GUIDELINES

The subcommittee recommends that each assignment judge adopt and approve bail guidelines. These should enumerate suggested bails for various crimes. The committee is aware of the diversity of criminal problems experienced by our counties. Counties bordering other states, for example, may be subjected to a greater number of out-of-state offenders than a more insular county. Consequently, although county bail schedules should be uniformly applied within that unit, attempted statewide uniformity may well be impractical. The committee also recommends that each assignment judge establish and encourage the use of a ten-percent bail alternative in conformity with applicable rules and case law.

C. AUTHORITY TO SET BAIL

The indiscriminate setting of bail by clerks and police has caused problems in municipal courts. The court rules, specifically Rule 7:5-3, mandates municipal court judges set bail in all indictable offenses except those noted in Rule 3:26-2, for which the Superior Court judge must set bail. However, he may designate the court clerk or others authorized by law to take a recognizance. The subcommittee finds that many judges have delegated this duty primarily to subordinates who may be unfamiliar with bail and crimes as they are legally defined. It is the subcommittee's position that only in the absence of the judge should others be authorized to set bail. Moreover, bureaucratic personnel should set bail only in accordance with county bail schedules approved by the assignment judge. Also, police should be allowed to set bail only in emergent matters. Impropriety, or the hint of it, may appear when

departmental colleagues effect an arrest and co-workers set bail on the case. Courts should exert all reasonable means to avoid the appearance of prejudice or bad faith in criminal proceedings.

Another aspect of authorization problems in municipal courts involves the disparity among municipal court judges as to which judge may set bail in serious crimes. The most controversial rule among municipal court judges is Rule 3:26-2 (authority to admit bail), which specifies the charges upon which bail may be set. It expressly prohibits municipal judges from setting bail on the following:

(a) Murder
(b) Kidnapping
(c) Manslaughter
(d) Aggravated manslaughter (e) Aggravated sexual assault
(f) Sexual assault
(g) Aggravated criminal sexual contact (h) Robbery
(i) Second or third degree aggravated assault per N.J.S.A. 2C:12-1(b); or
(j) Arrestee in any extradition proceeding

The genesis of Rule 3:26-2 can be found in Rule 2:9-3 (Rules, effective September 15, 1948), which allowed municipal court judges the authority to set bail for "any person charged with a criminal offense except treason, murder, kidnapping, manslaughter, sodomy, rape, arson, burglary, robbery or forgery." After the Rule revision of 1953, this Rule emerged as 3:9-3, and was further amended in 1965 (effective September 13, 1965) to eliminate the above cited exclusions of arson, burglary, robbery and forgery. Rule 3:9-3 continued to exclude the other offenses from the jurisdiction of the municipal court (for bail setting purposes) and added the crime of armed robbery as an offense for which only an upper court judge could set bail.

The Rule continued in that form until 1978. Effective September 11, 1978, the Rule was amended to limit the jurisdiction of municipal

courts by denying them the power to set bail in matters involving "atrocious assault and battery, an attempt to commit any of the enumerated crimes, any offense involving significant violence to the person or an arrest in connection with an extradition proceeding." (Comment, Rule 2:26-3, 1984 ed.) Most of these changes were quickly reversed by amendment effective June 1979.

The reasons behind the amendments of September 1978 and June 1979 are not totally clear. The limitations imposed upon the jurisdiction of municipal courts on bail matters (September 1978 amendments) appear to have been prompted at least in part by a series of criminal incidents in the City of Trenton during the late Spring and Summer of 1978. The "mugging" of several state employees, an Assemblywoman and her aide (all near the State House) heightened the awareness and concern of all branches of government, including the Judiciary. At the same time, an incident occurred (which received ample press coverage) in which an allegedly violent repeat offender in Trenton was released on $500.00 bail. This incident occurred despite the fact that all proper procedures and policies were followed by the judge setting bail. In a press release dated May 4, 1978 Chief Justice Hughes indicated the Court's continued concern with violent and repetitive offenders and its intent to upgrade bail procedures to protect the community from those offenders during the time between the commission of the offense and the trial. The primary concern of the Chief Justice appeared to be the lack of a procedure (as well as the resources to implement same) that would allow for a thorough examination at the municipal level of all the circumstances surrounding a case prior to the setting of bail.

The Court Rules governing bail were amended as indicated above, effective September 11, 1978. At the time of their amendment Chief Justice Hughes indicated that the removal of these matters to the Superior Court was intended to put more bail matters into the hands of full time judges who could do the job with "more uniformity and expedition..." (Trentonian, August 1, 1978). The new rules underwent intensive scrutiny and discussion by the members of the bench throughout the Fall and Winter of 1978-1979. During this time a strong consensus emerged that most of the bail matters that had been recently transferred to the Superior Court should be returned to the Municipal Court level. It was felt that the municipal court was the proper forum for determining bail and that it, rather than the Superior Court, could best protect the public from dangerous or violent offenders.

Supporters of this position argued that the municipal courts were less lenient than Superior Courts in setting bail (as evidenced by the number of cases in which Superior Courts reduced the bail figure set below). It was further argued that municipal courts were quite susceptible and amenable to direction from upper courts, so that if municipal courts were directed to "tighten up" bail procedures, they would do so. Others felt that the municipal court judge is better equipped to evaluate and set bail because of his proximity to the scene, his knowledge of repeat offenders, his access to information on a local level (which could establish or disprove the existence of probable cause), and his experience in differentiating between frivolous and serious allegations. Additional concerns also emerged, such as the problems involving atrocious assault and battery cases in which the private complainants' exaggerations had resulted in the conversion of a

simple assault and battery into an offense for which only a Superior Court judge could set bail. There was also criticism of the language "any other offense involving significant violence to the person," as being inexact and vague.

After much study and debate and after receiving the recommendation of the Assignment Judges, the Rules were amended effective June 1, 1979 to return these bail matters to the municipal court level. The Rules were again amended (effective September 1, 1979) to reflect the terminology and grading system of the 1979 Code of Criminal Justice. As presently constituted, Rule 3:26-2 allows the municipal court to set bail for all defendants except those charged with "murder, kidnapping, manslaughter, aggravated manslaughter, aggravated sexual assault, sexual assault, aggravated sexual contact, robbery, aggravated assault if it constitutes a crime of the second or third degree as defined by N.J.S.A. 2C:12-1b, or a person arrested in any extradition processing."

Further changes were made to the bail procedure when the New Jersey Supreme Court modified the Rule permitting municipal court judges sitting in Newark, East Orange, Irvington, Montclair and Orange to admit bail to any person charged with:

> a) Aggravated manslaughter b) Aggravated sexual assault
> c) Sexual assault
> d) Aggravated criminal sexual contact e) Robbery (except of the first degree) f) Second or third degree aggravated assault per N.J.S.A. 2C:12-1(b)

Most judges of municipalities without this authority complain that they should be vested with it. Confusion exists among police and clerks who needlessly contact Municipal Court Judges on matters for which only Superior Court Judges may set bail. Likewise, confusion occurs when

judges who serve adjoining communities may set bail for serious crimes in one town, but are prohibited from setting bail in the neighboring town although the cases are similar. Such problems frustrate municipal court personnel and hamper effective operation within the system.

The aforementioned practice may also compromise the credibility and self-image of municipal judges, and may seed erroneous public perception of diminished competency among Municipal Court judges in relation to Superior Court judges. Every municipal court judge should be permitted to set bail on serious charges. Often, many cases such as aggravated assault charges initially outside the jurisdiction of municipal courts subsequently are downgraded by the County Prosecutor and ultimately find their way to the jurisdiction of the municipal courts. Cases may proceed more efficiently if municipal courts are initially permitted to set bail in these cases within the county's minimum bail guidelines. Such practices would allow defendants to make immediate application for bail. The foregoing realities and present quality of the municipal court bench obviate the necessity for the present restriction. Effective September 10, 1984, Rule 3:26-2 was amended, in conformance with committee recommendations, to extend the authority of the municipal court judge to set bail for robbery and aggravated assault if it constitutes a crime of the second or third degree as defined by N.J.S.A. 2C:12-1b.

CONCLUSION

The subcommittee repeats: Bail should be used only to assure the presence of the accused at all stages of the trial; expansive interpretations of the rule should be avoided. Use of bail prior to in personam adjudication for any other purpose is opposed. Further,

municipal judges should adhere to the guidelines of Rule 3:26-2 in determining bail eligibility. Every effort should be made by municipal courts for speedy bail determinations. Use of bail schedules in each county, approved by the assignment judge, is an appropriate mechanism for eliminating many current deficiencies in the municipal court system. All assignment judges should be directed to permit municipal court judges to apply the ten-percent cash bail alternative in relation to the bail schedules. Periodic review of bail procedures by municipal court judges and staff is extremely important. The use of these procedures should enhance the constitutional and practical purposes of bail; to protect the rights of society and the accused. Finally, the Committee recommends that Rule 3:26-2 be amended to allow all municipal court judges to set bail on most serious charges, as is currently the practice in the City of Newark and in several other jurisdictions.

PROVISION OF COUNSEL IN MUNICIPAL COURTS

It has long been required that counsel be appointed for defendants who are indigent and subject, if convicted, to consequences of magnitude. Rodriguez v. Rosenblatt, 58 N.J. 281 (1971). As the number of cases involving consequences of magnitude increases, the number of cases that require counsel increases. Many courts are responding well to this problem. Others, unfortunately, are not. There appear to be cases in which consequences of magnitude, including jail, are imposed without defense counsel and without a waiver of that counsel. There are many situations in which some counsel is provided but that counsel is insufficient in one or more respects.

System of Providing Counsel

Because counsel must be provided in certain cases in each municipality, each municipality should adopt a regulated system of providing counsel. There are three methods for the provision of counsel: employment of a staff public defender, use of a panel of private attorneys paid on a per case basis, and reliance on a rotational, unpaid appointed counsel system on a regular basis. There are significant reasons that the use of unpaid private attorneys is less desirable than either of the other two systems. While this method for

provision of counsel should not be forbidden, it should be discouraged. It is important that a specific organized system should be adopted. The practice currently used in some courts of assigning whichever lawyer is present in the court that day to defend a person facing a consequence of magnitude is unacceptable. Such a system can never be expected to provide adequate counsel. The system chosen should be approved by the assignment judge. This recordation will assure that some system has been chosen.

Waivers of Counsel

In each case in which a consequence of magnitude is possible if the defendant is convicted, the court should inquire as to indigency and should offer counsel. The court should not wait for the defendant to raise the issue. As in cases in Superior Court, only a defendant who affirmatively desires to appear pro se should do so. The court should never suggest or encourage a defendant to appear pro se. As uncounseled cases should be exceptional, it would be appropriate to require that a statement should be stamped on the complaint itself, to be signed by the defendant, in the event of a waiver of counsel. Since the complaint is retained by the Municipal Court, the signed statement will be available

in the event of a subsequent dispute. The statement shall include the following language:

> I HAVE BEEN ADVISED BY THE JUDGE·THAT I MAY HAVE A LAWYER APPOINTED TO REPRESENT ME IF I HAVE INSUFFICIENT MONEY FOR A LAWYER. I DO NOT WANT TO HAVE A LAWYER REPRESENT, BUT WISH TO PROCEED WITH MY CASE NOW:
>
> _____
> DEFENDANT

This statement would be used anytime that a consequence of magnitude is imposed on a case without defense counsel.

Adequacy of Counsel

The counsel that is provided must be adequate counsel. That counsel must be appointed early enough in the process to allow an opportunity to prepare the case. Adequate counsel cannot be provided if a lawyer is given a case and expected to try it on the same evening. Counsel must have an opportunity to sit down and interview his client and reflect on that interview and develop a defense. He must have the opportunity to review discovery and decide what investigation and preparation is necessary. Counsel cannot be said to be adequate in an assault case if he does not have an opportunity to seek out witnesses and prepare the case by talking to them in advance. If a system of

appointed counsel, paid or unpaid, is employed, the lawyer will need to be appointed well in advance of the trial date. Appointed counsel will also need to be educated as to what is expected of him in providing adequate representation. If a staff public defender is used, the public defender must be given the opportunity to prepare the case well in advance of the trial date. Also, in establishing a public defender system, it will be necessary to provide a sufficient amount of public defender lawyer hours to allow proper preparation and representation in all cases. Last, however lawyers are provided, courts should remember that in appropriate cases, ancillary defense services such as investigators, experts, etc. will need to be provided. The cost of these services, as well as the cost of a lawyer's time if a paid lawyer system is chosen, is the responsibility of the municipality. The municipal government should make provision for these costs in its budget.

ROLE OF THE PROSECUTOR

The municipal prosecutor has been a step-child of the municipal court system. In most municipalities, other than those large cities in which the municipal prosecutor is a part of the city attorney's staff, the appointment is an office unto itself. There is no direct affiliation with the Administrative Office of the Courts, which concerns itself with municipal court judges and court clerks, the Assignment Judge of the vicinage, the Trial Court Administrators, the Attorney General's office or the Division of Criminal Justice, or the County Prosecutor. In many instances there is not even a direct relationship between the municipal prosecutor and the local police department for whom the municipal prosecutor prosecutes.

This lack of consistency continues through the prosecution and trial of various complaints and summones: in some municipalities, the prosecutor prosecutes all complaints and summonses, including both police and private complaints (although the latter is an exception). However, the usual rule is that a municipal prosecutor prosecutes only police complaints. A hybrid situation occurs when a municipal prosecutor prosecutes not all police complaints but only those police complaints in which a defendant is represented by an attorney. In some municipalities, a municipal prosecutor prosecutes all drunk-driving cases regardless of defendant's representation. Although these different concepts are confusing, the situation becomes even more convoluted when the factor of whether the complaint or summons has been made by State Police or local police is added. Many of these situations are controlled by negotiated contractual determinations between the municipal prosecutor and the local governing body, with each municipality having potentially a different response -- some

municipal prosecutors are part-time employees, while others are independent contractors.

All of the above factors can present difficult burdens for municipal court judges, clerks, police, and defense attorneys in dealing with various prosecutorial functions in a consistent manner. In order to overcome these problems, the committee has attempted to construct standards for municipal prosecutors to be imposed on all areas of the municipal court process - local governing bodies, judges, clerks, police, and defense attorneys.

> Recommendation 1: Each municipal court must have a prosecutor on a regular basis, and standards should be established for contractual relationships between municipalities and their prosecutors. Rule 7:4-4 should be amended to establish such uniform standards and implement the recommendations below. Regular professional training should be provided for all municipal prosecutors.

As noted earlier, it is absolutely essential to bring some consistency to the situation in which a municipal prosecutor's representation of the State in a prosecution, whether it be a motor vehicle summons, a disorderly persons offense, or drunk driving. The Supreme Court Committee on Municipal Courts has previously recommended that each municipal court have a prosecutor. This recommendation has not been fully implemented, since there are those municipal courts that do not have regular municipal prosecutors; however, compliance is nearly complete, with almost all municipal courts at least having a prosecutor available to them.

The concept surrounding the requirement for municipal prosecutors derives from the need to separate the judicial function from the prosecutorial function. Historically, the municipal court judge has, in

many instances, served as the prosecutor, at least in a de facto sense. This situation can no longer be tolerated if the municipal court system is to be upgraded. The public cannot perceive the police, prosecutorial, and judicial function to all be one and the same. Therefore, each municipality must have a municipal prosecutor on a regular basis.

The question then becomes, "What is a 'regular basis'?" This issue becomes more difficult in the face of arguments presented from different positions. Some large or heavy volume courts would argue that to require a municipal court prosecutor in all motor vehicle offenses would, in essence, extend the court sessions because the use of the prosecutor would formalize the prosecutorial procedure, thereby adding additional time. If the municipal court system is to be made consistent with judicial procedures elsewhere in the court system, this argument must fail. A municipal prosecutor of even average experience should be able, through direct questioning of witnesses, to narrow and focus facts and issues so as to make the eventual judicial determination easier. When no prosecutor is present, a municipal court judge will often simply say,"Tell me what happened," in order not to express the prosecutorial function. Because the judge does not want to appear as the prosecutor, elements of the offense may go wanting or important facts may not be explored either with prosecution witnesses or defense witnesses. This is not helpful to any part of the municipal court system.

Finally, it is crucial that regular training programs and educational seminars be made available to both new and experienced municipal prosecutors. Such programs should be designed and conducted by the Office of the Attorney General, ICLE, law schools, or a combination thereof. The courses should focus on familiarizing municipal prosecutors with the latest

legislative enactments and court opinions, case processing techniques, and procedural rules and directives. These programs should be offered on a regional basis at least once each year.

Recommendation 2: The municipal prosecutor should appear in all cases, irrespective of whether an attorney appears for the defense and regardless of the nature of the complaint.

A municipal prosecutor should appear in all cases (private complaints are dealt with below), and the appearance of the prosecutor should be required irrespective of whether an attorney appears for the defendant. This is necessary so that neither the complaining officer nor the defendant feels disadvantaged through municipal court judge intervention to protect one or both sides. It is also important that a municipal prosecutor be available even during pleas of guilty in the event issues are raised that should appropriately be addressed by a representative of the State. In essence, a municipal prosecutor should be available at all times.

Recommendation 3: In the case of civilian (non-police) complaints, the problem of screening frivolous or bad-faith complaints must be addressed prior to assigning prosecutorial resources.

Civilian complaints, whether motor vehicle or disorderly persons, pose a difficult issue. Disorderly persons complaints usually involve domestic or neighborhood disputes, although they may also involve merchant crime such as shoplifting or bad checks. In either disorderly persons or motor vehicle cases, civilian complaints have generally not been investigated by the local police. Should a municipal prosecutor be required to prosecute such private complaints?

The general rule is that municipal prosecutors do not prosecute "private complaints." Those who argue that all "private complaints" should be prosecuted by the municipal prosecutor take that stand based upon the concept that every complaint in a municipal court is in the name of the "State of New Jersey." The problem inherent in "private complaints" is that there is no intervening step whereby it can be determined in the first instance whether the complaint is frivolous, made in bad faith, or otherwise inappropriately filed. Although no greater credence should be given to a police officer, there is some independent investigation to determine prior to the filing of a complaint whether the standard of probable cause exists. This generally does not take place in the instance of a "private complaint."

One may argue that the municipal prosecutor should not be placed in a position of prosecuting frivolous, bad faith, or malicious complaints on behalf of a private litigant based upon resources provided by the municipality. In requiring a municipal prosecutor to prosecute these types of complaints, in essence the municipal prosecutor is taking the position that the complaining witness had probable cause or at least that an appropriate violation exists. In many circumstances this is not the case. While the county prosecutor has the grand jury screening process as well as the statutory right to process and dismiss the complaints administratively, this same right does not exist on the municipal level.

If a municipal prosecutor is to prosecute all complaints, whether private or otherwise, there must necessarily be required a screening process for so-called "private complaints" so that only good faith and appropriate "private complaints" are prosecuted through municipal prosecutorial resources. The difficulty is that this type of screening process may be more

burdensome than simply letting the system stand as it is presently constituted -- i.e., no use of a municipal prosecutor in "private complaints."

> Recommendation 4: The handling of civilian cross-complaints requires the development of a mechanism to assure that the municipal court judge is not required to serve as the de facto prosecutor.

The ultimate goal of the committee's recommendations on municipal prosecutors is to eliminate the need for municipal judges to serve as both judge and prosecutor in any case. There is an absolute need to distinguish between the two independent roles, both in appearance and fact. It is in the handling of civilian cross-complaints that the issues of judicial and prosecutorial role separation are most focussed.

There are essentially two types of civilian cross-complaints -- police/civilian and civilian/civilian complaints. In the former situation, ethics decisions seem to indicate clearly that the municipal prosecutor may, at best, prosecute the complaint filed by the police officer against the civilian. The municipal prosecutor may not, at least in a consolidated situation, prosecute the civilian complaint against the police officer or defend the police officer on the civilian complaint.

The civilian/civilian "cross-complaint" is a situation in which historically municipal prosecutors have not been involved. This situation may have resulted from tradition or from contractual relationships that did not require a municipal prosecutor to handle "private complaints" at all.

One option to be considered would require that a municipal prosecutor be involved in the prosecution of all complaints, whether those complaints are

generated by police or civilians or are cross-complaints. In handling civilian cross-complaints, the key issue involves the mechanism to be used for determining which of the complaints are to be prosecuted and which are not. One approach would be to require municipal prosecutors to examine all civilian cross-complaints and make a determination of whether either complaint has merit. If it is decided that the complaint is without merit, the municipal prosecutor would then move for dismissal.

The most difficult issue involves those cases in which, after review of the civilian cross-complaints, the prosecutor determines that both complaints have merit. In such a situation, consideration should be given to having the municipal prosecutor serve as a counsel to the court, assuming that all facts and legal issues are raised and, more important, that the independent and impartial role of the municipal judge is protected. Such a "counsel to the court" role should also be considered in those cases in which the prosecutor's motion for dismissal of one complaint in a cross-complaint case is denied. Only by assuming that the prosecutor is available to perform this counsel role in every case that he is not prosecuting can it be assumed that the municipal judge will not be forced into the untenable position of prosecuting those cases in which the municipal prosecutor has removed himself, either by choice or through contractual agreements. However, the Committee recognizes the difficulty of this issue and therefore presents for the consideration of the entire Task Force and the Judicial Conference the alternative of eliminating the involvement of the prosecutor in these cases and having the judge elicit the facts and make determinations of acquittal or guilt with respect to each defendant.

Additionally, if it is to be determined that a municipal prosecutor should appear in every type of case regardless of its origin and that he should have some responsibility for screening complaints, requirements must necessarily be imposed upon municipalities and their prosecutors. This becomes essential because the contractual obligations sometimes circumscribe the obligations of the municipal prosecutor in relation to what complaints are prosecuted.

> Recommendation 5: Procedures for discovery in the municipal courts should be revised by modifying Rule 7:4-2(g) to permit discovery in any case. Discovery should be requested by serving a written request upon the municipal prosecutor with a copy to the appropriate police agency.

Currently the rUles related to discovery in municipal court are governed by Rule 7:4-2(g). This Rule provides as follows:

(g) Depositions and Discovery. Depositions and discovery in any case in which the defendant may be subject to imprisonment or other consequence of magnitude if convicted shall be as provided by Rule 3:13-2 and Rule 3:13-3, provided that the municipality in which the case is to be tried has a municipal prosecutor. In all other cases the court may order depositions to be taken and discovery made in criminal actions as provided by Rule 3:13-2 and Rule 3:13-3.

Without reviewing the case law surrounding the history of this Rule (which is not the purpose of these comments), the committee refers to the practicalities of discovery in the municipal court through the municipal prosecutor for an understanding of how the Rule should be utilized.

Generally, since most if not all municipal prosecutors are part-time, systems are developed whereby discovery is given to defendants or their attorneys upon request. Despite the Rule, some requests for discovery are pursued through the municipal court judge, some through the municipal court clerk, some through the municipal court prosecutor, and some through the records division of the local police department. Interestingly, in State Police cases normally the only way the State or the defendant can obtain discovery is through direct request to the records division of the State Police Headquarters in West Trenton. Additionally, other types of discovery, such as certified driving abstracts, are equally accessible to the State as well as to the defendant directly. In many municipalities, procedures are set forth by which the municipal prosecutor is consulted for discovery purposes and requests only when a problem exists. Otherwise discovery requests are handled internally, and in most instances without the intervention of the municipal prosecutor. The issue then becomes whether the discovery Rules as related to municipal courts meet the practical demands of the process which occurs in the municipal court.

The answer is, as proposed by these comments, that there is no reason why the discovery dictates pursuant to Rule 3:13-2 and Rule 3:13-3 should not be followed consistently in municipal court. The qualifications as contained in Rule 7:4-2(g) concerning a "consequence of magnitude" or "imprisonment" or the presence of a municipal prosecutor should not be a consideration as to whether discovery should take place. The first two qualifications would require a municipal court judge to know a defendant's prior record at the time of the initial request so as to ascertain whether imprisonment or other consequences of magnitude are present. This should not be necessary.

Obviously, there are cases in which the mandatory minimum nature of the penalty in itself creates a per se discovery situation. However, neither a municipal court judge nor even a municipal court prosecutor should be placed in a position of having to determine that situation. To extend the situation even further, a minor traffic offense, which would not ordinarily allow for discovery, might create a discovery situation under the Rule when a defendant's "point" status could, upon conviction, result in a drivers license suspension either through the municipal court or throught administrative action by the Division of Motor Vehicles. Why should these fine distinctions have to be made when dealing with discovery?

There is no reason why any and all discovery should not be given upon request pursuant to Rule 3:13-2 and Rule 3:13-3. In order to accomplish and also to accomplish the practicalities of the discovery process in municipal courts, all qualifications should be eliminated from the Rule and reference should be made to the discovery Rules regarding criminal practice as set forth in chapter three of the Rules. The only requirement, that should be implemented to deal with the practicalities of the discovery situation in municipal court is that the notice for discovery should be directed to the municipal prosecutor with a copy to the records division of the local police department or to the Division of State Police at West Trenton.

A proposed Rule follows:

> (g) Depositions and Discovery. Depositions and discovery in any case shall be permitted as provided by Rule 3:13-2 and Rule 3:13-3. Discovery shall be requested of the State by the service of a written request upon the municipal prosecutor

with a copy to the records division of the appropriate police agency. In the absence of a municipal prosecutor, a motion may be directed to the municipal court for discovery.

SERVICE OF PROCESS IN MUNICIPAL COURT

ISSUE AND CONCLUSIONS

The questions addressed here are whether service of process issuing out of the Municipal Courts as currently provided for in the Rules fulfills in a practical manner its stated purpose of providing notice to a named defendant, and whether the nature of service provided is the most practical and economical. It is concluded that the manner of service currently provided in the Rules is satisfactory, practical, and economical. The only recommendation made is that a fine of uniform amount be set to be imposed on a finding of contempt.

DISCUSSION

The Municipal Court Rules rely heavily on the Criminal and Civil Rules for effecting service of process. See R.3:3-3 and R.4:4-4. Of course, when a warrant is issued, it must be served personally upon the defendant. In that case, it is incontrovertible that the defendant has received notice of the complaint. For a summons issued upon a complaint, the defendant may be personally served as well. R.7:3-1(a), R.4:4-4(a).

While personal service is clearly the best way to ensure that the defendant has been notified of a complaint against him or her, the Rules provide for an alternate mode of service by permitting mailing of the

summons and complaint to the defendant. Rule 7:3-1(a) allows service of process by mailing the summons to the defendant's "last known address" or in accordance with Rule 4:4-4. The purpose of using the postal system to effect service of process is twofold. First, in practical terms, municipalities have neither the physical nor fiscal means personally to serve every named defendant. The current trend in this State and in the country is to cut back budgets by excluding tasks usually accomplished by manpower. Since it could conceivably take months to physically locate a defendant to serve him personally, and since the postal system is generally reliable and efficient, the alternative of service by mail currently set forth in the Rules makes good sense. Hence, there are no revisions of the Court Rules recommended in this respect.

It is noted, however, that while a summons may be addressed to a defendant and served by mail, there is no guarantee that the defendant received it. The flip side of the coin when mailing is employed to effect service of process is that a defendant will ignore service and later claim that he never received the summons. It may be argued that to safeguard against this tactic and since Rule 4:4-4(e) provides for simultaneous mailing both by certified (or registered) mail and ordinary mail, this double mode of service should be employed, the theory being that if the certified (or registered) letter is refused, but the letter sent by ordinary mail is not returned as undeliverable, there is effective service of process. While it is felt that this attempt at double service is commendable, it is concluded that fiscal restraints on Municipal Court budgets preclude the option of double service. This conclusion is

buttressed as well by the fact that a defendant does not often claim that the summons and complaint were not received by regular mail. In summary, the general reliability of mailing solely by ordinary mail greatly outweighs the additional trouble and expense incurred by mailing both by ordinary mail and certified (or registered) mail.

It is felt that Rule 7:3-1(b), providing for the nature of service in motor vehicle offenses, has proven reliable in the past and no change is recommended in this regard.

With regard to motor vehicle offenses, any deficiencies that might appear as a result of service by mail are addressed sufficiently by Rule 7:6-3, dealing with procedure on failing to appear. It is felt, however, that since most unaccounted-for failures to appear are due to the defendant's ignoring the service by mail (since letters that do not reach the defendant at his last known address will have been returned by postal authorities to the court), the additional expense involved in citing the defendant for contempt and issuing a Bench Warrant, which is then personally served upon the defendant by the police, should be borne by the defendant, and should be in an amount up to $100.00.

COMMITTEE ON TRIALS

Standards and Procedures in the Appointment of Counsel

The problem of appointment of counsel in municipal courts is the problem of developing procedures and standards for determining conveniently and correctly in which case counsel should be appointed. The law requires appointment of counsel when a defendant:

1. is facing a charge that may entail a consequence of magnitude upon conviction, and
2. is indigent.

Thus, procedures must be established to make both of these determinations.

The phrase "consequence of magnitude" is derived from the case of Rodriguez v. Rosenblatt, 58 N.J. 281 (1971). That case gives some guidance as to the scope of the phrase, and practice since has given some additional guidance. Any jail, even pretrial detention, is such a consequence. A substantial loss of driving privileges is also included in the phrase. A court suspension of a driver's license for ten days or more is generally held to be a substantial loss of driving privileges. (Bulletin Letter #5/6-75, p. 2). There is general agreement that larger fines also constitute consequences of magnitude. Many courts use $200 as the threshold for inclusion. On the other hand, smaller fines and probation are generally not held to be consequences of magnitude. A court should realize, however, that if counsel is denied on the ground

that no consequence of magnitude is entailed, enforcement of the fine or probation may be difficult. This is a reason for a court to consider any case that might require the consequence of magnitude in the long run to be a case for appointment of counsel.

The second determination, that of indigency, is somewhat simpler. A person is indigent if he cannot afford to retain counsel and to provide for the other costs of his defense, such as experts or investigation. See N.J.S.A. 2A:158A-2, - 14 to - 16. A court is expected to balance the available assets of a defendant against the likely cost of his defense. The determination is straight-forward in concept, though occasionally difficult in application to individual cases.

To avoid the inconvenience to witnesses, parties, and the court caused by adjournments, the determination as to whether counsel must be appointed must be made prior to court appearance for trial where possible. Procedures should be adopted to identify cases requiring appointment of counsel before any court appearance and as soon as possible after the receipt of complaints. At the latest, the decision should be made at a first court appearance scheduled for that purpose.

The first determination that must be made is whether the case involves a possible consequence of magnitude. In certain cases the decision is clear. Any cases in which the defendant is in jail or in which the charge carries a mandatory consequence of magnitude on conviction fall in this category. Other cases, however, provide more difficulty. When an offense allows, but does not require, a penalty that would be a consequence of magnitude, it is desirable that the judgment be made pre-trial. The person making this judgment should apply standards

set by the Judge. These standards should be based on the seriousness of the offense and the frequency of the use of consequences of magnitude as a penalty for it. When the prior record of the defendant is available, it also could be used.

The standards should be set keeping in mind the fact that a consequence of magnitude may be required in order to enforce a fine or probation. While the pre-trial determination will not be perfect, it will succeed in identifying the overwhelming majority of cases requiring appointment of counsel. In some cases it will be necessary to schedule a court appearance for the determination, and there will always be some few cases caught by the judge at the time of trial; when that happens, an adjournment will be necessary to allow for appointment.

When a case is identified as possibly entailing a consequence of magnitude, the defendant should immediately be informed that the case is one that requires a lawyer and that he should hire a lawyer if he can afford one, and that if he cannot afford one, he should fill out a form for the appointment of counsel. When the defendant is incarcerated, this communication should be made in person, so that no unnecessary time is lost. When the defendant is not incarcerated, this communication can be made by mail, enclosing the form and requiring a reply by a specific date. Only where the defendant affirmatively indicates his desire to proceed pro se should the case be listed for court without counsel. See Rule 3:27-2.

On the receipt of a form from a defendant requesting appointment of counsel, the form should be reviewed and an immediate decision made as to whether the defendant is indigent. The form should include a statement

that the information on it will be checked for accuracy. In appropriate cases the court should see that the form is checked. If the court has a Public Defender's Office, the checking can be delegated to that office. If the defendant is found to be indigent, a lawyer should be chosen for him immediately, so that preparation can proceed before the trial date. If he is not indigent, he should be informed of that fact immediately and directed to retain his own lawyer in time for the trial. Present legislation does not allow an indigent defendant to be billed for the cost of the services provided for him, nor does it provide that a person who cannot afford the full price of counsel may nevertheless be required to make partial payment if he is able to do so. (N.J.S.A. 40:6A-1 will allow billing of indigents only if and when law requires municipalities to pay for representation of indigents.) Legislative change would be desirable to provide for both billing and partial payment.

Of course, there will be some cases in which the issue of appointment of counsel is not settled before the first court appearance. Among those cases are those in which the court sees a likelihood of consequence of magnitude not seen by the person doing the earlier screening of complaints. These cases will require adjournment. There will also be cases in which defendant did not respond to the letter sent to him or in which he continues to affirm his indigency notwithstanding an adverse pre-trial decision. These cases may require adjournment in the discretion of the judge, depending on their circumstances.

The procedures suggested in this paper are very different from those now employed by municipal courts. These procedures are necessary, however, if counsel is to be provided for all those who are entitled to it. If whenever counsel is necessary an adjournment is necessary as

well, both the court and the defendant are under pressure to let the case go forward without counsel. That pressure has resulted in the past in a substantial number of offenders sentenced to consequences of magnitude without compliance with the constitutional requirement of appointment of counsel. The procedures suggested are not impossible; they are essentially those used by family courts in the appointment of counsel in juvenile delinquency cases.