

Minutes
Municipal Courts Task Force
Tompkins County Legislature Chambers
January 13, 2016

Present: Ray Schlather, Jason Leifer, Scott Miller, Mark Solomon, Glenn Galbreath, Gwen Wilkinson, Liz Thomas
Excused: Betty Poole, Mary Ann Sumner
Staff Joe Mareane, Marcia Lynch
Speakers: John Petito (Newfield Court Clerk), Pat Kannus (Cayuga Heights Village Court Clerk), Ronna Collins (City of Ithaca Court Clerk). John Chernish (Town Judge, Newfield)

Mr. Schlather called the meeting to order at 4:30 p.m.

The minutes of the December 16 meeting were moved by Ms. Wilkinson, seconded by Mr. Miller and approved unanimously.

Mr. Schlather invited public comment. Julia Hughes, Assigned Counsel Coordinator, advised that she had investigated the use of central booking. Chenango County does not have central arraignment Ontario is trying to implement, and is now using lock-ups so that from midnight until 8 a.m. detainees are held until City Court opens at 8 a.m. in Geneva and Canandaigua. She has not found a county that has central booking outside the District Courts on Long Island. There were no other comments from the public.

Mr. Schlather advised that we are in touch with the district courts and will be attempting to set up a Skype connection at a future meeting.

He advised that he has received a report from law student Mr. Lively. The analysis was good in part, but not as thorough as we had hoped. He has given feedback to Mr. Lively and hopes that the report can be perfected and circulated. Mr. Schlather also circulated a memo that summarizes further areas of task force research.

Mr. Mareane said we have made contact with Judge Marks about arranging a contact with district court officials on Long Island in the hope of setting up a video conference. He also reported on the poll taken of municipal officials to see if they would like to present to the task force. So far, only the Enfield Supervisor has responded. She offered to address the group regarding their experience in reducing the number of judges in Enfield from two to one. He also updated the task force on the status of the other two law students, who have been given Mr. Schlather's list of potential areas of study.

Mr. Schlather introduced the presenters: Ronna Collins (Ithaca Court Clerk), Pat Kannus (Cayuga Heights), John Petito (Newfield). Mr. Schlather noted the task force's interest in knowing more about

the operational aspects of the local courts such as how things work, the volume of work , the division of labor, the technology available, and so forth.

Ms. Collins said that City Court handled 103 after-hour arraignments in 2015 (it is rare that a town or village judge covers a City after-hours arraignment). In the context of the discussion regarding consolidation of DWI cases, she expressed concern about the need for additional staff to handle that work, City Court currently has 4.5 clerks plus 3 full time vacancies (2 of which will be filled in the next few months). There is also a half time judge's secretary and half time law clerk that would have to go to full time if DWI cases were shifted to City Court. She reported that there were 52 DWI arrests in 2015 and rose to 100 arrests in 2015. She discovered only 2 repeat defenders, so in all, 150 individuals were arrested for DWI over the two years. She presented a caseload statistics report showing the number of new filings by category. The City Court had 5,900 new criminal cases and 3,500 V&T cases. In order to take on more cases, more staff would be needed, at a higher cost.

Mr. Solomon asked for clarification about the DWI arrests. Ms. Collins confirmed the statistics are only for City Court. Mr. Mareane asked why the criminal cases are so much higher than Binghamton, which usually has higher caseloads than Ithaca. Ms. Collins said there have been a number of City Code violations (eg, exterior maintenance violations) that are quasi-criminal and that have been counted in the numbers. Ms. Collins said Ithaca is comparable in population to Cortland and Elmira, but typically has higher caseloads than the comparable cities.

Mr. Schlather opened the discussion to questions, and asked the clerks to walk through the process from beginning to end.

Mr. Petito said Newfield is in the process of going paperless, so the current process is a little jumbled during the transition. Now, the clerk logs onto a computer, goes onto a "SEI" web site to determine if there are any tickets, download and print the electronic tickets, check the court dates for accuracy, make cover sheets to know docket numbers and other information, put together with ticket, conduct DMV search to see if there is any prior history and to verify the address on the ticket so that notices can be sent. Once that is done, the file is done and is put in file cabinet. The day before court, the calendar is printed and files reviewed to make sure all is in order. When the court acts, the judge notes the amount of the fine. That information is entered into the SEI program, a fine notice is generated and mailed, the clerk tracks the ticket to make sure it is paid and, if not paid after 60 days, the ticket is scooped and put into a folder. Presumably the ticket is paid.

Mr. Leifer asked if partial payments are accepted. In Newfield they are.

Mr. Solomon asked about the website used. Mr. Petito said he uses a TSLED report from DMV to see tickets that pertain to his court. He believes it takes 3-7 days for the ticket issued by law enforcement to be entered in the computer and available to the court. There is not a savings to the courts generated by the electronic system versus the old paper system—there is still a review of the information by the court. He noted that Newfield is trying to go paperless, which will avoid the expense of paper.

Ms. Kannus uses a UCS program to get tickets from DMV. The tickets are downloaded into a folder and transferred into an SEI program, which gives it a docket number. Once all is downloaded, she goes to the DMV site and removes the tickets from the file. A paper copy of the ticket is reprinted from the SCI program. The process after that is similar to Newfield. She uses a computer in court to type notes of the case in the file. She puts a docket sheet with the ticket and files. If there is a fine, she sends a fine notice; if it's adjourned, she sends an adjournment notice.

Mr. Schalthor asked about the process in which a not guilty plea can be submitted by mail. Ms. Kannus said approximately 50% appear in court. Mr. Petito said a number of people don't respond by mail or show up for their court appearance. When he sends a notice to appear, he provides contact information for the DA so that the individual can work out a solution with the DA. Mr. Petito estimated that about 60% mail their plea rather than appear in court. Of the 40% or so who do show up, approximately 90% are resolved before a trial. Judge Chernish noted that he has only had 1 V&T hearing over the past two years. Cayuga Heights averages 1-2 trials per week. Mr. Galbreath said in one year, he had 120 speeding trials, but doesn't approach that level now. Ms. Kannus estimated that 1-2 cases a month go to trial after the first appearance; most cases are resolved before going to trial.

Mr. Schlather asked about how criminal cases are processed. Mr. Petito said the process is about the same. Information is received from the FBI, including the rap sheet. Information is put in a folder, with a cover sheet including the person's name, charge, arresting officer, etc. to assist the judge. Mr. Petito said the number of court appearances vary by the situation. If a person shows up for arraignment, they are accompanied by an on-call attorney. Mr. Solomon asked about the source of information about criminal cases. Mr. Petito said he goes to an FBI website that has a short-form and long-form of an actual rap sheet. The criminal background check information is printed for the judge. The defendant and attorney are not given a copy of the background check, based on the instructions that have been given to the judges. Mr. Galbreath said he understands that OCA advises that a physical copy of the rap sheet can't be shared with the defendant, although they can see it. Mr. Miller said it is given to the defendant in City Court. Ms. Wilkinson said that at arraignment, the court is the conduit for the criminal history; that it should be provided to the defendant.

Mr. Schlather asked for a sense of how many appearances occur before resolution in a criminal trial, and whether there are redundant processes that could be eliminated. For example, does the court accept a phone call to adjourn an appearance? Ms. Kannus said that after the original arraignment, time is allowed a defendant to hire an attorney, and the time taken to resolve a case depends on the situation. If attorneys fail to appear, the clerk calls them to set up a new date. Mr. Schlather asked whether mutually agreeable adjournments can be done on the phone by the clerk. Judge Chernish praised the work of the clerks in keeping the processes moving.

Once a person has an attorney, in Cayuga Heights, notices of the next/future appearance are given to the parties while they are in court. In Newfield, notices are mailed. In City Court, if a lawyer is present there is no written notice provided. If someone fails to appear, City Court sends an "appear or warrant" letter, giving one last chance to appear before a warrant is issued.

Mr. Miller advised that CPL 160.40 says that a copy of the rap sheet should be provided to the defendant or counsel. Mr. Solomon emphasized the importance of providing that information to the defendant early in the process.

Mr. Schlather asked to discuss the DWI paperwork process, and who does the work. Mr. Kannus said beginning at the first appearance, many DWI forms have to be filled out to determine if a license is suspended pending prosecution (the form is filled out by hand while they wait). At the next appearance, or when a plea is entered, another form is filled out to suspend or revoke a license. A plea-sentencing order is filled out by the judge to set forth conditions such as community service, victim impact, DDP program. Probation would be involved only if the plea or conviction is for probation or a conditional discharge. If for probation, a presentencing investigation is required. The forms are all done by hand vs. pre-populated forms. Mr. Schlather asked if any automated/prepopulated forms are in use. No one was aware of such forms. Ms. Kannus estimated it takes 20-45 minutes to fill out forms that accompany a plea (plea form, suspension/revocation, sentencing form, victim impact form, ignition interlock order)- all done by hand. In City Court, the forms are all done up front. Ms. Collins said City Court is about to receive a system that will have forms generated through the data base, similar to the system Mr. Schlather had described. Other courts, including Cortland and Oneonta, are already using the system. Judge Chernish noted that the system is summarized in the 6th Judicial District newsletter. Ms. Collins said the time savings will be significant, with forms generated at court. She also believes charges are filed in the program. Mr. Schlather asked that Ms. Collins pass along the name of the system to the task force.

Mr. Schlather asked how DWI fines are processed. Ms. Kannus said there is a fine, a surcharge, and a charge for a DNA test. To ensure all that is done as ordered, all is calendared in Ms. Kannus's electronic and paper calendar. If a case is dismissed, the seal-order system is done through the SEI court program that has a drop down box that affects the seal. An order is generated by the clerk after the dismissal determination, and distributed to the prosecution, defense attorney, and law enforcement and is transmitted to DCJS. Ms. Kannus and Mr. Petito both have computers in the court and make both electronic and manual entries.

If a fine is levied, a person can pay at that time, a receipt is issued, and money is deposited into a court account. An electronic monthly audit report is prepared and submitted to OCA, with funds then provided to the town/village that, in turn, is billed by the State for its share. The City has an automatic withdrawal by the State rather than the billing system used by the towns and villages. The County is still sent a check, as is the City for code violations.

When an individual cannot pay, Cayuga Heights allows partial payments to be made (the state audit allows such an installment arrangement to be recognized, with the State receiving its share of the partial payment). The City also takes partial payments. Newfield does not take personal checks—although all take attorney's checks. Cayuga Heights does not take credit cards. In Newfield, a 2.99% surcharge is added to cover the card company's charge; the City does not add this extra charge.

Mr. Schlather asked the clerks whether bail has been forfeited in their court. Ms. Kannus said if so, it's only happened once or twice. Ms. Collins said it happens once every couple of months in City Court, although Mr. Miller said that the Court makes an effort not to forfeit bail. Mr. Solomon asked where the money goes if there is a legitimate forfeiture. Ms. Collins said it depends on whether the highest charge is a state or local offense, which determines where the money goes.

Mr. Schlather asked if the clerks have suggestions about how to change operations to make them more efficient. Mr. Petito suggested a better operating system than the SEI system, which is flawed, error prone, and wastes time. Mr. Petito is a part-time clerk, and was scheduled to work 18 hours a week. With the town reducing the number of judges, his hours will increase to 30. Ms. Kannus works about 26 hours a week, but finds it difficult to get all of her work done during that time.

Ms. Thomas noted that the Ulysses court clerk cannot finish her work within the scheduled work week; that the load seems too large for the clerk to handle. Therefore, the Ulysses clerk seemed to welcome the idea of shifting DWI cases to another court, which would free up time for other work. Ms. Kannus said there is always more work to be done.

Ms. Thomas also said that the court clerk gives the town the money collected, and that the State receives most of it. The Town gets \$30,000 in aid from NYS, but gives the State \$140,000 in court fines. If there is a way to provide equal justice through a district court the state pays for, it will be a relief to local property tax payers.

Ms. Hughes said DWI is the most cumbersome type of case. Lawyers must often return to court because of a mistake on the forms.

Mr. Schlather asked if there are other types of case that involves a similar amount of paperwork. According to Mr. Miller, nothing else comes close.

Ms. Thomas asked what happens if someone fails to pay a fine. Ms. Collins said if payment hasn't been made, and appear/warrant letter would be sent. Usually, when there is a fine due, the most reliable way to collect is through scoffing the license or entering judgments (for V&T). Cayuga Heights just started entering judgment for unpaid fines. Ms. Wilkinson asked about how restitution is handled. Ms. Kannus said restitution is paid to the DA (which Ms. Wilkinson said is not the right way). City Court said there can be a confession of judgment for restitution if they can't pay.

Mr. Schlather thanked the panelists for their participation and input.

Mr. Schlather said the discussion of writing assignments will be deferred until the next meeting.

The next meeting is scheduled for January 27th, and may include a video conference with the district court representatives. The magistrates will also return with their recommendations.

All agreed that value has been added by today's meeting.

The meeting was adjourned at 6:05 pm.

