

Draft Minutes
Municipal Courts Task Force
Tompkins County Legislature Chambers
February 10, 2016

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

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

He noted a change in the agenda to delete the Nassau District Court item in the hope of rescheduling the session in March.

Mr. Schlather said the Magistrates are expected to return to the task force at the next meeting. He expressed hope for a strong turn out by the Magistrates. He said several mental health advocates will be attending the March 9 meeting to discuss a mental health court, along with Bill Shaw, who will discuss youth courts. Mr. Schlather said the task force will need to discuss how to use its remaining time to complete its work.

The minutes of the January 27th meeting were moved by Ms. Wilkinson and seconded by Mr. Leifer and were approved unanimously.

County Legislature Chair Michael Lane addressed the group as a part of the public comment period. He thanked the group for its work, noting it's met 15 times so far, and expressed disappointment that the Nassau delegation was not able to appear. He said that after all of the work of the task force, he hopes it leads to something new and innovative. He deferred on whether the right solution is the district court approach, but said that he has been intrigued by the district court system for many years, and that the task force shouldn't be satisfied with what we have now. He noted that some of the task force's early meetings indicated some of the issues we have in some of the local courts. He said it is the unevenness of justice that troubles him; that people in one village or town court may be receiving different kinds of responses than others and that justice should be even. He praised the task force for the work it is doing and encouraged it to set a mark for other counties by being the ones to do the innovation.

In his chair's report, Mr. Schlather noted that we are down to one law clerk, and that he has been persistent in doing work to aid the group. He said one of the tasks will be to do the research about what is necessary to get from where we are now to where we want to go, including the district court, or DWI part, or mental health court option, what would be required legislatively to implement those ideas. He noted his December memo that tried to summarize the task force issues that needed to be further explored. Item one was the respective cost to local municipalities of options A-H. The second item was to establish a scheduling matrix, which is now underway. The third was to advise as to the operational and legal mechanisms to establish to implement 24-hour bail review, the cost of implementing any such system, the entry of civil judgments as an alternative to fines, and how to incorporate the youth court into the local court system. With respect to some of these items, the Dunne report includes a section in

the Action Plan for Justice Courts (November 2006, pages 16-19) that sets forth the existing system and describes some of the things required for change. If that is coupled with the State Constitution in Article 6, Sections 16-17, the various limitations on the authority of the various courts are described.

There was no staff report.

Mr. Schlather suggested the discussion be opened up to focus on topics consistent with the general direction that seems to be emerging, to confirm the direction and discuss where differences exist and how to bridge them. He said some of the easier matters relate to scheduling, e-records, and other items that have been discussed with presenters. At the other end of the spectrum, he believes the most difficult issue is whether the group intends to make a recommendation regarding district court. All of this needs to roll into a discussion of further research, the writing assignments, and the schedule. The goal is a well-founded report completed by the end of May or early June.

Mr. Wilkinson agreed the most difficult question is whether or not to shift to a district court model. The reason this was identified as a research topic is because until the group cannot know if the option is viable until there's an understanding of what it takes to create a district court, what the rules are, what legislative changes are, the qualifications of the judges, etc. She said based on the testimony of the presenters, there is good cause to take a hard look at what's necessary to implement a district court. While the group can decide not to pursue that option, a decision can't be made until these questions are answered.

Ms. Thomas said that the process of court consolidation may require referendum votes of the participating jurisdictions, so that no matter the recommendation made by the task force, there will have to be some selling of the change to town boards and public. She said the current experience in Ulysses of changing elected highway superintendents and clerks to appointed positions highlights the difficulty of change. Mr. Schlather said to create a district court, the county would need to initiate the change and State legislation would likely be required. To consolidate town courts, an affirmative vote of both municipalities would be required. A village board of trustees may abolish its village court, with the town assuming responsibility for the work formerly performed by the village. The task force needs to decide whether to recommend these kinds of changes. To the extent it knows how to implement the change, the task force would then map it out. Clearly, the task force couldn't expect to recommend change and the legislature simply enact it.

Mr. Miller said that he and Mr. Galbreath have been talking about parts of the CPL that may have relevance to the question of how to create a countywide DWI part without a referendum. It appears statutory authority exists under NYCPL 100.55, subdivision 7, which is an interesting one sentence provision that says "An information, a simplified information, a misdemeanor complaint or a felony complaint may be filed with a judge of a superior court sitting as a local criminal court when an offense charged therein was allegedly committed in a county in which such judge is then present and in which he either resides or is currently holding, or has been assigned to hold, a term of a superior court." Mr. Miller said this means any misdemeanor or felony charge can be filed with a County Court or Supreme Court judge without anything special being created other than prosecutors and police and that judge

agreeing about what will be filed. Mr. Schlather asked if there is another section about removing it to another local court after arraignment. Mr. Miller responded in the negative. He had hoped to ask the District Court officials what kind of cases they heard. He said it looks like if the DA directed all DWI cases to be filed in County Court, and if the County Court Judge agrees, the county court judge would sit as a local court judge. He speculated that this section was created for this type of situation, in which citizens of a county desired certain cases to be heard by a lawyer-judge. With agreement by all parties, that could happen. Mr. Wilkinson indicated agreement from the DA would seem to be possible. Mr. Galbreath said this appears to be an avenue that warrants additional research. He anticipates that town and village judges will not like things being taken away, although the shift of DWI could be palatable and would have an impact in terms of efficiency and evenness, if it is done the way Mr. Miller described. It appears the only person who would need to be on board is the DA. Mr. Miller said there must be a judge who would agree.

Mr. Schlather said that at a prior meeting, it was clear that it takes a long time to process DWI paperwork in the town and village courts. An electronic system would help; he is also getting the impression that a DWI part would be welcomed by the local magistrates, although he would like to hear from them. The DA affirmed that Judge Cassidy handles a DWI part of County Court. Mr. Schlather commended Mr. Miller for this insight that would seem to make this a simple plan to implement.

Mr. Schlather said the Nassau district court was created in the Laws of 1936 as a court of original and exclusive jurisdiction of all misdemeanors. There were cases in Suffolk County that asked whether misdemeanor cases could be heard in village courts as well as district court. In *People v. Beech*, the court declared concurrent jurisdiction.

With respect to central after-hours arraignment, Mr. Galbreath said this may be more palatable to the magistrates than other items, and this would be a way of evening-out the burden of after-hours arraignment work. He isn't sure of the legislative changes necessary to create this system. Mr. Schlather said CPL 10.30.1 allows any local court to serve as an arraignment court to establish preliminary jurisdiction—all of the post-arraignment work would return to the local court. Mr. Galbreath asked whether this needs to be in an adjacent jurisdiction. Mr. Galbreath and Ms. Wilkinson discussed whether the court could be at the jail, which it apparently can't, but it could be in a publicly accessible area of the County's public safety building. Mr. Leifer asked whether a Dryden justice could do an arraignment in the Ithaca Town Court (Judge Ravo had a problem with that situation in the past.)

Ms. Thomas asked whether centralized booking would relieve some of the burden of the local town clerks. Generally commentary indicated that the work would still flow to the local court clerks, so this would not result in relief.

Ms. Wilkinson asked if the arraignment occurs in a jurisdiction other than where the crime allegedly occurred, could a preliminary hearing occur in that centralized place? Mr. Galbreath said it might be able to stay. Mr. Miller said a felony can be filed in any justice court (but not a city court) as long as the crime happened in the county. It can stay in that court through the preliminary hearing. Also, Mr. Miller referred to CPL 10.20, which establishes that only a superior court judge can sit as the arraigning-only

judge for misdemeanors that occur. In contrast, an Enfield magistrate cannot preside over a Cayuga Heights arraignment, unless the arraignment happens in Enfield. (CPL 10.20.1b gives superior court trial jurisdictions with misdemeanors concurrent with the local courts. The only time a superior judge hears a petty offense if it is in an indictment that charges a misdemeanor or felony.) Mr. Schlather said we will ask Mr. Li to review this. Mr. Miller agreed to draft a legal memorandum on what a superior court/county court judge do without changing the law or going to referendum, i.e., can they hear town and village DWIs from start-to-finish?

Mr. Mareane asked whether Mr. Miller's research would apply generally to all misdemeanors (as well as to DWIs). Mr. Miller confirmed that it would.

Mr. Schlather suggested the task force defer on the operational issues such as schedules, paying of fines, electronic records until the magistrates return at the next meeting.

Mr. Schlather asked whether, as we contemplate a district court, the group would be inclined to consider a single district court, or a few courts covering parts of the county. Ms. Wilkinson said at least two speakers have pointed to accessibility as a factor that works against the district courts. Accordingly, if the task force was to pursue district or regional courts, the task force should consider more than one court. Mr. Schlather said that two adjacent jurisdictions can decide to merge into a single court, with the concurrent majority of voters in each municipality. Ms. Thomas noted that accessibility is always a problem in the rural areas (few people walk into the court) and Ithaca is fairly central to all. Mr. Leifer said it would be nice to have two, but not crucial. Ms. Wilkinson said she thinks it is crucial. Mr. Mareane asked whether a single district could meet in multiple locations. Most agreed that would be possible.

Mr. Schlather revisited a discussion from a prior meeting about web-based systems for dealing with certain kinds of offenses, such as traffic offenses, that can improve efficiency and equity by openly laying out the DA's policy for dealing with specific offenses and allowing an individual to send in their plea. The DA would acknowledge receipt and then leave it to the judge to accept or reject the plea. This "black box justice" is something that deserves thought, and could be a more fair and efficient system that produces the same general outcome as less fair and efficient systems now in place. Ms. Wilkinson referred to the Broome County DA's office webpage that approaches traffic offenses the way Mr. Schlather suggests. She said she has given thought to this approach. Ms. Wilkinson will send the webpage link to Mr. Mareane, who will forward it to the group. She said the Broome model has apparently resulted in greater efficiency. Mr. Schlather said Seneca County has a similar system. Mr. Galbreath noted that the system could raise false expectations that the courts would not be bound to fulfill. He said the courts would not be allowed to participate in such a system that would make it sound like the court is encouraging the defendant to use the system. Ms. Wilkinson said the system might involve her office posting the policy and system, with disclaimers about the courts not being bound to accept the offer.

Mr. Miller said he is opposed to any computerized system that would preclude a defendant involved in a DWI case from appearing in front of a judge. He said a first offender who has not had prior exposure to

the courts is influenced by “specific deterrence” that results from a skilled judge talking to the defendant about the consequences of their behavior. This cannot happen in a computer-based system. He also cited a new ethics opinion from the Judicial Ethics Committee that judges were automatically having their clerks enter pleas of guilty to reduced charges and agreed-upon fines. That has been ruled an improper delegation of judicial authority. This affects the way thousands of tickets are processed in City Court.

A brief discussion about video arraignments occurred. It is believed that law exists to allow the use of video, but the use of video must be accepted by the defendant.

The discussion turned to writing assignments.

The beginning of the report would be a reference to the Charge, how the task force came into being, and the like. Another section introduces the task force members and the constituencies they represent. Another would summarize the history of the justice courts in New York (with attribution, this could come from the Dunne report), including any noteworthy parts of the courts within Tompkins County. An appendix, including a table of contents and all of the meeting materials, would be put in the report. The report will be posted on line, and made easily accessible, so care needs to be taken to accommodate that. The body of the report, with the recommendations, analyses, pros and cons, etc. will await further discussion.

Mr. Miller will do the legal research described earlier regarding jurisdiction of the superior courts. Mr. Mareane will assemble the appendix. Mr. Galbreath volunteered to do the history section. Ms. Wilkinson agreed to do the introduction/preface/charge. Mr. Leifer will do the biography section and a section on court financing. Mr. Schlather will coordinate things. Ms. Thomas will do the section on the methodology of the group—how it has approached the task. Mr. Miller also agreed to write a section on where someone can be arraigned, depending on the charge.

Mr. Schlather discussed the schedule for the task force. He said he would like to have the report to the Legislature by June. Testimony should come to a close by the end of March, but the task force should continue to meet every other Wednesday to make sure the project comes to completion on time. Mr. Galbreath said he will be on the road during most of March. Mr. Schlather said the next critical meeting will be with Nassau officials. Mr. Mareane said the venue of that meeting might be important; that the Nassau delegation is concerned about being drawn into a politically controversial situation. It was suggested that a subcommittee communicate with the Nassau group and report back to the task force.

The March meetings will be on March 9th and March 30th (but the 23rd will be held open in case there is a need to meet.) April meetings will occur on the 13th and 27th.

All agreed that the meeting added value, particularly that the group is beginning to narrow its focus and that there, is light at the end of the tunnel.

The meeting adjourned at 6:00 p.m.