



Town and Village Justice Courts
Task Force Report
February 2008

*Enhancing the Fair Administration of Justice
In New York's Towns and Villages
Through Court Consolidation*

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Introduction

The Fund for Modern Courts is an independent nonpartisan statewide court reform organization committed to improving the court system for all New Yorkers. Modern Courts supports a judiciary that provides for the fair administration of justice, equal access to the courts, and that is independent, highly qualified and diverse. By research, public outreach, education and lobbying efforts, Modern Courts seeks to advance these goals and to ensure that the public confidence in the judiciary remains strong.

In the fall of 2006, Modern Courts formed a Task Force on Town and Village Justice Courts to study the town and village justice courts, which have been described as “the face of justice for a great many New Yorkers.”¹ The Task Force members reside or work in those parts of the New York served by town and village justice courts. Participants live or work in the counties of Broome, Schenectady, Westchester, Nassau,

¹ Judith S. Kaye and Jonathan Lippman, New York State Unified Court System, Action Plan for the Justice Courts, Preface (2006).

Erie and Rockland.² The Task Force offers this report as one means to address the issues facing town and village justice courts in New York State.

Town and Village Justice Courts

The town and village justice courts are part of the unified court system, as provided by the New York State Constitution.³ There are over 1900 justices in more than 1270 justice courts across New York.⁴ These courts are financed and administered, for the most part, at a town and village level.

Issues Confronting the Justice Courts

Questions have been raised in the past year (and for decades) about whether town and village justice courts are able to provide the quality of judicial services required in handling the criminal and civil matters within the jurisdiction of these courts.⁵

In the 2007 legislative session, the New York Legislature passed legislation, and the Governor signed into law, providing for greater statewide resources for the training of judges, and expanded the opportunity for justice courts in a given county to consolidate.⁶ Chief Judge Kaye's Special Commission on the Future of the Courts (chaired by Carey Dunne) held extensive hearings and traveled across the State to study the justice courts and provide recommendations for reform.⁷ The New York State Magistrates Association

² Task Force Chair, Daniel R. Murdock, members: Elizabeth Hubbard, Lenore Banks, Gary Brown, Richard Long, Helga Schroeter and Catherine Samuels. The Task Force acknowledges the contribution made to this report by Denise Kronstadt, Director of Advocacy and Michael Escott, summer law intern.

³ New York State Constitution Article VI § 1(a).

⁴ Action Plan for the Justice Courts, Office of Court Administration, November 2006 ("Action Plan").

⁵ See generally transcripts of hearings before the Commission on the Future of the Court at www.nycourtreform.org.

⁶ Chapter 237, Laws of 2007.

⁷ See www.nycourtreform.org for information. The Special Commission on the Future of the Courts is hereinafter referred to as the "Dunne Commission."

has drafted a resolution seeking local support for justice courts.⁸ Criminal defense attorneys, civil legal service providers, court clerks, individual judges, advocates for victims of domestic violence, lobbyists for mayors and towns, government agencies, bar associations and others have addressed the issues surrounding justice courts.⁹

All support some type of reform, but there is wide disparity as to the nature and extent of the reform that is necessary or appropriate. Some would simply provide more training and education for the judges, while others would dismantle the existing system and create one integrated statewide system of district courts. Still others argue that the local nature of the courts is itself important to preserve; while, on the other hand, many question the ability of small courts to meet the Constitutional requirements of the criminal defendant's right to counsel.

Other important issues raised include the need for improved education and training of court clerks, the need for attention to security problems and deteriorating facilities, and the lack of a uniform understanding of the consequences of domestic violence, the importance of civil procedure in eviction cases, and problematic record keeping. One of the most prominent issues debated has been whether judges without formal legal training can have sufficient understanding of the law to properly administer it.

The various concerns raised strongly suggest that some form of reform in the justice court system is warranted.

Consolidation

⁸ See <http://www.nysmagassoc.homestead.com>.

⁹ See generally testimony before the Dunne Commission, www.nycourtrefrom.org.

New York State law allows towns to combine the services of their justice courts with each other.¹⁰ It further permits Village Justice Courts to dissolve.¹¹ By taking steps to adopt these options, local governments are able to address some of the problems of small courts, without losing local access to the justice system. Consolidation, or the opportunity for towns to cooperate and form one justice court or share court facilities, and for villages to join their courts with town justice courts, or simply to dissolve their justice courts, permits local elected officials and local residents to preserve local courts.¹² It also provides for local citizen input in the process; public hearings must be held by local governments as they determine what would be best in their communities. At the same time consolidation may address many of the issues that cause great concern about the justice court system.

The Rationale for Consolidation

Modern Courts believes that consolidation will address many of the issues by a simple formula -- fewer courts afford an opportunity for a greater sharing of vital resources that the local justice courts need to ensure the fair and impartial administration of justice. Modern Courts supports consolidation of justice courts as a meaningful reform with a number of positive potential improvements:

- economic savings for town, village and county governments, and therefore taxpayers,
- better use of resources for civil legal services, criminal defense services and district attorney offices,

¹⁰ UJCA § 106(1), UJCA§106-a.

¹¹ Village Law § 3-301(2)(a).

¹² This report outlines one of the ways localities can cooperate and share services. The report describes the statutory framework for consolidation. It is not meant to be an exclusive means for cooperation between localities as other methods may be available under New York Law.

- improved administration,
- greater fiscal accountability,
- increased opportunity for lawyer judges to serve in the local courts,
- greater assistance to the local courts from the Office of Court Administration,
- greater oversight by the New York State Commission of Judicial Conduct,
- increased potential for shared safety and security measures,
- simpler management of the education and training of judges and court clerks, and
- the maintenance of accessibility for local residents.

The Task Force Report

In this report, Modern Courts will address why consolidation of town and village justice courts would be a positive development in terms of (1) lawyer justices, (2) education and training, (3) financial management and oversight, (4) security, and (5) indigent defense. This report does not address whether an individual court within a particular village or town properly adjudicates matters of those who appear before it,¹³ but whether the system as a whole through consolidation can better serve the public's right to the fair administration of justice and equal access to the courts.

Lawyer Justices

While the New York State Constitution requires that judges in all other courts in the State be trained as lawyers,¹⁴ the Constitution does not require that the judges in town and village justice courts be admitted to practice law in New York State.¹⁵ And the Court of Appeals has determined (by a one vote margin) that a defendant's right to counsel in a

¹³ For more information on individual disciplinary proceedings before the NYS Commission on Judicial Conduct, see www.scjc.state.ny.us. The Commission is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State.

¹⁴ NY Const., Art VI §20(a).

¹⁵ NY Const., Art. VI §20(a).

criminal proceeding does not create a related right that the criminal proceedings be heard by a judge trained as a lawyer.¹⁶ According to the Office of Court Administration, almost 72% of all justices are not trained as attorneys. Rather, the law governing town and village courts only requires that the justices complete a certification course designated by the legislature before taking office.¹⁷ The issue of non-lawyer judges raised concern for many of the witnesses who testified before the Dunne Commission, including the Fund for Modern Courts. In our exceedingly complex legal system, at whatever level of the judicial system being considered, it is believed desirable that judges be lawyers, and that steps should be taken to strongly encourage, if not require, that result.¹⁸

The arguments raised in opposition to requiring lawyer justices are two fold: (1) it is logistically difficult, if not impossible, to have lawyer justices throughout the entire system, and (2) legal training is not necessary to be able to judge in justice courts. As the Office of Court Administration reported in its Action Plan, “some of these jurisdictions have historically lacked a large pool of attorneys, while in other locations attorneys are available but may be unwilling to preside because judicial responsibilities would create conflicts of interest that impair their private practice of law.”¹⁹ Others claim that lay justices are properly trained and bring with them sufficient background experience and familiarity to properly adjudicate matters in their communities. However, as one sitting justice himself conceded, “most of the uncontested or unsatisfactory [non-

¹⁶ People v. Charles F., 60 NY2d 474 (1983), “A defendant is constitutionally entitled to receive a fundamentally fair trial (cite omitted) but the mere allegation that a judge lacks legal training does not mandate removal. . .” In the dissenting opinion, however, Chief Judge Kaye (joined by three other judges) concluded that lawyer judges in criminal cases were constitutionally mandated. In Judge Kaye’s view, “[t]he argument that it would be difficult throughout the State to find law-trained persons to serve as judges cannot preclude what is constitutionally required.”

¹⁷ See NY Const., Art VI §20(c).

¹⁸ The National Advisory Commission on Criminal Justice Standards and Goals, 1971.

¹⁹ Action Plan, p.42.

lawyer] judges are people who have court once or twice a month and take care of four cases in an evening. Even some of those are conscientious people who learn all they can, but just don't have the traffic in their courts to keep their skills honed.”²⁰

If there is any merit to the claims that some of the less populous counties of the State do not have enough resident lawyers willing to serve as judges in the existing town and village courts in these counties, reducing the number of courts through consolidation is one step that might address the problem. The Fund for Modern Courts believes that voluntary consolidation of justice courts, thereby increasing the workload of the remaining courts, should encourage greater use of lawyer justices in sparsely populated areas. “Having fewer courts – by whatever name we call them – would help attract more lawyers to judicial service in rural areas, and thus make it more feasible to shift to an attorney-only system. But even if we retain non-attorney judges, fewer courts would mean more efficient training and supervision, more experience with relatively infrequent jury trials and motions, and thus a higher quality of justice.”²¹ Consolidating justice courts and thereby reducing the number of sitting justices would also necessarily increase the experience of the justices retained.

Education and Training

Consolidation also could address the need for more training of both lawyer and non lawyer justices. Although the New York State Magistrates Association does not support a system with exclusively lawyer justices, many of its members are in favor of proposals that would improve the education and training made available to all justices.

²⁰ Hon. James Rodgers, Essex County Magistrates Assn., Testimony before the Dunne Commission, 6/13/07.

²¹ The League of Women Voters, Testimony before the Dunne Commission on the Future of the Courts, 6/13/07

For example, one judge, speaking before the Commission on the Future of the Courts, remarked that “[t]he vast majority of us agree that significantly improved training of magistrates is needed. Training of enhanced scope and depth is needed to enable the magistrates, attorney as well as non-attorney, to properly administer the daily functions of the court as well as managing the jury trials and other occurrences that are infrequent but vitally important to the judicial system.”²² Another justice stated, “The problem of how to prepare for the bench in the seven weeks between the election and taking office is still present. It is unrealistic to expect anyone to attend a six or seven week course, eight hours per day, plus home study, between winning the election and taking office on January first.”²³

Resources and training are available to justices but, as the above indicates, more training and supports are desired and needed. The Office of Court Administration established the City, Town and Village Resource Center, which answers calls from justices seeking legal research and guidance, touching all aspects of their criminal and civil jurisdiction.”²⁴ Although an extraordinary number of calls come into the Resource Center, the calls represent less than 1% of the total Justice Court caseload. In addition, in remarks given at Modern Courts’ *Forum on Justice Courts: Is There Justice in Justice Courts*,²⁵ advocates for victims of domestic violence reported a need for more comprehensive education of town and village justices on the appropriate administration of domestic violence proceedings: there are, they argued, too many examples of improper

²² Hon. David Mathis, Town Justice of Saratoga, Testimony Before the Dunne Commission, 6/13/07.

²³ Hon. Jack Ditch, Town Justice of Saratoga, Testimony Before the Dunne Commission, 6/13/07.

²⁴ Action Plan, p.58.

²⁵ Modern Courts” Forum was held at the NYSBA on April 17, 2007 - *Perspectives on Criminal Justice in Town and Village Justice Courts; Is There Justice in Justice Courts*. Presentation by Connie Neal, Director of Criminal Justice Projects, NYS Coalition Against Domestic Violence.

orders made by town and village justices that show a lack of knowledge about domestic violence. Training and education remains a critical need for the justice court system.

Modern Courts believes that consolidation can address both the lack of lawyer judges and the need for more efficient use of resources for education and training. Fewer courts mean fewer justices – as a result, finding more attorneys to serve – if the conflict issues as stated above are also addressed - may not be as difficult. In addition, fewer courts and fewer justices would allow the more efficient use of resources to train both lay and lawyer justices.

Financial Management and Recordkeeping

According to the Office of the New York State Comptroller, justice courts generate significant revenue for local towns and villages. In 2006, the justice courts took in a reported \$211,795,045.14 in fines, fees and other expenses.²⁶ All of these funds are required to be paid into the Justice Court Fund (“JCF”) by the local courts.²⁷ Despite the enormity of this amount, there is little uniformity or oversight of the courts’ accounting or reporting processes.

The State Comptroller’s Office has issued a *Handbook for Town and Village Justices and Court Clerks*, which exhaustively sets forth practices and procedures the justice courts are to follow in administering and accounting for all financial transactions. Initial oversight of each court’s finances, however, is the responsibility of the individual localities.²⁸ Audits performed by the state in recent years document that many courts routinely fail to conform to practices mandated by the Comptroller, and, indeed, that

²⁶ According to the State Comptroller’s 2006 Justice Court Ranking.

²⁷ State Finance Law § 99-a.

²⁸ Town Law § 123.

many local governments are unaware of the requirements they are supposed to be complying with.²⁹

In 2006, 1,260 justice courts reported income to the Comptroller's Office.³⁰ With so many courts, it would be impossible for the Comptroller to audit effectively every court every year (or even every 10 years). In fact, during 2003 to 2005, the state completed only 32 random audits of justice courts.³¹ As a result of the 32 audited, it was discovered that money was missing from 11 courts, with amounts ranging from \$650 to \$62,600.³² The Comptroller's Office reported, "If the same percentage and size of fraud is occurring at the 1,260 courts statewide, auditors estimate that \$5.2 million may be missing at 430 courts."³³ Based upon these disturbing findings, the Comptroller's Office concluded ". . .that over the past several years there was widespread lack of accountability and internal controls in many Justice Courts and, thus there is a need for Court operational reform."³⁴

The Office of Court Administration and the Office of the Comptroller have collaborated on new practices designed to improve the justice courts' financial integrity. Specifically, the Plan calls for participation in the electronic Invoice Billing Program ("IBP")³⁵, and universal acceptance of credit card payments at all courts. These initiatives have been determined to reduce the opportunity for miscalculation and fraud, while simultaneously reducing the overhead costs of accounting and reporting to the courts.

²⁹ Comptroller, Justice Courts Accountability and Internal Control Systems, 2005-MR-10.

³⁰ According to the State Comptroller's 2006 Justice Court Ranking.

³¹ Justice Courts Accountability and Internal Control Systems, 2005-MR-10, p. 6.

³² OSC press release, 5/18/06, <http://nyosc3.osc.state.ny.us/press/releases/may06/051806.htm>.

³³ OSC press release, 5/18/06, <http://nyosc3.osc.state.ny.us/press/releases/may06/051806.htm>.

³⁴ Justice Courts Accountability and Internal Control Systems, 2005-MR-10, p. 22.

³⁵ IBP, is an electronic computer filing system that allows courts with adequate computer resources to remit only state revenue directly to the JCF. The courts may retain the local portion of revenue, avoiding the waiting period before the Comptroller's Office to return it.

Although the advocated changes are intended to be a help to the courts, some smaller courts have argued that without a staff dedicated to court accounting, the institution of new practices requiring new training is a severe imposition on the local governments, and, without state funding for ongoing maintenance of those systems, a disruptive financial burden is imposed on the communities with small courts. “Computers are needed and will be welcomed, but everyone whose office operates on a network knows that this too needs constant servicing and maintenance.”³⁶ Programs like Justice Court Assistance Program (“JCAP”) and direct support initiatives from the Office of Court Administration can provide justice courts with necessary facility and security upgrades. The Association for Towns, however, claims that “time and again, State programs have been established that were initially funded by the State, only to be defunded at a later date, with the responsibility of paying for the state-mandated program falling on the shoulders of the State’s local governments and their property taxpayers.”³⁷

Consolidation could offer the NYS Comptroller’s office greater opportunity to audit local courts, reduce the costs for both the State and the localities, and enhance the needed improvements for financial reporting.

Justice Court Security

“On average, New York judges report to the Office of Court Administration’s Department of Public Safety over 100 threats or other security breaches each year.”³⁸ Unlike the rest of the court system the facilities for justice courts are entirely provided and funded by the localities of the individual courts. The financial responsibility for court security is within the province of the local town or village board. There is no uniformity

³⁶ Richard Hoffman, Testimony before the Dunne Commission, 6/13/07.

³⁷ Wade Beltramo, NYCOM, Testimony before the Dunne Commission, 6/13/07.

³⁸ Action Plan, p.52.

of court security. In a recent assessment of Dutchess County Justice Courts, Modern Courts' court monitors observed that of 25 courts monitored, only 3 had magnetometers in use.

While some localities are reputed to have relegated court proceedings to such dubious premises as a folding card table in a firehouse garage,³⁹ others have constructed highly specialized dedicated courtrooms for their justice courts.⁴⁰ Although the professional courts may enable better security, the more common use of multi-purpose facilities for smaller courts makes the installation of proper security features a practical impossibility. Many courts lack such amenities as magnetometers for screening the incoming public, holding cells for inmates transported from jail, or even security personnel. As one study noted:

“In [an] upstate county, the Sheriff’s Department noted that not only must it transport in-custody defendants to the local court dockets, but that it ends up performing the function of court security. The Sheriff’s Department believed that the local courts purposefully hear in-custody cases last in order to get free in-court security from the sheriffs who must guard the prisoners but who will also respond to other security issues that may arise.”⁴¹

The Task Force on Court Security completed a survey of justice court facilities in 2005 that revealed the following:

“[T]he vast majority of Justice Courts have no entrance screening to detect and confiscate deadly weapons; no uniformed presence in courtrooms properly trained to detect and respond to security incidents; no effective means to segregate detained defendants from the public, or segregate litigants from the judge; no secure locations anywhere in the facility, no mechanism to separate alleged victims and perpetrators of domestic violence; no published and practiced protocols for justices and staff to follow in case of emergency; few effective protections for cash and other

³⁹ William Glaberson, *Small Town Justice, with Trial and Error*, *The New York Times*, 9/26/06.

⁴⁰ Judiciary and Court Administration, Towns of Shelby and Ridgeway Court presentation.

⁴¹ Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services, June 2006 (“Spangenberg Report”), p.105.

instruments stored either in the court or elsewhere on premises; no restraints to keep furniture and fixtures from being used as projectiles or other weapons; and no effective way to summon help in case of a security breach.”⁴²

As a League of Women Voters representative observed, “In economic terms, most Town and Village Courts are too small to justify the great expense of bringing all of these courts into the 21st century.”⁴³ While the Office of Court Administration has indicated that it intends to distribute magnetometers to all courts lacking them without cost, many courts cannot support the personnel needed to use magnetometers.

“Two years ago, the New Paltz Town Court obtained a grant and purchased a magnetometer. It is working well. Unfortunately, in order to use the equipment properly, we need the services of a second court officer so that we have one at the machine, screening people as they come in, and the other watching the defendants, the complainants, and their families and friends.... This additional person was, of course, not included in the grant, and it has been difficult to obtain the additional funds from the town.”⁴⁴

Consolidated courts would increase the likelihood that local courts would have the financial wherewithal to address security needs in a satisfactory manner.

Indigent Defense

It has long been held that a defendant charged with a criminal offense has a right under the U.S. Constitution to be represented by counsel.⁴⁵ In New York the right is recognized constitutionally⁴⁶ and by statute.⁴⁷ Locally, Section 200.26 of the Uniform Rules for Trial Courts requires town and village courts to make an initial determination of

⁴² Action Plan for the Justice Courts, p.54.

⁴³ The League of Women Voters, Testimony Before the Special Commission on the Future of the Courts, 6/13/07.

⁴⁴ Hon. Judith Reichler, New Paltz Town Justice, Testimony before the Special Commission on the Future of the Courts, 6/13/07

⁴⁵ Gideon v Wainwright, 372 US 335 (1963); Coleman v Alabama, 399 US (1970); Powell v Alabama, 287 US 45 (1932).

⁴⁶ NY Const, Art I, § 6.

⁴⁷ CPL 170.10, 180.10, 210.15.

eligibility for assigned counsel at arraignment when a defendant is being held without bail or is unable to post bail. If the court determines that the defendant is eligible for counsel, it must immediately assign counsel and notify counsel and the local pretrial services agency of the assignment.”⁴⁸ Defendants are not obligated to request assignment of counsel to represent them; the judges are expected to recognize and determine when the rule applies.⁴⁹

In June, 2006, the Commission on the Future of Indigent Defense Services concluded that a crisis exists in the delivery of defense services to the indigent throughout New York State.⁵⁰ It further outlined the problems experienced in town and village justice courts.⁵¹ “[T]he sheer number of Justice Courts in some counties can require a limited supply of indigent defenders to appear in many tribunals, often separated by significant distances, and thus to expend precious time traveling among these many Justice Courts when defenders instead could be meeting with clients and otherwise preparing cases.”⁵² In addition, the financial responsibility of providing indigent defense services has been assigned to the counties in New York⁵³ which also fund the district attorney’s offices. Although no comprehensive economic analysis has apparently been made, the “stretching” of resources of district attorneys and public defense services is certainly at play as defense counsel and prosecutors must appear in many courts at all reaches of their counties, with little or no coordinator among them.

⁴⁸ Spangenberg Report, p.113.

⁴⁹ 22 NYCRR § 200.26.

⁵⁰ Report to the Chief Judge by the Commission on the Future of Indigent Defense Services, 2006.

⁵¹ Report to the Chief Judge by the Commission on the Future of Indigent Defense Services, 2006.

⁵² Action Plan for the Justice Courts, p. 29-30.

⁵³ County Law § 722 *et seq.* (Article 18-b).

Consolidation would provide for fewer courts, opportunities for more lawyer justices, greater resources, and less logistical difficulties for prosecutors and public defense providers. It would not be a complete answer to some of the serious questions raised by the Report on the Future of Indigent Defense Services, but towns and villages, working together with their respective county government, could clearly improve the process of criminal justice services through court consolidation.

The Statutory and Political Requirements of Consolidation

The New York State Constitution provides for town and village justice courts.⁵⁴ Changing the system would require a Constitutional Amendment. While establishing a statewide district court system likely would ameliorate many of the problems highlighted within this report, a Constitutional Amendment would be required to implement it⁵⁵ because the local justice court structure would be eliminated statewide. Another option is consolidation within each county – which requires the passage of a referendum.⁵⁶

The Fund for Modern Courts has supported the replacement of town and village justice courts by full-time, county-based district courts with legally trained judges, and we continue to support this approach where the geography and caseload make it feasible. In other areas, however, significant improvements in the provision of court services may be achieved through consolidation, short of establishing a district court system. Moreover, the past lack of success of efforts to establish a statewide district court system led Modern Courts to focus on the local option for reform through consolidation as an effective alternative. Accordingly, this report seeks to address the opportunity local

⁵⁴ NYS Const. Art. VI § 17.

⁵⁶ NYS Const Art VI, § 16

governments have in cooperating with other towns and villages while fully respecting localities' interest in maintaining accessibility to local courts.

The statutory process of consolidation, as outlined below, requires cooperation between towns, or towns and villages involved in the process, and agreements among the participants to a consolidation between towns are a prerequisite to moving the process forward. Often, the lack of political will and commitment to consolidate on the part of one or both parties to a potential consolidation can cause the process to founder and fail. In conversations with representatives of a number of towns and villages, Modern Courts learned that many of them did not know that consolidation was permissible, and fewer were aware of the best means to accomplish it. Fortunately, in 2007, the New York State Comptroller's office issued a "How to Consolidate"⁵⁷ brochure, and forwarded it to towns and villages across the State. The brochure provides a helpful guide to the New York State law governing consolidation.

Consolidation Laws for Towns:

Under current New York State law, each town is mandated to have two justices among its officers.⁵⁸ Although there are mechanisms in place through which a town may *increase* the number of justices in its local court⁵⁹, there are few options available to a town board attempting to reduce the number of justices. A town may petition the State Legislature to dissolve a town justice court and the roles of the corresponding justices.⁶⁰ Town boards may reduce the number of justices in their town by consolidation with an

⁵⁷ Comptroller's Office www.osc.state.ny.us.

⁵⁸ Town Law § 20(1)(a) states that Class A towns must have two justices, and § 20(1)(b) states that Class B towns must have two justices of the peace.

⁵⁹ Town Law § 20(1)(d).

⁶⁰ NYS Const. Art. VI § 17(b).

adjacent town. But consolidation of justice courts of two towns would permit the towns to keep their local justice and directly affect their own justice courts.

Until this year, the Uniform Justice Court Act (“UJCA”) authorized the town boards of two adjacent towns within the same county to establish a single town court.⁶¹ On July 18, 2007, Governor Eliot Spitzer signed into law a bill that expands the power of towns to consolidate their justice courts. The new law, sponsored by Senator Young and Assemblyman Parment, expands the number of towns that can consolidate their justice courts into a single, coordinated court from two, to any number, as long as they are geographically contiguous, of towns within the same county. In support of the bill, the sponsors relied on statistical data from the State Comptroller’s office suggesting the consolidation of redundant municipal services between neighboring towns.⁶²

This new law, Section 106-a of the UJCA, provides two or more contiguous towns with the ability, through consolidation, to eliminate one judgeship in each of the participating towns, and create one justice court jurisdiction that encompasses all the participating municipalities. To initiate such an undertaking, the board of each participating town would have to adopt a resolution in support of reducing the number of its justices by one, or the voters in each town would have to submit a petition with sufficient signatures seeking this reduction in the number of justices in their town. Thereafter a joint public hearing would be held before representatives of the participating town boards. The petition or resolution would then go before the individual town boards for approval or disapproval. If approved by the boards in the participating towns, the

⁶¹ UJCA § 106-a(1).

⁶² Office of the State Comptroller, Division of Local Government Services & Economic Development. *Opportunities for Town and Village Justice Court Consolidation, and Justice Courts Accountability and Internal Control Systems.*

voters in each town then must pass a referendum supporting the consolidation. If the consolidation is successfully completed, each of the towns will have eliminated the offices of one of their two justices, and the remaining town justices, one from each town, will have concurrent jurisdiction over the agreeing towns, consistent with their previous scope of authority.⁶³

Moreover, the consolidation law provides the agreeing towns with extensive freedom regarding the logistics of the actual organization of their new single town court. The towns must draw up and agree on their own plan for consolidation before a resolution to consolidate may be implemented.⁶⁴ Ideally, their plan would address the issues that led the town boards to seek consolidation; fiscal efficiency, service redundancy, etc. The law only requires that the remaining justices maintain separate records and accounts for each of the towns, and that each justice file individually with the comptroller.⁶⁵

Although the intention is to create a “single town court,” there are no specifications in the law regarding court facilities. The UJCA permits a justice to hold court in a neighboring town if doing so pursuant to a consolidation plan.⁶⁶ The law gives the towns the flexibility to maintain one court facility within any one of the participating municipalities, staffed by all of the remaining justices. Such a plan assumes that a single physical court facility will be convenient and readily accessible to the residents of all of the constituent towns. However, the law also leaves the towns free to maintain separate court facilities. Should the towns determine that such a plan is more prudent, they may

⁶³ UJCA § 106-a(12).

⁶⁴ UJCA § 106-a(11).

⁶⁵ UJCA § 106-a(13).

⁶⁶ UJCA § 106(1).

retain individual court facilities within each of the towns, thereby foregoing many of the advantages of consolidation.

Consolidation Laws for Villages:

A village board is granted authority by New York State law to both establish and abolish the offices of village justices.⁶⁷ Unlike towns, which are required by law to have two justices, the village courts are required not to *exceed* two justices without authority from the legislature.⁶⁸ By law, the town justice courts have equal and concurrent jurisdiction with the village justice courts of any incorporated village within the town limits.⁶⁹ Therefore, if a village chooses to reduce the number of justices it employs, or eliminate the local justice court altogether, the town justice court serves, as it had before, the same jurisdiction. Moreover, the law guarantees that any fines imposed as a result of violation of village code or ordinance will remain the property of that village, regardless of whether the case is disposed of by a town justice court.⁷⁰ The same, however, is not true of fines imposed for violations of the Vehicle and Traffic Laws – these become the property of the town. That is the present status of the governing law.

State Support for Consolidation

The Governor, in response to the economic burdens faced by localities in providing adequate and effective municipal services, has strongly recommended that localities consider the consolidation of local services with each other. The New York State Comptroller's office similarly has recommended consolidation of justice courts, has presented localities with vital information on "how to" consolidate, and has offered to

⁶⁷ Village Law § 3-301(2)(a).

⁶⁸ Village Law § 3-301(2)(a).

⁶⁹ UJCA § 201(b) grants town and village courts concurrent civil jurisdiction. CPL § 10.30 grants local courts trial jurisdiction of all offenses other than felonies.

⁷⁰ UJCA § 2021(1).

assess the benefits of consolidation to towns and villages by providing relevant revenue and expenditure data.⁷¹ Both offices advocate the cooperation of local agencies in the provision of municipal services as a cost cutting measure, and as a means of improving the effectiveness and efficiency of local service delivery. The State has instituted funding resources to facilitate local consolidation through the establishment of the Shared Municipal Services Incentive Grant Program (“SMSI”). SMSI provides “technical assistance and competitive grants to two or more units of local government for the development of projects that will achieve savings and improve municipal efficiency through shared services, cooperative agreements, mergers, consolidations and dissolutions.”⁷² “For 2007-2008, the New York State Budget contains 25 million dollars for SMSI, including 10 million dollars for Consolidation Incentive Aid and 15 million dollars for Shared Services projects.”⁷³

In April 2007, Governor Elliot Spitzer issued an Executive Order⁷⁴ creating a Commission on Local Government Efficiency and Competitiveness. It further established an interagency task force that will provide consultation, legal and logistical support to local governments wishing to consolidate or share services. Among those local governments that are considering either consolidation of justice courts or the sharing of court facilities, various villages and towns within the following counties, have submitted requests for assistance: Broome County, Chemung County, Franklin County, Genesee County, Jefferson County, Schuyler County, St. Lawrence County, and

⁷¹ Comptroller Brochure www.osc.state.ny.us.

⁷² From the Shared Municipal Services Incentive Grant Program home page, www.dos.state.ny.us/lgss/smsi/smsihome.html.

⁷³ Id.

⁷⁴ Executive Order No. 11.

Tompkins County. Many of New York's local governments clearly are interested in shared services among their justice courts.

Orleans County: An Example of Cooperation and Consolidation

The Center for Rural Regional Development and Governance prepared a case study which reviewed the consolidation of the justice courts in the towns of Shelby and Ridgeway in Orleans County.⁷⁵ The report thoroughly examines the process leading up to consolidation, the public debate accompanying it and, most importantly, the outcome. The Fund for Modern Courts recognizes that no two towns are alike in our vast state but the consolidation report of Shelby and Ridgeway is a helpful example of how justice court consolidation in New York may be carried out. The following is a summary of the report.⁷⁶

The Shelby - Ridgeway Justice Court

Shelby and Ridgeway are contiguous towns in the southwest corner of Orleans County, which has thirteen separate justice courts. Each town occupies a primarily rural area of approximately 50 square miles. Shelby has a population of approximately 5,400, and Ridgeway, a population of 6,800.⁷⁷ As the Report summarizes, “. . .both the Town of Shelby and the Town of Ridgeway. . .operated two justice courts employing two justices each and two court clerks each, for a total of eight employees. If consolidated the total number would be reduced to half. . . The Town Boards viewed this consolidation as an opportunity to save tax dollars. Perhaps not a lot of tax dollars but they believed it was

⁷⁵ The study was prepared for the New York State Department of State and Albany Law School/ Government Law Center as part of the Shared Municipal Services Technical Assistance Project.

⁷⁶ The Shelby-Ridgeway Report.

⁷⁷ According to the 2000 United States census, Shelby has a population of 5,420, and Ridgeway has a population of 6,886.

a step in the right direction.”⁷⁸ To consolidate the justice courts, an initial step, as required by Section 106-a of the UJCA, was the passage of a resolution by each town board, introduced by members of each board, after a joint public hearing.⁷⁹ The resolutions were introduced and a public hearing held. At the public hearing, the Orleans County District Attorney spoke in favor of the consolidation, stating, “I have to say that I think it does make sense to consolidate the courts in this county, particularly when you take into consideration the size of our county, the costs that are in government and the problems we’re having with budgets in the county.”

The Report further outlines the benefits of the proposal, from the perspective of the District Attorney, as providing savings “. . .by not having to send out representatives from the District Attorney’s office, the Public Defender’s office, the Sheriff’s Department and the Probation Department,”⁸⁰ to two separate court facilities. The opposition came from three of the four sitting justices. The justices stated that there would be “insignificant savings, loss of town identity and lack of convenience. . .”⁸¹ After the joint public hearing, each town board approved the resolution to abolish a justice position. Each town board also approved a separate resolution to accept a mutual agreement. The next step required by the Uniform Justice Court Act was for the voters of each town to vote on the consolidation at the next general election. Supporters of a “Yes” vote included the Chamber of Commerce and the editorial board of the Medina Journal Register. Rumors included the threat of a legal action by one of the justices

⁷⁸ The Shelby-Ridgeway Report.

⁷⁹ UJCA Sect. 106- a (the other method is for registered voters to submit a petition to the Town Boards which would then trigger a public hearing).

⁸⁰ The Shelby-Ridgeway Report p. 5.

⁸¹ The Shelby-Ridgeway Report p. 6.

whose position would be abolished.⁸² On Election Day, November 4, 2003, the voters in each town voted in favor of the following resolution:

Shall the Joint Resolution of the Towns of Ridgeway and Shelby to establish one single Town Court for the Towns of Ridgeway and Shelby and reduce the number of Town Justices from two justices to one justice from each town be approved?

The consolidation plan, which eliminated the positions of one justice in each town, went into effect on January 1, 2004. Each town paid the salary of its remaining justice, and each justice chose one clerk; the clerk remaining was an employee of the respective town. In addition, a deputy town clerk was appointed to receive the fines and other monies paid into both courts, (shared expenses were established for the deputy clerk). In conformity with UJCA Section 106-a(13) separate records were required of each town justice, and each town justice was required to account separately to the Comptroller's Office. Each town had separate responsibility for providing a bailiff, computer services, telephone lines, office supplies and keys were fairly distributed between the towns. Pursuant to the plan, what had been two separate court facilities were combined into one dedicated space housed in the Shelby Town Hall, in the Village of Medina.⁸³

The consolidation of the two courts provided savings to each town and the county, a well equipped courtroom, a facility in close to both towns, and more efficient recordkeeping. Although the savings were projected to be relatively minor in consideration of the total town budgets, the town boards believed that the consolidation

⁸² The Law has a problematic provision for transition – because justices are elected, the position cannot be abolished until the end of the term, Town Law Sect 60-a. The Attorney for the Town of Shelby suggested that the two laws may be in conflict but the Town Law could be amended to ensure its language conforms with the Uniform Justice Court Act.

⁸³ Judiciary and Court Administration, Towns of Shelby and Ridgeway Court; PowerPoint presentation, slide 7.

represented an important step toward overall cost cutting and regional cooperation.⁸⁴ The savings for Ridgeway were greater than for Shelby, but Shelby reported it saved over one thousand dollars. Perhaps the savings have not been huge, but the costs have not increased. In times when we are seeing dramatic cost increases in health care and NYS Retirement costs, to be able to hold the line in spending is a significant accomplishment. Moreover, the Sheriff's Department, responsible for transporting defendants to county jail to and from court appearances, reported savings in both manpower and transportation costs.

One judge believed the consolidated court was less confusing to the public and provided a much nicer courtroom; the other judge who initially worked against the consolidation believes it has worked as well. He noted, however, his caseload has increased⁸⁵ and he recommended that other towns considering consolidation should raise the salaries of the remaining judges. The combined location has been described as being more central and easier to locate than the old Ridgeway Justice Court facility. "People no longer get confused where they need to go and they are able to pay their fines and fees whenever the Town of Shelby Office is open for business."⁸⁶ The Report evaluated the facility as a highly professional courtroom with dedicated smaller rooms around it – unlike the court used by the Town of Ridgeway before the merger.⁸⁷ The separate rooms are used for attorney/client conferences, providing a necessary privacy that was previously impossible.⁸⁸ These rooms also are very important for participants in domestic

⁸⁴ Shared Municipal Services Technical Assistance Project, Case Study Template, p. 5 § 3.

⁸⁵ The Shelby Ridgeway Report, p. 11.

⁸⁶ Shared Municipal Services Technical Assistance Project, Case Study Template, p. 8 § 4(3).

⁸⁷ There is a photograph of the courtroom at Judiciary and Court Administration, Towns of Shelby and Ridgeway Court; PowerPoint presentation, slide 10.

⁸⁸ Shared Municipal Services Technical Assistance Project, Case Study Template, p. 8 § 4(3).

violence matters and for jurors attempting to deliberate. Without such separate rooms, the participants in domestic disputes have to wait, confer with legal counsel, and ultimately appear before the judge, all in each other's presence. Without separate facilities, jurors deliberating on a case have to remain within the crowded courtroom while they deliberate on a case they have just heard. The value of these "ancillary rooms" is so great that the provision of such rooms has been included among a short list of recommended improvements in the Action Plan.⁸⁹

It should be noted that in the recently released Modern Courts' Citizen Court Monitoring Report for Town and Village Justice Courts in Dutchess County that monitors observed that 80% of the court facilities observed did not have space allocated in the courthouse for attorney-client conferencing in private. In some cases, this deficiency led to noisy courtrooms because attorneys were forced to meet with their clients in the courtroom during the proceedings or a violation of attorney-client confidentiality because privileged information was exchanged between lawyers and their clients in a public courtroom. Modern Courts' monitors recommended that each court should allocate space within its facilities for attorney-client conferencing to maintain order in the courtroom and attorney-client confidentiality.

As stated in the Shelby-Ridgeway Report, the cooperative relationship between the two towns and the knowledge and interest of the elected officials helped ensure the success of the consolidation. Consolidation, the Report concluded, is not without emotional and personal issues as jobs may be eliminated, but here it was clearly in the best interest of "good cost effective government."

The Shelby-Ridgeway Justice Court, and the Village of Medina

⁸⁹ Action Plan, p.58.

Following the successful consolidation of the Ridgeway and Shelby Town Courts, and a feasibility study, the Village Board of Medina agreed on a resolution to dissolve its own village justice court. A review generated by the village trustees projected that the cost savings of the court's elimination to the village would be in excess of \$100,000 over the following four years.⁹⁰

Again, opposition to the abolition of the village court was generated from within the court. A campaign begun by a retired Medina police chief successfully led to the inclusion of a permissive referendum on the ballot regarding the justice court abolition. It was reported that the retired chief, whose wife was employed as the Court Clerk and would lose her job if the court was dissolved, engaged in a door-to-door campaign against the abolition of the court.⁹¹ On March 20, 2007, the referendum successfully defeated the proposed court dissolution by a margin of 27 votes.⁹²

Towns of Gaines and Albion, and the Village of Albion

Although dissolution of a village court represents an easy option for village and town courts to combine services, in cases where a large village wishes to decrease costs without losing the service of its justices, the municipalities may also choose to merge their facilities. The Village and Town of Albion, which have already consolidated several other municipal functions, have also combined their court systems.

The town and village have moved both of their justice courts into a single dedicated facility within the Village of Albion. Now the Town Board of Albion and the Board of the neighboring Town of Gaines are considering a proposal to consolidate their justice courts according to measures in the UJCA. The two town boards, along with the

⁹⁰ Shared Municipal Services Technical Assistance Project, Case Study Template, p. 11 § 5(6).

⁹¹ Shared Municipal Services Technical Assistance Project, Case Study Template, p. 11 § 5(6).

⁹² Shared Municipal Services Technical Assistance Project, Case Study Template, p. 11 § 5(6).

Village Board of Albion, have applied for an \$80,000 feasibility study grant from the state. The grant, which would be used to hire the services of a professional consultant, such as Cornell University, will be used to determine whether a further consolidation of the combined Albion Court with the Gaines Justice Court would benefit the municipalities.⁹³

Summary

Consolidation is a realistic, practical and reasonable approach to address the wide range of issues consistently confronting the fair administration of justice in the town and village justice court system. It is not simple to achieve, but the opportunity exists to reform the troubled justice courts voluntarily and cooperatively by local government initiatives to combine two or more court jurisdictions, or dissolution of one court and merger into another.

⁹³ www.journal-register.com/archivesearch/local_story_048115053.html.