Justice Court Manual

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Preface

It is with great pleasure that I introduce the New York State Justice Court Manual. This Manual, a product of the Justice Court Task Force, is New York's first one-stop-shopping handbook of best practices to efficiently operate a Justice Court consistent with both local needs and the interests of the administration of justice. This Manual also offers town and village governments invaluable advice about combining, sharing, and otherwise adapting their Justice Courts to fiscal, operational, and other local needs.

The Justice Court Task Force, and this Manual, appear in a time of fiscal constraint and close focus on local governance. Like all public instrumentalities in New York State, wise stewardship of Justice Courts is important to keep the public trust vested in them and make efficient use of limited taxpayer funds. Ensuring that Justice Courts reflect these realities is both important and fraught with complexity due to the many fiscal, operational, constitutional, and statutory issues that shape Justice Courts. The Task Force's work of identifying needs and concerns, researching best practices and governing laws, sifting through and synthesizing all of the information, coming to consensus, and developing this Manual, was no small mandate.

In this mandate, the Task Force's mission – and one of this Manual's guiding values – is to recognize and empower a town and village discretion to the maximum extent practicable. Under State law, each Justice Court represents collaboration between its sponsoring locality, the State, and the justice stakeholders appearing in or affected by the courts operations. I hope this Manual promotes the wise collaboration that is key to healthy Justice Courts and their effective administration of justice.

In their discretion, localities sponsoring Justice Courts are asking questions about potentially reconfiguring their local courts. This Manual offers objective advice about options to share facilities, merge courts, restructure judgeships, and undertake other reforms to improve the local administration of justice.

Although this Manual is an impressive document in its thoroughness and completeness, perhaps what is most impressive is that it represents the collective voice of so many groups and agencies that have something important to say about Justice Courts and their optimal functioning. You will see these groups listed in the appendix of this Manual. This Task Force was able to take their many legitimate points of views and still achieve this goal. Because the Justice Court environment constantly changes, this Manual is intended to be a living document and will be updated periodically as the need arises.

I would like to thank the co-chairs and members of the Task Force for their hard work and contributions to developing this Manual. I know that it will educate and inform local governments in making the best decisions about Justice Courts for their communities.

Honorable Michael V. Coccoma
Deputy Chief Administrative Judge
Unified Court System

I. Overview: How to Use This Manual

Town and Village Justice Courts are part of New York State's complicated web of judicial institutions and play vital roles in both criminal and civil actions. The purpose of this Manual is to provide an overview of the Justice Courts, including the types of cases they handle, how they operate, how a village may establish or abolish a Justice Court, and how towns and villages can collaborate to provide better administration of justice and operate more efficiently.

This Manual is intended to support justices, town and village governing boards, Justice Court clerks and other non-judicial staff of the Justice Courts, municipal chief financial officers, and other municipal officials who are involved or interact with Justice Court operations. Its contents reflect best practices recommended by the Office of the State Comptroller, Office of Court Administration, New York State Association of Towns, New York State Conference of Mayors, New York State Magistrates' Association, and other key stakeholders in the Justice Court system. These stakeholders comprise the Justice Court Task Force, which is responsible for developing this Manual. A list of the Justice Court Task Force's participants is included in the appendix of this Manual.

While this Manual aspires to be comprehensive, it is not designed to provide legal or operational advice with regard to particular issues that may arise in a specific Justice Court at a particular time. Justice Courts and their sponsoring municipalities always are encouraged to seek appropriate advice concerning these issues as they arise.

If questions arise about Justice Court operations, Town and Village Justices should contact the Office of Justice Court Support or their Supervising Judge. Town and village officials should contact their municipal attorney, the Association of Towns or the Conference of Mayors.

II. Overview of the Justice Court System

A. New York State's Town and Village Courts

Within New York's complex judicial system are nearly 1,300 Town and Village Justice Courts.[1] Justice Courts are governed by the Uniform Justice Court Act ("UJCA"), first enacted in 1967, as well as a host of other statutes, executive-branch regulations, and rules enacted by the State Judiciary.

Most of New York's town and villages operate a Justice Court. Together New York's nearly 2,200 Town and Village Justices handle almost two million cases per year. Justice Courts vary in their number of justices, volume and types of cases, hours and frequency of scheduled court dates, number of non-judicial employees, and costs of operation. Many factors shape these aspects of Justice Court operations, some of which are matters of local discretion.

In general, Justice Courts are empowered to hear both civil and criminal cases, but are courts of limited jurisdiction in that they adjudicate only certain types of civil and criminal cases. On the civil side, Justice Courts hear money actions that do not exceed $3,000, with very narrow exceptions.[2] On the criminal side, Justice Courts are local criminal courts with the same jurisdiction as the New York City Criminal Courts, District Courts and City Courts outside New York City, with the power to adjudicate misdemeanor and petty offenses, and arraign defendants in felony cases before they are transferred to a superior court (usually the County Court).[3]

While Justice Courts have limited jurisdiction, they are integral parts of New York's Unified Court System comprising the Judicial Branch of New York State government.[4] As such, each Justice Court is responsible for administering justice consistent with the Constitution and its separation of powers, as well as applicable statutes and court rules, and subject to the general oversight of the Chief Judge and Chief Administrative Judge. Every Town and Village Justice, and every municipal official interacting with the local Justice Court, shares responsibility for ensuring the effectiveness of the Justice Court under our Constitution, the UJCA, and other statutes that govern aspects of Justice Court operations – including the Judiciary Law, Civil Practice Law & Rules ("CPLR"), Criminal Procedure Law ("CPL"), Real Property Actions and Proceedings Law ("RPAPL"), Vehicle and Traffic Law ("VTL"), General Municipal Law ("GML"), Town Law, and Village Law.

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[1] There is frequent confusion regarding the term "court of record." While technically Justice Courts are not currently courts of record, *see* N.Y. Const., art. VI, § 1(b); Judiciary Law § 2, all Justice Court proceedings are subject to electronic recording and the Criminal Procedure Law applies in all criminal courts whether or not the court is of record. *See* CPL 10.10.

[2] *See generally* UJCA § 202.

[3] *See generally* UJCA § 2001; CPL 10.30.

[4] *See* NY Const, art VI, § 1(a); Judiciary Law § 1; UJCA § 102.

B. What are the Functions of the Town and Village Courts?

Town and Village Courts play vital roles in the New York State Unified Court System. These courts have jurisdiction and hear both civil and criminal matters.

A court's powers are limited by its subject matter jurisdiction. Jurisdiction is the legal term that describes the authority of a court to hear and determine certain types of cases and its power over individuals, legal entities, and property that are the subject of actions before it. Justice Courts derive most of their basic civil and criminal subject matter jurisdiction from UJCA §§ 201-203, 2001, and CPL 10.30.

1. Civil Actions and Proceedings

The civil jurisdiction of Town and Village Courts includes the power to hear actions seeking monetary awards up to $3,000, and small claims proceedings for awards up to $3,000. Town and Village Courts are perhaps best known for their small claims parts. Small claims proceedings are intended to provide a low-cost, simplified, and informal procedures for individuals to resolve disputes involving limited monetary claims. Often litigants choose not to be represented by attorneys in small claims matters. Upon the commencement of a small claims action, the court is required to furnish every claimant with "A Guide to Small Claims in the NYS City, Town and Village Courts."[5] Copies of this booklet may be obtained by contacting the Office of Justice Court Support or online at http://www.nycourts.gov/courts/townandvillage/pdfs/SmallClaimsHandbook.pdf

Justice Courts' civil jurisdiction also extends to actions and proceedings to recover money or chattel[6] where the amount of the money at stake or the value of the property to be recovered does not exceed $3,000, exclusive of costs and interest.[7] Justice Courts also have jurisdiction over summary proceedings to:

- Recover possession of real property located in whole or in part within the town or village for which the Justice Court presides;
- Remove tenants from such real property; and
- Render judgment for rent due without regard to the amount in controversy.[8]

Violations of town or village local laws or resolutions, which are subject to civil penalties not exceeding $3,000 per event, also can be heard in the local Justice Court. Justice Courts, however, do not have the power to grant provisional remedies, such as injunctive powers, relative to town and village ordinances.

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[5] *See* UJCA § 1803 (b).

[6] Chattel is personal property as distinguished from real property.

[7] *See* UJCA § 202.

[8] *See* UJCA § 204; RPAPL § 701.

2. Criminal Actions and Proceedings

In addition to their civil jurisdiction, Justice Courts are authorized to handle criminal cases involving the prosecution of misdemeanors, violations and traffic infractions allegedly committed within the geographic boundaries of the town or village for which the Justice Court presides.[9] Justice Courts have exclusive trial jurisdiction over petty offenses, which consist of violations and traffic infractions, but superior courts have jurisdiction over petty offenses when charged in an indictment that also charges a crime.[10] Justice Courts share their trial jurisdiction over misdemeanors with superior criminal courts (i.e. County Court or Supreme Court), which can divest (i.e. take control of) cases from Justice Courts under certain circumstances.[11] Justice Court procedure in criminal actions and proceedings is subject to the Criminal Procedure Law.[12]

Town and Village Justices comprise the largest corps of New York judicial officials who are potentially on-call 24 hours a day to arraign criminal charges and issue orders of protection or enter certain emergency orders when Family Court is not in session. In cases involving domestic violence, Town and Village Justices have jurisdiction to issue temporary orders of protection during off-hours.

3. Traffic and Parking Violations

i. Adjudicating "Traffic Infractions"[13]

While traffic infractions are not crimes and their penalties are not criminal in nature,[14] the Criminal Procedure Law classifies traffic infractions as "petty offenses."[15] Therefore, traffic infractions *must* be heard before a

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[9] *See* UJCA § 2001; CPL 10.30.

[10] *See* CPL 10.20(c). Petty offenses are not crimes.

[11] *See* CPL 10.30.

[12] *See People v Hickey*, 40 NY2d 761 (1976) (Justice Courts are local criminal courts and, as such, possess trial jurisdiction of all offenses other than felonies and preliminary jurisdiction over all offenses, subject to divestiture by a superior court); *People v Lindsly*, 99 AD2d 99 (2d Dept. 1984), *appeal withdrawn* 62 NY2d 987 (any conflict between CPL and UJCA in connection with Justice Court criminal jurisdiction is resolved in favor of the latter). In general, the jurisdiction of Justice Courts and the disposition of fines and penalties for violations of rules and regulations of State agencies contained in the NYCRR is the same as for violations of the pertinent statutes themselves. *See* Ops St Comp No. 80-10.

[13] When dealing with parking and traffic tickets, terminology can be confusing. A violation of any provision of the Vehicle and Traffic Law or any local law, ordinance, order, rule, or regulation adopted pursuant to the Vehicle and Traffic Law is a "traffic infraction." *See* VTL § 1800. State law may declare that the violation is a misdemeanor or felony. "Traffic infractions" include "traffic violations" and "parking violations." "Parking violations" are violations of parking, stopping, or standing restrictions. VTL § 155. "Traffic violations" constitute all other "traffic infractions."

[14] *See* VTL § 155.

[15] *See* CPL 1.20 (39).

court with jurisdiction for the location in which the case arises.[16] Municipal clerks do not have authority or jurisdiction to accept pleas or assess fines on traffic tickets or parking tickets in lieu of a judge. Traffic and parking tickets issued in a town or village must be made returnable before the local Justice Court having jurisdiction in the location where the alleged infraction occurred.

ii. Traffic Violations Bureau

A town or village may, by local law or ordinance, authorize the Justice Court having jurisdiction over traffic cases arising in the town or village to establish a traffic violations bureau to assist in disposing traffic and parking infractions.[17] A traffic violations bureau may be authorized to accept guilty pleas to violations of traffic and parking laws, ordinances, rules, and regulations. A traffic violations bureau cannot accept guilty pleas to speeding offenses, misdemeanors, or felonies;[18] these matters must come before the court itself. Persons who plead not guilty to traffic infractions are entitled to a trial under the procedures set forth in the CPL and VTL.[19]

Where a town or village establishes a traffic violations bureau, the Justice Court must pre-designate the exact fines to be paid for the cases heard in the traffic violations bureau.[20] The pre-determined fine must be within the statutory fine limitations for the offense. In general, a person convicted of a traffic infraction is punishable by a fine of not more than $150 for the first conviction, not more than $300 for a second conviction on a violation committed within 18 months of the first conviction, and not more than $450 for a third conviction based on a violation committed within 18 months after the first conviction.[21] Penalties on conviction for a traffic infraction established by local law, ordinance, order, rule, or regulation are prescribed by the locality but cannot exceed the maximum amounts set forth in the Vehicle and Traffic Law.[22] Tickets returnable in a traffic violations bureau must include applicable schedules of penalties so a defendant may resolve the matter by mail.[23]

If a person charged and personally served with a traffic infraction, returnable before a town or village traffic violations bureau, does not appear, the traffic violations bureau may cause a complaint to be entered with the

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[16] *See* CPL 10.30 (1) (a).

[17] *See* GML § 370.

[18] *See* GML § 371 (1).

[19] *See* CPL 340.40. For hearing procedures on actions arising under Vehicle and Traffic Law article 2-A, *see* VTL § 227.

[20] *See* GML § 372.

[21] *See* VTL § 1800.

[22] *See generally* Ops Atty Gen No. 93-62.

[23] *See* 15 NYCRR 91.5 (j) ("appropriate information relating to the disposition of matters in the traffic violations bureau shall be placed on the reverse [of the uniform traffic ticket]").

Justice Court and a warrant issued for the individual's arrest.[24] Note that a traffic violations bureau may only cause an arrest warrant to be issued where the person was personally served with a ticket.[25]

4. State Laws Granting Justice Court Jurisdiction

In addition to the general civil and criminal jurisdiction given Justice Courts, other State laws grant Justice Courts jurisdiction in specific cases. For example:

- The Agriculture and Markets Law confers jurisdiction to conduct proceedings to destroy or securely confine dangerous dogs.[26]
- The Environmental Conservation Law ("ECL") grants jurisdiction over certain alleged offenses committed against the environment.[27]
- The Social Services Law ("SSL") grants jurisdiction over special proceedings to terminate admission agreements of residents of adult homes.[28]
- The General Business Law ("GBL") grants jurisdiction over cases alleging unlawful use of milk cans.[29]
- The Mental Hygiene Law ("MHL") confers jurisdiction upon Town and Village Justices in limited circumstances to commit someone with serious mental illness who appears to be a danger to themselves or others.[30]

5. Provisional Remedies, Process, and Search Warrants

The only provisional remedy available to Justice Courts is an order to seize chattel under certain circumstances.[31] Justice Courts may also issue injunctions and orders of contempt for unique chattel. Injunctions and orders of contempt should be exercised sparingly, and the chattel should truly be "unique."

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[24] *See* GML § 371 (3).

[25] *See id*; *compare* CPL 120.20 (no arrest warrant if summons can be issued and court is satisfied that defendant will respond).

[26] *See* Agriculture and Markets Law § 121; *In Re Foote*, 129 Misc. 2 (Co. Ct. Livingston Co. 1927) (designating dog matter as neither criminal action nor civil action, but special civil proceeding).

[27] *See* ECL 71-0513 (granting jurisdiction over offenses specified in ECL 71-0501 and ECL article 71, titles 5 through 15 and title 33. For penalties in ECL cases, *see* ECL 71-0507).

[28] *See* SSL § 461-h.

[29] *See* GBL § 271.

[30] *See* MHL § 9.43.

[31] *See* UJCA § 209.

Where Justice Courts have jurisdiction over an action or proceeding, they may send their processes and other mandates for service or execution to any part of the county or, in some instances, an adjoining county.[32] Likewise, Justice Courts may compel the attendance of witnesses, order the conditional examination of witnesses within,[33] inquire into the sanity of a criminal defendant, and dismiss the prosecution of an action in like fashion as any other local criminal court. Justice Courts may issue search warrants, which may be executed only according to their terms and only within the county or an adjoining county.[34]

6. Contempt of Court

Like other courts, Justice Courts have the power to punish contempt of court. The principal contempt category relevant here is summary contempt, committed in the view and presence of the judge while holding court.[35] Summary contempt is a criminal contempt that is invoked sparingly, based only on egregious behavior. The conduct must directly tend to interrupt the court's proceedings, or to impair the respect due to its authority. Other instances of contempt in Justice Court may be connected with recovery of unique chattel or disobedience of a properly issued and served subpoena to appear before the Justice Court, or failure to comply with properly issued Information Subpoenas in the context of a small claims judgment.[36]

7. Marriages and Oaths

The Domestic Relations Law ("DRL") authorizes Town and Village Justices to solemnize marriages.[37] This solemnization authority extends statewide for all Town and Village Justices.[38] Town and Village Justices also may administer oaths anywhere in the county in which they are selected.[39]

8. Special Considerations for Justice Courts within the District of a District Court

The general jurisdiction of Justice Courts set forth in the UJCA does not fully apply to Justice Courts located in Nassau County and the western part of Suffolk County, because these locations are served by District Courts.

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[32] *See* NY Const, art VI, § 1 (c); CPL 130.40; UJCA §§ 403, 1803, 2005.

[33] *See* CPL Art 660; UJCA § 2005.

[34] *See id.*; *see also* CPL 690.20; *People v Hickey*, 40 NY2d 761 (1976) (Justice Courts lack authority to issue a search warrant directed at persons or premises located outside its territorial jurisdiction unless affidavits which form the basis for issuance of warrant allege that an offense was committed within the geographic jurisdiction of the court).

[35] *See* Judiciary Law § 750; UJCA § 210.

[36] *See* UJCA § 1812 (d).

[37] *See* DRL § 11 (3).

[38] *See* DRL § 11 (6). If a Town or Village Justice seeks to perform a marriage within the City of New York, they must first register their name and address with the Clerk of the City of New York. See DRL §11-b.

[39] *See e.g.* Real Property Law § 298 (3).

Pursuant to State law, all powers, duties, and jurisdiction of Town Justice Courts in those areas were transferred to the District Court of the county, and the offices of Town Justice in those several towns were abolished.[40] All powers, duties, and jurisdiction of Village Justice Courts in Nassau County were transferred to the Nassau District Court, except that these Village Justice Courts retain jurisdiction over violations of village local laws and ordinances, as well as VTL violations allegedly committed within the village except for where the charge is operating a vehicle while intoxicated or impaired.

C. General Oversight by the State

Every Justice Court interacts with and is responsible to multiple State entities. Justice Courts must report fine and fee receipts to the Office of the State Comptroller ("OSC"), and its criminal proceedings to the Division of Criminal Justice Services ("DCJS"). The financial reporting obligations are described in the Office of the State Comptroller's Justice Court Fund Handbook for Town and Village Justices and Court Clerks ("OSC Handbook").
(https://www.osc.state.ny.us/localgov/pubs/jch.pdf)

While each Justice Court is subject to limited oversight by its local town or village board (*See Section III* of this Manual), the Chief Judge and Chief Administrative Judge, as chief judicial officers of the Unified Court System, exercise administrative control over the Justice Courts.[41] For this reason, Justice Courts also are subject to the Rules of the Chief Judge and the Chief Administrative Judge, and participate in programs of the Office of Court Administration ("OCA") designed to support the Justice Courts consistent with the general operational autonomy of each town and village sponsoring a Justice Court. These include, for instance, OCA's provision of computers, Judiciary email systems, online databases, court manuals, and other resources, at no cost to the locality.

Each county in which a Justice Court presides has a Supervising Judge appointed by the Chief Administrative Judge to serve as a conduit of information between the Justice Courts and the statewide Unified Court System. Supervising Judges can help Justice Courts and their local Justices answer questions and mediate disputes that affect the operation of the local justice system. A list of Supervising Judges for the Justice Courts can be found at http://www.nycourts.gov/admin/directory.shtml

D. Other Justice Court Stakeholders

A Justice Court's operation often brings its Justices, and the municipal officials of the town or village sponsoring the Justice Court, into contact with a variety of key participants in the Justice Courts. Each Justice Court therefore is a "hub" of activity, a forum that brings together these many participants in the justice system. Often the operations of one of these participants can impact the cost, schedule, or overall effectiveness of the Justice Court itself and/or other participants in the local justice system. For that reason, it behooves Justice Courts, court managers, and local governments sponsoring Justice Courts to be cognizant of these dynamics,

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[40] *See* Uniform District Court Act ("UDCA") § 2402. Note another Uniform District Court Act ("UDCA") § 2402 exists for Suffolk County.

[41] *See* NY Const, art VI, §§ 1 (a); 28; Judiciary Law §§ 211-212.

and seek assistance from local Supervising Judges and/or municipal attorneys to resolve issues arising among them that can support improved cost-effectiveness.

1. Police Agencies: Transporting Defendants from County Correctional Facilities.

Once a defendant is committed to the custody of the Sheriff, and booked into a correctional facility, only the Sheriff can have custody of the inmate, unless, upon application of the District Attorney, there has been a subsequent Order to Produce issued out of the County Court relating to an inmate being held in a different county and which authorizes another law enforcement agency to take possession of that individual for another lawful purpose.

2. District Attorneys.

The district attorney ("DA") is empowered, under the County Law, to prosecute all crimes and offenses in the county where elected or appointed.[42] While the DA or assistant DAs may personally undertake each prosecution, the law does not require the personal appearance of the DA or an assistant DA for each prosecution.[43] Rather, a DA may delegate its responsibility to prosecute offenses to a county attorney, a municipal attorney, or even private counsel, pursuant to a proper grant of authority so long as the DA maintains a system that allows him or her to know of all such prosecutions and consents to appearances on his or her behalf.[44]

3. Indigent Criminal Defenders.

Because criminal defendants have a constitutional right to representation regardless of their ability to pay, state and local governments support a wide array of criminal defense entities that provide representation for unrepresented indigent defendants. These may include a county-appointed public defender, a legal aid society, or a so-called "18-B" panel of private-sector attorneys who undertake these representations as part of a Bar Association plan.[45] This system also may include an office of conflict defender where a defense entity has a conflict of interest in a particular case that the law does not allow that entity to undertake.

4. Civil Legal Service Providers.

State and county governments also support an array of civil legal service providers, which assist parties in important cases directly affecting their quality of life. In Justice Courts, these may include consumer-credit actions and summary eviction proceedings pursuant to the Real Property Actions and Proceedings Law, to evict tenants and collect back rent. Providers of civil legal services come from nonprofit organizations, as well as

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[42] *See* County Law § 700 (1).

[43] *See e.g. People v Soddano*, 86 NY2d 727, 728 (1995).

[44] *See id.*; Ops Atty Gen No. 98-14 (1998); *People v VanSickle*, 13 NY2d 61 (1963).

[45] *See generally* County Law, art 18-B.

efforts by local bar associations or area law schools to address the need for counsel. As with indigent criminal legal service providers, civil legal service providers may be inadequately funded relative to their caseloads. Civil litigants, in addition, do not have the same right to counsel as criminal defendants and many appear before the courts without counsel causing impact on the courts and the community. Even when the resources are available for counsel in civil cases, court delays and limited days for scheduled civil court times and dates, can have substantial implications for attorneys representing litigants as well as for their clients. A Report created by the Fund for Modern Courts and submitted to the Task Force to Expand Access to Civil Legal Services concerning summary eviction proceedings may be found at: http://moderncourts.org/town-and-village-courts/

III. Justice Court Administration

A. Introduction

The administration of Justice Courts is a complex undertaking that involves interaction with multiple levels and branches of government, reporting obligations, enforcement of rights, financial controls, security, and technology. Because the expense of operating a Justice Court is the responsibility of the town or village sponsoring it, the municipality hires and oversees the non-judicial personnel of the Justice Court, provides supplies and facilities, and is responsible for whatever other physical or human resources the court may require. At the same time, the Justice Court is not a routine department or office of town or local government: it is part of a constitutionally different branch of government, and its justices have rights and duties that are constitutionally different from all other town or village officials. A Justice Court tends to operate most smoothly with a cooperative relationship between the Justice Court and the town or village government, respecting the principle of separation of powers. This section describes how the separation of powers and the various roles of municipal governing boards, local justices, and state entities interact.

B. Separation of Powers: Local Discretion and Judicial Independence

Preserving the separation of powers among the executive, legislative, and judicial branches is essential to our system of government. The United States Constitution and the New York State Constitution both require that no one branch of government be allowed to dominate the others: only by each branch fulfilling its proper roles can the three branches together "check and balance" each other.

To be sure, while the separation of powers and the responsibilities of government's three branches may seem relatively clear at the Federal and State levels, for New York towns and villages these separations sometimes can seem difficult to discern. Town executive officers (supervisors) have administrative and financial duties but also serve as members of their town legislative bodies (town boards).[46] Town Justices also used to serve on the town's legislative body,[47] a practice banned in 1976 to better protect the separation of powers. Similar to towns, villages have executive officers (mayors) that participate in their legislative bodies (village boards of trustees).[48] Unlike towns, however, villages need not have local courts at all.[49] For villages, the entire judicial branch of government is optional.

While some traditional elements of the separation of powers may not easily translate to New York towns and villages, there still exist structural safeguards between the local executive and legislative branches, on the one hand, and the local judicial branch, on the other. As previously noted above, Justice Courts are part of the New York State Unified Court System,[50] the co-equal judicial branch of government led by the Chief Judge of the

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[46] *See* Town Law § 60.

[47] *See* Town Law § 60-a; L 1976, ch 739.

[48] *See* Village Law § 4-400.

[49] *See* Village Law § 3-301.

[50] *See* NY Const, art VI, § 1 (a).

State of New York.[51] In discharging judicial responsibilities under our Constitution, all courts – including Justice Courts – must operate free from undue interference from the executive and legislative branches. Judicial independence and its protections are core features of the separation of powers, and apply as much to towns and villages as to other levels of government.

Unlike other New York Courts, however, each Justice Court is funded and operated primarily by the locality for which it is established.[52] While the Chief Judge and OCA have plenary authority over all New York trial courts, State law vests in localities themselves the day-to-day supervision, budgeting, and control of Justice Courts. Consistent with their home rule powers, towns and villages have substantial discretion and flexibility in how they discharge these responsibilities.

Town and village boards must remember, however, that this discretion has limits. They must administer their local courts consistent with principles of judicial independence and the separation of powers that all municipal officers are sworn to uphold. Boards must bear in mind that all trial judges and justices including Town and Village Justices, must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct.[53] Decisions bearing directly on the core judicial operations of Justice Courts, such as the processing or outcome of cases, generally are inappropriate for interference by the executive and legislative branches of local government. Such intrusion by municipal officials in the affairs of a Justice Court can undermine the court's independence and violate the constitutional separation of powers.

These principles have important implications for all three branches of local government, to assure that each branch can fulfill its responsibilities in the balanced way our Constitution requires. As discussed further below in this Manual:

- ***Local officials must not create even the appearance of attempting to influence Justice Courts concerning judicial roles.*** It is improper to communicate with a judge about a case that is pending or likely to occur, or any issue directly related to a case, outside the presence of all parties to that case. Judges are ethically forbidden to make any public comment about pending or impending proceedings in not only their court, but in any court within the United States or its territories.[54] Additionally, with very limited exceptions, a judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding.[55] As such, communication between the judge and municipal employees is not only discouraged but, in fact, not allowed and can subject a judge to discipline by the Commission on Judicial Conduct.

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[51] *See* NY Const, art VI, § 28 (a); Judiciary Law § 211 (1).

[52] *See* Judiciary Law § 39 (3) (a).

[53] *See* 22 NYCRR 100.

[54] *See* 22 NYCRR 100.3 (8).

[55] *See* 22 NYCRR 100.3(8) (B) (6).

- ***Potential revenue payable to a locality is not relevant to Justice Court case decisions.*** While it is true that Justice Courts can be a source of revenue for their sponsoring localities, their first obligation is to do justice in each case without consideration of that potential. For that reason, Justice Courts are not to be viewed as revenue generating entities for their municipalities. As such, it is improper to pressure a judge to impose fines or other penalties as a way to raise revenue. Likewise, it is unlawful for a Justice to select the amount of a fine imposed based on revenue payable to the locality, or the cost of police time expended relating to a case.[56] Even if Justice Court activities may affect the locality's fiscal balance, the Court's constitutional obligation is to decide every case fairly and independently for all litigants without regard for the sponsoring locality's potential revenue and costs.
- ***Towns and villages must adequately budget for their courts.*** Courts need sufficient personnel and funding to discharge their responsibilities, and the legislative bodies of towns and villages are responsible for appropriating these resources.[57] While town and village boards enjoy substantial discretion in budgeting for local court operations, they must do so in a way that does not undermine judicial independence or subvert the effectiveness of the local courts.
- ***Towns and villages must not unduly interfere in local court administration.*** While towns and villages may set general personnel and administrative policies for their local governments and employees, Justice Court operations are the responsibility of the justices to supervise. For instance, generally the local justice supervises court staff in performing court-related functions, and a court clerk cannot be discharged from the Justice Court without the consent of the justice or justices.[58]
- ***Towns and villages must set and pay rational salaries for their justices.*** Among the Constitution's core safeguards of judicial independence, New York law protects the compensation of all judges against manipulation by the other branches of government. While town and village boards have substantial discretion in setting judicial salaries, this discretion has three kinds of limitations that are binding on all towns and villages. First, the salaries of local justices cannot be reduced during his or her term of office.[59] Second, the salaries of local justices must be adequate and rational: there cannot be arbitrary salary discrimination among justices of the same locality, and salary levels must not impede the effective operation of the court, such as to force a vacancy in office. Third, judicial salaries must be established and adjusted independent of judicial performance,[60] and cannot be linked to inappropriate considerations such as court-generated revenue or the salaries of town or village

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[56] *See In re Paul Hermann*, New York State Commission on Judicial Conduct, Dec. 15, 1999 (censuring Village Justice who refused plea bargain based on justice's belief that the court had a revenue function and should not be supported by local taxpayers).

[57] *See* Judiciary Law § 39 (3) (a).

[58] *See* Town Law § 20 (1) (a); Village Law §§ 3-301 (2) (a); 4-400.

[59] *See e.g. Kelch v Town Bd. of the Town of Davenport*, 36 AD3d 1110 (3d Dept 2007). While the Compensation Clause of the New York State Constitution does not expressly apply to Town and Village Courts, *see* NY Const, art VI, § 25 (a), courts still construe the Compensation Clause's ban against diminishing judicial salaries to protect Town and Village Justices based on the separation of powers.

[60] *See e.g. id.*

board members.[61] Therefore, it is improper for a local official even to suggest a local judicial pay increase, or judicial pay decrease, to take effect at the start of the next term, based on whether a court appears to be "profitable." Likewise, it is improper to link a judicial pay adjustment to any matter that the law commends to judicial discretion, such as case decisions or supervision of court staff.

- ***Justices generally should avoid the appearance of participating in the affairs of town or village government outside their Justice Courts.*** Just as municipal executive and legislative officials cannot treat Justice Courts as ordinary departments of local government, justices also have an affirmative duty to avoid that appearance. For example, a local justice cannot attend a monthly department meeting called by the town supervisor or village mayor, because it would violate the separation of powers and create the impression that the justice is part of, or answers to, the executive branch of the locality.[62] For the same reason, a local executive or legislative official cannot require a justice to attend such a meeting, or penalize him or her – or his or her Justice Court – in any way on account of the justice's abstention from the non-judicial affairs of the town or village.

Applying these principles sometimes can raise nuanced questions, especially where the proper roles of the local executive and legislative branches brush up against the proper roles of local Justices and their Courts. Because constitutional issues are relevant where the three branches of government intersect, it is important for officials to proceed with caution when uncertainties or disagreements arise. Recalling that Justice Courts are subject to a different set of laws and constitutional principles than other parts of local government, officials perceiving uncertainty or disagreements about Justice Court operations should not act hastily: they should consult with appropriate experts in this complex area for assistance and support.

Town and village officials with questions about these matters should contact their municipal attorneys, the Association of Towns, or the Conference of Mayors. Town and Village Justices with questions about these matters should contact OCA's Office of Justice Court Support, their local Supervising Judge, or the Advisory Committee on Judicial Ethics. http://www.nycourts.gov/ip/acje

C. Supervision of Court Personnel, Establishment of Court Personnel Salaries, and Court Personnel Policies

1. Creation and Abolition of Offices

i. Justices

Town Justices

The number of justices for each Town Justice Court is prescribed by the Legislature as required by the Constitution.[63] The Town Law generally provides that each town must have two justices. Some towns with

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[61] *See Maron v Silver*, 14 NY3d 230 (2010).

[62] *See* New York State Advisory Committee on Judicial Ethics, Opn. No. 99-104.

[63] *See* NY Const, art VI, § 17 (d).

especially large Justice Court caseloads, by special act of the Legislature, have statutory consent to select a third or fourth justice. Where a town has two justices, the town board may reduce the number of justices to one justice by resolution subject to permissive referendum.[64] Unlike villages, there is no statutory authority to appoint an Acting Town Justice. If a town scales back to a single justice, the town can restore the second justice in the same manner. A town may discontinue its Justice Court only by a special act of the Legislature subject to mandatory approval by the voters in the affected town.[65] The office of Town Justice is an elective office with a term of four years; generally the Justice must reside within the town, but the Legislature may provide exceptions.

Village Justices

Unlike towns, villages are not required to establish a Justice Court but may do so. Where a village establishes a Justice Court, the village may have either two Village Justices, or one Village Justice and an Acting Justice. If the village board of trustees establishes a second Village Justice, the resolution or local law must establish a system of rotating terms, such that the first term of the second Village Justice would be for one, two or three years, beginning on the first day of the official year following his or her election. After the first term of the second Village Justice, the term of office of the second Village Justice will be four years. If a village has two justices, they are both jointly responsible for running and administering the Justice Court.[66]

The Village Justice, as an elected village officer, must reside within the village unless the village has a population of less than 3,000 and adopts a resolution providing that the justice may reside anywhere within the county in which the village is located. If the village allows its justice to reside outside the village, the individual must, nonetheless, hold court in the village and only village residents are entitled to vote for his/her election.[67]

An Acting Village Justice, appointed to supplement the judicial resources of a Village Court with a single justice, serves when requested by the Village Justice or when the justice is absent or unable to serve.[68] Unlike the position of Village Justice, the position of Acting Village Justice is an appointed one-year[69] position, appointed by the mayor, subject to the approval of the Board of Trustees.[70]

If a vacancy in the position of Village Justice occurs, the Acting Village Justice does not automatically assume that position. Rather, the Acting Village Justice serves until either the mayor and board of trustees fill the vacancy or the Chief Administrator of the Courts assigns a justice from another municipality to serve as the Village Justice.

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[64] *See* Town Law §§ 20, 60-a.

[65] *See* NY Const, art VI, § 17 (d).

[66] *See* 22 NYCRR 214.2 (a).

[67] *See* Village Law § 3-300 (2) (b).

[68] *See* Village Law § 3-301 (2) (a).

[69] *See* Village Law § 3-302 (4).

[70] *See* Village Law § 3-301 (3).

Education and Training Requirements

All newly elected and appointed Town and Village Justices are encouraged to participate in initial education and training. Justices who are not admitted to practice law in New York State are required to partake in such training. The actual and necessary expenses incurred by a justice or justice-elect in obtaining this education and training are chargeable against the municipality for which the justice is selected.[71] The specific requirements of the training program depend on whether the justice is admitted to practice law:

- Non-attorney justices. Where a Town or Village Justice is not admitted to practice law in the State of New York, he or she may not assume the duties of office before filing with the clerk of the Court's sponsoring locality a certificate of completion of a course of education and training prescribed by the Administrative Board of the Courts (comprising the Chief Judge of the State and the Presiding Justices of the four Appellate Divisions). This "Taking the Bench" certification course is provided through OCA's Office of Justice Court Support and is conducted following the November and March elections. The course includes an intensive introduction into criminal and civil law, as well as the administrative responsibilities associated with being a judge.

- Attorney justices. Newly elected and appointed judges who are permitted to practice law in the state of New York may take the bench as soon as the election results are certified and they are sworn into office. While not required, newly-elected attorney justices are encouraged to also attend the Taking the Bench certification course.

- Advanced judicial training: All sitting attorney and non-attorney justices are required to complete at least 12 Continuing Judicial Education (CJE) credits each year they remain in office. Six (6) of the 12 must be earned by successfully completing an advanced training program (Core A or Core B) offered by OCA's Office of Justice Court Support. These programs are available at training locations throughout the year, as well as on-line. All non-attorney justices must achieve a passing grade on one Assessment associated with the Core programs. The remaining 6 credits may be earned several different ways. Justices may take the other Core advanced training program (Core A or Core B) given that year. Justices may also take elective courses which have been pre-approved for CJE credits which may include on-line training programs, programs conducted through local county magistrate's associations, local district trainings, etc. Nassau County Justices are only required to obtain a total of 6 CJE credits, which must be obtained by attending or viewing 6 hours of Core credit courses.

ii. Non-Judicial Personnel

Pursuant to UJCA § 109, the governing board of each Justice Court's sponsoring town or village determines the employees or non-judicial officers the court has, subject to the constitutional requirement that the governing board must provide sufficient staff and other resources for the Justice Court to discharge its constitutional responsibilities without undue interference from its sponsoring locality.

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[71] *See* UJCA § 105 (b).

Non-judicial positions are typically created or abolished by resolution of the governing board. Upon creation, the governing board should specify the duties and qualifications of the position, and notify the County Civil Service Commission or Personnel Officer. Likewise, the county's civil service office should be consulted whenever a position is abolished, as there may be rules that apply to abolishing or restoring the office.

iii. Enforcement Officers

Court enforcement officers are designated by the UJCA and are responsible for serving and executing all civil processes and mandates of the court within his or her territorial jurisdiction. In towns, the enforcement officers are the town constables and the county sheriff.[72] In villages, the enforcement officers are the police, constables, and marshals of the village, as well as the county sheriff.

iv. Full-Time versus Part-Time Positions

Inherent in the authority to determine what non-judicial positions exist is the authority to designate those positions as full-time or part-time. These terms are not uniformly defined throughout the law and may have different definitions for different purposes. For instance, for purposes of jurisdictional classification, Civil Service rules may define a position as full-time if it requires more than 20 hours per week. The employment policy of the town or village, however, for purposes of eligibility for benefits, may define "full-time" employment as more than 30 hours per week. It is essential, therefore, for governing bodies to be cognizant of how these terms are defined for different purposes prior to designating a position as full- or part-time.

v. Appointment, Termination, and Training

Court Clerks

The court clerk holds a unique position requiring the trust and confidence of the sitting justice(s), and is entrusted to handle a variety of matters on behalf of the justice(s) and the Justice Court. For this reason, Justice Court clerks may be employed and discharged by a town governing board or village mayor only upon the advice and consent of the justice(s).[73] While the town board or village mayor ultimately makes the appointments (or termination), this power cannot be exercised over the justice's objection: a town or village may not hire or fire a court clerk over the objection of the justices. Likewise, because the locality and not the Justice Court formally appoints or terminates a court clerk, Justice Courts may not hire or fire a clerk over the objection of the town board or village mayor.

Similar rules apply where the Justice Court retains multiple clerks. If the Justice Court has two justices and one clerk is assigned to each, each justice has advice-and-consent power over his or her own clerk. If justices share one or more clerks, all justices must give consent to employ or discharge those clerks.

OCA has established a training and certification program for Justice Court Clerks.

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[72] *See* UJCA §110.

[73] *See* Town Law § 20 (1) (a), § 20 (1) (b), Village Law § 4-400 (1) (c) (ii).

Other Non-Judicial Personnel

All other Justice Court employees, other than the court clerk(s), serve at the pleasure of the locality's governing board subject to New York State's Civil Service Law and any applicable union contracts. However, local governing boards should take care not to exercise these powers in a way that undermines the effective operation of the Justice Court. The best practice is always to communicate clearly and collaboratively with the justice(s) about these matters to discern how potential employment policies and practices may affect the Justice Court. Where questions arise on these matters, judicial officials should contact their local Supervising Judge and other municipal officials should contact their municipal attorney for guidance.

vi. Civil Service Rules

All appointments of non-judicial personnel, including Justice Court clerks, must be consistent with Civil Service rules and regulations for the sponsoring town or village. The local civil service rules are established by the County Civil Service Commission or personnel officer, so it is important for the appointing authority to check with that office prior to making any employment decisions to ensure that they are consistent with the applicable rules.

Under the Civil Service Law, one clerk and one deputy clerk, if authorized by law, of each court, and one clerk of each elective judicial officer are authorized to be in the exempt class of civil service.[74] This provision allows local governing boards and local justices to make certain Justice Court employment decisions without need for competitive examination. It also allows the termination of the Court Clerk without need for a hearing pursuant to Civil Service Law section 75, *unless the clerk is a veteran or a volunteer firefighter*.

Note that the Civil Service Law only speaks to the manner of appointment: it is not an independent source of authority to create a position. In other words, while the Civil Service Law states that each justice may have one clerk in the exempt class, the decision of whether or not each justice has his or her own clerk, or whether justices will share a clerk, remains a decision of the local governing board.

vii. Oaths of Office and Undertakings

One of the first acts of a justice upon taking office, and the staff of the court upon being hired, is to take and file an oath of office.[75] Justices, as public officers, must take and file their oath of office with the municipal clerk,[76] as well as the county clerk and OCA (as repository for the Judiciary's Administrative Board).[77] In addition, each justice must file with the county clerk a bond or undertaking in an amount fixed by the municipal board

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[74] *See* Civil Service Law § 41.

[75] *See* UJCA § 111; *see also* Town Law § 25; Civil Service Law § 62; Public Officers Law § 10.

[76] *See* Public Officers Law §§ 10, 30.

[77] The Administrative Board consists of the Chief Judge and the Presiding Justices of the four Appellate Divisions. *See* NY Const, art VI, § 28 (a); Judiciary Law § 210.

and conditioned on faithful performance of his or her duties.[78] This requirement can be satisfied by a blanket undertaking insurance policy obtained by the municipality that includes the justice, in an amount sufficient to cover any losses occasioned by theft or other misplacement of Justice Court funds. The filing of the oath of office must be completed within 30 days of the commencement of the term for which the justice was selected, or the office is deemed vacant. (See Part III.D, Vacancies in Judicial Office, below.)

All other Justice Court employees must take and file an oath of office upon employment.[79] All non-judicial personnel are required to file an oath of office, along with a bond or undertaking in the amount established by the local governing board, with the county clerk and/or municipal clerk. Unlike a public officer, a non-judicial employee's neglect to file within a prescribed time does not automatically vacate the position, but if the employee willfully refuses to take and file an oath, the position becomes vacant.

viii. Fingerprinting Requirements for Justices and Judicial Staff

OCA has executed a Use and Dissemination (U&D) Agreement with the New York State Division of Criminal Justice Service (DCJS) concerning access to State and Federal Criminal History Record Information (CHRI). Under that agreement, each user who accesses Federal NCIS/III CHRI systems through eJusticeNY must comply with the following provision:

Conduct fingerprint-based criminal history record/fugitive file searches in accordance with Federal NCIS/III criteria upon initial assignment or employment of all personnel who will have access to Federal NCIC/III criminal history record data, including programmers, technicians and other persons who will be utilized to effectuate access to, or initiate transmission of Federal NCIC/III data.

As such, all court staff, including judges and court clerks, must undergo both the DCJS and FBI fingerprint process. This fingerprint-based check requirement applies to prospective employees who will access or review State and Federal CHRI; existing employees who currently access or review state and Federal CHRI; existing employees upon their future initial assignment to access or review state and Federal CHRI, or prospective or existing employees who handle or view criminal history records and/or information.

Regardless of the reasons and/or how many times an individual was fingerprinted in the past, the town or village court employee will still need to be fingerprinted so that DCJS can run an updated fingerprint check and OCA can be informed of any future arrests that may occur. Any town or village court staffer that may view or handle criminal history records is required to undergo the fingerprint process.

Questions regarding this requirement can be directed to the DCJS Customer Contact Center at (800) 262-3257 (ask to be directed to the Civil Identification Bureau).

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[78] *See* UJCA § 104.

[79] *See* UJCA § 111; Civil Service Law § 62.

2. Non-Judicial Personnel: Supervision and Employment Policies

Much as the Justice Court's constitutional duties require that a locality cannot hire or fire court clerks without consent of the justice(s), the locality's executive and legislative branches cannot exercise undue direct control over the court clerk's activities on behalf of the Justice Court. The supervision of Justice Court clerks is an administrative function of the Justice Court that is a responsibility of the justice(s). Under the separation of powers doctrine, the executive and legislative branches of local government can make general rules for local employees but cannot interfere with the Justice Court's day-to-day supervision of its staff. Where questions arise on these matters, judicial officials should contact their local Supervising Judge and other municipal officials should contact their municipal attorney for guidance.

Justices are responsible for supervising their non-judicial staff, but must do so in accordance with the general employment policies established by the town or village to the extent that these policies do not conflict with any State statute, regulation or rule. For example, while the employment policy may establish standard workdays for all town or village employees, State court rules require that justices set the hours of the local Justice Court.[80] Since justices set the court hours and the non-judicial personnel are required for the operation of the court, it is the justice who establishes the schedules of the Justice Court's non-judicial personnel. Similarly, while the employment practices of the town or village will control leave policies (vacation, personal days, sick time), it is the justice who must approve individual requests for days off. It follows that while a Justice Court's sponsoring locality must determine the Justice Court's annual budget, they must negotiate court hours and the hours of non-judicial personnel with the justices.

The various employment policies established by the local governing board should be made available to the justice(s), who should take time to periodically review them. The more common employment policies with which justices should be familiar with include:

- Vacation, Sick, and Leave Policies
- Harassment Policies
- Workplace Violence Policies
- Use of Municipal Property and Computers
- Disciplinary Procedures

Naturally, this list is not exhaustive, and the municipality may not have a policy on each of the topics above. Nevertheless, in the justices' capacities as supervisors of non-judicial staff, justices should inquire as to what employment policies the town or village adopted and become familiar with them, because the justices will be responsible for enforcing them in their Justice Courts.

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[80] *See* 22 NYCRR 214.2.

3. Compensation: Salaries and Benefits

The governing board of each locality establishes salaries for all local employees, including justices and non-judicial employees of the Justice Court.[81] The governing board also is responsible for determining the employment benefits, if any, attaching to a particular position.[82] Collectively, the salary and benefits are known as the compensation for the office.[83]

i. Non-Judicial Personnel Compensation

State statutes provide towns and villages much discretion in determining the salary and benefits that they provide to their officers and employees. Salaries usually are established through the budget process, and may be adjusted from time to time.[84] Benefits such as health insurance, life insurance, and paid leave time may be made available to officers and employees as well.[85] Sometimes benefits may be made available only to a certain classification of employees, such as those designated as full-time. While governing boards are entitled to make such decisions and distinctions, they must make sure that they are consistent with equal protection guarantees. As a general rule, this means that the governing board must have a rational basis for treating similarly situated persons differently.[86] A stricter standard – with much less discretion for the locality – applies if a decision interferes with a fundamental right or makes a classification based on race, religion, ethnicity, national origin.[87] Statutes also ban employment discrimination based on disability, veteran status, sexual orientation, and other criteria. Local officials should be familiar with these protections and work closely with municipal attorneys to ensure compliance with the law.

ii. Working Within Staff Appropriations

When setting the schedules for their non-judicial personnel, justices must be mindful of the appropriations authorized for non-judicial compensation. If the local governing board designated a position as part-time and appropriated funds based on a part-time schedule, the justice should make sure that work schedules remain within the limits of the appropriations. If at any time the appropriations appear to be insufficient, the justice should address the issue to the local governing board.

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[81] *See* Town Law § 27; Village Law § 5-502 *et seq.*

[82] *See* GML § 92, 92-a.

[83] *See e.g. Taylor v McGuire*, 420 NYS2d 248 (1979); *see also* Ops St Compt 96-9.

[84] *See generally* Town Law § 27; Village Law § 5-502 *et seq.*

[85] *See* GML § 92, 92-a.

[86] *See* Ops St Compt No. 89-27.

[87] *See* Ops St Compt No. 79-649.

iii. Judicial Compensation

While compensation of non-judicial staff may be adjusted from time to time, the compensation of a justice may not be reduced during his or her term of office. Even for a new term of office, judicial salaries may not be reduced to the point where they impede effective judicial operations. These constitutional guarantees seek to protect judicial independence from undue intrusion, manipulation, or pressure from executive and legislative branches of government.

If a locality reduces a justice's compensation, taking effect at the start of a new term of office, the reduction must have a legitimate purpose supported by a rational basis. For instance, a justice's salary may not be linked to a "performance evaluation," the amount of revenue the court generates, or other factors related to the operation of the Justice Court. Because these factors flow from the operation of the Justice Court itself, which the law commends to the judicial branch of government, these factors are not legitimate ones on which the executive or legislative branch of local government should make budget decisions about the Justice Court. By contrast, a local governing board that demonstrates a financial shortfall and, due to budgetary constraints, reduces by five percent the salaries of justices upon the commencement of their next terms of office, can have a legitimate purpose (overall budget savings) for the reduction that is rationally supported by the proposed action (salary reductions).[88]

Presumption of Equal Judicial Salaries

Salaries of justices must be equal unless the governing board adopts a resolution creating unequal salaries.[89] As with a salary reduction, a resolution setting unequal judicial salaries must have a legitimate purpose supported by a rational basis, and cannot be calculated to impair judicial independence or penalize a justice in a manner that appears retributive for decisions the justice makes or does not make in his or her judicial capacity. For instance, where one justice assumes all of the administrative responsibilities of the Justice Court, that justice may be compensated more than the other commensurate with those administrative responsibilities. Conversely, lowering one justice's salary without an appropriate governmental reason may run afoul of that justice's constitutional protections.

To better understand how laws governing judicial salaries can work together, consider the following situation. A town has two justices and one position becomes vacant. The town board wishes to increase the salary of the remaining justice until the vacancy is filled. Clearly, the remaining justice will have sufficient additional responsibilities to justify the unequal pay, so the increase is justified. When the vacancy is filled, however, the constitutional prohibition on reducing the justice's compensation bars the town board from restoring that justice's previous salary until a new term of office begins for that justice's position. Moreover, unequal salaries may not be equitable as the caseload of the incumbent justice and the new justice start to balance out, which could violate the new justice's constitutional protections.

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[88] *See e.g. Benjamin v Town of Fenton*, 892 F Supp 64 (NDNY 1995).

[89] *See e.g.* Town Law § 27.

Summary

For all of the reasons discussed above, any decision to adjust judicial compensation should be taken carefully, in close consultation with municipal attorneys. The Association of Towns and Conference of Mayors are available to assist localities in thinking through potential options. Justices with questions should contact the OCA Resource Center or their Supervising Judge.

D. Vacancies in Judicial Office

1. Creation of Vacancies

A vacancy in judicial office may occur in a number of ways, the most common being the retirement, resignation, or death of the office holder. The office may also become vacant upon any of the following.

- Conviction of a felony;
- Conviction of a non-felony offense that violates the oath of office;
- Ceasing to reside in the municipality (unless the Legislature has waived residency by law, such as in the case of certain villages);
- Failure to file the oath of office on time;
- Removal from office for misconduct by the Commission on Judicial Conduct; or
- Entry of a court order declaring the office vacant or the office holder incompetent to fulfill the duties of the office.

2. Resignations

The Public Officers Law strictly regulates the process for submitting an effective resignation. Resignations of all judicial officers, including Town and Village Justices, must be submitted in writing to the Chief Administrative Judge, and resignations of all town or village officials must be submitted in writing to the town or village clerk.[90] As local justices are *both* judicial officers and officers of the municipality in which they serve, Town or Village Justices should submit written resignations to both the Chief Administrative Judge and the municipal clerk. While this approach may seem duplicative, it is important that both the Judiciary and the Justice Court's sponsoring municipality be kept abreast of pending vacancies.

The written resignation may specify a future date upon which the resignation will be effective. For justices, that date may be up to 90 days from the date that resignation is submitted or filed.[91] If the resignation specifies a date beyond 90 days, the resignation is effective on the 90th day following its delivery or filing. If no date is specified on the resignation, the resignation is effective immediately.

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[90] *See* Public Officers Law § 31.

[91] *See id.*

3. Filling Vacancies

As an elective office, a town or village judicial position that becomes vacant must be filled by election.[92] Until such time as a new justice is elected, the town board or village mayor, as appropriate, may temporarily fill the vacancy by appointment. Every justice – whether elected or appointed – must comply with the State's mandatory training requirements prior to assuming the duties of the office.

i. Vacancies in the Office of Town Justice

If a vacancy in the office of Town Justice occurs before September 20, then the election will be at the general election the following November. If the vacancy occurs on or after September 20, then the position will be filled by election at the general election in the following year. A justice elected to fill a vacancy will serve a full four-year term, even if the vacancy occurred in the middle of the prior justice's term of office.[93] Until the election, the town board may fill the vacancy by temporary appointment. Alternatively, OCA can temporarily assign a justice from a neighboring community to preside in the town court during the vacancy.

ii. Vacancies in the Office of Village Justice and Acting Village Justice

Under state law, the village mayor may make an appointment to fill a vacancy in any village office.[94] The mayor does not need approval from the village board of trustees when filling a vacancy not caused by the expiration of the term. However, if the mayor makes an *initial* appointment of an Acting Village Justice, the appointment is not a vacancy appointment and requires approval of the village board of trustees.

If a vacancy occurs in the position of Village Justice more than 75 days prior to the third Tuesday of the month preceding the end of the village's current official year, then the mayoral vacancy appointment is for the balance of that official year, and if an unexpired term remains, a special election for the remainder of the term must be held that year.[95]

If the vacancy occurs less than 75 days prior to the third Tuesday of the month preceding the end of the current official year, then the mayoral appointment to fill the vacancy is for the balance of the official year. If the term of office does not expire at the end of that official year, the mayor must make another appointment at the beginning of the next official year. That second appointment, like the first, is not subject to approval by the board of trustees and is effective until the end of the next official year. If the term of office does not expire at the end of the next official year, a special election must be held to fill that position for the remainder of the term.[96]

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[92] *See* Public Officers Law § 42.

[93] *See* NY Const, art VI, § 17 (d); *Munnelly v Newkirk*, 262 AD2d 781 (1999).

[94] *See* Village Law § 3-312 (3).

[95] *See* Village Law § 3-312 (3) (b) (1).

[96] *See* Village Law § 3-312 (3) (b) (2).

While elections to fill vacancies in the office of Town Justice result in the commencement of a new four-year term,[97] and not merely completing the prior term of office, an election to fill a vacancy in the office of Village Justice is to complete the balance of the unexpired term.[98]

iii. Temporary Assignment of Justices

Where the Chief Administrative Judge makes a temporary assignment to a Justice Court to fill a vacancy, he or she may designate the justice of another Justice Court, or a judge of a City Court, within the county of residence or an adjoining county.[99] Typically the temporary assignment is sent to the Administrative Judge of the Judicial District in which the vacancy arises. Any judge or justice temporarily assigned to the Justice Court has all the powers, duties, and jurisdiction of a "native" justice of the Justice Court to which the assignment is made. Judges or justices acting pursuant to a temporary designation by the Chief Administrative Judge are entitled to compensation and travel expenses that the Chief Administrator prescribes by rule, payable out of funds appropriated to the State Judiciary for such purpose.[100]

4. Vacancies in Non-Judicial Office

Vacancies in non-judicial offices are filled in the manner discussed above under "Appointment, Termination, and Training." Remember, however, that a Justice Court clerk can only be appointed or terminated with consent of the justice(s) whom the clerk serves, and that all appointments must be made in accordance with the civil service rules applicable to the town or village.

E. Criminal Proceedings in the Justice Courts

1. Protecting Criminal Defendants' Right to Counsel

The right to counsel in all criminal cases is guaranteed by the United States and New York Constitutions, as well as State statutes.[101] This right to counsel is fundamental and essential to fair trials.[102] To effectuate this

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[97] *See* NY Const, art VI, § 17 (d).

[98] *See* Village Law § 3-312 (3).

[99] *See* NY Const, art VI, § 26 (j) (1); UJCA § 106 (2).

[100] *See* UJCA § 106 (2).

[101] *See generally* US Const, 6th Amend; NY Const, art I, § 6; CPL 170.10 (3), 180.10 (3), 210.15 (2); County Law, art. 18-A, 18-B; *Gideon v Wainwright*, 372 US 335 (1963) ("[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."); *Hurrell-Harring v State of New York*, 15 NY3d 8 (2010); *People v Witenski*, 15 NY2d 392 (1965); Spangenberg Group's report, Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services (2006), which has a chapter on the right to counsel (ch. 3).

[102] *See Gideon v Wainwright*, 372 US 335, 344 (1963) ("The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. … This noble ideal

right, all criminal courts – including Justice Courts – must assign counsel to any person charged with an offense, other than a traffic infraction, if the person "is financially unable to obtain" counsel.[103]

New York State delegated to counties the responsibility to provide public defense services, which includes representation in criminal proceedings.[104] Each county must have a plan for providing public defense representation.[105] A current list of the providers of public defense representation is available on the New York State Defenders Association website.[106] Counties and the City of New York are responsible for "all expenses for providing counsel and services other than counsel."[107] In addition, the County Law provides that after an *ex parte* proceeding and pursuant to a finding by the court that "services other than counsel" are necessary, a court must authorize defense counsel to obtain the supplement services required, such as investigators and experts. [108]

The New York State Office of Indigent Legal Services and the Indigent Legal Services Board were established in 2010.[109] The purpose of the Office is to monitor, study and make efforts to improve the quality of services provided pursuant to County Law article 18-B.[110] In addition to regulating and monitoring the provision of indigent defense services, New York State provides some funding for public defense services through the Indigent Legal Services Fund, which is administered by the New York State Office of Indigent Legal Services ("the Office"), and other programs, such as the Aid to Defense program, which is administered by the New York State Division of Criminal Justice Services.

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cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.").

[103] CPL 170.10 (3); *see also* CPL 180.10 (3), 210.15 (2); County Law § 722, 722-a (providing for the assignment of counsel in cases where the person is charged with "a felony, misdemeanor, or other breach of any law of this state or of any law, local law or ordinance of a political subdivision of this state, other than one that defines a 'traffic infraction,' for which a sentence to a term of imprisonment is authorized upon conviction thereof").

[104] *See generally* County Law, art. 18-A, 18-B.

[105] A county plan may include representation by a public defender, a legal aid society or bureau, a bar association plan whereby private counsel are rotated and coordinated by an administrator (commonly known as an assigned counsel plan), or a bar association plan whereby representation is provided by an office of conflict defender, or a combination of these options. *See* County Law § 722.

[106] *See* New York State Defenders Association, www.nysda.org/ChiefDefendersList.html.

[107] *See* County Law § 722-e.

[108] County Law § 722-c applies to all cases where the defendant is "financially unable to obtain" such services, even if the defendant is not being represented by a public defense provider. It is critical that defense counsel be able to seek funding for these services ex parte (*i.e.* without notice to the prosecution). *See e.g. Marshall v United States*, 423 F.2d 1315, 1318 (10th Cir. 1970) ("The manifest purpose of requiring that the inquiry be ex parte is to insure that the defendant will not have to make a premature disclosure of his case.").

[109] *See* www.ils.ny.gov/content/mission.

[110] *See generally* Executive Law, art 30.

2. Defendant's Right to Counsel at Arraignment

Under State law, the right to assigned counsel applies at arraignment, which is a critical stage of the criminal proceeding.[111] Chief Judge Jonathan Lippman observed, however, that there is a "continuing practice of arraigning and jailing accused persons without affording them the assistance of counsel."[112] The Chief Judge announced that the Office of Indigent Legal Services and the Indigent Legal Services Board will work "to ensure that all defendants arraigned before the courts of this State are represented by counsel at their first appearance."[113] In 2013, the Office awarded three-year grants to 25 counties to provide counsel at first appearance.[114] The Office is seeking state funding in the 2015/2016 fiscal year to expand the availability of counsel at arraignment grants. Information about other steps being taken by the Office can be found on its website.[115]

On October 21, 2014, the State and the plaintiff class in *Hurrell-Harring v State of New York* announced that they have agreed to settle the case, which was brought against the State alleging that it failed to meet its constitutional obligation to provide effective public defense representation to eligible criminal defendants in

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[111] *See Hurrell-Harring v State of New York*, 15 NY3d 8, 20 (2010) ("As is here relevant, arraignment itself must under the circumstances alleged be deemed a critical stage since, even if guilty pleas were not then elicited from the presently named plaintiffs, a circumstance which would undoubtedly require the "critical stage" label (*see Coleman v Alabama*, 399 US 1, 9 [1970]), it is clear from the complaint that plaintiffs' pretrial liberty interests were on that occasion regularly adjudicated (*see also* CPL 180.10 [6]) with most serious consequences, both direct and collateral, including the loss of employment and housing, and inability to support and care for particularly needy dependents" [footnote omitted]); *see also* CPL 170.10 (3), 180.10 (3), 210.15 (2). Arraignment is defined as "the occasion upon which a defendant against whom an accusatory instrument has been filed appears before the court in which the criminal action is pending for the purpose of having such court acquire and exercise control over his person with respect to such accusatory instrument and of setting the course of further proceedings in the action." CPL 1.20 (9).

[112] Chief Judge Jonathan Lippman, *Law Day 2011: The Legacy of John Adams* (2011), www.nycourts.gov/whatsnew/pdf/ChiefJudgeLippmanLawDayAddress2011%20.pdf. Issues regarding the implementation of the right to counsel, both at the arraignment stage and other stages of the criminal proceeding have been discussed in a variety of publications, including The Spangenberg Group's report, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services* (2006), available at www.nycourts.gov/ip/indigentdefense-commission/SpangenbergGroupReport.pdf.

[113] *See id.*

[114] The counties that received grants are: Albany, Broome, Cattaraugus, Cayuga, Chemung, Dutchess, Erie, Herkimer, Monroe, Nassau, Niagara, Oneida, Onondaga, Ontario, Oswego, Rensselaer, Rockland, Schuyler, St. Lawrence, Suffolk, Tompkins, Ulster, Westchester, Wyoming, and Yates.

[115] www.ils.ny.gov/content/counsel-first-appearance. The Office periodically will announce "the availability of funds and soliciting proposals from counties to develop new, innovative programs or processes to make appreciable, demonstrable and measurable improvements in the delivery of indigent defense services to eligible persons at a defendant's first appearance before a judge or judicial officer."

five counties, Onondaga, Ontario, Schulyer, Suffolk, and Washington.[116] The settlement agreement is expected to be approved by the Albany County Supreme Court in early 2015.

The agreement focuses on four issues: counsel at arraignment (Section III of the agreement), reduction of public defense caseloads (Section IV), improving the quality of public defense representation (Section V), and creation of eligibility standards (Section VI).

Section III of the agreement addresses counsel at arraignment. Paragraph B of that section provides, in part, that "[t]he Executive shall coordinate and work in good faith with the Office of Court Administration ("OCA") to ensure, on an ongoing basis, that each judge and magistrate within the Five Counties, including newly appointed judges and magistrates, is aware of the responsibility to provide counsel to Indigent Defendants at Arraignments, and, subject to constitutional and statutory limits regarding prompt arraignments, to consider adjustments to court calendars and Arraignment schedules to facilitate the presence of counsel at Arraignments."

3. Determining Defendant's Eligibility for Assigned Counsel

In 2005, before the Court of Appeals made clear that defendants have a right to legal representation at arraignment,[117] and before the plaintiffs and the State agreed to settle the *Hurrell-Harring* class action lawsuit, the Judiciary had instituted procedures to ensure provision of counsel as soon as possible after arraignment. The Chief Administrative Judge promulgated a rule requiring Justice Courts to make initial eligibility determinations of a criminal defendant's entitlement to assigned counsel.[118] Under this rule, where a Town or Village Justice arraigns a defendant who appears without counsel, the court cannot issue a securing order fixing bail, or commit the defendant to the custody of the sheriff, before the Court makes an initial eligibility determination.[119] If the Court determines that the defendant appears eligible for assigned counsel, the court has to assign counsel in accordance with the county's plan for representation. The court has to notify counsel of the assignment on issuance of the securing order, or if not practicable, within 24 hours, but no later than 48 hours, thereafter if extraordinary circumstances require it. The court also has to notify the local pretrial services agency or pretrial services unit of the county probation department, if any.

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[116] The settlement agreement and information about the case is available on the website of the Office of Indigent Legal Services (https://www.ils.ny.gov/node/88) and the website of the New York Civil Liberties Union, counsel for the plaintiffs (http://www.nyclu.org/node/1538, http://www.nyclu.org/news/settlement-begins-historic-reformation-of-public-defense-new-york-state).

[117] *See Hurrell-Harring v State of New York*, 15 NY3d 8, 20 (2010).

[118] *See* 22 NYCRR 200.26. The Uniform Rules are available on OCA's website, www.nycourts.gov/rules/trialcourts/200.shtml.

[119] Eligibility guidelines are usually set forth in the county's assigned counsel plan, but the court has the ultimate responsibility to make eligibility determinations. See *Powell v. Alabama*, 287 U.S. 45, 72-73 (1932); *People v McKiernan*, 84 NY2d 915 (1994); *Matter of Stream v. Beisheim*, 34 AD2d 329, 333 (2d Dept. 1970); CPL 170.10 (3) (c); (4) (c); 180.10 (3) (c), (4); 210.15 (2) (c), (3).

If the Court determines that the defendant appears financially able to retain counsel, the Court has to notify the appropriate public defense provider and pretrial services agency of the defendant's appearance before the Court, and the Court's finding that the defendant appears financially able to afford counsel.

OCA established forms to use for providing notice to defenders about assignments of counsel in Justice Courts.[120]

Each Justice Court must maintain a record of all communications and correspondence initiated or received by the Court under this rule, to ensure compliance and the protection of defendants' constitutional rights to counsel.

As noted above, assuming the *Hurrell-Harring* settlement agreement is approved, the Office of Indigent Legal Services will "issue criteria and procedures to guide courts in counties outside of New York City in determining whether a person is eligible for Mandated Representation."

Information about the right to counsel in New York State and the State's public defense system is available from the New York State Office of Indigent Legal Services (www.ils.ny.gov; 518-486-2028), as well as the New York State Defenders Association (www.nysda.org; 518-465-3524). Other resources include the websites of the New York State Commission on the Future of Indigent Defense Services,[121] and the New York State Bar Association's Committee to Ensure Quality of Mandated Representation.[122]

4. Criminal History Reports of Defendants (RAP Sheets)

The New York State Division of Criminal Justice Services' (DCJS) E-Justice System Portal provides courts and other agencies with Criminal History Record Information (CHRI), commonly known as a "RAP Sheet". The RAP sheet is a confidential document according to DCJS' "Use and Dissemination Agreement". The Use and Dissemination Agreement outlines rules regarding RAP Sheets and those having access to them.

According to Criminal Procedure Law § 160.40, the arresting agency must provide CHRI to the district attorney and the expected arraignment court. Upon receipt, the court must give a copy of the fingerprint based RAP sheet to the defendant or defense attorney. If a fingerprint based RAP sheet is not available at arraignment, the court can also provide a Repository RAP sheet, only when the search is run using reason code RRB (Release on Recognizance/Bail Investigation). See attached memo titled "Providing rapsheets to the defense" is included as Appendix B of this Manual.

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[120] TV-1 and TV-2 forms can be obtained from the Office of Justice Court Support and are located at www.nycourts.gov/justicecourts.

[121] *See* www.nycourts.gov/ip/indigentdefense-commission/index.shtml. The website has links to reports and hearings including The Spangenberg Group's report, *Status of Indigent Defense in New York: A Study for Chief Judge Kaye's Commission on the Future of Indigent Defense Services* (2006) and the *Final Report to the Chief Judge of the State of New York* (2006).

[122] www.nysba.org/AM/Template.cfm?Section=Special_Committee_to_Ensure_Quality_Mandated-_Representation-Home&Template=/CM/HTMLDisplay.cfm&ContentID=65146.

Any court employee and prospective court employees who will have access to or review State and Federal CHRI via E-Justice System and RAP Sheets must first be fingerprinted and cleared by DCJS, regardless of any previous fingerprinting or employment screening. Under no circumstances will the fingerprint process be waived. There is a fee for the process and the court will need to determine who is responsible to pay this fee. In most cases the applicant will pay the fee. However, in certain situations a municipality will cover an employee's fingerprint processing fee.

5. Recording Criminal Proceedings

Even though Justice Courts are not included in the Legislature's list of "courts of record,"[123] various statutes and rules require the recording of Justice Court criminal proceedings. Effective 2008, pursuant to rules of the Chief Judge and Chief Administrative Judge, all Justice Courts must mechanically record their court proceedings,[124] though a litigant also may employ a stenographer to take minutes manually.[125] The Justice Court itself also may employ a stenographer.[126]

6. Criminal Trials and Juries

Justice Court criminal trials are governed by the Criminal Procedure Law, and trial procedures are set forth in CPL articles 340 to 370. Where a Justice Court defendant is charged with a misdemeanor, the defendant has a right to a jury trial but may waive that right and consent to a trial before a single judge, known as a bench trial.[127] In Justice Court jury trials, the jury consists of six jurors, but alternate jurors may also be selected.

7. Appeals

The procedure for appealing a judgment, sentence or order of a Justice Court depends on where the Justice Court is located. In the Third and Fourth Departments, the appeal must be taken to County Court. In the Second Department (i.e. Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester counties), the appeal must be taken to the Appellate Term of the Supreme Court.

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[123] *See* Judiciary Law § 2; *see also* NY Const, art VI, § 1(b).

[124] *See* AO/245/08 (May 21, 2008), effective June 16, 2008.

[125] *See* 22 NYCRR 30.1.

[126] *See* UJCA § 2021 ("Whenever a contested criminal proceeding is prosecuted in a Justice Court, the justice may employ a stenographer to take the testimony on such trial. The municipal board shall fix the rate of compensation to be paid to such stenographer for such services rendered. Such compensation shall be a municipal charge, and shall be audited and paid upon certification by the court specifying the number of folios furnished"); Judiciary Law § 319-a ("In a hearing held in a criminal proceeding upon a charge of felony, in a town or village court, unless pursuant to law a stenographer be regularly employed by it, such court may, if the defendant be represented by counsel, employ a stenographer to take testimony on such examination. The compensation of such stenographer shall be fixed by the [county] and shall be a county charge").

[127] *See* CPL 340.40; Other procedures regarding jury trials appear in UJCA art 20.

The appellate procedure depends, in part, on whether a stenographer recorded the proceedings in the Town or Village Court.[128]

F. Justice Court Operations

1. Court Facilities

A justice may hold court in any public facility located in the town or village for which the Justice Court is established. Two or more contiguous towns or villages may maintain offices in the same building, and justices of those villages may hold court in that building, even if the building is outside the boundaries of the village for which one of those justices is selected.[129]

In addition, a village may hold Village Court proceedings, including jury trials in a town (or any one of the towns) in which the village is located, beyond the territorial limits of the village, if suitable accommodations cannot be obtained within the village. The Board of Trustees of the Village must first authorize the extraterritorial proceedings.[130] Sessions of the court must be held in the facility that a municipality provides for them;[131] a Justice Court should not convene in a justice's home or another inappropriate location.[132]

While the provision of Justice Court facilities generally is a matter of substantial local discretion, facilities should be at least minimally appropriate for the safe and effective holding of public court sessions and provide secure storage for paper, electronic, or microfilmed court records where applicable.

2. Court Security

In the past several years, court-security issues have grabbed national headlines. Incidents of violence against judges, court personnel, and individuals using court facilities have occurred both in New York and in states nationwide, including in New York's Justice Courts. OCA has long identified court security as a priority for all levels of the State court system. Similar to its responsibility to provide court facilities, the town or village sponsoring a Justice Court is also responsible for providing adequate court security.

Under its ***Action Plan for the Justice Courts***,[133] OCA experts are available to conduct on-site security assessments of every Justice Court, to identify and mitigate potential security threats. OCA has promulgated

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[128] *See* CPL 460.10 (2)-(3); *People v Guernsey*, 136 Misc.2d 791 (Co. Ct., Schoharie Co. 1987); *People v Bartholomew*, 31 Misc.3d 698 (Co. Ct. Broome Co. 2011); *People v Schumacher*, 35 Misc.3d 1206 (Sup. Ct. Sullivan Co. 2012).

[129] *See* UJCA § 106 (1).

[130] *See* UJCA § 106.

[131] *See* 22 NYCRR 214.2 (a).

[132] *See* Advisory Committee on Judicial Ethics, Ethics Opinion 96-100.

[133] *See* New York State Office of Court Administration, *Action Plan for the Justice Courts*, http://www.nycourts.gov/publications/pdfs/ActionPlan-JusticeCourts.pdf

security best practices to assist local governments and law enforcement personnel in assessing and addressing court security issues. As noted in the Action Plan, many threats to Justice Court security are preventable with commonsense steps that are within the means of nearly every locality to adopt.

Recognizing that no two Justice Courts are alike and that the diversity of Justice Court facilities and dockets makes a one-size-fits-all approach impractical, OCA offers these guidelines to inform judges, court staff, and local government leaders in securing their courts:[134]

i. Dedicate Space Exclusively for Justice Court Use.

Full implementation of many court security best practices can more easily be achieved when there exists sufficient space dedicated exclusively for the use of judges, court staff, attorneys, litigants and other members of the public with business before the court. By their nature, multi-use Justice Court facilities often must accommodate needs inconsistent with the proper security profile of a court. For that reason, the safest Justice Court is one that shares core operational space with no other governmental or non-governmental function. Municipalities with relatively large dockets and physical infrastructure for the local government already have established dedicated Justice Court facilities; other localities are strongly advised to do so. If localities must hold Justice Court proceedings in multi-use facilities, the court facility and all other appurtenant space open to the public (e.g. bathrooms, corridors, closets) should be swept for weapons and other potential threats before Justice Court proceedings begin, and all of that adjacent space should be considered part of the Justice Court for purposes of these Best Practices.

ii. Eliminate Potential Courtroom Weapons.

Whether in a dedicated courtroom setting or a mixed-use facility, even the most seemingly innocuous object can become a weapon in seconds: a window or glass-covered table can be broken and large shards converted into knives, while a wall-mounted fire extinguisher easily can become a projectile. Experience in judiciaries nationwide proves, sometimes only in tragic hindsight, that these kinds of potential weapons must be eliminated from places where court proceedings are held. To this end, glass should be eliminated from tabletops and old windows should be either replaced with shatterproof glass or lined with inexpensive material to limit breakage. Likewise, moveable objects such as fire extinguishers should, to the maximum extent that Fire Codes permit, be mounted away from where litigants congregate. In courtrooms with microphones, portable microphones with long wires are disfavored because the wires also can become weapons: these microphones should be replaced with fixed-location microphones wherever possible.

iii. Create Strategic Barriers.

The main security benefits of having a court bench are to physically elevate the judge and separate the judge from others in the courtroom, making physical contact between the judge and would-be assailants more difficult. Justice Courts should, if possible, install benches high and wide enough to confer this minimal security

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[134] *See id;* Appendix B therein.

benefit. If benches are impracticable, then several large tables should be placed between the judge and the rest of the courtroom to create a makeshift physical barrier. Likewise, the main security benefit of having a "bar" between the audience and the working section of the courtroom is to establish a physical barrier that, even if a would-be assailant scales it, can afford precious seconds for intended victims to take evasive action. Each Justice Court should install such a bar wherever possible. Similarly, there should be a bar or other physical barrier between the judge and wherever a witness would sit to provide a zone of protection in case a witness becomes violent. If a courtroom space cannot accommodate immovable physical barriers of this nature, as much space as possible should be created between the audience seats and the working part of the courtroom. Localities using spaces too small to provide such space should identify alternative space for holding court.

iv. Eliminate Strategic Lines of Sight.

Disturbing as the prospect may be, justices and court personnel could be — and have been — watched and targeted from outside courtrooms. Many Justice Court facilities have windows or other clear lines of sight between unsecured outside locations and the court bench (or table) where the judge presides, the judge's office, the clerk's office, etc. All of these lines of sight should be obscured. Measures as simple as tinting windows (opaque coverings can be affixed to existing windows), relocating desks (to obscure direct lines of sight to windows) and erecting inexpensive portable screens can greatly assist at minimal cost.

v. Secure Courtroom Furniture.

An intoxicated or distraught litigant or other interested party to a contentious court action can become explosively violent in seconds, and experience reveals that such persons often can be quite strong. If a weapon is unavailable, even a table or chair can suffice to threaten or injure others. Especially in Justice Court facilities with dedicated courtrooms, all courtroom furniture (e.g. tables and chairs) should, if feasible, be bolted to the floor; in mixed-use facilities, furniture can be bolted down and then released to clear the space for other uses. In both dedicated and mixed-use Justice Court facilities, lightweight furniture (e.g. card tables that some Justice Courts provide for litigants) should be avoided in favor of heavier and more immovable wood furniture; plastic chairs and other furniture should be avoided unless physically linked together and thus made more difficult to throw.

vi. Provide Uniformed and Armed Security Presence.

Courts nationwide employ uniformed and often armed security personnel for two reasons: their presence can have an important deterrent effect on would-be perpetrators of courtroom violence, and their expertise can become vitally necessary if a security threat requires immediate response. These truths are as valid in Justice Courts as in State-paid courts, and yet few Justice Courts have uniformed security personnel in courtrooms to protect the court and the public. Recognizing that Justice Courts lack statutory authority to appoint officers eligible to carry firearms, localities should ensure that whenever the court is in session, and especially when the court is hearing criminal or other sensitive cases, at least one member (and in the busiest courts, at least two members) of the local police or sheriff's office are on-site to protect the court and the public. As with regular-hour Justice Court sessions, off-hour proceedings (e.g. arraignments and emergency applications) likewise require dedicated armed presence to protect the court. Where such a police officer or deputy sheriff is armed in the courtroom, he or she generally should remain at sufficient distance from members of the public to minimize

the possibility that they could lunge for the officer's pistol, and the pistol should be secured in a proper Level 3 holster (i.e. a holster with three restraints) to ensure maximum control of the weapon.

vii. Provide Ingress Screening.

One of the most important preventive security measures a locality can implement for its Justice Court is to provide ingress screening for all persons seeking to enter a court facility. The most effective method is by proper magnetometer. Installation requires sufficient space to accommodate the machine and its operators, separate secured space from unsecured space, and eliminated direct lines of sight between the court and unsecured areas. Larger town and village halls can accommodate these adaptations with minimal changes to the space; one-room all-purpose facilities may require modest capital alterations. In either case, it should be a priority of every locality operating a Justice Court to provide some ingress screening to keep weapons out of court.

viii. Secure and Illuminate Parking.

Perhaps the most palpable threat to court security occurs after a court session, away from public view and often at night. Judges or court staff members leaving court for their cars naturally expose themselves to risk. For that reason, some localities provide escort for the judge and court staff after the conclusion of court proceedings. This practice is a good one and should be emulated throughout the Justice Court system. Localities also should, where possible, provide a secure (i.e. gated and/or patrolled) and well-illuminated place for judges and court staff to park, as well as secure access between that parking location and the court facility. Typically, this latter adjustment will require a second backdoor, key-controlled entrance to the court facility, which also would convey the secondary benefit of giving judges and court staff an alternative way to leave a court facility (and police to enter a court facility) under threat conditions.

ix. Arrange Armed Escort for Bank Deposits.

Especially for high-volume Justice Courts, the collection of revenue can concentrate in the court significant funds, including cash, that must be deposited in a local bank. The clerk or other personnel responsible for making these deposits thereby can be exposed to the risk of assault, particularly if that person's bank deposits are relatively routine (e.g. each Monday and Thursday afternoon after lunch). To protect the staff and the Justice Court's funds, the locality should ensure that physical deposits of Justice Court funds in the local bank be protected by armed escorts, typically by the local police.

x. Secure Storage of Cash and Negotiable Instruments.

Until funds are deposited in a local financial institution, Justice Court staff must keep physical custody of cash and checks paid in satisfaction of court mandates. While some Justice Courts properly store these funds in secure, immovable vaults with the double protection of key or combination access, others keep cash merely in a desk drawer or cabinet — either in a small lockbox that can be easily removed or even in a simple envelope. At absolute minimum, Justice Courts should keep funds, and especially cash, in safes too large to move, segregated from public areas, with access limited to the minimum possible number of persons and secured by proper combination lock. Deposits and withdrawals should be conducted under as secure circumstances as possible,

preferably under armed escort as described above.

xi. Provide Duress Alarms in Strategic Places.

When threats do arise, seconds count. Even in the presence of armed security, but especially when a court lacks such security, it is imperative that judges and staff have a fast and secret way to call for help. To that end, judiciaries nationwide are installing duress alarms at strategic locations (e.g. in judges' chambers, near benches, in back- room offices) that can be activated by push of a button. These inexpensive alarms are easily installed to provide direct 911-like notification to local police that an emergency is in progress, and thereby can make the difference between life and death or escape and apprehension. Just as New York's State-paid courts are installing these duress alarms, so too should localities make this critical investment in the security of their courts.

3. Setting Court Hours

Each Justice Court is responsible for establishing the days and times when it will sit in *regular session*. The Chief Administrator of the Courts may modify this schedule. The schedule must be filed with the municipal clerk, posted where other official notices are posted, and filed with law enforcement agencies regularly appearing in the court.[135] Justice Courts must schedule at least one small claims session every other week, and may allocate portions of every session to hear small claims.[136]

4. Setting Office Hours

As noted, local justices set the hours of a court clerk's office, subject to rules and orders of the Chief Administrative Judge.[137] Hours should be sufficient for the transaction of the public business of the Justice Court, as well as the administrative duties necessary to process the Court's docket and timely issue the Court's mandatory reports to the Office of the State Comptroller, the Division of Criminal Justice Services, county defense and pre-trial service agencies, and the Office of Court Administration. Because the hours of non-judicial staff are relevant to setting the Justice Court's budget, justices and governing boards sponsoring Justice Courts should review staff allocations periodically, especially before the annual budget process. The hours of the non-judicial staff may not exceed those anticipated when a court's governing board is determining just how much to appropriate for the court's operations the amount appropriated therefore by the governing board.

5. Access to Justice Court Records

Justice Courts, like other courts, generally are not subject to New York's Freedom of Information Law (FOIL). Instead, access to Justice Court records is governed by UJCA section 2019 and rules promulgated by the Chief Administrator of the Courts. In addition, there are reporting requirements that can yield substantial information

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[135] *See* 22 NYCRR 214.2 (b).

[136] *See* 22 NYCRR 214.11.

[137] *See* 22 NYCRR 214.2 (b).

about a Justice Court. Localities wishing to review the distribution of fines levied in their local court can access the Justice Court's monthly report filed with the State Comptroller's Office.

i. Custody of Records

There are many situations in Justice Courts where the custody of records may change hands. The most common situation is when a justice's term has ended. In this case the closed records are transferred to the clerk of the municipality. Once custody of the records has changed hands, it is important for the clerk of the municipality to cooperate with court staff members who require access to those records. (See Appendix D in this Manual) The clerk must also follow all rules and regulations set forth by the Unified Court System's Office of Records Management to ensure the records are properly maintained.

Custody of Justice Court Records

Situation	Active Records	Inactive Records of Current Justice	Inactive Records of Previous Justices
Individual Town or Village Court	Courts shall keep records of all proceedings. UJCA § 2019	Courts shall keep records of all proceedings. UJCA § 2019	Custody of the clerk of the municipality. UJCA § 2019-a
Town Court Sharing a Judge	Judge must keep separate records for each individual court. UJCA § 106-b (7)	Judge must keep separate records for each individual court. UJCA § 106-b (7)	Custody of the clerk of each individual municipality. UJCA § 2019-a
Town Court Sharing a Facility	Each individual court must maintain their own separate records. UJCA § 106-b (7)	Each individual court must maintain their own separate records. UJCA § 106-b (7)	Custody of the clerk of each individual municipality. UJCA § 2019-a
Town Court Sharing Judge and Facility	Each individual court must maintain their own separate records. UJCA § 106-b (7)	Each individual court must maintain their own separate records. UJCA § 106-b (7)	Custody of the clerk of each individual municipality. UJCA § 2019-a

Town Court Consolidation	Separate court records must be maintained for each individual town. UCJA § 106-a (13)	Separate court records must be maintained for each individual town. UCJA § 106-a (13)	Custody of the clerk of each individual municipality. UJCA § 2019-a
Village Court Abolished	Any unfinished business shall be handled by the town court. Ops St Compt No. 81-202	Custody of the clerk of the original municipality. UJCA § 2019-a	Custody of the clerk of the original municipality. UJCA § 2019-a
Annexation of Town	All records shall be deposited with the clerk of the town to which it is annexed. Town Law § 79-a	All records shall be deposited with the clerk of the town to which it is annexed. Town Law § 79-a	All records shall be deposited with the clerk of the town to which it is annexed. Town Law § 79-a
Consolidation of Local Governments	To be determined by the district's Administrative Judge. General Municipal Law § 765 (6)	To be determined by the district's Administrative Judge. General Municipal Law § 765 (6)	To be determined by the district's Administrative Judge. General Municipal Law § 765 (6)
Dissolution of Local Governments	To be determined by the Judicial District's Administrative Judge. General Municipal Law § 788 (3)	To be determined by the Judicial District's Administrative Judge. General Municipal Law § 788 (3)	Clerk of the town in which the principal portion of dissolved municipality is situated. General Municipal Law § 788 (2)

ii. Records Management Responsibilities

Justice Court records are subject to the Unified Court System's Records Retention and Disposition Schedules which provide the minimum length of time court records need to be maintained. Once records have reached their retention period, a written request must be submitted to the Office of Records Management before they can be destroyed. The Unified Court System also provides guidelines and procedures outlining reproduction and destruction of records, and standards for offsite storage of records. Additionally, there are Unified Court

System Policies that govern the maintenance of records in alternative media such as microfilm or digital records.[138]

Due to the financial audit and control requirements of the Office of the State Comptroller, Justice Courts are required to retain fiscal records for at least six fiscal years, which may be different from other courts or agencies. In addition, written approval from the Office of the State Comptroller may be required prior to destruction of fiscal records. For additional information please visit the Unified Court System's Office of Records Management Website. http://www.nycourts.gov/admin/recordsmanagement/index.shtml or call (212) 428-2875.

iii. Records of Dissolved Justice Courts

The Office of Court Administration has opined that, when a village justice court dissolves, the records of the village justice court's closed cases remains with the village clerk, while any active/open cases are transferred to the town in which the village is located.[139] *See* Appendix D.

Village clerks may only release closed village justice court records to the judge or court clerk of the justice court of the town in which the village is located. If a village clerk who is in possession of records of a dissolved village justice court receives a request for access to or copies of closed village court records, best practices dictate that the village clerk may not disclose the court records but instead, refer the individual making the request to the town court in which the village is located. Thereafter, it is recommended that the town court clerk submit such a request for the judicial records in writing to the village clerk(s).

Village clerks may only destroy closed village justice court records when authorized to do so according to Record Retention Rules promulgated by the Unified Court System's Office of Records Management.[140]

6. Judicial Ethics

All trial judges and justices, including Town and Village Justices, must comply with the Chief Administrative Judge's Rules Governing Judicial Conduct (22 NYCRR 100). The Advisory Committee on Judicial Ethics ("ACJE") was formed in 1987 to help New York State's judges and justices adhere to the high standards set forth in the Rules. In 1988, the New York State Legislature codified the ACJE's creation, stating that any action a judge takes in accordance with a formal advisory opinion of the ACJE is "presumed proper" for purposes of any subsequent investigation by the New York State Commission on Judicial Conduct.[141] Each year, the ACJE issues over 100 formal opinions in response to questions from judges, justices, and quasi-judicial officers about

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[138] *See* Rules of the Chief Administrator of the Courts PART 104.1-104.5; UJCA § 107.

[139] *See* UJCA § 2019-a.

[140] http://www.nycourts.gov/admin/recordsmanagement/index.shtml

[141] *See* Judiciary Law § 212 (2) (l).

the propriety of their own conduct. Those opinions set forth the ACJE's interpretations of the Rules Governing Judicial Conduct, providing New York State's judicial and quasi-judicial officers with guidance for those circumstances that are not specifically governed by a particular rule.

Please visit http://www.nycourts.gov/ip/acje/index.shtml for information about obtaining a formal opinion and informal guidance from the ACJE, and to research the ACJE's published opinions.

7. Judicial Campaign Ethics

In response to recommendations of the New York State Commission to Promote Public Confidence in Judicial Elections, the ACJE established a five-judge Judicial Campaign Ethics Subcommittee which works closely with the Judicial Campaign Ethics Center ("JCEC") to review and respond to ethical inquiries from judicial candidates about their own prospective campaign conduct on an expedited basis. Judicial candidates, whether or not they are sitting judges, may e-mail their inquiries to the JCEC at contactjcec@courts.state.ny.us. Additionally, all judges must be in compliance with the "Hatch Act". http://www.osc.gov/hatchact.htm

G. Justice Court Fiscal Administration

1. Establishing Justice Court Budgets

Often the most difficult issues arising in Justice Court administration concern court resources. As noted above, the separation of powers requires that each Justice Court, as part of the judicial branch of state government, must have substantial independence from the rest of the town or village government sponsoring it. On the other hand, State law vests in towns and villages substantial discretion in budgeting for the Justice Courts they sponsor, selecting non-judicial employees, setting their salaries and other benefits, and enacting general policies of employment and administration.[142] The result is that Justice Courts and their sponsoring localities must collaborate to ensure effective Justice Court administration, finding a compromise to satisfy the Justice Court's general independence and its sponsoring locality's responsibilities and discretion.

Often these interests come together in the municipality's annual budget process, which must provide sufficient resources for the Justice Court to function adequately under the circumstances. What that means in practice is a flexible standard that depends on many variables, including the size and variability of a particular Justice Court's dockets, the character of its cases, the number of justices authorized by law, the experience of justices and non-judicial staff, whether the Justice Court has a dedicated facility or shares one with other governmental activities, the quality of the facility, the overall fiscal and governmental environment of the town or village sponsoring the Justice Court, and local traditions. Also important are timely compliance with the Justice Court's recordkeeping duties and reporting obligations to state and county offices; the character, size, and distribution of police agencies interacting with the Justice Court; the availability of indigent defense counsel

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[142] *See e.g. Kelch v Town Bd. of the Town of Davenport*, 36 AD3d 1110 (3d Dept 2007). While the Compensation Clause of the New York State Constitution does not expressly apply to Town and Village Courts, see NY Const, art VI, § 25 (a), courts still construe the Compensation Clause's ban against diminishing judicial salaries to protect Town and Village Justices based on the separation of powers.

relative to indigence rates; and the number of litigants who appear *pro se* (representing themselves) in potentially complex cases before the Justice Court.

Thus, there is no one-size-fits-all standard for Justice Court budgeting. The best practice is transparent communication between a Justice Court's justices, who should clearly articulate the needs of the Justice Court and operate their courts efficiently, and the sponsoring locality, which must factor in the Justice Court's legitimate needs and responsibly provide for them without unduly intruding on the Justice Court's independence. Where there exist different visions for Justice Court operations (e.g. court hours), governing boards should be mindful that justices are responsible for overseeing court operations, and justices should be mindful that Justice Court operations depend on appropriations from the local government, which is bound to numerous practical realities about the availability of revenue.

If there are substantial disagreements about the effect of a proposed or actual local budget on Justice Court operations, justices may contact their Supervising Judge and municipal officials should contact their municipal attorney, the Association of Towns, or the Conference of Mayors, as appropriate.

2. Reporting Monthly to the State Comptroller

Every Town and Village Justice, *including an Acting Village Justice or a temporary justice subject to a temporary appointment,* is required by law to report monthly to the Office of the State Comptroller ("OSC") the court activities of the preceding month.[143] Reports are due between the 1st and the 10th of the month, for each month that the justice holds office. Generally, only closed cases should be reported to OSC except if fines are paid in installments.

Only actions taken by a Town or Village Justice should be reported. While a Justice Court arraignment is subject to reporting, actions taken by another court (e.g. County Court) on defendants arraigned in a Justice Court are not within the Justice Court's reporting duties. https://www.osc.state.ny.us/localgov/pubs/jch.pdf

3. Annual Audit Requirements

Every Town and Village Justice is required to present his or her records and dockets at least once a year to the town or village to be examined by the auditing board or official, or by a Certified Public Accountant or Public Accountant.[144] Any justice who willfully fails to present these records and dockets to the auditing board "shall be guilty of a misdemeanor and shall, upon conviction, in addition to the punishment provided by law for a misdemeanor, forfeit his [or her] office."[145] The Town Law also expressly provides that the town board at any time may require any town officer – including a Town Justice – to submit to the board or to a Certified Public Accountant or Public Accountant for examination "his [or her] books, dockets, records, receipts, warrants, vouchers, and canceled checks or check images."[146] Governing boards that sponsor Justice Courts must

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[143] *See* Town Law § 27; Village Law § 4-410; UJCA § 2021.

[144] *See* UJCA § 2019-a.

[145] *See id.*

[146] *See* Town Law § 123.

perform the audit themselves, unless they engage the services of an independent Public Accountant or Certified Public Accountant to audit the records. In towns or villages with a comptroller, the annual audit responsibility rests with the comptroller.

Each year, to ensure that the annual audits are being performed and no major issues are found, the Chief Administrative Judge, or appropriate OCA personnel on his or her behalf, may request that mayors and supervisors submit copies of their annual audits of the Justice Courts they sponsor. OCA's Office of Internal Affairs may review these audits for recurring findings and other matters that might identify areas of concern, which may justify further audit or remedial actions by OCA. Results of these reviews will be integrated into OCA's risk assessment process. Each year, OCA provides to OSC a list of municipalities that have not submitted their local audits; OSC may use this information as part of its own financial control process.

To ensure effective auditing and financial controls, town and village governing boards should gain an understanding of how the local Justice Court operates, what the general rules and requirements are for financial accountability and reporting, and what types of financial records should be maintained to meet these responsibilities. The first step is to reach out to the justices and court clerks, experienced board members, and/or OSC. The second step is to read OSC's Handbook for Town and Village Justices and Court Clerks, which provides guidance as well as requirements for Justice Court transactions.
https://www.osc.state.ny.us/localgov/pubs/jch.pdf

i. Justice Court Recordkeeping Requirements

Court personnel are required to maintain various records and documents pertaining to the cases handled in their respective courts. They are also required to perform certain finance-related duties to account for and report all transactions. Some of these recordkeeping requirements are as follows:

- Each court is required to maintain individual case files containing all papers and other documents pertaining to each case.[147]

- Each court is required to maintain an index of all cases with a unique number assigned to each case when filed. If manual, an index is an alphabetical list of cases with case numbers as a cross-reference. This will assist in locating cases since case files are filed by disposition date. If computerized, the index is maintained in the system and can be accessed at any time by name, ticket number, or address.[148]

- Each court is required to maintain a cashbook, which chronologically identifies all receipts and disbursements.[149]

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[147] *See* 22 NYCRR 214.11.

[148] *See id.*

[149] *See id.*

- Each justice is required to maintain an official bank account in his or her name as judicial officer.[150]
- Each officer or employee receiving money is required to issue acceptable receipt forms for all monies collected.[151]
- Each justice is required to deposit all monies received in his or her judicial capacity in the official bank account within 72 hours of collection, exclusive of Sundays and holidays.[152]
- Each Justice Court must make all disbursements by check and signed by the justice except for acceptable petty cash transactions.
- Each justice must, within 10 days after the end of the month in which collected, submit a monthly report to the Justice Court Fund. Since all Justice Courts now participate in the Invoice Billing Program, each justice must issue a check each month to the Chief Fiscal Officer for the monies reported to OSC that month.

To comply with the foregoing reporting obligations, the following minimum records should be maintained by court personnel receiving and disbursing monies, whether the records are manual or computerized:

- Cash receipts records and supporting documents;
- Cash disbursement records and supporting documents;
- Bank statements and supporting documents;
- Cash book reconciliations (determining accountability); and
- Reports to applicable governmental agencies.

In preparation for the required annual audit, it is a good practice for the justices to utilize the following monthly checklist to ensure compliance with the above referenced requirements and good accounting practices. This checklist will help justices to discover any irregularities early and minimize the time necessary to investigate these issues. It should also minimize the time necessary for the local governing board or financial control officer to review these records.

Board members should utilize the annual checklist referred to the "General Recordkeeping Requirements for Town and Village Justices" section of the OSC Handbook which provides general tools to properly perform the annual audit and provide reasonable assurance that work performed by those individuals who handle monies as

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[150] *See* 22 NYCRR 214.9.

[151] *See generally* GML § 99-b.

[152] *See* 22 NYCRR 214.9.

part of their duties are properly monitored and reviewed. https://www.osc.state.ny.us/localgov/pubs/jch.pdf (See Appendix 9 and 10 of the OSC Handbook)

Monthly Checklist for Review of Justice Court Records

NAME OF MUNICIPALITY:	

PERIOD REVIEWED:		through	

NAME OF JUSTICE:	

REVIEW PERFORMED BY:		**DATE**	

Monthly Checklist for Review of Justice Court Records (cont'd)

Month of _____

Cash Book Reconciliation (Accountability) at End of Month

The amounts on deposit in the court bank accounts (adjusted bank balance) are the following:

Bank Balance – End of Month	_____
Add: Cash on Hand - Deposited 1st Day of Next Month (Deposit in Transit)	_____
Deduct: Outstanding Checks – Month End	_____
Adjusted Bank Balance – Month End ***	_____

Cash Book Balance at Month End is determined as follows:

Amount Due to the State Comptroller (or CFO)	_____
Bail	_____
Other - Identify	_____
Total Cash Book Balance - Month End ***	_____

*** **Adjusted Bank Balance should agree with total Cash Book Balance at month end.**

Monthly Checklist for Review of Justice Court Records (cont'd)

	Yes	No
Cash Book Summary		
► Does the amount remitted to the Chief Fiscal Officer agree with the Monthly Report to be submitted?	☐	☐
► Does the amount shown as bail agree with the list of bail held for pending cases?	☐	☐
► Does the amount shown for other categories agree with supporting information?	☐	☐

Issuance of Receipts

What was the beginning receipt number for this month? _____

What was the ending receipt number for the previous month? _____

➔ Receipts should be issued in numerical sequence. The ending receipt number from the previous month should be one number lower than the beginning receipt number for this month. For example, if the ending receipt number for the previous month is 256 then the beginning receipt number for this month should be 257. If they are out of sequence, please explain.

► Were receipts issued in numerical sequence during the month?	☐	☐

Bank Deposits

Review the bank statements, canceled checks and deposit slips for month and compare with accounting records.

Monthly Checklist for Review of Justice Court Records (cont'd)

	Yes	No
► Do deposits agree with cash collections shown in accounting records?	☐	☐
► Are deposits made within 72 hours of collection (exclusive of Sundays and holidays)?	☐	☐

Disbursements

► Does the check remitted to the Chief Fiscal Officer agree with the monthly report?	☐	☐
► Do checks agree with supporting information?	☐	☐
► Do bail return checks agree with supporting case information?	☐	☐

Overall Evaluation

_____

_____

_____

_____

Annual Checklist for Review of Justice Court Records

NAME OF MUNICIPALITY:	

MONTH REVIEWED:		through	

NAME(S) OF JUSTICE:

REVIEW PERFORMED BY:		**DATE**	

Annual Checklist for Review of Justice Court Records (cont'd)

	Yes	No
Cash Receipts Book		
► Are pre-numbered receipt forms issued for all collections?	☐	☐
► Are duplicate receipts kept for court records?	☐	☐
► Are receipts recorded up-to-date?	☐	☐
Last Recorded Receipt: *Number* _____ *Date* _____ *Amount* _____		
► Is the receipt book maintained in a manner to identify date received, payer, and the amount of fines, fees, bail and other categories of collection?	☐	☐
► Are deposits identified?	☐	☐
► Are duplicate deposit slips kept for court records?	☐	☐
► Do deposit amounts agree with cash receipt amounts?	☐	☐
► Are deposits made within 72 hours of collection (exclusive of Sundays and holidays)?	☐	☐
► Are deposits recorded up-to-date?	☐	☐
Last Recorded Deposit: *Date* _____ *Amount* _____		
► Is the receipt book totaled and summarized at the end of each month?	☐	☐
Last Month Totaled and Summarized: _____		
Cash Disbursements Book		
► Are pre-numbered checks used for all disbursements besides petty cash?	☐	☐
► Are all checks signed by the justice?	☐	☐
► Are canceled checks (or check images) returned with bank statements	☐	☐

Annual Checklist for Review of Justice Court Records (cont'd)

	Yes	No
and kept for court records?		
► Are checks recorded up-to-date?	☐	☐

Last Recorded Check: *Number* _____
Date _____
Amount _____

Bank Reconciliations

► Are bank accounts reconciled promptly after bank statements are received?	☐	☐
Last Bank Reconciliation for Each Bank Account:	☐	☐
*Date Performed*_____ *Month Ending*_____		

Additional Supporting Records

► Is a list of bail maintained?	☐	☐
► Is a record of uncollected installment payments maintained?	☐	☐

Dockets and Case Files

► Are separate dockets maintained for various classifications of cases, such as Vehicle and Traffic, Criminal, Civil and Small Claims?	☐	☐
► Are case files maintained for all cases? If manual, an index is an alphabetical list of cases with case numbers as a cross-reference. This will assist in locating cases since case files are filed by disposition date. If computerized, the index is maintained in the system and can be accessed at any time by name, ticket number or address.	☐	☐
► Do dockets for disposed cases appear to be complete?	☐	☐
► Do dockets for disposed cases agree with amounts reported?	☐	☐

Annual Checklist for Review of Justice Court Records (cont'd)

	Yes	No
Cash Book Reconciliation		
► Is the cashbook reconciled to the adjusted bank balances at the end of each month?	☐	☐
► Does the cashbook total agree with bank reconciliation and supporting information?	☐	☐

Last Cash Book Reconciliation:

Date Performed _____
Month Ending _____

Reports to Division of Criminal Justice Services		
► Are reports made timely to the Division of Criminal Justice Services?	☐	☐
► Has the court received any notices regarding late reporting?	☐	☐

If yes, why were reports late and what corrective steps were taken?

_____
_____
_____

Reports to Justice Court Fund	☐	☐
► Are monthly reports made timely to the Justice Court Fund?	☐	☐
► Do reported amounts agree with docket dispositions and case files?	☐	☐
► Do amounts agree with cash receipt and disbursement books?	☐	☐

Last Report Submitted: *Month Ending* _____
Date _____
Amount _____

► Has the court received any notices regarding late reporting?	☐	☐

If yes, why were reports late and what corrective steps were taken?

_____
_____

Annual Checklist for Review of Justice Court Records (cont'd)

	Yes	No
_____		
Reporting to Department of Motor Vehicles - TSLED Program		
► Are reports from TSLED to the court maintained and utilized?	☐	☐
Last TSLED Report Available: Date _____		
Note: Courts can access reports on-line from TSLED at any time.		
► How many cases are shown as pending in the last TSLED report? _____		
➔ Is the number of pending cases reasonable?	☐	☐
➔ How many cases are shown pending for over 90 days? _____		
➔ What actions have been taken to dispose of these cases? _____		

Overall Evaluation

_____

_____

_____

_____

4. Distribution of Fines Collected by the Justice Court

As stated previously, the purpose of justice courts is not to generate revenue. However, justice courts receive fees and justices routinely impose fines. Because multiple statutes govern the assessment and collection of Justice Court fines and fees, there is no one simple formula that determines how these court receipts are distributed. Generally, unless otherwise provided by law, a fine imposed by a Town or Village Justice Court for a violation occurring within the town or village is the property of such town or village.[153] With some exceptions, towns and villages receive fines collected in Justice Courts for violations of:

- Local ordinances;
- The Penal Law;
- The Alcoholic Beverage Control Law;
- The Parks, Recreation and Historic Preservation Law;
- The Navigation Law; and
- The Public Health Law.

Towns and villages also receive fines collected in Justice Courts for violations of certain provisions of the Vehicle and Traffic Law, the Agriculture and Markets Law, and Executive Department regulations relating to state parks and parkways.

There are numerous exceptions to this general principle, however. Several statutes, including the Vehicle and Traffic Law, Penal Law, and Environmental Conservation Law, require certain fines, penalties, fees, and surcharges to be distributed to the State. For example, fines collected in Justice Courts for VTL violations related to equipment, inspections, dimensions and weights, license, registration, insurance, state speeding, reckless driving, and speed contests, are required to be distributed to the State.

Distributions of fines paid for speeding violations are further complicated by the location where the alleged violation occurred. The State is entitled to receive the fines collected if the speeding violation occurs on a State-regulated road. Towns and villages, on the other hand, are entitled to receive fines collected from speeding violations occurring either on a state parkway or within a state park. Towns and villages also are entitled to receive fines collected from speeding violations that occur within a town or village speed zone up to a $5 per capita for each year commencing on July 1; fines collected in excess of the annual cap are required to be distributed to the State.

Another VTL exception relates to fines collected for certain violations relating to driving while intoxicated ("DWI"). In counties that have established a special traffic DWI program, these fines are required to be distributed to the *county* in which the violation occurred.

Occasionally, statutes direct that a fine be divided between the local government and the State. For example, violations of VTL article 47 (relating to registration of snowmobiles) are divided 50% to the town or village, and 50% to the State.

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[153] *See* UJCA § 2021 (1).

There are several other statutes that provide that certain Justice Court revenues be distributed to the State. Fines and surcharges collected for violation of the Environmental Conservation Law must be distributed to the State, as are ***surcharges*** collected on certain violations of the VTL, Penal Law, and the Parks Recreation and Historic Preservation Law.

Some statutory provisions require the imposition of various fees, in certain cases, in addition to any fine and/or surcharge that may be required to be imposed. For example, crime victim assistance fees, DNA databank fees and/or sex offender registration fees are collected for certain violations of the VTL and Penal Law. These fees are required to be distributed to the State and, generally, are required to be used to support specific programs.

Under the Invoice Billing Program, distributions are generally made on a monthly basis. All courts participate in the Invoice Billing Program in which they remit all fines, fees and surcharges to the chief financial officer of the town or village monthly. Based on an invoice billing statement from the Justice Court Fund ("JCF"), the town or village retains its share and remits to OSC the State and county share for subsequent distribution.

It is important for the Justice Court to note the correct conviction when reporting cases to OSC, because the nature of the conviction determines to which entity any fines are distributed. If the correct conviction is not noted on the report to OSC, then a town or village may receive funds to which it is not entitled, or miss out on funds that it should have received.

Sometimes a village may receive a fine from a Justice Court case adjudicated in the town in which the village is established, even if the village does not have its own Justice Court. The following is a list of the fines that a village may receive even if the village does not have its own Justice Court. This can be found at: https://www.osc.state.ny.us/localgov/pubs/jch.pdf

Nature of the Case	Is the village entitled to the fine if does not have a Justice Court?
Village Local Law – Villages are entitled to the fines resulting from violations of its local laws unless otherwise directed by statute.	Yes
Village Speed Limit – Villages are entitled to the fines resulting from violations of local speed limits enacted pursuant to Vehicle and Traffic Law §§ 1643 & 1644. **NOTE:** Of all the fines collected for speeding violations, villages are only entitled to a total of $5 per resident per annum. For example, if a village has 1,000 residents, the village will only receive up to $5,000 per year from convictions on speeding tickets issued within its	No

jurisdiction, regardless of the number of speeding tickets issued and fines imposed.[154]	
New York State Vehicle & Traffic Law – Villages are entitled to the fines resulting from most violations of the State's Vehicle and Traffic Law, except Vehicle and Traffic Law §§ 1182, 1192, & 1212.	No
State Parks and Parkway Rules & Regulations – Villages are entitled to the fines resulting from vehicle and traffic violations of State Parks and Parkway Rules & Regulations.	No
Local Parking Regulations – Villages are entitled to the fines resulting from violations of local parking regulations enacted pursuant to Vehicle & Traffic Law § 1640.	Yes
Penal Law – Villages are entitled to the fines resulting from Convictions of the Penal Law.[155]	No

Mandatory surcharges imposed pursuant to Penal Law § 60.35 are remitted to the State Comptroller who credits the surcharge funds to the criminal justice improvement account. Municipalities may, however, establish administrative surcharges in addition to monetary penalties imposed on violators of local laws.[156]

For routine filing fees, see http://www.nycourts.gov/forms/filingfees.shtml#6

5. Fees under General Municipal Law § 99-*l*

Towns and villages are entitled to fees for the service of their Justice Courts to adjudicate various criminal actions and other proceedings:[157]

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[154] *See* VTL § 1803(5).

[155] *See* Ops St Comp No. 87-86.

[156] *See* Ops Atty Gen No. 90-22.

[157] *See* GML § 99-*l*.

For services in each case of a misdemeanor or other offenses, including misdemeanors and moving violations under the VTL instituted in and triable in such court, wherein a fine, if imposed, would be the property of the state.	$15
For all services in each criminal proceeding instituted before and triable by such a court, wherein a fine, if imposed, would be the property of the state.	$15
For all services in any case in which the court acts upon a felony complaint, to be paid by the county.	$10
For all services in any case in which the defendant is held for appearance before another court.	No Fee
For endorsing a warrant from another county.	No Fee
For furnishing copies of papers in any proceeding.	25¢ per 100-word folio
For return to any appeal to be paid by the county.	$10
For examination of any information, depositions and issuing a search warrant, including any disposition upon the return thereof.	$15
For issuing a license suspension or revocation order pursuant to VTL § 1193(2)(d), providing the license suspension or revocation order is forwarded to the commissioner along with the certificates required in VTL §§ 513 & 514 within 96 hours, or for suspending a license pursuant to clause a of VTL § 1193(2)(e)(1), providing the license and the certificate of magistrate required in VTL § 513 are forwarded to the commissioner within 96 hours.	$15

6. Handling Justice Court Funds

A Town or Village Justice is personally responsible for monies received by his or her Justice Court. For instance, a justice may be personally liable for money paid to the Justice Court and then lost or stolen, even if he or she was not negligent or acted improperly.[158] Therefore, all monies paid to a Justice Court must be received by the justice or by personnel under his or her supervision and control and may not be collected by other municipal personnel.[159] For the same reason, town and village officials other than Justice Court personnel may not direct or control how Justice Court money is received, handled, or deposited.[160]

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[158] *See e.g. Bird v McGoldrick,* 277 NY 492 (1932), *Hartford v Hale,* 546 NYS2d 61 (1989); *see also* Ops St Compt No. 79-285, 83-174.

[159] *See* Ops St Comp No. 83-174.

[160] *See id.*

i. Internal Controls: Accounting Process and Records

A well-designed system of internal controls is necessary to ensure that cash received by the Justice Court is safeguarded and that Court activity is properly recorded and reported. Justices must ensure that internal controls are in place and working effectively, particularly when there is limited segregation of duties. Justices responsible for adjudicating cases brought before their Court also are responsible for accounting for and reporting all related Court financial activities. To meet that responsibility, they must maintain complete and accurate accounting records and safeguard all monies collected. Justices also need to reconcile cash activity and report all Court transactions to OSC's Justice Court Fund ("JCF"). Monthly reconciliation of bank accounts enables court personnel to verify the accuracy of financial records and establish control over cash.

Unlike other municipal operations, Justice Courts do not account for financial transactions on a fiscal year basis and are not required to complete annual financial statements. However, as noted, Town and Village Justices must account for cash receipts and disbursements from month to month, and reconcile their cashbooks and bank balances as of the end of each month. Each month, court personnel should compare information from their accounting records with the information shown on their bank account statements. As of the end of each month, court personnel should reconcile all bank accounts and perform a financial reconciliation by comparing reconciled [adjusted] bank balances with cashbook totals. These financial records are subject to OSC and OCA records retention policies as previously described.

To account for Justice Court monies, justices may use either manually prepared cashbook accounting records or computerized accounting software programs that meet the recordkeeping requirements of the OCA.

ii. Receipts

Justice Courts are required to issue acceptable receipt forms to acknowledge collection of all monies paid to the court.[161] These receipt forms should be pre-numbered and in at least duplicate form. When acquiring pre-printed forms from vendors, justices should keep an inventory record of the receipt numbers acquired, and account for those forms utilized and remaining on hand. The forms should be issued in consecutive numerical sequence and a copy should be retained as evidence of collection. Receipt forms produced from computerized accounting software programs, cash registers, and other mechanical or electronic devices should also be issued in consecutive numerical sequence and a hard copy should be retained as evidence of collection. If receipts are generated from a computerized system, the software controls must prevent the alteration of receipt numbers. If numbers can be altered, then pre-numbered receipts should be used instead.

Pre-printed receipt forms should contain sufficient information to identify the court, the categories of the transaction, the method of payment (currency, check, money order, credit card), and other information needed to properly categorize and account for the monies collected.

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[161] *See* GML § 99-b.

As with any good business operation, monies received by the Justice Court should be reconciled with the supporting case file information and the financial information shown in the cash book or accounting system. This reconciliation of financial records should ensure that the amount of money collected corresponds to:

- The duplicate receipt forms issued for those collections;
- The receipt amounts recorded in the cash receipts section of the cashbook or accounting records;
- The deposit made from those same collections; and
- The applicable case files.

Monies received should be deposited intact as soon as possible. Depositing intact means that monies are not split or grouped into lump sum amounts, but are deposited in the same amounts as received. For example, if a Justice Court collects $1,000.00 for the day's receipts, the deposit for that day's collections should be exactly $1,000.00: the deposit should not be split $400.00 one day and $600.00 the next day. Deposited amounts should always agree with amounts received and recorded.

Although justices are encouraged to make deposits as soon as possible, all monies received must be deposited within 72 hours of collection, exclusive of Sundays and holidays.[162]

Each justice, including an Acting Village Justice, is required to maintain an official bank account in his or her name as judicial officer, in a bank or trust company within the State.[163] Depending on the size and complexity of the court, justices may also maintain a separate bank account for bail. When bank accounts are opened, justices are required to notify OCA about account information. Municipal accounts are opened in the name of the justice, but with the Employer Identification Number of the municipality. When a new justice assumes the duties of office, bail monies retained by the former justice should be audited and certified prior to the transfer to and acceptance by the new justice.

iii. Disbursements

Disbursement of monies received by the court and deposited to justice bank accounts should be made only for purposes authorized by law. Generally, disbursements from Justice Court accounts involve returning bail, transferring monies to other courts, or remitting monies to the chief financial officer of the municipality sponsoring the Justice Court.

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[162] *See* 22 NYCRR 214.9(a).

[163] *See* 22 NYCRR 214.9. While this part of the rules of court requires a justice to open a bank account in his or her name as judicial officer, section 10 of the General Municipal Law requires that the governing board of the town or village designate one or more banks or trust companies for all deposits of the town or village. Reading these provisions together, the account of a Town or Village Justice in his or her own name must be at one of the banks or trust companies designated by the governing board.

All disbursement of court monies should be made by check signed by the justice. Checks should:

- Be pre-numbered;
- Be issued in consecutive numerical sequence; and
- Contain sufficient information to identify the court, payee, amount, and purpose of payment.

All unissued checks should be inventoried and accounted for.

When checks are returned with bank statements, court personnel should verify that amounts deducted from the account balance agree with the amount written on each check. These checks should be retained as evidence of the disbursement. Generally, it is common business practice to keep checks with the applicable bank statements and file the entire package together. Today, many banks do not return the original canceled checks; instead, the Justice Court may receive a substitute check[164] or a check image[165] that provides all the information contained on the front and back of the original check. These check images should be verified and retained in the same manner as original checks.[166]

Prompt and accurate recording of disbursements is an essential process needed to properly account for court monies. Each check should be recorded in the cash disbursement section of the cashbook or accounting system promptly upon issuance. Ideally, depending on the type of cashbook or accounting system utilized, disbursements should be recorded simultaneously as checks are written.

iv. Reconciling Cash Book Balances with Adjusted Bank Balances

As indicated above, the accounting process for justices requires an accurate recording of receipts and disbursements, with a month-end reconciliation of cashbooks to bank balances. To reconcile the cashbook to the bank balance, justices should compare information from their accounting records with information shown in their bank records.

- Accounting records should show how much money the Justice Court should have as of the end of each month; and
- Reconciled bank accounts should show how much money the Justice Court actually has as of the end of each month.

These amounts should always agree. If they do not agree, differences found should be promptly investigated and resolved.

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[164] *See generally* 12 USC § 5001 *et seq*.

[165] *See* GML § 99-b (2).

[166] *See id.*

v. Bank Reconciliations

The next step in reconciling the cashbook and bank balances is to reconcile the bank accounts and compute how much money the Justice Court has at the end of each month. Since the accounting records are on a monthly cycle, the bank statements also should be on a monthly cycle, starting with the first day of the calendar month. If that is not a Justice Court's current cycle for bank statements, Justice Court personnel should contact the bank to request adjusting the statement period to begin on the first day of the calendar month. Promptly after receiving the monthly bank statements, court personnel should review the statements and perform the following procedures:

- Verify that deposits have been posted to the account on the correct dates and in the correct amounts;
- Verify that checks have cleared the account in the correct amounts;
- Verify that other charges or credits are legitimate and are supported by adequate documentation;
- Identify any deposits and/or credit card transactions not posted to the account that should be considered "in transit"; and
- Identify any checks that have not cleared the account that should be considered "outstanding."

The bank account should be reconciled as of the end of each month. To reconcile a bank account(s), Justice Court personnel must account for all transactions that have cleared the bank account as of the end of each month, and those transactions that have not cleared the bank account.

The adjusted (reconciled) bank balance as of the end of each month always should agree with the amount shown in the checkbook and the month end amounts identified in the accounting records (cash book balance). If these amounts do not agree, Justice Court personnel should promptly investigate and resolve all differences.

Remember: All justices and acting justices must deposit, as soon as practicable, any money received in his or her judicial capacity in a separate bank account in his or her name as judicial officer, in a bank or trust company in this State, pending disposition as required by law. Money must be deposited within 72 hours, exclusive of Sundays and holidays, from the day of receipt. Withdrawals from such accounts may be only for purposes permitted by law.

Within ten (10) days of opening or transferring a bank account, a justice must notify OCA in writing of the name and address of the bank in which the account was opened or to which the account was transferred, the title of the account, the account number and the date that the account was opened or transferred. If the justice, during his or her tenure, closes or transfers the account to a different bank, he or she must, within 10 days, notify OCA of the closing or transfer and state the reasons.[167]

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[167] *See* 22 NYCRR 214.9.

vi. OCA Credit Card Machine Program

OCA established a Town and Village Court Credit Card Machine Distribution Program in 2007. This program allows Justice Courts to receive up to two credit card machine terminals, allowing individuals to pay fines, fees, and surcharges, as well as permitting defendants to post bail by credit card.

Courts that have incorporated credit card machines into their operations have reported an increase in fines collected, due in large part to the large number of individuals that regularly carry credit cards.

Before OCA can supply a credit card machine, the Justice Court must have an available analog phone line in proximity to the terminal or terminals to be used. While a dedicated phone line is not required, a "splitter" will be required if more than one payment terminal is being installed or the line is also a voice/fax line. Once the site is prepared, the Justice Court will complete an OCA questionnaire regarding the names of the justices, bank account numbers, and the number of terminals requested. Once OCA receives the questionnaire, it sends the information to the machine vendor, which then programs the machines based on the information provided in the questionnaire, and sends the terminal(s) on to the Justice Court.

When a Justice Court receives a credit card machine, a toll-free telephone number is affixed to the side of the machine that a Justice Court representative can call for installation assistance.

Justice Courts wishing to participate in OCA's Credit Card Machine Distribution Program, having questions about the program, or experiencing difficulty with machines already installed, should contact OCA's Office of Justice Court Support.

vii. New Credit Card Machine Payment Program

The Office of Court Administration has begun the process of implementing a system under which a service fee will be charged to anyone who uses a credit card to pay a fine, surcharge, bail, or other charge in a town or village court. The fee is presently estimated to be 2.99% of the amount charged. Implementation will require that the Key Merchant Services (KMS) credit card terminals currently in the courts be replaced by terminals capable of assessing cardholder fees at the point of payment.

In order to provide your court with a new machine, KMS will require your municipality's Taxpayer Exempt Identification Number (TIN) via a tax exemption certificate/letter (available from your fiscal officer) and a completed W-9 form. We are asking each court to facilitate with their fiscal officer the W-9s and tax exempt certifications. Please note that providing the W-9 will not subject your municipality to any costs nor require them to fill out any additional tax forms. Failure to provide such information to our office may prevent your court from further participation in the Credit Card Machine Distribution Program.

You may fax your municipality's completed W-9 form and tax exempt certificate/letter within 30 days to the Office of Justice Court Support at 518-438-3518.

The changeover is scheduled to begin in late August and is expected to take approximately six months to complete. Each court will receive updated terminals along with installation/operating instructions. A phone line splitter that allows for operation of two devices from a single phone jack will be sent via separate mailing for those locations with only one dedicated telephone line. A KMS trainer will contact each location for training

and to assist in set up. The KMS training telephone number is 1-866-451-4004. Additionally, KMS technical support will be available by calling 1-800-725-1243. Callers to the training and technical support lines will be required to provide a merchant account number, which will be located on the side of the new terminals, and, for the training line, to verify their location address.

The terminals currently in operation will be rendered inoperable 45 days after delivery of a new terminal. Once your court receives the new credit card machine(s), please retain the old machine(s) and the box the new machine(s) came until you receive UPS return postage labels to send the old machine(s) back to KMS. If your court has more than two justices, please call the OJCS for additional guidance. During the 45 day period, locations may use the current terminals to process mail-in payments where the payor has not been notified about the service fee. In order to avoid timing issues going forward, it is strongly suggested that each location immediately revise their pay-by-mail fine letters to indicate that all payments made via credit card will be subject to a 2.99% service fee.

The Office of Court Administration is working closely with KMS to ensure that the updated credit card program will be implemented with a minimum of disruption to the courts. Please contact the Office of Justice Court Support at (800) 232-0630 if you have any questions regarding this issue or wish further information.

NOTICE OF CREDIT CARD SERVICE FEE

A service fee of 2.99% of the payment amount will be assessed on all credit card payments. Payments may continue to be made by cash or by a cashier/certified check without imposition of a service fee.

Note that neither the municipality nor the court receives any portion of the service fee.

If you use a credit card, there will be two transaction receipts generated, one for the court fine and one for the service fee. The cardholder must sign both receipts in order for the payment to be processed.

viii. Credit Card Controls

When accepting credit cards, Justice Courts should adopt the following best practices and procedures:

- **Approve transactions for Justice Court purposes only.** Credit card payments should only be accepted for those transactions authorized by the Justice Court. Each transaction should be processed according to written procedures.
- **Confirm the details of credit card transactions.** Persons accepting credit card transactions in Justice Courts should:
  - Check the expiration date of the credit card;
  - Examine the credit card to determine if it was altered in any way;
  - Ask for photo identification;
  - Verify the signature on the card against the signature on the sales draft;
  - Verify the account number on the card to the account number displayed after the card has been swiped;
  - Obtain the cardholder billing address for verification when the cardholder is not the defendant or not present; and

  - Receive an authorization before completing the transaction.
- **Segregate duties related to credit card collections. –** Someone other than the person processing card transactions should settle the scanner or POS (Point of Sale) machine at the end of the day, and reconcile the daily sales receipts to the cash, checks, and credit card sales drafts collected (if possible). Credit card receipts should be incorporated into the daily sales reports. Any discrepancies should be investigated promptly.
- **Carefully print and retain credit card paperwork.** Keep a white copy of sales drafts (or Merchant Copy) in case a charge is disputed. At the end of the records retention period, all sales drafts and detail reports with account numbers need to be made unreadable prior to disposal. Copies of sales drafts should not be filed in alphabetical order, since card issuers do not use names when requesting a copy of a sales draft during a dispute. Sales drafts should be filed in chronological order by date, issuer, and then by amount or card number.
- **Assign separate staff to reconcile monthly bank statements.** Each month someone, ideally other than the person accepting credit card payments, should reconcile the bank statement. This reconciliation will include reconciling deposits for credit card sales less any refunds to the daily credit card sales reports.
- **Credit card machine mail waivers and receipts**. Town and village courts that accept credit card payments and store data that contains payment card information must protect the confidentiality of that data. After a court processes a credit card transaction, the court should retain a copy of the transaction receipt. Court personnel must then redact or black out credit card or CVV numbers (3 digit number on back of credit card) on any mail waiver or document they retain regarding the transaction.

When accepting credit cards, Justice Courts should not do the following:

- **Do not process a credit card transaction if an authorization is denied.**
- **Do not process a credit card transaction if the signature does not match the card.**
- **Do not refund cash to a credit card user.**
- **Do not list a cardholder's personal information on a credit card sales draft.**
- **Do not process a transaction for another merchant or vendor.**

7. Insuring a Justice Court

A Justice Court may substantially increase the insurance exposure of its sponsoring locality's liabilities, a dynamic often overlooked when reviewing the municipality's insurance exposures. Several areas should be given extra attention when reviewing and providing for the municipality's insurance needs.

The municipality's General Liability Policy will respond to most bodily injury (e.g. arising from slip and fall, assault, etc.) and property damage claims potentially associated with Justice Court functions. However, if the

Justice Court employs security personnel, especially armed security, then a law enforcement liability ("LEL") policy is needed to provide coverage for this exposure. If the municipality has a law enforcement liability agency and a LEL policy already exists, then typically the Justice Court's security personnel can be added to that policy. If the municipality does not directly employ a court-security officer but instead contracts for court security services, a law enforcement liability policy may still be needed to protect the municipality's liability. Any contract for security should be reviewed with your insurance representative to determine if a law enforcement liability policy is needed.

Justice Courts may handle a significant amount of cash, which can be lost or mishandled. Therefore reviewing the Municipality's Employee Dishonesty, Theft, and Forgery coverage is important. All municipalities are required to determine an undertaking for their justices[168]. This requirement can be accomplished through the purchase of Employee Dishonesty coverage. This policy should be structured in such a way to cover not only the judges but the clerks as well. When reviewing the crime exposure for the courts, consideration should also be given to the accounts that justices hold in trust for others such as bail accounts. Funds that are held in trust for other parties typically are not covered under Employee Dishonesty Coverage. Therefore, it is important to inquire whether the Employee Dishonesty Coverage will cover these funds or if other coverage is needed.

Besides theft from an employee, money may be subject to theft by outside individuals. Coverage for these situations can be addressed with Money and Security Coverage. Consideration should be given to the amount of cash received daily. In addition, cash received by the courts is prone to forgery. Therefore, it is important to review the Justice Court's procedures for detecting forgery in addition to securing coverage for this exposure.

The Justice Court's amount of public traffic, the volume and case types of its docket, its annual financial transactions, the quality of court facilities, and the Justice Court's provisions for security are among the factors that should guide towns and villages as they review their insurance needs to ensure they adequately cover exposure arising from sponsoring a Justice Court.

8. Protecting Justice Court Data Security

As Justice Court case processing and financial transactions increasingly move online or have online components, Justice Courts must take adequate measures to protect the availability and security of this electronic data. This data may contain sensitive financial or legal information about litigants and other parties interacting with Justice Courts. For that reason, Justice Courts must protect the integrity of this data. These protections should provide for periodic backup, protect against unauthorized use, and protect against unauthorized alteration.

i. Periodic Backups and Secure Duplication of Electronic Data

All Justice Court electronic data should be backed up periodically. Back-up files should be transferable and storable off of the hard drive of the Justice Court computer system, either on tape or by another medium. Back-up files allow for restoring data in a test environment as part of the Justice Court's disaster recovery plan.

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[168] *See* Public Officers Law § 11; Town Law § 25; Village Law § 3-301 (2) (a).

Back-up files should be subject to the same security measures – including protections against unauthorized use and unauthorized alteration – as the day-to-day "working" files. For maximum protection, Justice Courts should give consideration to storing back-up files at a physical location other than the Justice Court itself.

ii. Protections Against Unauthorized Use

Access to Justice Court electronic data, including financial information and sensitive or confidential case files, should be restricted. Specifically, the following measures should be taken to protect against unauthorized use:

- **Password protection.** Access to electronic data should be restricted through the use of unique, user-specific IDs and/or passwords. Approved passwords should be at least six characters, using a combination of alpha, numeric, and special characters. Access rights should be revoked after a set number of failed log-in attempts. Passwords should be disguised upon entry into the system and should be stored in encrypted format.
- **Tiered permissions.** Access permissions should match job duties. For instance, clerks should have access to data entry only, while justices should have access to audit logs commensurate with their overall responsibility for financial controls.
- **Security tracking.** Changes to access rights should be logged with the date of change, the nature of the access change, and the identity of the person making the change.
- **Access tracking.** Access to data also should be logged with the date of access, user obtaining access, duration of access and the data obtained.

iii. Protections Against Alteration

Changes to Justice Court electronic data should be strictly limited. The integrity of the original records should be maintained by taking the following precautions, which can be built into security software and/or the case management system.

- **File protection.** Original data generally should not be altered. Once data has been posted to records, information should not be deleted or altered.
- **Data tracking.** Changes to data should be logged with the date of change, the nature of the change, and the identity of the person making the change.
- **Segregation of duties.** Changes to data should be made by someone other than the person who initially entered these data. Persons with entry rights should not have "change" rights.

9. Internal Control Responsibilities of Governing Boards

While justices are responsible and accountable for the activities of their Justice Courts, the governing board of the locality sponsoring the Justice Court also is responsible for providing general financial oversight. A governing board's general oversight responsibilities include ensuring that Justice Court duties are segregated, so that no one person is responsible for all steps in a financial transaction. A governing board also should ensure that proper data-security controls are in place over Justice Court network passwords. The governing board also is responsible for completing the annual audit of the Justice Court's financial records.

Where it is not practical to segregate court duties, compensating controls can be implemented through timely and effective oversight by the justices and, ultimately, the sponsoring locality's governing board, to help ensure that transactions are properly recorded and reported and that all monies are accounted for.

Governing boards seeking further information on internal controls may wish to reference and follow the best practices published by the Comptroller:
www.osc.state.ny.us/localgov/pubs/lgmg/managementsresponsibility.pdf.

H. Funding Sources for Routine Justice Court Administration

1. Justice Court Assistance Program

The Justice Court Assistance Program ("JCAP") was established in 1999, at the request of the Unified Court System, to help provide Justice Courts with resources and equipment to fulfill their critical roles in the justice system. With the advent of the Judiciary's 2006 Action Plan for the Justice Courts, a broad-based initiative focused on improving the efficiency and quality of the Justice Courts, JCAP was expanded both in funding levels and the scope of projects eligible for funding.

JCAP administration is subject to Part 138 of the Rules of the Chief Administrative Judge and Judiciary Law article 21-B. Each year, the Legislature appropriates funds to JCAP in the State's annual budget process. These funds are administered by OCA for distribution to localities sponsoring Justice Courts to enhance their ability to provide suitable and sufficient justice services to the community. These purposes may include, for instance:

- Automation of court operations;
- Recording court proceedings;
- Law books, treatises, and related materials;
- Appropriate training for justices and non-judicial court staff;
- Improvement or expansion of court facilities; and
- Records management supplies and document conversion.

Each town and village sponsoring a Justice Court may make an individual application for JCAP funds, or two or more such towns and/or villages may make a joint application. All applications must be submitted to the Chief Administrative Judge for approval.[169] The maximum grant per locality is $30,000.[170] JCAP funding cannot be used to compensate justices or non-judicial court staff, or to reduce town or village appropriations to support its Justice Court.

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[169] *See* Judiciary Law § 849-h.

[170] *See* Judiciary Law § 849-i.

2. Records Management Grants

In addition to JCAP, The New York State Archives offers a grant for local governments called the Local Government Records Management Improvement Fund "LGRMIF".

LGRMIF is for records management projects and is awarded to local governments as a whole. Justice courts can apply for this grant, but must work with their municipality's records management officer. The records management officer should have the necessary information to use the NYS Archives E-Grant System for online applications. If you are interested in applying for this grant, contact your local New York State Archives Advisor. For a Listing of Regional Advisory Officers, go to http://www.archives.nysed.gov/a/directories/dir_staff.shtml#Advisory

The New York State Archives also offers workshops that help with the application process as well as workshops on specific areas of records management. You can register for these free workshops online. For more information about the LGRMIF Grant and workshops available in your area please visit the NYS Archives home page http://www.archives.nysed.gov/aindex.shtml

Please Note: Any municipality awarded grant funds through JCAP or the New York State Archives, must follow Unified Court System Office of Records Management Policies and Guidelines.

3. Justice Court Audits

The Office of the State Comptroller and Office of Court Administration both conduct periodic audits of Justice Courts. These audits each have a different focus. OCA's Office of Internal Audit may review Justice Court operations that affect the administration of justice, while Comptroller audits focus on fiscal matters. OSC and OCA often coordinate audit efforts to respond appropriately to various issues, both fiscal and procedural, encountered by the Justice Courts. OSC's audit reports are available on OSC's website at www.osc.state.ny.us

OSC has both a constitutional and statutory role in the oversight of financial operations of local governments, including New York's Justice Courts.[171] This oversight responsibility is exercised primarily through OSC's Division of Local Government and School Accountability. One part of this responsibility is to periodically examine the fiscal affairs of local governments, examinations designed to provide information to officials so they can perform their financial stewardship responsibilities effectively. Like other OSC audits of local governments, OSC audits of Justice Courts are filed with the local government -- in this instance, the town or village sponsoring the Justice Court.[172]

OSC fiscal audits of Justice Courts confirm that the courts properly account for all court monies; establish an effective system of internal controls to protect public resources from misuse, loss or fraud; process and record court financial transactions in a timely manner; file accurate financial reports in a timely manner; and observe

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[171] *See* NY Const, art V, § 1; GML, art 3.

[172] *See* GML § 35.

pertinent laws, rules, and regulations concerning internal controls and financial responsibility. The conduct and performance of OSC audits are guided by professional auditing standards promulgated by the Comptroller General of the United States in the publication, "Government Auditing Standards."

Most OSC audits of local governments result from a risk assessment process that takes into account a number of factors. OSC routinely gathers information from a variety of sources and considers items that come to its attention such as the results of an analysis of financial and demographic information on file with OSC and elsewhere, information gained during on-site visits and any pertinent correspondence or other contacts OSC may have had with local officials, State and Federal agencies, citizens, and others.

OCA's Office of Internal Audit may also conduct random audits of the financial records and internal controls of Justice Courts statewide. The main objective of OCA's audits is to evaluate compliance with OSC fiscal guidelines, and to review court operations as requested by the Chief Administrative Judge or Deputy Chief Administrative Judge for the Courts outside New York City.

Each year, to ensure that the governing board's own annual audits of Justice Court books are being performed and no major issues are found, the Chief Administrative Judge, or appropriate OCA personnel on his or her behalf, may request that mayors and supervisors submit copies of their annual audits of the Justice Courts they sponsor. OCA's Office of Internal Affairs may review these audits for recurring findings and other matters that might identify areas of concern, which may justify further audit or remedial actions by OCA. Results of these reviews will be integrated into OCA's risk assessment process. Each year, OCA provides to OSC a list of municipalities that have not submitted their local audits. OSC, in turn, may use OCA's report as part of its own financial control process in choosing which localities to audit.

IV. Inter-Municipal Cooperation

The foregoing pages demonstrate that Justice Courts are important and complex institutions. They touch the lives of millions of New Yorkers, sometimes irrevocably. They not only dispense criminal and civil justice, but also collect fines, fees, and surcharges that may be disbursed for all levels of government. Their operations bring together not only justices and Justice Court staff but also prosecutors, defenders, police agencies, the State's judicial and financial oversight, and a host of other stakeholders in what are truly these "hubs" of justice. A Justice Court's effective operations require not only appropriations from its sponsoring locality but also an array of administrative policies and programs that include personnel sometimes subject to civil service rules, adequate facilities and court security, data management and electronic security, proper insurance, and appropriate internal controls. Add that a Justice Court lies at the overlap between local government and the State Judiciary, with core constitutional rights and interests in the balance, and hopefully every justice, non-judicial staff member, and member of a town or village governing board will quickly appreciate the importance and sensitivity of Justice Court operations.

Balanced against all of these important rights, interests, and responsibilities is the practical reality that Justice Courts are funded primarily by their sponsoring localities, many of which may have limited funds and capital resources to invest in all facets of local governments. Town and village governing boards sometimes must make difficult choices in how to use these limited funds, and the operation of a Justice Court – while important – is but one among the many priorities competing for these limited funds. Relevant to this understanding is that some Justice Courts have relatively small dockets justifying relatively infrequent regular court hours. Some facilities are barebones at best. Some justices and court staff earn very low salaries for their work. Although grant funds are available, a locality supporting a Justice Court may be hard-pressed to invest limited local funds in a Justice Court, and yet the local justice system has operational needs that are the local government's responsibility to provide.

Against this backdrop, an increasing number of towns and villages are reviewing their Justice Court operations and finding that voluntary cooperation and collaboration among them may help make the most of limited Justice Court resources, improve the efficiency of the local justice system, and free up money that can be re-invested to improve Justice Court operations. For all branches and levels of government, exploring how to deliver services in the most cost-effective manner is an ongoing necessity. For local governments subject to the property tax cap and rising costs, consolidations and shared-service agreements are becoming increasingly common for many aspects of local operations. For Justice Courts, which serve as a "hub" for so many participants in the local justice process and at the intersection of multiple branches and levels of government, this exploration is potentially even more important, but sometimes more difficult given the constitutional nature of the Justice Court's operations and the number of inter-related operations at multiple levels of government that come together in a local courtroom.

To assist towns, villages, justices, and non-judicial staff in reviewing these ideas and the voluntary steps localities can take, this section offers a primer on potential options and best practices to consider. As described below, individual towns can reduce the number of justices or collaborate with other municipalities to either share Justice Court facilities or entirely merge their separate Justice Courts into a single court that presides for multiple localities. Individual villages likewise may desire to create a justice court, collaborate with other municipalities to provide justice services, co-host multiple courts in a single facility, or abolish their Justice Courts and transfer cases to the appropriate Town Courts.

Given the sensitive nature of Justice Court operations, any assessment of whether and how to undertake these voluntary modifications should occur with maximum transparency and communication among and between the governing board and justice(s) of each town and village involved.

A. Inter-Municipal Cooperation Pursuant to General Municipal Law Article 5-G

General Municipal Law Article 5-G gives municipalities extensive authority to enter into, amend, cancel and terminate agreements for performing their respective functions, powers, and duties on a cooperative or contractual basis. [173] In simple terms, Article 5-G provides that anything that a municipality can do by itself, it can do with another municipality.

There are many reasons for cooperating with other municipalities to fulfill municipal services, including economies of scale, convenience, utilizing unequal distribution of resources and surplus facilities, and eliminating duplicate services. The municipalities that may participate in inter-municipal agreements (IMAs) include counties,[174] cities, towns, villages, boards of cooperative educational services, fire districts, and school districts.[175] There is no limit on the number of municipalities that may participate in any one inter-municipal agreement.

1. Getting Started

Some activities are obvious candidates for inter-municipal cooperation. However, many municipal functions are less obvious candidates or may entail extremely complicated IMAs. To flesh out what functions, powers, and duties are appropriate for inter-municipal cooperation, General Municipal Law Article 12-C authorizes municipalities to form joint survey committees to study and plan cooperative measures to improve the administration of local government and the services that they provide. Survey committees may be formed with combination of two or more of the following: counties,[176] cities, towns, villages or school districts. It must be noted that IMAs may be negotiated without forming intergovernmental relations councils.

2. The Form of the IMA

While there is no requirement that IMAs be in writing, it is strongly recommended that every IMA, no matter how minor in detail, be put in writing. Municipalities that currently have informal IMAs should formalize those by putting them in writing. There are two main types of IMAs: service agreements and joint agreements. A

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[173] *See* GML § 199-o.

[174] Counties outside New York City.

[175] It must be noted that there are many other provisions of New York State law that address issues of inter-municipal cooperation, including GML Article 14-G which authorizes local governments to cooperate with governmental units of other states on a basis of mutual advantage, GML § 209-t, which authorizes joint fire alarm systems, GML § 121-a, which authorizes joint village and town police departments, GML Article 5-B, which authorizes common water supplies, and GML § 72-j, which authorizes joint town and village parking garages.

[176] Counties outside New York City.

service agreement is essentially a contract in which one municipality agrees to provide a service to another municipality at a stated price. A joint agreement exists when the municipalities agree to perform a function together. Joint agreements usually provide for significant participation by each of the municipalities. Which type of agreement is used depends upon the nature of the function that is going to be performed. As a general rule, however, multi-faceted projects may not lend themselves to joint agreements due to the complexity of administering and performing the agreement.

In many ways, service agreements resemble regular contracts which municipalities enter into every day. When drafting service agreements, municipalities need to consider:

- The nature of the agreement (identifying the governments involved and describing the type of service(s) to be performed);
- The scope of service (setting forth performance standards and limitations on the service);
- Service charges (establishing the amount, times, and manner of payments);
- Each party's duty to defend and indemnify;
- The term of the IMA;
- The method of amending the IMA; and
- The circumstances under which the IMA may be terminated.

Joint agreements take many forms, including mutual aid agreements (i.e. for fire departments agreeing to assist each other when necessary) or joint projects that serve all the parties to the IMA, such as water and sewer systems. Issues to consider when entering into joint agreements are:

- The nature and composition of the joint agreement's governing body, if any;
- Which municipalities are to provide personnel;
- Financial considerations (including the method for equitably apportioning costs and revenues); and
- Property considerations (i.e. is property to be acquired and held jointly or by only one municipality).

One particular issue to address in the IMA is the process for supervising and disciplining employees. This issue should be addressed thoroughly to avoid confusion and conflicts.

3. Approval of the Agreement

Every IMA must be approved by a majority vote of the governing body of each municipality that is a party to the agreement. In addition, if the municipality's authority to perform any function is subject to a public hearing, a mandatory or permissive referendum, the consent of other governmental agencies, or other requirements applicable to making contracts, then its ability to participate in any IMA to perform the same function is similarly conditioned.[177]

[177] *See* GML § 119-o.

B. Factors to Consider When Reviewing Whether and How to Engage in Inter-Municipal Cooperation

This Manual's general guidance for how sponsoring localities should budget for Justice Courts also applies to whether and how they should voluntarily alter the structure of the local justice system. Whether one of these options is right for a particular locality or group of localities may depend on many factors including:

- The size and variability of municipal dockets;
- The character of its cases;
- The number of existing justices and their terms of office;
- The experience of justices and non-judicial staff;
- Whether there are dedicated Justice Court facilities, and whether their quality is sufficient for safe and effective judicial operations;
- The municipal fiscal and governmental environment;
- If multiple localities propose to co-locate their courts in a single facility or merge their courts, the track record of these municipalities in working together to share services; and
- The existing costs of the local Justice Court system for not only each sponsoring locality but also other Justice Court stakeholders (e.g. prosecutors, defenders, police agencies) who must cover multiple courts or, on the other hand, might be called to travel further if courts or court facilities are changed.

A decision to share, consolidate, or relocate a Justice Court, or create or dissolve a Village Justice Court, is a policy decision for the municipality. As local governments attempt to maintain services in challenging fiscal environments, while keeping budgets within New York's statutory tax cap, the increasing trend is toward controlling costs by collaborating across municipal boundaries to provide local government services. State law allows localities to bring this same collaborative approach to providing justice services.

However, as noted, Justice Courts are not routine agencies or offices of local government: they are part of a separate branch of government with constitutional and statutory responsibilities whose judicial decisions cannot turn on financial considerations. Just as a locality's costs and revenues cannot be allowed to shape decisions about individual cases or core issues of Justice Court administration that the Constitution independently vests in the Justice Court and its justices, so too should decisions about whether and how municipalities voluntarily modify their Justice Court systems turn on the needs of the justice system. Just as localities cannot unduly interfere with the administration of the Justice Courts they sponsor or treat them as revenue generating enterprises for local governments whose "efficient" operation means bringing in revenue at a predetermined amount, so too should municipal decisions affecting the structure of the Justice Courts turn on more than dollars and cents.

Busier Justice Courts have greater caseloads and, in turn, assess more fines and fees than smaller courts. Conversely, the operational costs of courts with a smaller caseload in less populous towns or villages may present a significant expense for the annual budget of the municipality. In such circumstances, both towns and villages have some options to reduce the expenses of a Justice Court.

Although towns, by law, cannot dissolve the court, towns are not without options to reduce court operation costs. As discussed below, there are a number of ways in which a town can share court facilities and services with a neighboring town or towns. Cooperation in this manner may help reduce the operational expenses of the

court. In addition, it may allow smaller courts to take better advantage of technologies, equipment, staff, and facilities that improve the quality of service that the courts offer the community. As with any cooperative endeavor, there may be disadvantages as well, such as a loss of control over court facilities and the convenience of holding court within the town, among others.

Villages also have the option of sharing court facilities. In addition, villages, unlike towns, have the option of creating or dissolving their Justice Court. When a Village Court dissolves, court matters are transferred to the Town Court. Although Village Court dissolution may save the village a significant annual expense, it also has disadvantages. For instance, the village would experience the loss of convenience of a local court, the loss of control over court facilities, as well as a significant reduction in fines and fees formerly collected by the Village Court. Alternatively, a village may desire to establish a village court for the reverse reasons.

For both towns and villages, the local governing board will have to weigh the respective advantages and disadvantages before any of these options are to be considered. It is advised that the governing board of a town or village contemplating changes to their justice court consult with their sitting justices, as well as with other stakeholders who will be affected by the changes, when evaluating these factors.

C. Justice Courts and Tax Cap "Transfers of Function"

New York's "tax cap" statute[178] establishes a tax levy limit that affects towns and villages. Under this law, town or village property tax levies generally cannot increase annually more than two percent or above the rate of inflation, whichever is lower, with certain exclusions. The locality's governing board, by 60 percent of total voting power, may adopt a local law to override the tax cap in a particular year.

While the tax cap makes it even more important for localities to ensure the cost-effectiveness of municipal services, eliminating or restructuring the local justice system does not necessarily mean a dollar-for-dollar savings against the tax cap. Under the tax cap statute, when the responsibility and associated costs of a local government function are transferred from one local government to another, the State Comptroller must determine the affected localities' costs and savings attributable to the transfer for the first fiscal year following the transfer. The affected local governments are required to adjust their tax levy limits based on those costs and savings.

Thus, changes in Justice Court structures may impact the tax levy limit of the town or village. For example, if a village dissolves its Justice Court,[179] the responsibility and cost of providing justice services would transfer to the town(s) in which the village is located, thereby requiring the State Comptroller's Office to determine the costs and savings for the village and the town(s). In this example, the village would likely see a net savings based on the transfer and therefore would have a correspondingly reduced tax levy limit. The town(s), on the other hand, likely would experience increased costs as a result of the transfer, which would lead to a higher tax levy limit.

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[178] *See generally* GML § 3-c.

[179] *See* Village Law § 3-301 (2) (a) (authorizing dissolution of Village Justice Court by resolution or local law, subject to permissive referendum).

Any municipality or group of municipalities contemplating a change to the local Justice Court structure should contact OSC to determine the potential effect on local tax levy limits. As a general matter, dissolution of a Village Justice Court will result in a lower tax cap for the village and a higher tax cap for the town(s) that inherit the village's docket. By contrast, other potential options, such as sharing facilities in which multiple courts preside, or merging courts in which cooperating municipalities each continue to have financial responsibilities for supporting the shared court, are unlikely to trigger tax-cap implications because the responsibility and cost do not shift from one local government to another. Because the tax cap statute requires the State Comptroller to perform this analysis, municipalities considering adjustments to their Justice Courts should contact the State Comptroller's office before planning or implementation of a Justice Court change.

D. Prohibition Against Binding Future/Successor Boards

Decisions regarding the structuring of village and town justice courts, including inter-municipal agreements affecting justice court operations can always be reversed at a later date. This legal principle, that a governing board acting in its governmental or legislative capacity may not bind its future or successor boards, has long been recognized at common law.[180]

Thus, if a village decides to establish a justice court by creating the position of village justice, it may later dissolve the justice court by abolishing the position of village justice. Likewise, if a village decides to dissolve its justice court by abolishing the position of village justice, it may later reconstitute its justice court by establishing the position of village justice. Similarly, if local governments decide to share justice court facilities, that decision may later be reversed.

E. Potential Options

There are multiple options available to municipalities looking to share services related to their Justice Courts or establish a justice court. Some of these options are available only to towns, and some only to villages. These include:

Home Rule Legislation Required:

- ***Share a single justice.*** Towns may preserve their separate Justice Courts but elect a single justice to preside over multiple Justice Courts;
- ***Share both court facilities and a single justice.*** Towns may preserve their separate Justice Courts but share a single justice and a single facility.
- ***Develop an alternative model. Municipalities can propose legislation authorizing another variation that better suits local needs.***

[180] *See People ex rel. Devery v. Coler*, 173 N.Y. 103, 110 (1903).

No Home Rule Legislation Required:

- ***Share court facilities.*** Municipalities may preserve their separate Justice Courts but share a single court facility in which each Justice Court would convene;

- ***Merge multiple courts but keep multiple justices***. Towns may consolidate multiple Justice Courts into a single multi-municipality Justice Court, with justices separately elected from each town;

- ***Create a Village Court.*** Villages without a Justice Court may establish a Village Court and thereby also create the office of village justice.

- ***Establish an additional village justice.*** Villages may have one or two Village Justices for their Justice Court. Village Justices with one justice shall also have an Acting Village Justice.[181] Villages with one justice can create a second Village Justice position.

- ***Abolish the Village Court outright***. Villages may dissolve their Justice Court outright and transfer cases to the town or towns in which the village is situated.

Each of these voluntary options will be discussed in turn. As will be described in the next several sections, each option has potential advantages and potential disadvantages that must be weighed carefully: no change to a Justice Court should be undertaken lightly or without due consideration to the impacts on the municipalities and the administration of justice both in the affected municipalities and the region. Each option also has specific constitutional and/or statutory procedures associated with its consideration that must be followed carefully. In most instances, voter approval either may be required or must be obtained. For all of these reasons, planners should undertake careful study with sufficient time to comply with applicable rules and procedures.

1. Share Court Facilities (UJCA § 106 / GML Art 5-G)

The Constitution authorizes two or more municipalities to join together in providing any municipal facility, service, activity, or undertaking that each has the power to provide separately.[182] The Legislature, in turn, implemented this constitutional authority by inviting localities to enter into so-called "5-G agreements," named for General Municipal Law article 5-G that governs them.[183] Under article 5-G, municipal corporations may enter into, amend, cancel, and terminate agreements for the performance – among themselves or one for the other – of their respective functions, powers, or duties on a cooperative basis, or for the provision of a joint service. A "joint service" contemplates joint provision of any municipal facility, service, activity, project, or

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[181] *See* Village Law § 3-301 (2)(a).

[182] *See* NY Const, art VIII, § 1.

[183] *See generally* GML §§ 119-m – 119-ooo. (5-year maximum term except where there is joint indebtedness.)

undertaking; the joint performance or exercise of any function or power; and the extension of appropriate territorial jurisdiction necessary to give it effect.[184]

Pursuant to this authority, two or more localities may enter into a 5-G agreement to share court facilities, including a courtroom, office space, and supplies. Under this agreement, two or more separate Justice Courts may convene in a single facility: when each Justice Court convenes, it would serve as the Justice Court only for the town or village sponsoring it, but would physically sit in the shared facility. The shared facility should be physically located in one of the municipalities that is a party to the 5-G agreement. This arrangement may mean that a justice from one municipality holds court outside the geographical jurisdiction for which the justice was selected, but statute expressly invites this result so long as the cooperating municipalities are contiguous and agree to share the facility.[185]

Municipalities considering a shared-facility agreement should remember that it would not change the "identity" of the Justice Courts. Each Justice Court would maintain its separate identity, justices and staff, which would separately administer the judicial business of each Justice Court as if each court continued to meet in separate facilities. Each Justice Court, for instance, would be required to keep separate books, records, dockets, and bank accounts, and would have jurisdiction only over cases arising within the municipality. Thus, for instance, a Justice Court for Town A, which under a 5-G agreement physically sits in a shared facility located in Town B, would have jurisdiction to hear cases arising from Town A and hear those cases when physically sitting in Town B, but would not have jurisdiction to hear cases arising from Town B itself. Likewise, the Justice Court for Town B would not have jurisdiction to hear cases arising from Town A. Because each Justice Court would continue to hear its own cases, a shared-facility agreement would not change the flow of revenue arising from the Justice Courts' operations. The fines and fees received in each Justice Court would continue to be disbursed among each court's respective municipality, the county, and the State as if there were no shared-facility agreement at all.

A shared-facility agreement may create opportunities for savings arising from shared facility and overhead costs, as well as potential opportunities to share non-judicial staff. A shared facility, however, can raise questions about the provision of court security and liability insurance that need to be taken into consideration.

The process to approve a shared-facility agreement affecting the Justice Courts is the same as any other inter-municipal agreement under article 5-G, requiring approval of each governing board. In this instance, while a shared-facility agreement should involve the affected justices, the localities are not required to obtain advance consent by the justices to an inter-municipal agreement limited to sharing facilities. Justices must hold court in the facility provided by the Justice Court's sponsoring municipality,[186] which is allowed to contract for the provision of that service. As to sharing Justice Court staff, however, because justices generally are responsible for the work product of a Justice Court's non-judicial personnel, justices must give consent to the staff assigned to them.

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[184] *See* GML § 119-n.

[185] *See* UJCA § 106 (1).

[186] *See* 22 NYCRR 214.2 (a).

2. Elect a Single Judge for Multiple Justice Courts (UJCA § 106-b)

The Legislature authorizes multiple towns to elect a single justice to preside in the Justice Courts of two or more adjacent towns in the same county.[187] This option is available only for towns. Like a shared-facility agreement, a single-justice plan preserves the identity of each Justice Court and its separate administration and jurisdiction, allowing multiple towns to select only one justice to "ride circuit" among the Justice Courts.

The process of electing a single justice begins with each town enacting a joint resolution agreeing to undertake a study of the idea. The joint resolution (or certified copy thereof) must be filed with the town clerk of each of the participating towns. Once the joint resolution has been filed in at least two adjacent towns that adopted the resolution, the study may begin. There is no required time frame to complete the study.

Within 30 days after finishing the study, each town must cause a notice to be published in its official paper (or a paper with general circulation in the town, if no official paper) notifying the public that the study has been concluded and setting forth the time, date, and place of a public hearing to be had on the study. Each town must conduct a public hearing on the study not less than 20 or more than 30 days after publication of the notice of public hearing. Within 60 days after the last public hearing, the town boards of each town must decide whether they will participate in the joint plan to elect a single Town Justice. If two or more adjacent towns do not approve the plan, then the process is terminated.

If two or more adjacent towns approve the plan, the town boards so approving then adopt another resolution calling for: (1) the election of a single justice at large to preside over the courts; (2) the abolition of the existing office(s) of Town Justice in the participating towns; and (3) the election of a single Town Justice every fourth year thereafter. Once the joint resolution approving the plan is adopted, the resolution must be forwarded to the State Legislature as a "home rule message." It is then up to the Legislature to enact legislation implementing the plan. This last step is a purely discretionary act by the Legislature: it cannot be compelled to implement the towns' proposed plan.

If it passes into law, however, the plan will guide the selection of a single justice. The existing office of Town Justice in each participating town would be abolished, and a single justice would be elected at large to preside in the Justice Courts of all participating towns. The shared justice would have jurisdiction in each participating town, and would be required to keep separate books, dockets, and records for each Justice Court, as well as a separate bank account for each.

A single-justice plan, like a shared-facility plan, preserves the "identity" of each Justice Court. For instance, Town A and Town B can agree to share a justice. If the towns and the Legislature agree, then the justice would preside in the Justice Court of Town A and separately preside in the Justice Court of Town B. There would be no merger of the Justice Courts and no change to the revenue allocable to each town. Litigants of cases arising in Town A would need to appear in the Justice Court of Town A, and litigants of cases arising in Town B would need to appear in the Justice Court of Town B.

See Harrisburg-Pinckney-Montague consolidation notes in the attached Appendix C.

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[187] *See* UJCA § 106-b.

3. Share Facilities and a Single Justice for Multiple Justice Courts

If multiple contiguous towns adopt a single-justice plan approved by the Legislature, those towns can combine that approach with an inter-municipal agreement under article 5-G that would allow the towns to jointly offer a single Justice Court facility. Instead of riding circuit among multiple Justice Court facilities in multiple towns, the single justice would preside in a single facility. As part of this agreement, the towns could share non-judicial staff and other costs associated with the provision of their respective Justice Courts.

While this approach may appear to be a true merger of the Justice Courts of each cooperating town, it is not. It preserves each town's separate Justice Court as an independent entity. For instance, Town A and Town B may agree, with assent of the Legislature, to select a single justice to serve both towns, and then establish an article 5-G agreement to share a facility located in Town B. The single justice, wherever he or she resides, would hold court in Town B for both towns, and litigants in cases arising in either town would appear in Town B. However, the justice would need to hold court sessions separately for Town A and Town B, and litigants appearing in cases arising in Town A would need to attend the session (or part of the session) dedicated to those Town A cases. The single justice also would need to maintain separate books and financial records for each town's cases, and revenue would flow as if there were two separate courts sitting in two different towns. Thus, this approach is *almost* true merger of the Justice Courts, but still maintains the skeletal identity of each Justice Court.

4. Merge Courts and Select Justices from Each Town (UJCA § 106-a)

Two or more towns forming a contiguous geographic unit within the same county may together establish and support a single consolidated Justice Court, comprised of justices selected from each participating town but fewer justices than existed before the consolidation. This single Justice Court represents a true merger of the Justice Courts of the cooperating towns. As with several other structural options, this consolidation option is available only to towns.

The process of establishing a consolidated Justice Court is initiated either by the town boards of each town, or by petition of residents in each town. If initiated by petition, a single petition must be addressed to each separate town board and signed by at least 20% percent of the registered voters within such towns. The form and content of the petition is set forth in the law.[188] Once the petition has the requisite number of signatures from each town, the original petition is filed in the office of the clerks of any town stated on the petition, with a certified copy of the petition to be filed in each of the other towns.

If the consolidation process is initiated by town board resolution, one town may adopt a resolution calling for the consolidation, and corresponding reduction, of justice positions of their Town Justice Court with the Justice Court of any other town or towns forming a contiguous geographic unit. Once a town board adopts this resolution, it must file the original in the town clerk's office, and file certified copies of the resolution with the clerks of the other towns.

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[188] *See* UJCA § 106-a.

Within 30 days of filing the original and copies of the resolution or petition, the clerk with whom the original was filed must publish a notice in the official paper of each town (or a paper having general circulation with the town) stating that the petition or resolution has been filed and setting a specified time 20-40 days from the publication of the notice with a date and place for a joint hearing on the resolution or petition. Each town board specified in the resolution or petition participates in this joint hearing to receive testimony, evidence, and information on the establishment of a single Justice Court to serve each of the potentially cooperating towns.

Within 60 days after the joint hearing, the town boards must determine whether to approve the proposed consolidated Justice Court. If one town specified in the petition fails to approve the proposal, the process terminates for all participating towns: if other towns wish to pursue a consolidated Justice Court without the town that disapproved the proposal, those other towns must start the process again.

If all towns approve the proposed consolidated Justice Court, the town boards must prepare a joint resolution providing that one judicial office in each town shall be abolished, specifying the position to be abolished, and providing that the remaining justice shall have jurisdiction to hear cases arising out of each town. The resolution must also provide for the election of at least one Town Justice every two years, and provide for continued staggering of the terms. If no agreement can be reached with respect to which judicial position from each town should be abolished, the decision will be made by lot unless doing so would violate the provision requiring staggered terms.

Once the joint resolution is approved by each of the participating town boards, the proposal must be submitted to the electors of the respective towns. The proposal must be approved by a majority of the voters voting thereon in each such town, or else it is defeated. If voters approve in all but one town, the proposal still is defeated: the towns in which the proposition passed would need to start the process again if they wish to pursue consolidation.

Each town justice exercising jurisdiction in accordance with this section shall keep a separate set of records and dockets for each town in which he or she exercises jurisdiction and such justice shall also maintain a separate bank account for each town for the deposit of monies received when exercising jurisdiction in each town.[189]

5. Create a Village Justice Court (Village Law § 3-301(2)(a))

Villages that do not presently have a Village Justice can establish a Justice Court and create the office of Village Justice. The Board of Trustees may establish a Village Justice Court by resolution or local law, subject to a permissive referendum.[190] In the local law or referendum, the Village will also be creating the office of Village Justice. A Village may have one or two village justices. Village Justices with one justice shall also have an Acting Village Justice.[191] The term of office of each Village Justice is four years. If a Village desires

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[189] *See* UJCA § 106-a (13).

[190] *See* Village Law § 3-301 (2)(a).

[191] *See* Village Law § 3-301 (2)(a).

to have two justices for its new court, the second justice would initially be elected for a term shorter than four years, such that village justices are elected every two years.[192]

6. Adding an Additional Village Justice (Village Law § 3-302 (3))

Villages that have one justice may create a second village justice office. The Board of Trustees may establish a second village justice office by resolution or local law. The second justice would initially have a term shorter than four years to meet the Village Law requirement that elections for village justice be held every two years.[193] Villages desiring to add an additional justice beyond the two authorized by Village Law will need to seek authorizing legislation.

7. Abolish the Village Justice Court (Village Law § 3-301 (2)(a))

Unlike towns, villages are not required to have a Justice Court. If a village decides not to continue its Justice Court, the village may dissolve it by resolution or local law, subject to permissive referendum.[194] Pursuant to Village Law, however, the dissolution would take effect only upon the expiration of the justices' terms of office.[195] For example, if a Village Justice was elected to office in March 2012 to serve a four-year term starting April 1, 2012, and the village board of trustees votes to dissolve the Village Court in 2014, the justice and the Justice Court must continue to exist until the justice's term expires on March 31, 2016: the dissolution could not take effect until April 1, 2016. Thus, a village that may wish to dissolve its Justice Court should plan substantially in advance to ensure that the process does not intrude on Village Justices' terms of office.

If a village dissolves its Justice Court, the active cases of the Justice Court would be transferred to the town or towns in which the village is situated. Its closed case files would remain village property, unless the village makes another arrangement with the town(s). Absent this arrangement, the village clerk would remain the custodian of the closed case files, and the village would need to continue storing, granting access to, and maintaining those records according to the Unified Court System's Records Management policies and procedures. The village is responsible for these records. However, village personnel have no authority to issue Certificates of Disposition. Therefore, from a best practices standpoint, if a village receives a request for a Certificate of Disposition, such request should be brought to the attention of the town court personnel now responsible for the adjudicating of village court cases. Such town court personal are authorized to issue Certificates of Disposition. Additionally, village personnel should provide access to the abolished village court records for review by the town court personnel when the need arises.

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[192] *See* Village Law § 3-302 (3).

[193] *See* Village Law § 3-302 (3).

[194] *See* Village Law § 3-301 (2)(a).

[195] *See id.*

Where a town receives the cases of an abolished Village Justice Court, those cases come into the Town Justice Court like any other case. The town cannot treat them differently and cannot "charge" the village or the litigants for costs incurred.

Dissolving a Justice Court may be a useful approach for villages with small caseloads and/or poor facilities. Village planners should be aware, however, that dissolving the Justice Court will deprive the village of much Justice Court revenue, local control of Justice Court operations, and the convenience of proximity.

8. Handling of Records of a Dissolved Village Justice Court

When a village dissolves its justice court, cases that are active at the time of the effective date of the court's dissolution are transferred to the justice court of the town in which the village is located. Note, however, that it is the opinion of the Office of Court Administration that the records of closed cases of a dissolved village justice court remain in the custody and care of the village. See Appendix D.

In villages, the village clerk serves as the records management officer and under New York law is responsible for initiating, coordinating, and promoting the systematic management of the village's records in conjunction with other local officers.

Note, however, that judicial records, including the records of closed village justice court cases, are not handled in the same manner as regular village records. As a general rule, the handling and management of local government records is governed by The Local Government Records Law, NYS Arts and Cultural Affairs Law Article 57-A, and the Freedom of Information Law, Public Officers Law Article 6.

Judicial records, however, are not subject to either Article 57-A of the Arts and Cultural Affairs Law or Article 6 of the Public Officers Law. Rather, the disclosure, retention, and destruction of judicial records, including closed village justice court records, is governed by the Judiciary Law and rules promulgated by New York's Judiciary.

Village clerks may only release closed village justice court records to the judge or court clerk of the justice court of the town in which the village is located. If a village clerk who is in possession of records of a dissolved village justice court receives a request for access to or copies of closed village court records, best practices dictate that the village clerk may not disclose the court records but instead, refer the individual making the request to the town court in which the village is located. Thereafter, it is recommended that the town court clerk submit such a request for the judicial records in writing to the village clerk(s).

Village clerks may only destroy closed village justice court records when authorized to do so according to Record Retention Rules promulgated by the Unified Court System's Office of Records Management.[196]

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[196] http://www.nycourts.gov/admin/recordsmanagement/index.shtml

9. Propose an Alternative Approach

Towns and/or villages can propose special legislation that might better meet local needs. The Constitution gives the Legislature broad power to regulate the Justice Courts,[197] which invites the Legislature to consider and approve most proposed modifications to Justice Court structures, operations and judicial selection. These proposals might include:

- **Enhanced cooperation between villages**. Current law does not expressly authorize multiple villages to share a single Justice Court. Villages may share a court facility under certain circumstances without the Legislature's specific approval. Moreover, because smaller villages may authorize the selection of a justice who is not a resident of the village,[198] multiple villages can agree to select a single justice. Together these authorities invite multiple villages to co-locate their separate Justice Courts in one facility and with one justice. These villages then can establish an article 5-G agreement to cover other aspects of Justice Court operations. They cannot, however, *merge* their separate Justice Courts into a single consolidated Justice Court to serve multiple villages. This final step would require special legislation, which villages are free to propose if it would serve their needs.
- **Enhanced cooperation between towns and villages.** Current law does not expressly authorize a town and a village, or multiple towns and multiple villages, to share a single Justice Court. To be sure, towns and villages together may undertake many of the same kinds of piecemeal arrangements as villages can undertake alone. For instance, towns and villages may share a court facility and routinely do. Where a village is located within a town, a justice living in the village is eligible to serve as both Town Justice and Village Justice, and can be separately selected to both positions. Towns and villages also can enter into article 5-G agreements to share other aspects of Justice Court operations. They cannot, however, *merge* their separate Justice Courts into a single consolidated Justice Court to serve a mix of towns and villages. This final step would require special legislation, which towns and villages are free to propose if it would serve their needs. If a consolidated court would require the dissolution of any Town Justice Court, however, the dissolution must be approved by the voters of that town.

10. Best Practices for Exploring Inter-Municipal Cooperation

The following best practices can assist towns and villages in considering their potential options and working across municipal boundaries to provide justice services in the most cost-effective manner consistent with the administration of justice:

- Identify Opportunities;
- Conduct a Feasibility Analysis;
- Negotiate the Agreement;
- Build and Maintain Support; and
- Anticipate and Plan for Roadblocks.

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[197] *See* NY Const, art VI, § 17 (d).

[198] *See* Village Law § 3-300 (2)(b).

11. Identify Opportunities

Performing a "needs assessment" is a practical first step in determining those functions or service areas that can benefit from restructuring based on cooperation. Finding a partner for a cooperation arrangement can be accomplished by contacting neighboring local governments that already provide the needed service or that do not provide the service but wish to do so. Options should be studied thoroughly and officials should focus on realistic programs that show promise from both a policy and financial perspective. Even those officials or communities that demonstrate hesitation toward the pursuit of cooperative arrangements can find success in small projects that do not involve much financial risk and are likely to succeed. As mentioned before, small cooperation efforts can help build trust between participant local governments, and may even lead to further cooperation in the future.

After finding potential partners, the next step is to jointly study whether the cooperative arrangement is feasible.

12. Conduct a Feasibility Analysis

The feasibility study should be viewed as an opportunity for officials to determine whether a proposal "makes sense" economically, operationally, and administratively. After determining a possible service to provide on a cooperative basis and finding a potential partner (or partners), a feasibility analysis should be conducted. While it is important to give much thought and consideration to implementing a cooperative service agreement, the analysis need not overwhelm planners.

A clear goal should be established for the cooperative service provision project. In doing this, the service to be provided should be well described, with the aspects of the service that will remain the individual responsibilities of the participants defined and any particular requirements, which must be addressed by the joint service, clearly stated. Expectations such as cost savings or improved level of service should be clearly detailed. The criteria that will be used to measure the quality or the effectiveness of the cooperative service should be determined as well. In addition:

- ***In the case of an existing service, a detailed description as to how the service is now being provided by each participant should be clearly documented***. Details should include the departments, divisions and units involved and how the local government is organized to perform the function. The discussion should identify who is responsible for the various aspects of the service; identify any equipment, vehicles or special material required; and identify the facilities to be used to provide the service.
- ***The level of service presently being provided by each participant should also be documented, in quantifiable measures.*** This process will help determine whether the current level of service is adequate for present needs and forecast the level of service to be required over the next two to five years. The documentation should identify what the total cost would be for each participant, what is needed to meet minimum service levels, and what would be the projected service cost over the next two to five years.
- ***Total costs, as well as participant costs, should be calculated.*** An annual cost calculation based on planned service levels for each participant will need to be developed.

- ***Determine if the proposed cooperative provision of service meets the established goals.*** Officials will have to determine whether or not the cooperative provision of the service fulfills the objective of reducing costs, improving levels of service, and/or providing service that would otherwise be unavailable to participants.

For villages considering dissolution of their Justice Courts, the financial considerations may be calculable directly. Villages may wish to follow the analysis offered at the back of this Manual, entitled "Analysis of the Financial Impact of Dissolving a Village Court".

- ***At this stage, planners should be in close touch with Justice Court stakeholders, who will have keen operational understandings of the costs and benefits of potential Justice Court modifications, as well as the needs of the local justice system and potentially hidden costs or operational complexities that various proposals might entail.*** These stakeholders – including local justices and clerks, prosecutors, indigent legal defense providers, OCA, the local Supervising Judge, and OSC – should be contacted and kept closely informed of developments. Ideally local stakeholders will have a direct role in advising the local governments in their feasibility analysis.

13. Negotiate the Agreement: Important Questions to Answer

Once it has been determined that the cooperative venture will achieve the desired result for the participant governments, a written service agreement should be negotiated and developed. During this process, several important issues to consider include:

- ***Budgeting for a consolidated Justice Court.*** If towns and/or villages would share a consolidated Justice Court, how would its sponsoring localities budget for the court? Would localities equally share in costs, or allocate costs based on some other criterion (e.g. populations, caseloads, etc.)? Would each locality need to sign off on the Justice Court budget? What if there is a dispute? If a town and village cooperate in providing for the Justice Court and are on different fiscal years, how will the localities manage their different fiscal years for a shared court?
- ***Setting judicial compensation.*** How will localities sharing a Justice Court provide for judicial salaries?
- ***Employment and compensation of non-judicial employees.*** Where multiple localities share a Justice Court, how will they share responsibility for setting the employment policies and compensation of non-judicial staff? If one locality's staff is unionized and another is not, how will those issues be worked out? If a non-judicial employee serves multiple municipalities' justices or courts, must each municipality approve the appointment or termination of that employee?
- ***Care, custody, storage and control of court records, equipment, and facilities.*** If multiple localities share a Justice Court facility, which locality will care for the records, facility, and equipment? Will they share responsibility for providing court security, or will officers for one municipality provide security services for another's court? If there are multiple computer systems, will they be maintained or merged? If there are multiple software contracts for Justice Court case management systems, will those separate contracts be maintained or do they need to be re-negotiated?

- ***Liability and insurance for shared facilities and staff.*** If multiple localities share a Justice Court facility, how will they provide insurance for the facility? Will the municipality hosting a shared court facility pay for all insurance, or will all localities join in payment? Will there be an indemnification agreement among the municipalities? If one municipality provides court security services, will insurance associated with that service also be provided by that municipality subject to an indemnification agreement?

An inter-municipal agreement that implements any form of sharing Justice Courts, facilities or services should address as many of these issues as possible. Advance identification of potential operational issues can head off problems before they occur. If these issues can be identified and resolved smoothly, it bodes well for the potential success of the initiative. If these issues cannot be resolved smoothly, then localities may wish to rethink their plans.

The inter-municipal agreement should be carefully reviewed and approved by legal counsel of each participating government prior to governing board consideration. Where these matters bear on the day-to-day operation of a shared Justice Court, the local justices also should participate in discussions. For operational reasons, technical assistance should be obtained as needed – whether from the New York Conference of Mayors, New York Association of Towns, the Office of Justice Court Support, and/or the Supervising Judge.

14. Build and Maintain Support

All relevant stakeholders should be meaningfully involved in studying, developing, and implementing a shared Justice Court. These stakeholders may include not only justices, prosecutors, and defenders but also police agencies, community groups, municipal staff, and union representatives. If state legislation would be required, ensuring the participation of local members of the Senate and Assembly may be important. It is especially important to identify and involve groups or individuals who may believe – rightly or wrongly – that they have something to lose in any potential modifications of the local Justice Court system: their views are important, and taking them into account can avert preventable operational problems later.

Good communication is an essential element of the process. Keeping the public informed can prevent speculation and assumptions as to what is actually going to transpire as a result of the cooperative effort. Utilizing media and press outlets can help to stimulate support.

15. Anticipate and Plan for Potential "Roadblocks"

Addressing concerns that can compromise widespread acceptance and ultimate success of an initiative to share a Justice Court, facility, or justice may prove challenging. On the other hand, not addressing them can derail the initiative or create substantial complexities during implementation.

OSC has a long history of providing local government officials with the guidance and tools necessary to maintain fiscal health, improve service delivery, and enhance efficiency. OSC can provide guidance and/or assistance to citizens and local governments interested in Justice Court consolidation.

Analysis of the Financial Impact of Dissolving a Village Court

Village of _____

Summary of Estimated Fiscal Impact	Pre	Post	Change
Local Share of Court Receipts (avg last two fiscal years)			
Budgeted Court Expenditures			
Net Operating Gain (Loss)			

Estimate of Impact on Local Revenue if Village Court is Dissolved

Fiscal Year Ended	Description		Village	Town
20XX	**Total Village Court Receipts Reported**			
	Total Local Share of Court Receipts			
	Estimated Revenue for Village w/o Court (post consolidation):			
	AA	Village Speeding (1)		
	AB, FO	V&T - Title VII violation		
	AH	Penal Law		
	AC	GML §99-L - Admin Fees		
	EN, EP	Encon Surcharges		
	FA,CQ,CZ,AI,CC	Miscellaneous (3)		
	AD	Parking (remains Village revenue)		
	BY, BZ	Village Ordinance - Dog (remains Village revenue)		
	BJ	Village Ordinances - General (remains Village revenue)		
		Total - Estimated Local Revenue		

	Net Estimated Revenue Increase (Decrease)			
Fiscal Year Ended	**Description**		**Village**	**Town**
20XX	**Total Village Court Receipts Reported**			
	Total Local Share of Court Receipts			
	Estimated Revenue for Village w/o Court (post consolidation):			
	AA	Village Speeding (1)		
	AB, FO	V&T - Title VII Violation		
	AH	Penal Law		
	AC	GML §99-L - Admin Fees		
	EN, EP	Encon Surcharges		
	FA,CQ,CZ,AI,CC	Miscellaneous (3)		
	AD	Parking (remains Village revenue)		
	BY, BZ	Village Ordinance - Dog (remains Village revenue)		
	BJ	Village Ordinances - General (remains Village revenue)		
		Total - Estimated Local Revenue		
	Net Estimated Revenue Increase (Decrease)			
Two Year Average - Net Estimated Revenue Increase (Decrease)				

(1) Village speeding revenue is subject to an Annual fine limit ($5 per capita), fines collected in excess of the limit become State property.

(2) U.S. Census Bureau, 2010 Census, 2005 Population Estimates, Census 2000

(3) The Miscellaneous category includes felony arraignment fees and license revocations fees.

Estimate of Cost Savings if Village Court is Dissolved

Court Expenditures		Actual - Last Completed Fiscal Year	Budgeted - Current Fiscal Year	Estimated - Post Dissolution	Estimated Potential Cost Savings
Justice(s)					
	Salary	$	$	$	**$**
	Social Security	$	$	$	**$**
	Health Benefits	$	$	$	**$**
	Pension Contribution	$	$	$	**$**
	Workers Comp Ins	$	$	$	**$**
Acting Justice					
	Salary	$	$	$	**$**
	Social Security	$	$	$	**$**
	Workers Comp Ins	$	$	$	**$**
Court Clerk(s)					
	Salary	$	$	$	**$**
	Social Security	$	$	$	**$**
	Health Benefits	$	$	$	**$**
	Pension Contribution	$	$	$	**$**
	Workers Comp Ins	$	$	$	**$**
Court Facilities					
	Utilities (phone/internet)	$	$	$	**$**
	Insurance	$	$	$	**$**

	Maintenance	$	$	$	**$**
	Security	$	$	$	**$**
Other					
	Local Prosecution	$	$	$	**$**
	Equipment (i.e., copier, fax)	$	$	$	**$**
	Equipment Maintenance	$	$	$	**$**
	Software/Maintenance	$	$	$	**$**
	Training & Development	$	$	$	**$**
	Stenographer	$	$	$	**$**
	Supplies & Postage	$	$	$	**$**
	Books	$	$	$	**$**
	TOTALS	**$**	**$**	**$**	**$**

Other Consolidation Metrics	**Village**	**Town**	
	Pre-Dissolution	Pre	Post
Cost Per Case			
Average Elapse Time from Arrest to Disposition			
% of Uncollected Revenue			
Avg Case Count Per Justice			

Estimate of Impact on Local Revenue if Village Court(s) are Dissolved

Calendar Year	Description	Village of	Town of
20XX	**Total Courts Receipts Reported:**		
	Local Share of Court Receipts:		
	Estimated Revenue Stream for Village w/o Court:		
	Village Speeding (1)		
	V&T - Title VII Violation		
	Penal Law		
	GML §99-L - Admin Fees		
	Encon Surcharges		
	Miscellaneous (3)		
	Parking (remains Village revenue)		
	Village Ordinance - Dog (remains Village revenue)		
	Village Ordinances - General (remains Village revenue)		
	Total - Estimated Local Revenue	**$**	**$**
	Net Estimated Revenue Increase (Decrease)	**$**	**$**
Calendar Year	**Description**	**Village of**	**Town of**
20XX	**Total Courts Receipts Reported:**		
	Local Share of Court Receipts:		

	Estimated Revenue Stream for Village w/o Court:		
	Village Speeding (1)		
	V&T - Title VII Violation		
	Penal Law		
	GML §99-L - Admin Fees		
	Encon Surcharges		
	Miscellaneous (3)		
	Parking (remains Village revenue)		
	Village Ordinance - Dog (remains Village revenue)		
	Village Ordinances - General (remains Village revenue)		
	Total - Estimated Local Revenue	**$**	**$**
	Net Estimated Revenue Increase (Decrease)	**$**	**$**

Appendix A

Task Force for Voluntary Reform of Justice Courts

MEMBER	AGENCY	WEBSITE
Judge David Gideon (Co-Chair)	5th Judicial District - Town of Dewitt Justice	www.nycourts.gov
Judge Nancy Sunukjian (Co-Chair)	4th Judicial District - Town Justice and Director of the Office of Justice Court Support	www.nycourts.gov
David E. Markus (Former Co-Chair)	Office of Court Administration	www.nycourts.gov
Judge Charles Apotheker	9th Judicial District – Supervising Judge	www.nycourts.gov
John Bartow, Executive Director	NYS Tug Hill Commission	www.tughill.org
Judge Harold Bauman	3rd Judicial District – Town Justice – SMA	www.nycourts.gov www.nysma.net
Wade Beltramo, General Counsel	NYS Conference of Mayors	www.nycom.org
Judge William Boller	8th Judicial District – Supervising Judge	www.nycourts.gov
Susan Bryant, Staff Attorney	NYS Defender's Association	www.nysda.org
Liz Carr, Principal Court Analyst	Office of Court Administration	www.nycourts.gov
Kristy Connor	Office of Records Management, OCA	www.nycourts.gov
Laura Crisafulli, Associate Attorney	Office of the State Comptroller	www.osc.state.ny.us
Tammi Coburn-Sossei (Former Member)	Office of the State Comptroller – Justice Court Fund (Former Position)	www.osc.state.ny.us
Judge Timothy Cox	3rd Judicial District – Town Justice – SMA	www.nycourts.gov www.nysma.net
Sandra Doorley, DA and NY Prosecutor's Training Institute	Monroe County District Attorney	www.monroecounty.gov/da-index.php www.nypti.org
Sheriff Carl Dubois	NYS Sheriff's Association	www.nysheriffs.org
Sheriff Chris Farber	NYS Sheriff's Association	www.nysheriffs.org
Julie Gansle, Court Clerk	NYS Association of Magistrates Court Clerks	www.nycourts.gov

		www.nysamcc.com
Kathleen Hogan, DA	Warren County District Attorney	www.warrencountyny.gov/da
Michael Kenneally, Associate Counsel (Former Member)	Association of Towns of the State of NY	www.nytowns.org
Lori Mithen-Demasi, General Counsel	Association of Towns of the State of NY	www.nytowns.org
Judge William Kocher	7th Judicial District – Supervising Judge	www.nycourts.gov
Denise Kronstadt. Deputy Executive Director and Director of Advocacy	The Fund for Modern Courts	www.moderncourts.org
Lieutenant Wayne Luce (Former Member)	Public Safety – Deputy Chief Administrative Judge's Office	www.nycourts.gov
Judge Donald Magill	6th Judicial District – Town Justice – SMA	www.nycourts.gov www.nysma.net
Judge Glenn Murphy	10th Judicial District – Supervising Judge (Suffolk)	www.nycourts.gov
Kevin Reilly	Office of Justice Court Support – Town and Village Resource Center	www.nycourts.gov
Kris Singh, Principal Court Attorney	4th Judicial District	www.nycourts.gov
Judge Tanja Sirago	3rd Judicial District – Town Justice – SMA	www.nycourts.gov www.nysma.net
Sheriff Reuel Todd	NYS Sheriff's Association	www.nysheriffs.org
Sheriff Paul Van Blarcum	NYS Sheriff's Association	www.nysheriffs.org
Joseph F. Wierschem	Office of Indigent Legal Services	www.ils.ny.gov

Appendix B

STATE OF NEW YORK
UNIFIED COURT SYSTEM
(OFFICE OF COURT ADMINISTRATION)
AGENCY BUILDING 4 - 20TH FLOOR
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223
(518) 474-3828

MATTHEW T. CROSSON
Chief Administrator of the Courts

JOSEPH J. TRAFICANTI, JR.
Deputy Chief Administrative Judge
Courts Outside New York City

February 16, 1993

MEMORANDUM

TO: All Judges having criminal jurisdiction outside the City of New York.

FROM: Joseph J. Traficanti, Jr.

SUBJECT: **Providing rapsheets to the defense.**

We recently received a letter from the New York State Defenders Association complaining that some of the local criminal court judges in one of the upstate counties, as well as many other judges throughout the state, are not providing the defense with a copy of the rapsheet in violation of the Criminal Procedure Law. Sections 160.40(2) and 530.20(2)(b)(ii) provide that the defense must receive copies of the rapsheet when the court receives copies.

If you have any questions pertaining to this section, please telephone the Town and Village Resource Center at 1-800-232-0630.

JJT/PJR/ibc
pc: Charles F. O'Brien, Managing Attorney
New York State Defenders Association, Inc.
Public Defense Backup Center
11 No. Pearl Street, 18th Floor
Albany, NY 12207

Appendix C

Harrisburg-Pinckney-Montague

Shared Justice Court

(11/16/10)

1. **Justice Court Characteristics:**
    a. Municipal Demographics
    b. Current Justice Court case structure, volume, fiscal metrics, etc.
2. **Project Impetus and Description:**
    a. History of 3 court structure
    b. Current Justice sharing arrangement
    c. 2010 Justice Court Act Amendments
3. **Proposal(s) and Proposed "Plan":**
    a. Shared Justice Court Structure and Administration
        i. Shared Facility
            1. Current Facilities
            2. OCA/ADA Compliance
        ii. Justice Court Jurisdiction
            1. Summary of GML Article 5-G agreement
        iii. Justice Court Administration
            1. Records and Dockets
            2. Equipment
        iv. Justice Court Finances and Auditing
            1. Separate Accounts
            2. Separate fees and revenues
            3. Auditing
        v. Justice Election
    b. Discontinuance and Dismantling of the Agreement
4. **Legal Foundation and Legal Process Checklist:**
    a. Joint town board initiated resolution authorizing the preparation of a "Plan"
    b. Shared Justice Court Plan
    c. Public Hearing on proposed "Plan" (30 days of Plan completion)
    d. Joint Resolution abolishing two town justices and retaining one shared justice and establishing terms (within 60 days of public hearing)
    e. GML Article 5-G Inter-Municipal Agreement
    f. Home Rule Message on the Joint Resolution and Article 5-G agreement and Special Act of the Legislature authorizing the arrangement.

Outstanding Questions/Concerns

While following UJCA section 106-B we encountered several questions and concerns as to following the procedure and going forward once the Plan was approved and implemented. The following highlights those questions/concerns.

1. **Maintaining 3 sets of proprietary court software systems**. In order to sustain the revenue structure for each of the participating municipalities it was necessary to keep three sets of proprietary software and associated licenses for each municipality. While the software provider did set key strokes so that a single computer could be used there are three sets of software, licenses and maintenance fees for each municipality.
2. **Appointing a new justice.** Only two months into the shared justice court the elected justice passed away and the towns where faced with having to appoint a new justice. 106-B is silent as to appointments and elected procedures so we went with the idea that each participating town board appointed the same justice. In this case the appointee was an attorney so training requirements where largely avoided and the process was relatively smooth.
3. **Altering the number of justices.** 106-B is silent as to the number of justices serving a shared court. In this circumstance there is one justice as authorized by each town. What if case load demand warrants a second justice? How would the shared court get two justices? Would there need to be an amendment to the Plan" and another Home Rule Message and legislative act to authorize it?
4. **Discontinuance and dismantling of the agreement.** Should circumstances change and one or more towns decide they want to revert back to their own justice court how would this be achieved? Would it require an amendment to the "Plan" and another Home Rule Message and legislative act?

Throughout this process we often thought that accomplishing a shared court under GML Article 5-G would be much easier. In effect it is within the spirit of 5-G in that anything anyone town can do it can share with another town. We see countless examples of this in shared governance, services and equipment. Article 5-G agreements are also limited in duration (maximum 5 years) and would authorize both the local governing bodies and the electorate periodic review of the arrangement. It is simple to craft, amend and undue an Article 5-G agreement. One consideration in approaching this from an Article 5-G agreement would be subject he agreement to a permissive referendum. Thus if anyone of the municipalities electorate had problems with the agreement they could force the issue to a referendum.

Appendix D

Counsel's Memo – Custody of Records

STATE OF NEW YORK
UNIFIED COURT SYSTEM
25 BEAVER STREET
NEW YORK, NEW YORK 10004
TEL: (212) 428-2150
FAX: (212) 428-2155

A. GAIL PRUDENTI
Chief Administrative Judge

JOHN W. McCONNELL
Counsel

November 7, 2014

Hon. Michael V. Coccoma
Deputy Chief Administrative Judge
Unified Court System
4 Empire State Plaza, Suite 2001
Albany, New York 12223-1450

Re: Disposition of Court Records After Dissolution of a Village Court

Dear Justice Coccoma:

As you know, the Justice Court Task Force has requested the views of this Office as to the proper disposition of court records upon the dissolution of a village court by a village board of trustees pursuant to Village Law § 3-301(2)(a). Our view is that the dissolved court's records must be deposited with the village clerk, remain the property of the village, and must remain accessible to the public and subject to rules of care, custody and disposition promulgated by the Chief Administrative Judge and the Administrative Board of the Courts.

* * *

As a general matter, the Uniform Justice Court Act grants court administrators broad regulatory power over the records of proceedings before Justice Courts. UJCA section 107 provides, in pertinent part, that:

> [e]ach [town or village] justice shall keep or cause to be kept legible and suitable books, papers, records and dockets of all civil actions and proceedings and all criminal actions and proceedings. The rules may prescribe their form, care, custody and disposition.

See also UJCA §§ 2101(o) (defining "rules" as "the rules adopted pursuant to § 2103 of this act"), 2103 (providing that the "administrative board [of the courts] may adopt, amend and rescind rules for the courts governed by this act, not inconsistent with this act or with the CPLR"), 2019 (addressing criminal court records); Judiciary Law § 213(2)(b) (granting the Administrative Board the powers of advice and consent with respect to the adoption of rules regulating practice and procedure in the courts by the Chief Administrative Judge as authorized by law); 22 NYCRR [Rules of the Chief Judge] § 80.1(b)(13) (delegating to the Chief

Administrative Judge the power to "supervise the maintenance and destruction of court records"); 22 NYCRR [Uniform Rules of Trial Court] §214.11 (establishing recordkeeping requirements for town and village Justice Courts).

Notwithstanding this broad regulatory power of court administrators over town and village court records, such records remain municipal property. On the criminal side, this is clear beyond cavil: UJCA section 2019-a, governing the disposition of criminal court records upon conclusion of a term of office of a local justice, provides in pertinent part that:

> [t]he records and dockets of the court except as otherwise provided by law shall be at reasonable times open for inspection to the public and shall be and remain the property of the village or town of the residence of such justice, and at the expiration of the term of office of such justice shall be forthwith filed by him in the office of the clerk of such village or town.

While no analogous provision governs the ownership of civil court records, we are aware of no principled basis to distinguish them from their criminal court counterparts. Consequently, it is our view that the duties of ownership of all court records - including the duty to maintain such records and to make them available for public inspection - remain with the village, except as otherwise provided by the Constitution or the Legislature,[1] and subject to the regulatory authority of court administrators.

I hope this discussion is helpful. If you have further questions on this issue, please contact Counsel's Office at 212-428-2150.

Very truly yours,

John W. McConnell

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[1]For instance, where a village court dissolves in favor of a district court, the village court's records are transferred to such district court. See UJCA §§ 107, 2019-a; see also UDCA §2021. Furthermore, where a village court is dissolved as part of a village consolidation or dissolution pursuant to General Municipal Law Article 17-A, court records "shall be deposited with a justice court to be designated by the administrative judge of the judicial district within which the dissolving justice court is located;" the repository court "shall have authority to execute and complete all unfinished business." General Municipal Law §§ 765(6); 788(3).