

#004

**DAMIANO M. FRACASSO  
ATTORNEY AT LAW**

500 INTERNATIONAL DRIVE NORTH  
SUITE 155  
MT. OLIVE, NJ 07828 - 1385  
TEL. 973.448.1110  
FAX. 973.529.0306  
dmfesq@fracassolaw.com

ALSO ADMITTED TO PRACTICE IN  
THE SUPREME COURT OF THE UNITED STATES OF  
AMERICA, THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT &  
THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY  
ACCREDITED IN THE PRACTICE OF COLLABORATIVE  
FAMILY LAW  
NJ # 019342000

Sunday, September 16, 2018

VIA: EMAIL TO [Comments.Mailbox@njcourts.gov](mailto:Comments.Mailbox@njcourts.gov)

Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Comments on Municipal Court Operations, Fines, and Fees Report  
Hughes Justice Complex  
PO Box 037  
Trenton, NJ 08625 - 0037

RE: PUBLIC COMMENT ON THE REPORT OF THE SUPREME COURT  
MUNICIPAL COURT OPERATIONS, FINES, AND FEES

Dear Judge Grant:

I respectfully submit the following comments which reflect my personal opinion regarding the Report of the Supreme Court Committee Report on Municipal Court Operations, Fines and Fees and to petition for redress of my grievances pertaining to the following matters of great public concern. I have been practicing on a regular basis in the municipal courts for over 17 years. In fact, my first court appearance as a practicing attorney was in a municipal court. I also hold a Bachelors of Science Degree

in Criminal Justice and I served a term of a Judicial Law Clerk.

**I. I AGREE THAT IMPROVEMENT NEEDS TO BE MADE WITH REGARD TO JUDICIAL INDEPENDENCE AT THE MUNICIPAL COURT LEVEL.**

A strong and independent Judiciary is indispensable to a free and just society. In my experience and with far too few exceptions, the Judicial Branch and the Executive Branch are too homogenous at the municipal court level. They often work together as a united front against a Defendant and their legal counsel. I have often and repeatedly dealt with Municipal Court Staff and even Judges who lack even the most basic appreciation (and perhaps even understanding) of Judicial Independence and the concept of "separation of powers." They give at least the impression that the Court exists to assist the municipal prosecutor and the police officers accomplish their objectives at their own pace, convenience and prerogative. Far too often, the schedule of a police officer takes precedence over the work and family schedule of a Defendant or even Defense Counsel. Delays caused by the State on discovery issues are taxed to the Defense for Speedy Trial purposes because "Defendant is asking for an adjournment" or "seeking additional discovery." Trials are broken into small

intervals and therefore span several days and months in order to accommodate participants other than the Defendant or their attorney and perhaps even to "wear the Defendant down." This causes the Defendant to incur additional, burdensome, highly prejudicial and unnecessary attorney's fees, expert witness expenses and lost wages in addition to anxiety.

Far too often, the State Police Discovery Unit is the "tail wagging the dog" when providing discovery in a timely manner (let alone within 10 days pursuant to R. 7:7 - 7(g)). Municipal Prosecutors are almost never held accountable for discovery related delays and deficiencies. Defendants are literally ordered to provide reciprocal discovery to the State before the State has fully furnished its discovery and in less than 20 days as permitted by the Rules of Court. Far too often, municipal court judges are reluctant to enter discovery orders pursuant to State v. Holup, 230 N.J. Super. 320 (App Div 1992) and are even more reluctant to enforce them before or during trial. Finally, far too often, municipal courts translucently convey to a Defendant and Defense counsel that municipal prosecutors are "very busy" and therefore the State does not have to respond to motions and instead, the municipal court judges

step in to argue a rebuttal for the State often asserting erroneous and surprise arguments which are inconsistent with the adversarial process.

I respectfully suggest that all municipal court staff and judges be trained and retrained with the concept that the Judicial Branch is an independent branch of government and that the Judicial Branch has **zero tolerance** for actual or perceived homogeny with the Municipal Prosecutors and / or Law Enforcement Officers. Guidelines should also be issued to Municipal Courts regarding the expeditious and practical scheduling of cases which comport with the interests of justice (as opposed to eroding the Defendant's financial and emotional resources) as well as confidence in the outcome of the proceeding. Possible suggestions include self - executing dismissal or *in liminie* orders if full discovery is not provided by a date certain or even destroyed.

**II. I DISAGREE THAT RECOMMENDATIONS 24 - 30 PRESENT A CONSTITUTIONALLY SOUND AND EFFECTIVE SOLUTION TO THE SELECTION AND REAPPOINTMENT OF HIGHLY QUALIFIED MUNICIPAL COURT JUDGES.**

Recommendations 24 - 30 presently provide as follows:

**RECOMMENDATION 24** Establish a statewide uniform and transparent process to assess the qualifications for the appointments and reappointments of all Municipal Court judges.

**RECOMMENDATION 25** All appointing authorities and municipalities shall be encouraged to participate in an appointment and reappointment qualifications process. Participating municipalities retain the authority to appoint Municipal Court judges.

**RECOMMENDATION 26** Utilizing guidelines of the Administrative Office of the Courts, establish a Municipal Judge Qualifications Committee (Qualifications Committee) to evaluate and assess the qualifications of attorneys being considered for appointment or reappointment to Municipal Court judgeships.

**RECOMMENDATION 27** The composition of the Qualifications Committee shall include: 1) the Presiding Judge of the Municipal Courts of the Vicinage wherein the municipality sits, or a designee selected by the Assignment Judge, who will serve as chair of the committee; 2) a member of the appointing municipality or municipalities, or their designee; 3) two members of the county bar association who have extensive municipal court practice, one with defense and one with prosecuting, as appointed by the Assignment Judge of the Vicinage; and 4) a non-attorney citizen from the county.

**RECOMMENDATION 28** All participating municipalities shall submit their candidates for appointment or reappointment as a Municipal Court judge to the Qualifications Committee for evaluation. After carefully reviewing the background and

qualifications of the Municipal Court judicial candidate, the Qualifications Committee shall promptly issue a report to the Assignment Judge. It is further recommended that a sitting Municipal Court judge who is up for reappointment may, with the permission of the Assignment Judge, submit his or her name to the Qualifications Committee for review. All materials created by the Qualifications Committee during the course of their review of a candidate are confidential.

**RECOMMENDATION 29** When a Municipal Court judge candidate is deemed not qualified by the Qualifications Committee, the Assignment Judge will first notify the candidate and then the town solicitor. If appropriate, the Assignment Judge will request that another candidate be submitted for consideration by the Qualifications Committee.

**RECOMMENDATION 30** When a Municipal Court judge candidate is deemed qualified, the Assignment Judge will notify the governing body, town solicitor, and the President of the County Bar Association. The notice will trigger the municipal governing body to vote or promptly take action on the candidate.

**[This space intentionally left blank]**

With very few exceptions, municipal court judgeship appointments and reappointments are directly related to political relationships, political inertia and / or law enforcement appeasement and approval as opposed to merit. The New Jersey Constitution imposes no requirements regarding the qualifications of municipal court judges.<sup>1</sup> The only modern Legislative requirement is the judicial candidate for a municipal court judgeship possess a license to practice law for at least *five* (5) years. See N.J.S.A. 2B:12 - 7(a).<sup>2</sup> Municipal Court Judges are rightly prohibited from privately practicing criminal and quasi - criminal law on a statewide basis once they accept a judicial appointment. As a result, few attorneys with extensive experience and proficiency in these areas of the law are willing to forsake a major or perhaps even

---

<sup>1</sup> In fact, the mandatory retirement age of 70 which applies to Supreme Court Justices and Superior Court Judges does not apply to them. See Article VI, Section VI, Paragraph 3 of the New Jersey State Constitution 1947. It is unclear to me why a defendant sued for \$5.00 in Small Claims Court is Constitutionally entitled to a trial judge under the age of 70 decide their case, yet a Defendant facing up to 180 days of incarceration is entitled to a judge who may be in their

<sup>2</sup> All other trial judges must be admitted to practice law for at least *ten* 10 years. See Article VI, Section VI, Paragraph 2 of the New Jersey State Constitution 1947. It is unclear to me why a Defendant being sued for \$5.00 in Small Claims Court is Constitutionally entitled to a judge with no less than ten (10) years of experience, yet a Defendant facing up to 180 days of incarceration is only entitled to a judge with no less than *five* (5) years of experience.

exclusive private practice revenue stream and business model in exchange for applying for and / or accepting a single municipal court judgeship. This results in attorneys who privately practice transactional law sitting as municipal court judges. Some "hit the ground running" and some struggle to learn and understand the most basic concepts of the Rules of Court, the Rules of Evidence, applicable *stare deices* and statutory interpretation. One unqualified and unprepared municipal court judge is one too many.

I interpret Article VI, Section I, Paragraph 1 of the New Jersey State Constitution 1947 in such a matter that municipal courts are "other courts." Therefore, the scope of their jurisdiction as well as their establishment, alteration and abolition are uniquely the sole providence of the Legislature as opposed to the Judiciary. My recommendations for improving the selection of municipal court judges is largely limited to the existing Legislative requirements set forth in N.J.S.A. 2B:12 - 7(a) and N.J.S.A. 2B:12 - 4 and the somewhat limited inherent Judicial Powers authorized in Article VI of the New Jersey State Constitution 1947. It is also limited (and rightly so) by the Constitutional restrictions upon the Judiciary



playing a role in the Legislative and Executive Branch's exclusive power to appoint and confirm judges.

Although well intentioned, I respectfully question:

(i.) How many Executive and Legislative branches of municipalities (especially those in actual need of municipal court hiring reform) will actually cede any part their exclusive statutory and Constitutional right to nominate and appoint municipal court judges to the Judiciary; and

(ii.) Whether the voting and nominating members of a municipal governing body which implement Recommendations 24 - 28 on a voluntary basis will have any actual legal obligation to even give the slightest deference (let alone submission) to Recommendations 29 - 30 when nominating and voting to approve a candidate for a municipal court judgeship.

After all, the doctrine of "Separation of Powers" applies as much to the Judiciary as

it does to the Executive and Legislative Branches.

Perhaps the recommendation in the entire report which I was most concerned about was Recommendation 27 which, again provides as follows:

**RECOMMENDATION 27** The composition of the Qualifications Committee shall include: 1) the Presiding Judge of the Municipal Courts of the Vicinage wherein the municipality sits, or a designee selected by the Assignment Judge, who will serve as chair of the committee; 2) a member of the appointing municipality or municipalities, or their designee; 3) two members of the county bar association who have extensive municipal court practice, one with defense and one with prosecuting, as appointed by the Assignment Judge of the Vicinage; and 4) a non-attorney citizen from the county.

First, assuming arguendo that N.J.S.A. 2B:12 - 1(b) thru (e) and Article VI, Section VI, Paragraph 1 of the New Jersey State Constitution 1947 do not supersede the process set in Recommendations 24 - 30 in the applicable courts, will the Governor and the Legislature be subject to Recommendations 29 - 30 in multijurisdictional courts? If not, what conclusion should the public draw from the fact that some courts select their judges using Recommendations

24 - 30 and others do not? Why should some defendants be entitled to a disposition from judge selected under the system employed under Recommendations 24 - 30 (theoretically, a better selection process endorsed by the Judiciary) and other Defendants not be so entitled simply because of the proclivities of a majority of voting members of a municipal legislature?

Second, the Presiding Judge of the Municipal Courts is typically a municipal court judge (although they can also be a sitting Superior Court Judge). See N.J.S.A. 2B:12 - 9. That means the Presiding Judge would be subject to the same scrutiny and review of a Qualifications Committee as the candidate his or herself to obtain and maintain their own judgeship appointment. What happens when the Presiding Judge is a candidate for re - appointment or a new appointment in one of the municipalities they sit? Will he or she have the power and influence over his or her own appointment or reappointment even potentially serving as the chairperson of the Qualifications Committee? Should a sitting Superior Court Judge be intermingling with municipal politicians during the municipal court selection process? If the Assignment Judge designates an alternate, how independent is that "alternate" going to be? Will the

power to appoint an "alternate" serve as a "rubber stamp" for that particular Presiding Judge's application or re-appointment? Will an appointment of a non-judge serve as the Assignment Judge's public endorsement of the skills and judgment of a particular attorney? To the contrary, will this power to appoint an "alternate" give the Assignment Judge the ability to directly or indirectly interfere in a Presiding Judge's appointment or reappointment at the municipal court level? After all, as a matter of law, Presiding Judges of the Municipal Court are appointed by the Chief Justice. See. N.J.S.A. 2B:12 - 9. The ability for the Assignment Judge to potentially to interfere with at least a reappointment of a Presiding Judge can potentially give an Assignment Judge veto power over the selection of the Chief Justice and also opens the door for an Assignment Judge to engage in municipal political activities and become favorably or unfavorably ensnared in local politics on a Vicinage wide basis. Will there be an imbalance of power between the Presiding Judge or the Assignment Judge's appointee who sit on a Qualifications Committee and the other members of the Qualifications Committee (especially the practicing attorney members)?

Third, many members of the bar also serve as either as mayors or legislators of municipalities. Recommendation 27

would empower them to either directly or indirectly play a role in exercising direct veto power over municipal court judicial applicants. This will lead to a less independent judiciary. Under the existing law, that member of the bar is but one vote for or against a judicial candidate in a municipal legislature or can only nominate a candidate if he or she is a mayor.

Fourth, the Assignment Judge publicly placing his or her imprimatur upon "two members of the county bar association who have extensive municipal court practice, one with defense and one with prosecuting" for the purpose of selecting a municipal court judge is perhaps the most problematic of all. First, what will be the merit based objective metric or rubric for measuring "extensive municipal court practice" and how would an Assignment Judge know what pool of candidates to choose from? Statistically, municipal public defenders have the most "extensive" experience in many large municipal courts and small counties? Should they be playing a large role in selecting the municipal court judges they are or will appear before? Second, why does the defense attorney or prosecutor also have to be a member of a county bar association in order to be considered for this process? Many municipal public

defenders are also municipal prosecutors in other counties. What role will those attorneys have in the process?

Many municipal court prosecutors and defense attorneys appear in municipal courts in the evening and cannot attend bar association events. Also, many highly qualified attorneys have family or public service commitments which do not allow time to belong to a county bar association. Their decision not to belong to a county bar association should not be a disqualifier from this important process. Why should a municipal prosecutor of all government employees have a direct say in selecting a municipal court judge? How does that foster judicial independence? The Vicinage Assignment Judge's identification of a particular municipal court defense attorney as someone who has "extensive municipal court practice" for the purpose of serving on a Municipal Court Qualifications Committee can only lead to a bullhorn or whisper advertising boon for those specific attorneys. It will confer completely unwarranted influence and status upon those attorneys in the municipal courts (especially in the municipalities who employ or consider hiring sitting Presiding Judges). Will that attorney or prosecutor be able to appear before the judge who had or has business before a Qualifications

Committee which they belong to? Take for example, an attorney has "extensive municipal court practice" because they appear in Bergen Central Municipal Court often. Will that attorney be barred from further appearing in that Court because he or she has influence over the sitting judge's appointment or reappointment? If not, how will the Judiciary rule out a judge's judicial performance before these attorneys with "extensive municipal court practice" is reflective of that judge's fitness on a "macro level" as opposed to a "micro level" derived solely from the presence of an attorney with "extensive municipal court practice" in the courtroom. Will the public perceive that any sitting judge may attempt to or actually curry favor with one of these attorneys designated as having "extensive municipal court practice" to keep or expand their judicial employment? Will the public perceive that a sitting judge may be biased against their attorney because he or she was designated as having "extensive municipal court practice," yet did not vote to endorse a judge for reappointment or for additional employment in another municipality while serving on a Qualifications Committee?

In my opinion, this component of Recommendation 27 will result in the creation of a literal caste of

Page 15 of 34

"überinfluential" municipal court defense attorneys and prosecutors which (many deserving... and... many undeserving) which will not only create unfair market competition amongst municipal court prosecutors and defense attorneys. It will also give those select "überinfluential" municipal court defense attorneys and prosecutors an actual (or at least legitimately perceived) advantage in municipal court courtrooms especially during appointment or reappointment times. This certainly does not foster confidence in the Judiciary or foster a meritocracy amongst practicing attorneys competing for the public's business, confidence and trust.

Fifth, how will the "non - attorney citizen from the county" be selected and who will select them? A member of the Judiciary? Can this "non - attorney citizen" be another member of the municipal governing body who is not an attorney? What is the "small d" democratic value added by having a "non - attorney citizen" from Essex Fells having critical influence over who Newark hires as their municipal court judge and vice versa? Again, what will be the credible and objective metric or rubric for selecting this "non - attorney citizen?" Will this be a citizen who has never appeared in a municipal court? Will this be a citizen



who frequently appears in various municipal courts because they the are frequently charged with (and perhaps convicted of) breaking the law?

In sum, and in my respectful and candid opinion, I respectfully submit that the selection system and process set forth in Recommendations 24 - 30 will be perceived (rightly or wrongly) by the bar and the public as "cronyism" or a "good old boy network" for selecting judges. It may be perceived as affording the Vicinage Assignment Judge and the Judiciary a whole far too much influence over the municipal courts. From the public's perspective, it affords far too little local "home rule" influence over the process by their elected public officials vested with the Constitutional and legislative authority to nominate and confirm municipal court judges.<sup>3</sup>

As a former elected public official and veteran candidate for office, I also anticipate that many members

---

<sup>3</sup> I personally believe that the "home rule" form of government is bankrupting the state and adds little to no actual value to any New Jerseyian's life. In this instance, the notion that a judge nominated and confirmed by the Statewide Government cannot deliver the same level and quality of judicial service as a judge nominated and confirmed by a local municipal government is both absurd and a subterfuge for political patronage.

of the Legislative and Executive Branches of municipal government (and perhaps even lobbying organizations such as the New Jersey League of Municipalities) may politicize and foster anti - judicial sentiment by arguing Recommendations 24 - 30 are the "unelected Judiciary's" insulting expression that local municipalities do not have (and historically never had) the competency, integrity or public's best interests in mind when they select and appoint the municipality's municipal court judge(s). They may also make the politicized assertion that the Judiciary is playing too large a role in the appointment of its own Judicial Officers (i.e. municipal court judges) and thus divesting their local mayor and council of their constitutional authority to nominate and confirm municipal court judges. Finally, in fairness to the municipalities, the remarkable involvement the Vicinage Assignment Judge will have in the process proposed in Recommendations 24 - 30 will also arguably interfere with the local governing body's legislative and executive independence. These branches may feel inclined to "go along to get along" with the Vicinage Assignment Judge who typically presides over legal matters such as election issues, actions in lieu of prerogative writ and other critical legal matters involving municipal governments.

Recommendations 24 - 30 are silent on where the candidates for municipal court judgeships will be drawn from. The proposed Qualifications Committee can only consider applicants who actually apply to the municipality for a judgeship. The process of filling the "candidate pool" with highly qualified judicial candidates dramatically needs to improve as far as public notification and advertising of the positions. I consider myself a well informed citizen and attorney. I have no idea if and when openings for municipal court judgeships become available to apply for (or to encourage a highly qualified judge or attorney to apply for a seat). The Judiciary website should dedicate a prominent page on its website posting each and every municipal judgeship opening prior to the expiration of the sitting judge's *three* (3) year term or an unexpected vacancy. From what I understand, the Legislature exempts municipal court judgeships from public notice and bidding requirements because they are "professional services" contracts. This essentially gives local politicians the ability to make these appointments without much public attention, scrutiny and / or meaningful competition.

From my experience and point of view, to the extent the municipal court structure set forth in N.J.S.A. 2B:12 - 1, et seq. remains in effect, I believe the better process for improving the ultimate appointment of highly qualified municipal court judges should *include* the following:

1. The Judiciary should exercise its authority under Article VI, Section II, Paragraph 3 of the New Jersey State Constitution 1947 to mandate that all candidates for all municipal court judgeships attend and complete a comprehensive training program promulgated and administered by the AOC and pass a comprehensive written examination on topics such as the Rules of Court, the Rules of Evidence, the Code of Judicial Conduct and related decisions, the Rules of Professional Conduct, Separation of Powers and state and federal Constitutional law, Criminal Procedure, Conflicts of Interest, Scientific Evidence and Technology in Modern Society, Sociology, Judicial Operations (financial, human resources and logistical), opinion writing, applicable *stare decisis* sentencing and penology. Completion of the program and a passing score on the written examination **shall be a minimum qualification**

for applying to and accepting any municipal court judgeship. Of course, this will have to be phased in hopefully within the next *three* (3) years and apply to every candidate for a judgeship (including those already sitting on the bench seeking a new judgeship and / or a renewal of their judgeship);

2. The Judiciary should publically advertise all municipal court judgeship positions on its website so that the pool of candidates is filled with the best and the brightest as opposed to political insiders and incumbents. It should also include the scheduled dates, times and locations for municipal voting on nominations so that non - candidates (such as all members of the bar and the entire public - as opposed to those selected by an Assignment Judge) will know where and when to attend to provide comment to the appointing body prior to voting on a nomination;

3. Allow all licensed attorneys to enroll in an online survey program to report back and comment upon a sitting municipal court judges' performance using the same or similar criteria as used in the Judicial Performance Program. This must be completed within seven (7) days of concluding a matter. Those

evaluations can (and should) be utilized by the Executive and Legislative Branches (and the public) during the nomination, re - nomination and approval process;

4. Implement a similar program as set forth in numbered paragraph *three* (3) for *pro se* litigants, members of the public and police officers who have interacted with a sitting judge. Those evaluations can (and should) be utilized by the Executive and Legislative Branches (and the public) during the nomination, re - nomination and approval process;

5. The Judiciary should exercise its authority under Article VI, Section II, Paragraph 3 of the New Jersey State Constitution 1947 to prohibit any sitting judge and / or candidate for a municipal court judgeship from:

a. Directly and / or indirectly utilizing his or her historical revenue generated from sentencing (either as a sitting judge or a municipal prosecutor) as a qualification for judicial office and to amend the Rules of Professional Conduct and the Code of Judicial Conduct to make it a violation thereof for doing so during an application process;

b. Other than making a formal written application and participating in a public interview process, soliciting a direct and / or indirect endorsement for appointment or reappointment from:

- i. A law enforcement agency (including the municipal prosecutor); and / or
- ii. An incumbent municipal government office holder or registered candidate for municipal office; and

**[This space intentionally left blank]**

c. Applying for and / or accepting a municipal court judgeship if they have ever represented the municipality in which they are applying (or

sitting) in a legal capacity other than municipal prosecutor or public defender. This prohibition shall also apply to Joint Insurance Fund (JIF) attorneys.<sup>4</sup>

6. Encourage the Legislature to amend the existing law to require that all candidates for a municipal court judgeship not be considered vendors of professional

---

<sup>4</sup> Estate of Spencer v. Gavin, 400 N.J. Super. 220, 241-43 (App. Div. 2008) specifically opined "a lawyer has a fundamental duty of loyalty to his or her clients." That duty of loyalty cannot be eliminated simply by placing on a black robe and substituting one position of municipal employment for another. I am of the opinion that even the best intentioned former municipal attorney or JIF attorney cannot objectively rule on a suppression motion and / or determine a complete lack of probable cause for a charge if that suppression motion or motion to dismiss could result in his or her former client being sued as a consequence of the decision. Even if the judge rules correctly, a member of the public may not perceive the outcome as just because of the ongoing duty of loyalty and / or relationship with the municipality. From a Judicial independence perspective, incentivizing municipalities to appoint their municipal or JIF attorneys to serve as judges (and ultimately rule on municipal court motions which could potentially result in a lawsuit against the municipality) both erodes the public's confidence in the independence of the Judiciary. It also casts the municipal court system in the role of an office of an insurance adjuster as opposed to a neutral and independent arbiter of fact and law. This also leads to eroded local law enforcement skills and standards not only for the cases heard in the municipal court, but the more serious offenses heard in the Superior Court by Superior Court and decided by completely disinterested judges and juries. The practice of "stipulating to probable cause" is still pervasive in the municipal courts. Although Opinion 66, 131 N.J.L.J. 170 (May 18, 1992) prohibits municipal from soliciting stipulations to probable cause, many municipal court judges have "picked up the baton." I have personally witnessed on several occasions municipal court judges rejecting a fair and legal plea agreement because a defendant or defense attorney would not stipulate to probable cause during the plea colloquy. Eventually, the litigant relents to receive the benefit of the plea arrangement.



services (or other such other vendor loophole status which circumvents the transparency and the competitive process). This will avoid bypassing the more transparent advertisement, application and bidding process for municipal court judicial nominees. This will influence all local municipalities to solicit, consider and appoint judicial candidates on the merits from the broadest possible pool as opposed to past and / or political relationships. It also fosters judicial independence before, during and after the appointment and re - appointment process.

**[This space intentionally left blank]**

**III. I DISAGREE THAT THE QUALITY OF MUNICIPAL COURT JUSTICE IS REMARKABLY EFFECTED BY JUDICIAL FINANCIAL MOTIVATIONS.**

By no means do I suggest that certain municipal courts do not have a past or present propensity to utilize the Court system as a source of municipal revenue.<sup>5</sup> I am simply stating that in my experience as a private defense attorney (both in my cases and those observed over thousands of hours of sitting in municipal court galleries), I have personally experienced little to no remarkable municipal court **judicial** abuse of the Legislatively authorized fines.<sup>6</sup> It is not uncommon (or remarkably overly common for that matter) for a municipal prosecutor to offer to dismiss

---

<sup>5</sup> On occasions, I have been privy to antidotal opinion from judicial candidates that they were not appointed or re-appointed for a municipal court judgeship based on the successful candidate's emphasis and reputation for municipal revenue generation through the imposition and collection of fines. Therefore, to the extent that municipal court judges place an emphasis on using their position of public trust to generate revenue for a municipality, it is my opinion and observation that such motivation is rooted in "building that judge's resume" as opposed to departing from judicial independence. The judges I have known to have used the municipal court as a revenue generator for the municipal treasury have been removed by the Supreme Court or disciplined and subsequently retired.

<sup>6</sup> If any branches of the State Government are responsible for the financial consequences associated with sentencing in the municipal court it is the Legislative Branch for creating the offenses and the financial consequences and the Executive Branch for enacting the legislation and then rarely utilizing prosecutorial discretion.

a more serious offense in exchange for a defendant pleading guilty to a lesser offense and paying the maximum legislatively permitted fine, penalty, assessment, surcharge, etc.. Of course, this has absolutely nothing to do with the Judiciary because it is the Legislature that establishes the fines, assessments, surcharges, costs, etc. and the Judiciary is Constitutionally bound to sentence a Defendant consistent with the Legislative mandates. I will also candidly express that even the most problematic municipal court judges I have dealt with over the years rarely imposes maximum fines or engineers the outcome of a case for the sole purpose of imposing a maximum fine.

That being said, with limited exceptions, I am of the opinion that other than the deeply flawed municipal court judgeship selection, appointment and reappointment process, my most serious criticism of the municipal court system is largely... if not exclusively... the Judicial appeasement of law enforcement. I have personally witnessed on several occasion what I would describe as a "look of visceral disappointment" in the eyes of more than one municipal court judge when I have presented uncontroverted evidence or argument that a law enforcement officer (including the municipal prosecutor): destroyed evidence, concealed

exculpatory evidence or the existence of an exculpatory witness, committed perjury, falsified or embellished a police report, missed an element of proof which would result in a acquittal, failed to provide discovery, failed to comply with a discovery order, made a misrepresentation of fact to the Court, acted without probable cause, manufactured probable cause or engaged in conduct which would otherwise result in civil litigation against the municipality and then asked for a ruling in favor of the defense. More often than not, the "look visceral disappointment" transitions to an poorly cobbled together adverse ruling against my client coupled with ill - tempered comments directed towards me which generate reinforcing smirks and snickering from offending party / parties.<sup>7</sup>

The above may be because of: a complete lack of respect or understanding of Judicial independence; a desire to be liked and accepted by the police and the municipal prosecutor from a social perspective; a desire to curry favor with the municipal prosecutor and the police for support in the re - appointment process; avoid the

---

<sup>7</sup> I have personally heard full courtroom galleries spontaneously "gasp" when judges do this or engage in other outwardly biased and humiliating conduct.

municipality and / or its employee from being sued; avoid the ire of the PBA or FOP for having one of its members referred for potential or actual discipline, demotion, termination and / or criminal investigation; avoid the inconvenience and disruption of having to refer the municipal prosecutor to the District Ethics Committee; a realization that their security and safety inside the courtroom is provided by these very same municipal police officers; or perhaps some other motivation. On more than one occasion, I experienced a municipal court judge express complete disbelief that I would even suggest that a police officer testified falsely before or during a trial. Whatever the motivation or motivations may be for making unjust decisions for the purposes of appeasing law enforcement, they have absolutely no place in any New Jersey Courtroom.

Jury trials are, with extremely limited exceptions, unavailable in municipal court matters. Therefore, heightened, scrupulous and unambiguous safeguards must be implemented to both deliver actual Due Process to Defendants as well as the perception of actual Due Process at the municipal court level. If the public perceives (rightly or wrongly) that the municipal court system is a

"rigged game" the entire Judicial Branch of government as well as the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments will be rendered quaint and the public will not spend their hard earned money on the effective assistance of legal counsel. They will simply plead guilty at their arraignment or take whatever offer the municipal prosecutor extends to them in order to avoid wasting their time and money on a "rigged game." Sadly, I have witnessed children's recreational sports games officiated with less bias and more erudition than many of municipal court proceedings I have participated in and witnessed from the gallery.

For so long as the current Legislative structure of the municipal court system remains in effect (one where municipal court judges are selected and employed by the same municipality which also employs the municipal prosecutor and the police officers who regularly appear before them), the Judiciary must "level the playing field" so to speak. It must eliminate the intended or unintended influence the Executive Branch (*to wit* the police and the municipal prosecutor) have over Judicial operations, public perceptions and dispositions. The simplest and most immediate solution would be for the Judiciary to exercise its power and authority under Article VI, Section III,

Paragraph 2 of the New Jersey State Constitution 1947 and utilize the Superior Court's "original general jurisdiction throughout the state in all causes" and its authority to "hear such causes, as may be provided by the Rules of the Supreme Court" under Article VI, Section III, Paragraph 3 of the New Jersey State Constitution 1947 to afford a municipal court defendant the option of transferring a contested pre - trial suppression, admissibility and / or dispositive motion, the trial itself as well as a contested post - conviction relief applications to the Superior Court to be adjudicated by a tenured<sup>8</sup> Superior Court judge who is free of the actual or perceived local law enforcement influences in the municipal courts.

While I certainly recognize that the Superior Court is already overburdened with its current caseload, the obvious staffing issues borne from adding municipal court motions and trials to the Superior Court docket may be resolved in part with the services of additional recall judges and

---

<sup>8</sup> While I certainly appreciate and agree with the sound need for and reasoning behind the concept of lifetime judicial tenure for Superior Court Judges and Supreme Court Justices, I fail to reconcile how the absence of lifetime tenure for municipal court judges (who must reapply for their jobs every *three* (3) years) renders them entirely incapable of succumbing to the exact same undesired influences which lifetime tenure was designed and enacted to avoid.

automation of clerical services (i.e. electronic motion filing and motion arguments by video conference). I also believe the Legislature may have an appreciation for the cost reduction and productivity improvements associated with having Superior Court Judges (and law clerks) processing, conferencing, managing, researching, hearing and adjudicating contested and substantive municipal court matters in countywide facilities on a full time basis.

The Legislature may also feel it is time to part ways with the financial and logistical burdens associated with staffing, operating, overseeing and maintaining the 515 municipal courts throughout the state (some of which only hold court once a month -- weather permitting) to hear and adjudicate substantive and contested pre - trial motions and trials only to then have to consume Superior Court resources with interlocutory appeals and appeals of convictions from the municipal court. Both the Legislature and the Judiciary may jointly conclude that the "transfer" system lessens the cost of appeals for the public (one less layer of appeal to pay an attorney for as well as the often overwhelming cost of transcripts) and bring swifter conclusion to matters such as DWI prosecutions. The municipal courts can still be utilized as a resource to



resolve matters which are uncontested (the vast majority) and contested matters in which a defendant wishes to have the municipal court adjudicate based on his or her confidence in the judge sitting in the municipal court having jurisdiction over their matter.

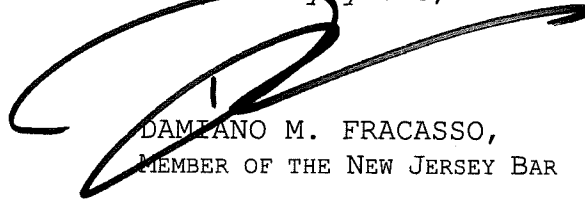
I conclude with the following observation from one of our Founding Fathers over 200 years ago:

Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. ***But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary*** [emphasis added]. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

- Federalist No. 51

In the event that I can be of any future assistance to either Your Honor or the Supreme Court Committee, please feel free to contact me by any of the above means.

Very truly yours,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

DAMIANO M. FRACASSO,  
MEMBER OF THE NEW JERSEY BAR