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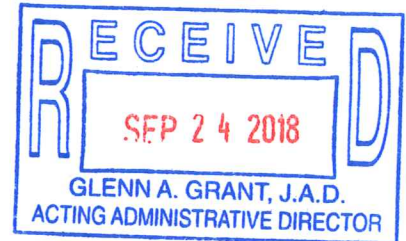


NEW JERSEY STATE BAR ASSOCIATION

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September 24, 2018

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



Re: Comments on Report of the Supreme Committee on
Municipal Court Operations, Fines, and Fees

Dear Judge Grant:

Thank you for the opportunity to review the Report of the Supreme Court Committee on Municipal Court Operations, Fines and Fees. The New Jersey State Bar Association (NJSBA) applauds the efforts of the members of that committee in thoroughly reviewing the myriad of issues confronted by the municipal courts. The report contains thoughtful, well-reasoned, comprehensive recommendations that recognize the positive work being done in municipal courts by a cadre of dedicated judges and staff, but also seek to make improvements that will benefit all who come in contact with the courts.

As you know, the NJSBA previously expressed concerns about the independence of municipal courts, culminating with the adoption of a Report on Judicial Independence in the Municipal Courts last year. The NJSBA is pleased that the Supreme Court Committee incorporated many of the recommendations made by the NJSBA in last year's report, and urges the Court to adopt those recommendations. In some areas, the NJSBA has additional comments.

Specifically, the NJSBA offers the following comments on the Guiding Principles and Recommendations contained in the Supreme Court Committee report (only those principles and recommendation on which the NJSBA has a comment are listed):

Guiding Principles for Municipal Courts

PRINCIPLE 1 – PURPOSE OF COURTS: New Jersey Municipal Courts are a forum for the fair, just, and independent resolution of disputes in order to preserve the rule of law and protect the individual rights and liberties of all that come before them.

NJSBA Comment: The NJSBA supports.

PRINCIPLE 2 – OVERSIGHT OF COURTS: Municipal Courts must operate under the authority and supervision of the judicial branch in a manner that ensures an independent Judiciary and enhances the public trust, and all operations and facilities must continue to be separate from law enforcement and prosecution activities.

NJSBA Comment: The NJSBA supports. This is consistent with the NJSBA's previous recommendation that a formal separation should exist between municipal court staff and police officers of that municipality, and that police representatives should be barred from being used in court proceedings to reach a resolution for traffic violations and other offenses.

PRINCIPLE 3 – JUDICIAL SELECTION AND RETENTION: Municipal Court judges shall be selected and reappointed in an objective and transparent manner using methods that are consistent with an independent Judiciary. Appointment and reappointment shall never be based on the revenue a Municipal Court judge generates for a municipality.

NJSBA Comment: The NJSBA supports. This is consistent with the NJSBA's previous recommendation that a formalized, uniform process for the appointment and reappointment of municipal court judges be established.

Recommendations

Fair Sentencing and the Use of Sentencing Alternatives

RECOMMENDATION 3 Develop a Judiciary policy providing Municipal Court judges guidelines for consideration of all available sentencing alternatives both at time of sentencing and as part of post-sentencing enforcement.

NJSBA Comment: The NJSBA supports. Wider discretion in sentencing is preferable for all parties involved as it permits the parties and the court to tailor the sentence more appropriately to the offense. Sentencing alternatives should be permitted wherever possible.

RECOMMENDATION 4 Develop policy and tools that would assist the Municipal Courts in establishing payment plans, determining defendant eligibility for other post disposition sentencing alternatives, and making ability-to-pay determinations.

NJSBA Comment: The NJSBA supports. Courts should be specifically permitted to establish reasonable payment plans without a finding of indigency on behalf of the defendant, especially in light of the increased costs borne by a person who is found guilty of an offense, the extremely high cost of living in this state, and the dearth of public transportation. While individuals may not be indigent they may still benefit from a well-structured payment plan. Many courts will not currently permit a payment plan without a showing of indigence.

RECOMMENDATION 6 Encourage the creation and expansion of diversionary programs wherein participating defendants who perform volunteer services or complete appropriate treatment services have matters against them dismissed.

NJSBA Comment: The NJSBA supports, as part of an expanded alternative sentencing program.

Legislative Proposals

RECOMMENDATION 10 The enactment of legislative alternatives to license suspension, such as the denial of renewal of a driver's license or vehicle registration, or the creation of a restricted use driver's license.

NJSBA Comment: The NJSBA has long supported alternatives to driver license suspensions, but have found implementation of alternatives to be difficult logistically. The denial or renewal is a potentially effective means of enforcing failures to appear and a good idea that has not been previously explored. The NJSBA suggests that alternatives to incarceration be explored as well.

RECOMMENDATION 11 Legislatively establish and update an incarceration conversion rate to reflect the actual costs of incarceration.

NJSBA Comment: The NJSBA supports.

Procedural Safeguards for Defendants Unable to Pay a Fine

RECOMMENDATION 12 No bench warrant or license suspension shall be issued against a defendant who becomes delinquent on time payments unless an ability-to-pay hearing is scheduled on proper notice to the defendant.

NJSBA Comment: The NJSBA supports.

RECOMMENDATION 13 Bench warrants should only be authorized for defendants who fail to appear for an ability-to-pay hearing where the outstanding fines and fees owed by that defendant equal or exceed \$250.

NJSBA Comment: The NJSBA supports, but recommends that bench warrants also be issued in cases with consequences of magnitude.

RECOMMENDATION 14 Develop a policy limiting the issuance of failure to appear bench warrants to certain, serious offenses, taking into account the following: the seriousness of the offense charged; the age of the case; and other relevant factors.

NJSBA Comment: The NJSBA supports.

RECOMMENDATION 15 Develop a policy formalizing the process for the recalling of existing bench warrants for failure to pay for complaints that have been disposed, taking into account the following: the age of the bench warrant; the seriousness of the conviction; the amount owed; and any other relevant factors.

NJSBA Comment: The NJSBA supports.

RECOMMENDATION 16 Develop a policy formalizing the process for dismissal of old complaints that have not been disposed, taking into account the following: the seriousness of the offense charged; the age of the case; and other relevant factors.

NJSBA Comment: The NJSBA supports. This is consistent with recent comments to the NJSBA provided to the Court urging that warrants relating to non-moving violations, including parking tickets, ordinance violations and fish/game charges that are 15 years or older should be dismissed, but noting there was not consensus on warrants relating to moving violations.

RECOMMENDATION 17 The AOC should develop additional tools and procedures for Municipal Court judges and staff to determine whether a defendant who has failed to appear or pay is incarcerated before a bench warrant or license suspension is issued.

NJSBA Comment: The NJSBA supports, however, this should be implemented in conjunction with practitioners, with input solicited from attorneys who practice in the courts.

RECOMMENDATION 18 Municipal Courts should recall bench warrants or rescind driver's license and vehicle registration suspensions when a defendant makes a subsequent good faith effort to report to court or to satisfy a legal financial obligation.

NJSBA Comment: The NJSBA supports. Additionally, the courts should be empowered to immediately restore licenses due to court ordered suspensions without then requiring the defendant to go to the Motor Vehicle Commission and pay an additional restoration fee.

Voluntary Compliance with Court-Ordered Appearances and Legal Financial Obligations

RECOMMENDATION 19 Establish a system for automated text, email, and/or telephonic reminders to defendants of upcoming or missed court dates and upcoming or missed legal financial obligation due dates.

NJSBA Comment: The NJSBA supports. There should be an opportunity to opt in via text service/email.

RECOMMENDATION 20 Modify court notices to advise defendants in plain language that: 1) inability to pay will not result in incarceration; 2) defendants can contact the court to seek alternative ways to meet their financial obligations; and 3) the failure to appear or respond to notices may result in additional monetary penalties, license suspension, and/or issuance of a warrant for arrest that may lead to incarceration.

NJSBA Comment: The NJSBA supports.

RECOMMENDATION 21 Centralize and modernize Municipal Court notice generation and printing to improve the quality and functionality of notice processing and to take advantage of high-volume printing and postage discounts for courts across the state.

NJSBA Comment: The NJSBA supports, however, there should be a goal of going paperless or largely paperless within a certain period of time. These notices can be sent electronically in lieu of paper.

RECOMMENDATION 22 The AOC shall develop policies expanding the use of video and telephonic appearances in appropriate instances in Municipal Courts.

NJSBA Comment: The NJSBA supports. This should be done immediately and with much wider application. It would solve much of the adjournment and delay issues due to attorneys having to be in multiple courts at once.

RECOMMENDATION 23 The AOC should explore the establishment of a uniform online adjournment request process.

NJSBA Comment: The NJSBA supports. This should be part of an e-courts system for municipal courts. There should also be a more liberal granting of adjournments in specific situations.

Independence of the Municipal Courts

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

NJSBA Comment: The NJSBA supports. This is consistent with the NJSBA's previous recommendation that a formalized, uniform process for the appointment and reappointment of municipal court judges be established.

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.

NJSBA Comment: The NJSBA supports.

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.

NJSBA Comment: The NJSBA supports. This is consistent with the NJSBA's previous recommendation that a formalized, uniform process for the appointment and reappointment of municipal court judges be established.

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.

NJSBA Comment: The NJSBA supports.

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.

NJSBA Comment: The NJSBA supports. This is consistent with the NJSBA's previous recommendation that a formalized, uniform process for the appointment and reappointment of municipal court judges be established.

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.

NJSBA Comment: The NJSBA supports, but with additional comments. While this is consistent with the NJSBA's previous recommendation that a formalized, uniform process for the appointment and reappointment of municipal court judges be established, the details of the proposed process will need to include whether a candidate can appeal a decision of the Qualifications Committee, and whether a candidate who is found unqualified initially can be resubmitted after a period of time.

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.

NJSBA Comment: The NJSBA supports, but with additional comments. While this is consistent with the NJSBA's previous recommendation that a formalized, uniform process for the appointment and reappointment of municipal court judges be established, the NJSBA recommends that, when implemented, a specific timeframe be included for the committee review.

Legislative Proposals

RECOMMENDATION 31 The legislature should consider modifying the current legislative scheme to mandate municipalities to participate in the proposed qualifications process for appointment and reappointment of Municipal Court judges.

NJSBA Comment: The NJSBA supports. This is consistent with the NJSBA's previous recommendation that a formalized, uniform process for the appointment and reappointment of municipal court judges be established.

RECOMMENDATION 32 The legislature should modify the current legislative scheme to increase the term of service for Municipal Court judges from three to five years.

NJSBA Comment: The NJSBA has concerns about a five-year term for municipal court judges, especially initially. The NJSBA had recommended maintaining the three-year terms, which is believed to be enough time to insulate a judge from political whims but also allow problems to be addressed through the reappointment process.

RECOMMENDATION 33 The legislature should mandate the consolidation of small courts, taking into account factors such as total annual filings, frequency of court sessions, and geography.

NJSBA Comment: While there are definite benefits to consolidation, the NJSBA believes the concept requires much more study before it can be implemented.

RECOMMENDATION 34 Establish a Municipal Court judge evaluation process, similar to the evaluation process utilized for Superior Court judges. The Judicial Education and Performance Unit of the Administrative Office of the Courts will administer the aforementioned evaluation process.

NJSBA Comment: The NJSBA supports. This is consistent with the NJSBA's previous recommendation that an anonymous evaluation system for municipal court judges be established.

Improve Access to the Municipal Courts Through Technology

RECOMMENDATION 37 All Municipal Courts shall offer defendants the ability to pay fines with a credit card or debit card using NJMCDirect.com at the payment window

NJSBA comment: The NJSBA supports.

RECOMMENDATION 38 Defendants shall be permitted to make partial payments on “payable offenses” without a court appearance.

NJSBA comment: The NJSBA supports, but recommends that flexible guidelines be established for such payments.

RECOMMENDATION 39 Enhancing customer service by allowing defendants to: 1) reschedule an initial court date, pursuant to policy promulgated by the AOC; and 2) apply online for a public defender.

NJSBA comment: The NJSBA supports.

RECOMMENDATION 40 Enhance the ability of all court users to easily access their outstanding Municipal Court obligations and pending matters across the state, and give Municipal Court judges and staff the ability to consolidate payments within the municipality through automation.

NJSBA comment: The NJSBA supports.

RECOMMENDATION 41 Expand eCourts technology in the Municipal Courts to include all case-related documents and court filings, such as motions and orders, and to explore the availability of discovery through electronic means.

NJSBA comment: The NJSBA supports.

RECOMMENDATION 42 To continue current efforts to modernize and integrate MACS and PromisGavel to improve case management coordination between the municipal and criminal courts.

NJSBA comment: The NJSBA supports. An attorney’s only access to ATS and PromisGavel should be established so that attorneys can access clients’ prior records and see what, if anything is currently pending. It would improve the quality of legal advice and lessen delay.

RECOMMENDATION 43 The AOC shall continue to encourage the expansion of the eTicketing model to New Jersey municipalities. The AOC shall also develop eSummons technology to enable quick entry of Special Form of Complaint/Summons cases.

NJSBA comment: The NJSBA supports.

RECOMMENDATION 44 Implement the WebFOCUS Reporting Software Upgrade for Municipal Courts for improved reporting and analytics.

NJSBA comment: The NJSBA supports.

RECOMMENDATION 45 Establish minimum uniform requirements for all Municipal Court websites.

NJSBA comment: The NJSBA supports. In addition, as previously recommended by the NJSBA, the sites should be required to post any delays/cancellations due to inclement weather, and a uniform policy should be developed to guide when municipal courts are closed due to weather.

RECOMMENDATION 46 Program ATS/ACS to technologically require compliance with R. 1:2-4.

NJSBA comment: The NJSBA supports.

RECOMMENDATION 47 Program ATS/ACS to allow court costs to be assessed only in statutorily-authorized instances.

NJSBA comment: The NJSBA supports.

RECOMMENDATION 48 Reaffirm the Judiciary's commitment to encouraging diversity in the judges and staff of the Municipal Courts and in the development of court policy and procedures to address the changing needs of the diverse population of New Jersey's court users.


NJSBA comment: The NJSBA supports. The NJSBA has a long history of being committed to increasing diversity on the bench.

RECOMMENDATION 49 Establish a working group comprised of all three branches of government and key stakeholders to implement needed reform and statutory changes to the structure of the Municipal Courts and to create a forum for the discussion of additional relevant issues.

NJSBA comment: The NJSBA supports, and respectfully requests that it be permitted to have a representative on the committee, as the private bar would be able to offer unique insight into issues facing the municipal courts.

The New Jersey State Bar Association thanks the Supreme Court and the members of the Committee for publishing this report and allowing the bar to submit comments and recommendations. Our state's municipal courts often represent an individual's first, and hopefully only, interaction with the criminal justice system. I hope that the NJSBA's comments help in the effort to ensure the fair and impartial handling and disposition of cases with the utmost integrity and independence, thereby instilling continued confidence in the judicial system.

Very truly yours.



John E Keefe Jr., Esq.
President

/sab

cc: Evelyn Padin, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director