



Report of the  
*Supreme Court Working Group*  
on the  
*Municipal Courts*

July 8, 2019

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## I. EXECUTIVE SUMMARY

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### **Reforming the Municipal Courts: Equal Access, Fairness and Judicial Independence**

The principles of equal access to the courts, fair justice for all, and judicial independence are the bedrock of the New Jersey Judiciary’s most recent endeavor to bring Municipal Court reform to the forefront of our judicial system. Ensuring that these principles are absolute for all Municipal Court users, including the most vulnerable, requires the Judiciary’s self-critical analysis of its Municipal Court system—identifying what the Judiciary as an independent branch of government can do better and the resources needed to achieve meaningful reform. New Jersey Municipal Court judges and Municipal Court staff are dedicated public servants who work tirelessly every day to uphold the public’s confidence in our judicial system. This is no small task given the fact that New Jersey’s Municipal Courts handle millions of cases every year.

*The good news is that New Jersey’s municipal court system is one of the finest in the nation.*

*It is comprised of talented judges and court administrators, guided by gifted presiding judges of the municipal courts, assignment judges, and the Director of the Administrative Office of the Courts.*

*– Chief Justice Stuart Rabner, May 17, 2019*

This report of the Working Group on the Municipal Courts (Working Group) represents a comprehensive reevaluation of the administration of justice in New Jersey’s Municipal Courts by closely examining how to improve and safeguard equal access, fairness, and judicial independence.

A leading step in the most recent push<sup>1</sup> to bring meaningful reform to the Municipal Courts occurred in March 2017, when New Jersey Supreme Court Chief Justice Stuart Rabner created the Supreme Court Committee on Municipal Court Operations, Fines, and Fees (Supreme Court Committee). The 31-member Supreme Court Committee was charged with conducting a reform-minded review of Municipal Court practices, particularly those that can have a detrimental effect on individuals of lesser economic means. On June 22, 2018, the Supreme Court Committee issued a report consisting of 49

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<sup>1</sup> This is not the first call for Municipal Court reform, which originated soon after the ratification of New Jersey’s 1947 Constitution, N.J. Const. art. IV, § 7, ¶ 2. Prior reform efforts were met with limited success, with the exception of a number of critical legislative changes made in the 1990s that have formed the Municipal Courts as we know them today.

recommendations designed to further enhance the principles of providing equal access to the courts and fair justice for all.<sup>2</sup> Recommendation 49 of the Supreme Court Committee called for the creation of a working group composed of all three branches of government and key stakeholders to implement those recommendations that required inter-branch collaboration and coordination, in particular, those recommendations that would require legislative changes.

In September 2018, Chief Justice Rabner convened the Working Group on the Municipal Courts<sup>3</sup> (Working Group) to review and discuss several key Supreme Court Committee recommendations and work on concrete steps toward implementation. The 38-member Working Group included representatives from all three branches of government at multiple levels. The focus of the Working Group was twofold: (1) facilitate implementation of the well-conceptualized road map of recommendations of the Supreme Court Committee, in particular those recommendations that required Legislative and Executive collaboration, and provide proposals for implementation and (2) explore any other reforms identified by the Working Group that will lead to improving the Municipal Courts in New Jersey.

### **Recent Municipal Court Reform Initiatives**

Over the past several years, the Judiciary has also engaged in numerous efforts to limit processes in the Municipal Court that have negative effects on defendants, particularly individuals of limited financial means.

In the past five years, the Judiciary achieved a dramatic reduction in the imposition of ‘contempt of court’ sanctions—penalties imposed by judges on defendants for failure to pay and failure to appear.<sup>4</sup> Since 2014, the Judiciary has conducted numerous trainings for judges on limiting the use of contempt. In April 2018, in a

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<sup>2</sup> <https://njcourts.gov/pressrel/2018/pr071718a.pdf>; Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees available at [https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport\\_wapp.pdf](https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport_wapp.pdf)

<sup>3</sup> <https://njcourts.gov/pressrel/2018/pr092518a.pdf>

<sup>4</sup> This issue was examined in the Supreme Court Committee report. Municipal Courts have the discretion to sanction a defendant for a failure to appear, and in some instances, find a defendant in contempt of court for a willful refusal to pay a legal financial obligation. The money, when collected, is distributed to the municipality where the court is located, rather than the county or State. For many defendants with limited resources, these added penalties can contribute to an ongoing cycle of court involvement.

letter addressed to all Municipal and Superior Court judges, the Chief Justice stressed the need for judges to exercise strong judicial integrity and independence in all judicial actions, emphasizing that: (1) the imposition of punishment should in no way be linked to a town's need for revenue and (2) defendants may not be jailed because they are too poor to pay court-ordered financial obligations. (Appendix O of 2018 Supreme Court Committee Report).

Throughout 2018, Assignment Judges issued local orders to make sure that proper procedures were followed under the Court Rules in the limited instances in which a contempt sanction may be imposed. On September 1, 2018, the Court enacted amendments to the Court Rules that put a hard cap on the maximum financial penalty a Municipal Court judge could assess a defendant for failure to appear in court and failure to pay.<sup>5</sup> These rule amendments do not prevent judges from imposing a sanction, but rather ensure that this enforcement tool is properly used.

These efforts have yielded positive results—the total amount assessed from contempt sanctions has steadily decreased each year since 2015, from \$8,433,180.61 (an average of \$67.41 per case where a contempt sanction was ordered) to \$3,134,400.08 (an average of \$57.15 per case) in 2018. This represents a staggering 63% reduction in total contempt sanctions over the past four years. The Judiciary computer systems continue to track these amounts and provide Assignment Judges and Municipal Court Presiding Judges with the tools to monitor sanctions imposed by judges under their supervision. These tools enable the Presiding Judges to provide mentoring and guidance to Municipal Court judges as needed.

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<sup>5</sup> R. 7:8-9A(b) provides that for consequence of magnitude cases where the defendant fails to appear, the aggregate sanction per case shall not exceed \$100. For cases other than consequence of magnitude, the aggregate sanction per case shall not exceed \$25 for parking offenses and \$50 for all other matters. In addition, R. 7:8-9A(c) provides that a judge may impose a higher sanction on a defendant for failure to appear only in accordance with the contempt of court provisions of R. 1:10. R. 7:9-5 provides that a judge may order a defendant to pay an aggregate monetary sanction for each order setting forth time payments not to exceed \$50, where the defendant defaults on payment of a Municipal Court imposed financial obligation without just cause or excuse. See <https://njcourts.gov/notices/2018/n180717b.pdf>; see also *Report of the Supreme Court Committee on Municipal Court Practice, 2015-2017 Term*, pp. 12-16 (Feb. 1, 2017) available at <https://www.njcourts.gov/courts/assets/supreme/reports/2017/municipal.pdf>.

TOTAL MUNICIPAL COURT FILINGS	CASES WITH CONTEMPT ASSESSMENTS	TOTAL CONTEMPT ASSESSED	PER CASE AVERAGE
<b>2015</b>			
<b>5,719,650</b>	<b>125,105</b>	<b>\$8,433,180.61</b>	<b>\$67.41</b>
<b>2018</b>			
<b>6,177,993</b>	<b>54,846</b>	<b>\$3,134,400.08</b>	<b>\$57.15</b>

The Judiciary has also developed a multi-pronged approach to ensure that bench warrants issued to defendants who have not appeared for their court dates are issued only when they may be useful and necessary and to restrict the overall number of such warrants issued. These efforts include expanded training for Municipal Court judges and the issuance of Assignment Judge orders, which restrict warrants for failure to appear on moving violations to only the most serious matters and provide for the immediate release on recognizance (ROR), the opportunity to post bail, or a 48-hour bail hearing for Municipal Court defendants who are detained on a bench warrant. The results of these efforts have been significant. In 2015, there were 559,697 bench warrants issued in New Jersey Municipal Courts. By the end of 2018, that number had been reduced to 395,542.

<b>Municipal Court Bench Warrant Report Statewide Comparison</b>			
	2015	2018	Reduction in the Number of Bench Warrants
<b>Total Number of Bench Warrants</b>	<b>559,697</b>	<b>395,542</b>	<b>164,155</b>

Further, in January 2019, the Chief Justice signed an order on behalf of the Supreme Court dismissing approximately 787,000 minor Municipal Court matters that were at least 15 years old, such as parking violations, minor motor vehicle offenses, and local ordinance violations.<sup>6</sup> Those old, outstanding complaints and open warrants raised questions of fairness and the appropriate use of limited public resources by law enforcement and the courts. They also raised concerns regarding the ability of the State to prosecute these cases given the age of the charges and the availability of witnesses.

<sup>6</sup> <https://njcourts.gov/pressrel/2019/pr011719a.pdf>



To complement a reduction in the use of punitive measures that have been relied on for decades to get people to come to court (such as bench warrants and license suspensions), the Judiciary is working to expand a process through which court users are given the option to be automatically notified of upcoming Municipal Court dates via email and text messaging.

### **Collaboration to Attain Municipal Court Reform**

Many of the recommendations set forth by the Supreme Court Committee in its June 2018 report are squarely within the authority of the Judiciary to implement. However, there are those that implicate the authority of the Legislative and Executive branches, or would otherwise benefit from inter-branch discussions. The Judiciary’s collaborative partnership with the other two branches in past successful initiatives has been crucial.

This report represents the latest effort in New Jersey’s long history of collaborative movements surrounding the provision of justice in the New Jersey court system. These efforts include Criminal Justice Reform, a transformative change from the money-based bail system to a pretrial release system based on risk; Drug Court, which offers an alternative to

*While our collective goals are many, they share a common ideal: that good government initiatives can protect the vulnerable and improve community safety while ensuring the essential constitutional principles of access, fairness, and equal treatment.*

*– Hon. Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts, April 3, 2019*

prison for people who have been convicted of a crime and struggle with alcohol or drug dependency; and the Juvenile Detention Alternative Initiative, which keeps youth accused of crime out of overcrowded detention facilities.

Through these efforts, New Jersey has become a nationwide model for the inter-branch development and implementation of justice reforms. However, there is a growing national and local consensus regarding the need to address issues particular to courts of limited jurisdiction—both in the form of structural reform and a reconsideration of policies and procedures surrounding the collection and enforcement of fines and fees. New Jersey has joined in this national effort and embarked on a reform-minded effort to scrutinize and improve the procedures of its courts of limited jurisdiction, the Municipal Court.

This report sets forth 17 recommendations that focus on: (1) decoupling of sentencing practices from a municipality’s need for revenue in order to enhance

equal access and fairness; (2) modifying the appointment and reappointment process for Municipal Court judges to enhance judicial independence; and (3) consolidation and regionalization of the Municipal Court system to improve the efficiency of court operations and the delivery of justice.

## **II. TABLE OF RECOMMENDATIONS**

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### **Recommendations of the Working Group on the Municipal Courts— Achieving Equal Access, Fairness and Judicial Independence**

The Working Group sets forth 17 recommendations that demonstrate a collective governmental commitment to ensure that the avenues of justice in the Municipal Courts are fair, independent, and accessible to all members of society. Recommendations 1-10 focus on ensuring equal access to and fairness in the administration of justice by separating a municipality's need for revenue from sentencing practices. Recommendations 11-17 focus on enhancing judicial independence and improving efficiency of court operations by modifying the appointment process and terms for Municipal Court judges, incentivizing municipalities to consolidate, and mandating the regionalization of smaller Municipal Courts.

#### **Equal Access and Fairness—Decoupling of Sentencing Practices from a Municipality's Need for Revenue**

- (1) The Legislature should consider amending N.J.S.A. 40A:4-45.3 to facilitate reducing a municipality's reliance on fines and fees collected by the Municipal Court as a source of general operating revenue when structuring and projecting its annual budget.
- (2) The Legislature should consider amending N.J.S.A. 40:49-5 to provide for a uniform cap on penalties and fines for certain categories of ordinance violations and to decrease the term of imprisonment for an ordinance violation from 90 days to 30 days.
- (3) The Legislature should consider creating a statewide mental illness diversion program; expanding community court programs; and creating a State-funded community service program.
- (4) The Legislature should consider creating a traffic ticket deferral program.
- (5) The Legislature should consider legislation that provides credit towards a legal financial obligation for hours spent in clinical treatment related to the underlying offense charged.

- (6) The Judiciary should continue to promote greater use of time payment plans that are reasonable and achievable.
- (7) Significantly reduce the commonplace usage of license suspensions for failure to pay through legislation, Administrative Directive(s), and judicial training.
- (8) The Legislature should consider amending N.J.S.A. 2B:12-26 to clarify the authority of the Municipal Court to docket civil judgments and amending N.J.S.A. 22A:2-7(a) to provide for waiver of docketing fees where a defendant defaults on a legal financial obligation after an ability-to-pay hearing has been scheduled and fails to appear at that hearing.
- (9) The Legislature should consider increasing the minimum incarceration conversion rate set forth in N.J.S.A. 2C:46-2a.(3)(c) and N.J.S.A. 39:5-36b.(3).
- (10) The Legislature should consider reducing surcharges and assessments imposed by the Motor Vehicle Commission (MVC) and reducing and/or eliminating certain surcharges statutorily required to be assessed and imposed by the Municipal Court at the time of sentencing.

**Judicial Independence—Reviewing and Modifying the Appointment  
and Reappointment Process**

- (11) The New Jersey State Bar Association’s county Judicial and Prosecutorial Appointment Committees (JPACs) should review the qualifications of Municipal Court judicial candidates for appointment and reappointment and report to the Municipal body on whether the judicial candidate is qualified. The Municipal body will retain the discretion to make the final selection decision.
- (12) The Legislature should consider amending N.J.S.A. 2B:12-4 to extend the term of office for the reappointment of Municipal Court Judges from three to five years, with the initial term of appointment remaining at three years.
- (13) The Judiciary should establish a Municipal Court judge evaluation process and increase the number of annual Municipal Court Judges’ conference training days to two days. Municipal leaders are encouraged to visit the Municipal Courts for purposes of gaining greater familiarity with court operations.

- (14) The Legislature should consider amending N.J.S.A. 2B:25-4 and N.J.S.A. 2B:24-3 to extend the term of office for the reappointment of the municipal prosecutor and public defender to three years, with the initial appointment term remaining at one year. The Legislature should also consider amending N.J.S.A. 2B:25-10 to allow the Attorney General to mandate training for Municipal Court prosecutors.
- (15) The Legislature should consider amending N.J.S.A. 2B:12-9 to relax the designation requirements for Presiding Judges of the Municipal Courts.

**Judicial Independence and the Efficient Administration of Justice—  
Consolidation and Regionalization of the Municipal Courts to Improve  
Efficiency of Court Operations and Delivery of Justice**

- (16) The Legislature should consider establishing additional incentives to encourage municipalities to consolidate under the existing statutory framework of shared and joint courts and modifying N.J.S.A. 2B:12-1(e) to expand central Municipal Courts to all counties in the State.
- (17) After a three-year transition period to encourage municipalities to voluntarily participate in shared, joint, or central Municipal Courts, the Legislature should consider mandating the regionalization of smaller Municipal Courts.

### III. METHODOLOGY

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To appropriately represent the inter-branch commitment to this venture, the Working Group, chaired by the Hon. Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts, includes representatives from all three branches of government, as well as representatives of key public interest groups.

*The recommendations set forth in the Supreme Court Committee's report can play an important role in enhancing public confidence in the municipal court system.*

*Implementing the recommendations will require collaboration and cooperation among the three branches of government as well as the state's municipalities.*

*– Hon. Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts, July 2018*

The Judicial Branch was represented by Assignment Judges, Municipal Court Presiding Judges, Municipal Court Judges, the Administrative Office of the Courts Director of Professional and Governmental Services and Assistant Director of Municipal Court Services, a Trial Court Administrator, and Municipal Court Practice Committee members.

The Legislature was represented by Chief Counsels of the General

Assembly and the Senate Majority, and General Counsel to the Assembly Majority Office.

Executive Branch stakeholders included the Associate Counsel to the Governor's Office, the Chief Administrator and designee of the New Jersey Motor Vehicle Commission (MVC), representatives of the Office of the Attorney General and the Office of the Public Defender, and mayors of three municipalities.

Other represented criminal justice stakeholders included a Municipal Chief of Police; and designees of the New Jersey Municipal Prosecutors Association, Association of Criminal Defense Lawyers of New Jersey, New Jersey County Jail Wardens Association, and the New Jersey State Association of Chiefs of Police.

Finally, represented interest groups included the League of Municipalities, New Jersey State Bar Association, New Jersey Muslim Lawyers Association, New Jersey Drug Policy Alliance, American Civil Liberties Union, NAACP New Jersey State Conference, and Hispanic Bar Association of New Jersey.

The charge of the Working Group was to address the issues stemming from several key recommendations of the Supreme Court Committee that required collaboration and coordination among all three branches of government. Those issues were categorized for review by three Working Group subcommittees as follows:

### **Inter-Branch Issues and Coordination Subcommittee**

- (1) Explore methods to encourage the decoupling of sentencing practices from a municipality's need for revenue.
  - a. Examine the seemingly never-ending imposition of mandatory fines and license suspensions, and their extension beyond the fine that is associated with the violation.
  - b. Explore the greater use of sentences that emphasize public safety and deterrence without such significant reliance on fines, surcharges, license suspensions, and incarceration.
  - c. Examine the use of New Jersey Motor Vehicle Commission surcharges that are not subject to forgiveness or reduction and have significant consequences for indigent defendants.
  - d. Explore the impact and prevalent use of license suspensions, and consider ways to reduce their use, particularly for minor offenses.
- (2) Members of this subcommittee were also tasked with reviewing the following Supreme Court Committee recommendations: Recommendation 6 (creation and expansion of diversionary programs), Recommendation 9 (receipt of credit towards a legal financial obligation), Recommendation 10 (legislative alternatives to license suspension), and Recommendation 11 (establish and update an incarceration conversion rate).

### **Municipal Court Judicial Appointments Subcommittee**

- (1) Consider modification of current legislative scheme for the appointment and reappointment process of Municipal Court judges to enhance judicial independence through the establishment of an objective, transparent appointment process. Specifically, review Supreme Court Committee Recommendations 24-31 (mandating a qualifications process for appointment and reappointment of Municipal Court judges), Recommendation 34 (evaluation process for Municipal Court judges), and Recommendation 35 (evaluation report to be used in qualifications process).

- (2) Consider increased terms of service for judges, municipal prosecutors, and municipal public defenders. Specifically, review Supreme Court Committee Recommendation 32 (increase term of service for Municipal Court judges from 3 to 5 years) and parts of Recommendation 49 (increase term of service of municipal prosecutors and municipal public defenders from 1 to 3 years).

### **Municipal Court Regionalization Subcommittee**

- (1) Review the structure, funding, and efficiencies of the Municipal Court system with an eye toward consolidation and regionalization, taking into account factors such as total annual filings, frequency of court sessions, and geography.
- (2) Explore shifting part-time Municipal Court judgeships to full-time, tenured judgeships funded by the State of New Jersey's general fund.
- (3) Members of this subcommittee were also tasked with reviewing Supreme Court Committee Recommendation 33 (consolidation of small courts) and parts of Recommendation 49 (expansion of subject matter jurisdiction of the Municipal Courts).

Both the full Working Group and the respective subcommittees met multiple times between the convening of the Working Group and the issuance of this final report. At the final meeting of the Working Group, members reviewed and approved the 17 recommendations captured in this report. Members were given an opportunity either to abstain from voting or to provide a written recitation of their minority opinion. Minority opinions received from Working Group members are published along with this report.



## IV. THE PATH TO MODERN MUNICIPAL COURT REFORM EFFORTS

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### Early Reform Efforts leading to the 1947 New Jersey Constitution

Nearly 70 years ago, prior to the ratification of the 1947 New Jersey Constitution, N.J. Const. art. IV, § 7, ¶ 2, the State recognized the need to reform its judicial branch. At that time, the State justice system included 17 different courts, which was considered unwieldy and confusing. The goals of that judicial reform were unification of the courts; providing for a flexible and efficient court system by assigning judges according to their ability, experience, and need, and dividing the administration of justice amongst various courts; and exclusive control over court administrative practices and procedures via the court rules to promote simplified and economical judicial procedures.

The result of those judicial reform efforts—the 1947 New Jersey Constitution—was the streamlining and creation of an administratively unified court system, a product of a broad partnership between the three branches of State government. Article VI of the 1947 New Jersey Constitution established the Supreme Court, the Superior Court (Appellate Division, Law Division, Chancery Division), and other courts of limited jurisdiction.<sup>7</sup> The 1947 Constitution also sets forth a procedure for the appointment of judges and the limitations on their terms and gives the Supreme Court the authority to administer all aspects of the New Jersey courts and the practice of law. However, Article VI did not establish a local court system, despite the fact that a system of Municipal Courts had existed since colonial times. Instead, New Jersey’s Constitution refers to the authority of the Legislature to create courts of limited jurisdiction, i.e. Municipal Courts<sup>8</sup> and Tax Court. New Jersey Municipal Courts are not constitutional courts, but rather legislative courts<sup>9</sup>, which are under the complete administrative control of the New Jersey Supreme Court.

The final component of unification—fiscal unification—came in the form of the Judicial Unification Act in 1994. That Act created a State-funded court system,

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<sup>7</sup> Article VI of the 1947 Constitution also provides that the other courts of limited jurisdiction “may from time to time be established, altered or abolished by law”.

<sup>8</sup> R. 7:1 lists those matters that are within the statutory jurisdiction of the Municipal Courts to hear. (Appendix A).

<sup>9</sup> N.J.S.A. 2B:12-1 et seq. provides for the establishment and organization of the Municipal Courts. (Appendix B).

whereby all State Judiciary employees joined the State payroll, all Judiciary functions came under the oversight of the Administrative Office of the Courts, and a statewide budget allowed the Judiciary to allocate its resources and develop technology. The result was the more equitable administration of justice across the State of New Jersey. Nonetheless, the Municipal Court system remains one of the few areas of court operation that is structured and funded in the same manner as it was in 1947.

### **Post-1947 Reform Efforts**

The first post-1947 call for reform—unification via regionalization—was made on November 20, 1958, when then Chief Justice Joseph Weintraub addressed the New Jersey League of Municipal Attorneys and called for the institution of a system of regional courts with judges appointed by the Governor. Chief Justice Weintraub noted that, “It is idle and incongruous to charge the Supreme Court with administrative supervision, as the Constitution does, while the capacity to frustrate effective supervision and performance remains with 567 autonomous bodies.” (Appendix C).

A similar call for regionalization was again made in 1971 by then Administrative Director of the Courts Edward McConnell, who relied on a report written by an outside consultant. That report, titled “Merging Municipal Courts,” recommended the creation of court districts and hiring full-time judges appointed by the Governor and confirmed by the State Senate. The report cited to the remote and inconsequential influence the State had over the Municipal Courts, as well as concern regarding case processing capabilities of the Municipal Courts. The report’s recommendations sought to incorporate methods and mechanisms to contend with these new pressures in the Municipal Courts—including regionalization.

The next attempt at Municipal Court reform was announced during an October 1973 meeting of the New Jersey State Bar Association. Then Chief Justice Pierre P. Garven proposed a number of reforms to the Municipal Court system, pointing to the criticism received by the Municipal Courts due to the lack of training for Municipal Court judges, as well as the significant number of cases (3 million) and revenue generated (\$32 million) from associated court fines and penalties. Chief Justice Garven proposed regional Municipal Courts, extensive training for newly-appointed Municipal Court judges, an extended reappointment term of at least five

years with eventual tenure, and screening of judicial candidates for the local courts by county bar associations.

Subsequently, at the October 17, 1973 Judicial Conference of Municipal Court Judges, Justice Mark Sullivan read a speech prepared by Chief Justice Garven, who was absent due to illness, reminding Municipal Court judges of the significance of their role. Chief Justice Garven passed away shortly thereafter and no action was taken by the Legislature on his proposals. (Appendix D).

***You, judges of the Municipal Court of this State, represent the first bastion of our judicial system.***

***Thousands of our citizens are exposed to justice in New Jersey through the Municipal Courts. They are unaware of the activities of any other court. To these people, you are the judicial system. This alone places a heavy burden upon you.***

***– Chief Justice Pierre P. Garvin,  
October 17, 1973***

Reform efforts continued in 1979 by then Chief Justice Richard J. Hughes, who called on the Legislature to establish regionalized Municipal Courts led by full-time Municipal Court judges. This recommendation was again based on the absence of unification, as demonstrated by local, politically influenced courts and the inappropriate influence those local officials had on the Municipal Courts, as explained in a legal brief written by Chief Justice Hughes to then Governor Brendan Byrne and Attorney General John J. Degnan. (Appendix H-1 of 2018 Supreme Court Committee Report).

A subsequent, extensive committee-led examination of the Municipal Courts was undertaken in 1983 by the Supreme Court's Task Force on the Improvement of the Municipal Courts (Task Force). The Task Force conducted an exhaustive study of the operation and administration of the Municipal Courts, focusing on the statewide management structure of the Municipal Courts; calendar management; Municipal Court personnel; budget and finances; trial and case processing; accountability and issues of public interest; and court facilities and operations.

In 1985, the Task Force issued a 200-page report containing a host of significant recommendations, many of which have been adopted over the course of the following decades<sup>10</sup>, including a series of 1993 legislative changes that have formed

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<sup>10</sup> Those recommendations include the creation of a Municipal Presiding Judge position, requiring that a candidate for a Municipal Court judgeship be an attorney admitted to the practice of law for a minimum of five years, the creation of a certification process for Municipal Court

the Municipal Court system as we know it today. N.J.S.A. 2B:12-1 to -31. (Appendix G of 2018 Supreme Court Committee Report). Some of the more significant 1985 Task Force recommendations that were not adopted related to changing the appointment process, establishing the provision of tenure, requiring uniform, capped salaries for Municipal Court judges, and structural changes either through the creation of regional courts or consolidation of courts.

On April 22, 1994, then Chief Justice Robert N. Wilentz stated that a township's refusal to reappoint its Municipal Court judge because of the judge's failure to generate sufficient revenue was intolerable. Chief Justice Wilentz emphasized that this reason "puts cash on the scales of justice," "encourages what amounts to judicial misconduct," and "threatens judicial independence and undermines the public's confidence in municipal courts." He underscored that Municipal Court judges "will continue to impose fines and penalties only to enforce the law, only in accordance with the law, and only to do justice."

Improvements in the New Jersey Municipal Courts continued in a variety of areas. In the mid-1990s, New Jersey was the only state that had a statutory certification program for administrators in courts of limited jurisdiction.<sup>11</sup> On November 15, 1996, in her address at an awards ceremony for certified Municipal Court Administrators, then Chief Justice Deborah T. Poritz acknowledged the professional achievements of these dedicated public servants and the statutory certification process they are required to complete in order to serve in that special role.

*During the past eleven years, with legislative and administrative support, a corps of highly qualified Municipal Court administrators has emerged.*

*Use your leadership and your skills to assure that Municipal Court offices are service oriented, that they are places of civility where the public has confidence that "Integrity," "Fairness," and "Service," are the standard, and not simply the words of a motto on office doors.*

*– Chief Justice Deborah T. Poritz,  
November 15, 1996*

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Administrators, and the creation of a statewide computer system (ATS/ACS) for the issuance of traffic tickets and complaints by local or State police or through citizen complaints.

<sup>11</sup> In 1997, the Legislature passed a law mandating certification of Municipal Court Administrators.

Despite significant efforts, many of which were successful, our Municipal Court system remains a work in progress.<sup>12</sup> The original motivation for reform was largely for practical purposes such as ensuring cases move through the system more efficiently and effectively. That impetus has now shifted to examining all aspects of the Municipal Court system to ensure that the principles of equal access, fairness, and independence are fully expressed. The path to true unification of the Municipal Courts has remained elusive, partially due to the unique structure of our Municipal Court system and the relationship between and the specific roles and responsibilities of the municipalities and the Judiciary. However, it is by no means unattainable.

### **Modern Municipal Court Reform Efforts by the Judiciary**

There is a growing consensus, both locally and nationally, that more needs to be done to address issues that are unique to courts of limited jurisdiction. This extends both to structural reform as well as a reconsideration of policies and procedures surrounding the collection and enforcement of fines and fees.

Recently, the Judiciary has again engaged in a variety of self-critical evaluations in order to improve various aspects of the Municipal Courts. For example, the Judiciary recognized the need to address the impact of monetary court penalties on individuals and created the Contempt of Court Working Group to review the long-standing Municipal Court practice of imposing monetary sanctions on defendants who fail to appear in court or fail to pay penalties imposed after conviction under the auspices of ‘contempt.’ That working group issued a report, which was submitted to the Municipal Court Practice Committee during the 2015-

*Notwithstanding built-in pressures that the structure of the system creates, our municipal courts have made important strides in recent years. At the same time, there is room for further improvement.*

*– Chief Justice Stuart Rabner,  
May 17, 2019*

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<sup>12</sup> New Jersey Municipal Courts represent a partnership between the 565 municipalities and state government. Municipalities fund Municipal Courts, including facilities and salaries for judges and staff. In the majority of instances, the municipality has the right to appoint Municipal Court judges and other court staff using minimum eligibility requirements as set by statute. It is this bifurcated structure, and the desire to maintain local ‘home rule’ control of the Municipal Courts, that has historically led to continuous resistance to reform efforts—from the initial calls for regionalization to ensure uniformity and Judiciary oversight, to the more recent focus on the public perception of the Municipal Courts as revenue generators.

2017 rule cycle and, as noted earlier, ultimately led to the Court’s adoption of caps on the maximum financial penalties for failure to appear and failure to pay.

Additionally, in 2016 the Judiciary created the Equal Justice Working Group. Comprised of Municipal Presiding Judges, Municipal Division Managers, and staff from the Administrative Office of the Courts, this working group developed and implemented a multi-pronged educational effort to advise the public and educate judges about payment alternatives.

On a national level, the U.S. Department of Justice’s 2015 investigation of the Ferguson, Missouri Police Department precipitated renewed scrutiny of Municipal Court practices to collect and enforce fines. Those questionable practices were addressed in the March 2016 Department of Justice’s “Dear Colleagues” letter to all state Supreme Court Justices and state Court Administrators in the United States.<sup>13</sup> That letter urged courts across the country to review procedures related to the enforcement of fines and fees to make sure they comply with procedural due process, equal protection, and sound public policy.

Additionally, for several years academic scholars and national and local news coverage increased focus on policies and procedures in courts of limited jurisdiction that appeared to emphasize generating revenue for municipalities rather than on dispensing justice. In 2017, the New Jersey Legislature held hearings and called for the investigation of the Municipal Courts.

Under the leadership of Chief Justice Rabner, the New Jersey Judiciary has significantly augmented its reform-minded efforts to improve its Municipal Courts when, in March 2017, the Chief Justice created this Working Group’s predecessor—the Supreme Court Committee on Municipal Court Operations, Fines, and Fees (Supreme Court Committee).

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<sup>13</sup>The March 14, 2016 letter is available at <https://finesandfeesjusticecenter.org/content/uploads/2018/11/Dear-Colleague-letter.pdf>. (See also Appendix A-2 of 2018 Supreme Court Committee Report).

On December 21, 2017, the Department of Justice rescinded this letter and 24 other documents as “unnecessary, inconsistent with existing law, or otherwise improper.” Press Release, Dep’t of Justice, Office of Public Affairs, Attorney General Jeff Sessions Rescinds 25 Guidance Documents (December 21, 2017), available at <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents>. (See also Appendix A-3 of 2018 Supreme Court Committee Report).

*It is often said that Municipal Courts, which handle millions of cases each year, are the face of the Judiciary. We must make sure that they adhere to the Judiciary's high standards of integrity, independence, and fairness. As part of that effort, courts are responsible to see that justice is carried out without regard to any outside pressures.*

*– Chief Justice Stuart Rabner, July 17, 2018*

The Supreme Court Committee, chaired by Assignment Judge Julio L. Mendez and Vice Chair Assignment Judge Lisa P. Thornton, was charged with conducting a review of Municipal Court practices, emphasizing several important concepts that affect all defendants in Municipal Court—particularly those of lesser economic means. These

concepts included, but were not limited to: the adequacy of notice provided to defendants before a driver's license suspension, the sufficiency of procedural safeguards for defendants who may be unable to pay a fine, whether an acquitted defendant can be assessed court costs, the use of excessive contempt sanctions, whether sufficient technology is available to the Municipal Courts and court users, and the independence of our Municipal Courts.

The Supreme Court Committee issued a report in June 2018 containing 49 recommendations that identified a range of solutions for issues confronting Municipal Courts. These included procedural safeguards for defendants unable to pay a fine, alternatives to bench warrants and driver's license suspensions, an evaluation process for the appointment and reappointment of municipal judges, the possible consolidation of smaller Municipal Courts, and improved access to Municipal Courts through technology.<sup>14</sup>

Many of the Supreme Court Committee's recommendations propose changes that the Judiciary can address through modifications to training, policy, administrative directive, or court rule. However, some of the recommendations implicate the authority of the Legislative and Executive branches. Thus, in its final recommendation, the Supreme Court Committee recommended that the Court form a Working Group "comprised of all three branches of government and key stakeholders to implement needed reform and statutory changes to the structure of

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<sup>14</sup> Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees available at

[https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport\\_wapp.pdf](https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport_wapp.pdf)

the Municipal Courts and to create a forum for the discussion of additional relevant issues.”<sup>15</sup>

To that end, the Chief Justice convened this Working Group on the Municipal Courts in September 2018, chaired by the Hon. Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts. The Working Group was charged with addressing issues that require collaboration and coordination with all three branches of government and that are interconnected with the principles of equal access, fairness, and judicial independence. Section V. of this report sets forth the Working Group’s 17 recommendations in furtherance of those principles.

## **V. WORKING GROUP RECOMMENDATIONS**

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The overarching issues examined by the Working Group include: (A) decoupling of sentencing practices from a municipality’s need for revenue to enhance equal access and fairness (Recommendations 1-10); (B) modifying the appointment and reappointment process for Municipal Court judges to enhance judicial independence (Recommendations 11-15); and (C) consolidation and regionalization of the Municipal Courts to enhance judicial independence and improve the efficiency of court operations and the delivery of justice (Recommendation 16-17).

### **A. Equal Access and Fairness—Decoupling of Sentencing Practices From a Municipality’s Need for Revenue (Recommendations 1-10)**

The Municipal Courts collect in excess of \$400 million annually. Approximately \$220 million of that total is distributed by Municipal Courts to municipalities, with the remainder being distributed to the State Treasurer, the local county, or to specific agencies (e.g., the Motor Vehicle Commission) or funds. All such distributions are made pursuant to statute. Most Municipal Courts generate revenue for the local municipality that far exceed the court’s operating budget.

Municipal Court stakeholders are in agreement that the administration of justice should not be guided by revenue. The Working Group was thus charged with exploring methods to decouple sentencing practices from a municipality’s need for revenue, all while discouraging or deterring undesirable or illegal behavior.

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<sup>15</sup> Ibid.



The goal of Recommendations 1-10 is to promote equal access and fairness by decoupling sentencing practices from a municipality's need for revenue. Recommendations 1-10 set forth the Working Group's proposed multi-faceted approach to achieving decoupling by: (1) reducing a municipality's reliance on fines as a source of revenue; (2) giving judges the sentencing tools they need to shape behavior beyond monetary penalties; and (3) modifying assessment, collection, and enforcement practices currently used in the Municipal Courts.

## **Part I: Reducing Reliance on Fines as a Source of Revenue**

The first facet of decoupling is to reduce local reliance on fines as a source of revenue. Monies turned over by a Municipal Court to a municipality go into that municipality's general fund and can be used by the municipality for any purpose. The Working Group recognizes that this is a lawful practice and logical in light of budgetary realities that many municipalities face. However, the assessed fines should not serve to drive a municipality's budget. The Working Group is confident that the vast majority of local leaders do not intend to influence Municipal Court-based revenue, and will gladly adopt reasonable practices that will make clear that intention.

To that end, Recommendation 1 urges the Legislature to consider amending N.J.S.A. 40A:4-45.3 to facilitate reducing a municipality's reliance on fines and fees collected by the Municipal Court as a source of general operating revenue when structuring and projecting its annual budget. Recommendation 2 proposes that the Legislature amend N.J.S.A. 40:49-5 to provide for a uniform cap on penalties and fines for certain ordinance violations and to decrease the term of imprisonment for such offenses from 90 days to 30 days. Both of these recommendations are discussed in further detail below.

### **RECOMMENDATION 1**

**The Legislature Should Consider Amending N.J.S.A. 40A:4-45.3 to Facilitate Reducing a Municipality's Reliance on Fines and Fees Collected by the Municipal Court as a Source of General Operating Revenue when Structuring and Projecting its Annual Budget.**

Municipal Courts assess and collect approximately \$400 million a year, with more than half of that total being turned over to municipalities. The rest of the monies are

distributed by the court to the State and counties. Of the hundreds of millions turned over to municipalities, no money is appropriated for the specific purpose of funding Municipal Court operations. Instead, monies turned over to the municipality enter its general fund and can be used in any manner the municipality sees fit. This is true even for collected court costs. Of course, the municipality is obligated to fund its Municipal Courts, including salaries for judges and staff, facilities, and all other related expenses.

The unique partnership between municipalities and the courts can potentially put a strain on the delivery of justice, in some cases, by creating tension between upholding the rule of law by deciding cases on the merits alone without undue pressure to impose fines and fees.

***One overarching concern, of course, is to separate a town's need for general operating revenue from the operation of the municipal court.***

***Otherwise, the system can inappropriately place pressure on police officers to write tickets and on judges to impose fines and fees. There is no place for either organization to be a party to raise funds for local government.***

***– Chief Justice Stuart Rabner, May 17, 2019***

Pursuant to N.J.S.A. 40A:4-45.3, annual local budget appropriations increases may not increase by more than the lesser of 2.5% or the cost-of-living adjustment over the previous year's final appropriations, with some exceptions. (Appendix E). Therefore, the Working Group recommends that the Legislature consider amending N.J.S.A. 40A:4-45.3 to include a Municipal Court operations budget on the list of final

appropriations excepted from this cap in order to ensure adequate court funding. This proposal might lessen a municipality's reliance on court revenue and remove pressure that judges and law enforcement officers may face from the municipality to use the courts as revenue generators.

Separating a town's need for general operating revenue from the operation of the Municipal Courts is paramount to maintaining the public's confidence in the integrity of the judicial system and to providing a forum to resolve disputes that is fair and accessible to all.

## **RECOMMENDATION 2**

### **The Legislature Should Consider Amending N.J.S.A. 40:49-5 to Provide For a Uniform Cap on Penalties and Fines for Certain Categories of Ordinance Violations and to Decrease the Term of Imprisonment for an Ordinance Violation from 90 Days to 30 Days.**

Generally, the purpose of local ordinances<sup>16</sup> is to secure the safety and general welfare of the municipality's constituents. N.J.S.A. 40:49-5 sets the maximum penalty that may be imposed for the majority of municipal ordinance violations. Those penalties may include one or more of the following: a fine not exceeding \$2,000; imprisonment not exceeding 90 days; or a period of community service not exceeding 90 days. (Appendix F). In the pursuit of fairness and to reduce the oftentimes harsh monetary consequences for lower level offenses, the Working Group recommends that the Legislature consider amending N.J.S.A. 40:49-5 to set specific fine thresholds for various categories of local ordinances. In other words, categories of local ordinance offenses could be created, and maximum fine amounts could be set (e.g., some capped at \$250, others at \$500, and others at \$1,000, with the most serious capped at \$2,000).

Additionally, the broad range for local ordinance fines (maximum \$2,000) has resulted in identical offenses across municipalities incurring vastly different penalties. Creating a fine structure based on the type of offense will have the desired effect of reducing reliance on fines and fees, moving away from potentially penalizing a person for their inability to pay, retaining the goal of modifying behavior that jeopardizes public safety and welfare, and creating uniformity in sentencing for ordinance violations. Uniform, categorical caps on fines would ensure equitable sentencing for similar offenses across the state, while also ensuring that the amount imposed is reasonable.

The Working Group also believes that a defendant found guilty of a local ordinance violation should not be subject to a longer jail term than someone convicted of a petty disorderly persons offense. Thus, the Working Group recommends that the Legislature consider reducing the maximum jail term for someone convicted of an

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<sup>16</sup> Pursuant to N.J.S.A. 40:48-1, the governing body of every municipality may make, amend, repeal and enforce ordinances that regulate or prohibit various actions or regulate the use of property or public spaces to preserve the public peace and order, e.g., loitering, public intoxication, underage drinking, excessive noise. N.J.S.A. 40:49-1 defines ordinance as "any act or regulation of the governing body of any municipality required to be reduced to writing and read at more than one meeting thereof and published".

ordinance violation from 90 days to 30 days, which aligns with the maximum term that can be imposed on someone convicted of a petty disorderly persons offense. Subject to technological availability, the Working Group also is supportive of exploring the development of statutory guidelines for laddering penalties for certain categories of offenses, e.g., a maximum amount of penalty could be set for a first offense, followed by increased fines for second, third, and fourth offenses.

## **Part II: Looking Beyond Monetary Penalties to Shape Behavior**

The second facet of decoupling is to look beyond monetary penalties to shape behavior. If the current fine-based sentencing construct is to be discouraged in the interest of parity in justice, consideration must be given to alternatives that can serve the same purpose of discouraging illegal conduct while ensuring both public safety and deterrence. This requires a shift in mindset that fines are the only appropriate penalty for Municipal Court matters to exploring diversionary program options.

The Working Group recommends the expansion of alternative sentences that can be used to address the underlying cause of illegal behavior. These could range from providing formal treatment for certain conditions, such as a drug addiction or mental illness; offering supplemental resources to address homelessness or unemployment; to creating one-time diversionary programs that are contingent on lawful behavior for a certain period of time, similar to conditional discharge or conditional dismissal.

Another option worthy of exploration is to provide credit toward an assessed fine for actions the defendant takes after being charged with an offense, such as voluntarily engaging in rehabilitative services to address the underlying cause of behavior that led to being charged. This would provide an incentive for defendants to seek appropriate treatment, while also providing a means for separating fines and sentencing.

### **RECOMMENDATION 3**

**The Legislature Should Consider Creating a Statewide Mental Illness Diversion Program; Expanding Community Court Programs; and Creating a State-Funded Community Service Program.**

The following proposals were developed upon review of Recommendation 6 of the Supreme Court Committee, which encouraged the creation and expansion of

diversionary programs that would result in the dismissal of charges for defendants who perform volunteer services or complete appropriate treatment services.

### Creation of Statewide Mental Illness Diversion Program

The Working Group recommends creation of a statewide diversionary program whereby an eligible defendant can complete appropriate mental health treatment services. Such a program would serve defendants with mental health issues that might otherwise preclude their participation in a Community Service Program or Community Court Program as discussed below. Creation of a mental illness diversion program will require the combined efforts of the Judiciary, the New Jersey Department of Human Services-Division of Mental Health and Addiction Services, law enforcement and local municipalities, amongst others. Sufficient resources for mental health treatment would be critical to the success of such an endeavor.

### State-Funded Expansion of Community Court Programs

The Working Group acknowledges Newark and Jersey City's Community Solutions court-based programs as models of community court programs that strive to improve the welfare of individuals involved in the judicial system by sending defendants to social service programs and community service. This in turn reduces the court's reliance on fines and jail sentences. (Appendix G). Under Community Solutions programs, Municipal Court judges have increased options for eligible defendants charged with low-level, non-violent offenses (drug possession, disorderly conduct, shoplifting, trespassing). Those options include social service programs, community service, short-term group counseling and treatment classes, and educational assessments rather than the imposition of fines.

Community Court Programs could provide defendants with the opportunity to attend educational programs in lieu of imposing fines and incarceration, and the ability to "work off" fines and fees through available workforce development programs that provide training, job preparation and placement services, and referrals to appropriate treatment services.

The expansion of diversionary community court programs that offer defendants various social service sentencing options, such as access to mental health service providers or job placement services, will require finances and specialized staff that are unavailable in most Municipal Courts. Despite fiscal hurdles, the needs of these defendants, particularly those who would otherwise be ineligible for probation monitoring, must be addressed. To that end, the Working Group recommends the

expansion of Community Court Programs that would be implemented via a partnership between municipalities, social service providers, and the Judiciary. Consideration should be given to the State-led expansion of these programs to allow for consistent sentencing alternatives that are made available to all defendants, regardless of the location of their offending behavior.

### Creation of State-Funded Community Service Program

N.J.S.A. 2B:12-23.1a authorizes a Municipal Court to order community service in lieu of payment of a penalty upon an inability to pay finding. A defendant who defaults on an installment may be ordered by the court to perform community service in lieu of continued payment. N.J.S.A. 2B:12-23.1a(4). Despite these provisions, community service, in this context, is rarely offered to the majority of Municipal Court defendants.

In the majority of municipalities, there is not enough funding to provide for community service. Further, the Judiciary's Probation Division does not have the staffing resources and financial means to monitor all Municipal Court defendants and, in some cases, defendants are ineligible for community service due to a serious physical or mental health disability, a history of chronic alcohol or drug abuse, or lack of a stable place of residence. Therefore, the Working Group recommends the creation of a State-funded Community Service Program as a sentencing alternative for defendants who are otherwise not eligible for placement in the Probation Division's community service program.

To address funding concerns for a Community Service Program and other diversionary programs, the Working Group proposes the diversion of monies collected and earmarked for court use under the Parking Offenses Adjudication Act (POAA), N.J.S.A. 39:4-139.2 et seq. This would require a legislative change as the POAA permits the money to be used only by the court for parking-related expenditures (e.g., compensation to judges, other Municipal Court staff, municipal prosecutors, and interpreters for special court sessions dedicated to parking violations; and for supplies, including forms, tickets, paper, etc. related to parking offenses).<sup>17</sup>

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<sup>17</sup> The POAA dictates the parameters for issuance of tickets for parking violations, including the notice that is to be received, the content of those notices, sentencing parameters, and the consequences of a failure to appear. The POAA provides that out of each parking penalty "assessed and disbursed to the municipality where a failure to appear notice was issued under these provisions, \$2.00 shall be designated and distributed to the municipal court by the municipality to provide for the operation costs to administer this act." N.J.S.A. 39:4-139.9a.

Working Group members cited to the inability of many municipalities to use these POAA funds for parking violations only, as budget appropriations are often directed to the entire Municipal Court, and not to a certain type of violation. In those instances, POAA funds sometimes sit unused while compounding interest. One possibility is to cap the amount of funds that can be diverted to the POAA, while the rest can be earmarked to fund the operation of a statewide community service program. Additional potential funding sources could be drawn from savings realized by docketing civil judgments (Working Group Recommendation 8) and increasing the minimum incarceration conversion rate (Working Group Recommendation 9).

**RECOMMENDATION 4** **The Legislature Should Consider Creating a Traffic Ticket Deferral Program.**

The Working Group considered sentencing options that would emphasize public safety and deterrence without a significant reliance on fines. The Working Group recommends that the Legislature consider creating a traffic ticket deferred disposition/sentence program similar to those available in at least six other states.<sup>18</sup>

Such a program would allow defendants who have committed certain minor traffic offenses to make an agreement with the court to have their ticket dismissed if they commit no traffic violations for a certain period of time, which is dependent upon the type of violation. Instead of paying the ticket, the defendant would pay a nominal administrative fee and court costs. During that time, prosecution would be withheld on the ticket. The Working Group recommends providing indigent defendants with the ability to request a waiver of any traffic ticket deferral program administrative fee that may be legislatively required.

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<sup>18</sup> Those states include Indiana, Texas, Washington, Maryland, Rhode Island, and Colorado. Typically, those states require an application/other enrollment program fee (ranging from \$100-\$200 and dependent on the type of infraction) and defendants are eligible for deferral once every set amount of years.

Vermont took a different approach in 2016 by giving drivers who were unable to pay their traffic fine an opportunity to resolve delinquent traffic tickets and restore their driver's licenses by paying a reduced fine of \$30 per ticket through a statewide Driver Restoration Program. Vermont also offers a Civil Driving While Suspended (DLS) Diversion Program, which is designed to help defendants who commit certain offenses to have their driver's license reinstated while they pay off their fines and fees. Participants may perform community service and/or participate in an educational program in exchange for a reduction in fines and fees owed.

If the defendant avoids another ticket during the deferral period, and, in some cases completes a defensive driving class, the ticket will be dismissed and will not show on his or her driving record. However, if the defendant receives another ticket during the deferral period, the tickets will be reported to the New Jersey Motor Vehicle Commission (MVC) and become visible on the driving record. Additionally, the court would reinstate the original charge(s) and schedule the matter for court.

Most states exclude a defendant from the program if he or she committed certain offenses such as failure to yield to an emergency vehicle, railroad-crossing violations, passing a school bus, no insurance, and work zone violations when workers are present. These offenses, along with other consequence of magnitude offenses, such as driving while intoxicated (DWI), refusal to submit to a chemical test, driving while suspended, could be added to the list of disqualifying offenses under a New Jersey program.

There are many benefits to implementing a traffic ticket deferral program. It would allow defendants who are unlikely to reoffend to avoid not only the immediate consequences of a traffic violation—a fine—but also avoid consequences such as increased insurance rates due to an accumulation of points on a driver’s record or the stackable fees associated with failure to appear and driver’s license suspensions. Moreover, a required education class could contribute to discouraging future reoffending. The immediate and long-term benefits to defendants who do not reoffend would be felt by many Municipal Court users.

The Working Group additionally suggests that strong consideration be given to first implementing a pilot program to help identify all the technological changes that would be required by the Judiciary and the MVC to develop such a program.

**RECOMMENDATION 5**

**The Legislature Should Consider Legislation that Provides Credit Towards a Legal Financial Obligation for Hours Spent in Clinical Treatment Related to the Underlying Offense Charged.**

The Working Group considered Recommendation 9 of the Supreme Court Committee, which called for legislation that would allow defendants to receive credit towards a legal financial obligation for hours spent in clinical treatment that is related to the underlying offense. The Supreme Court Committee based its recommendation on literature demonstrating that in some instances an underlying cause for criminal



behavior can be identified. Those underlying causes can include a mental health concern, substance abuse issue, or a combination of the two.

The Supreme Court Committee thus recommended that in instances where the offense is non-violent and otherwise petty, the Legislature should permit the defendant to receive credit towards their fines and fees for hours spent in a treatment program, including Drug Court, so long as the treatment is related to the commission of the underlying offense. This will create an incentive for participation in appropriate treatment programs. The Supreme Court Committee identified the following statutes as appropriate for modification to implement this recommendation: N.J.S.A. 2B:12-23, N.J.S.A. 39:4-203.1, and N.J.S.A. 2C:46-2(a)(2).

The Working Group agrees with the common sense approach put forward by the Supreme Court Committee to move away from a money-based penalty system in Municipal Court. However, unlike the Supreme Court Committee's recommendation, the Working Group does not agree that credit should *only* be received where the offense is non-violent. Consideration should be given to expanding the offenses that would be eligible for credit, with the possible exception of certain offenses such as domestic violence. This would provide the opportunity to get to the cause of a wider range of problematic behavior and potentially discourage it in the future. Essentially, encouraging treatment for conditions that may lead to criminal behavior meets the criminal justice goal of rehabilitation of the defendant, while also putting that defendant on the path to avoiding future illegal conduct.

The Working Group did not reach a consensus on the issue of providing credit for defendants who go to treatment voluntarily versus those who are ordered to treatment by the judge and whether the latter group of defendants should be allowed to receive credit towards a legal financial obligation. Nevertheless, the Working Group agrees that credit should be available to defendants, regardless of financial resources, since the need for treatment extends to individuals in all areas of society.

### **Part III: Modifying Assessment, Collection, and Enforcement Practices**

#### **Failure to Appear**

A defendant charged in Municipal Court must either respond by or appear in court on a set date. A failure to do so is referred to as a failure to appear (FTA), and triggers

a sequence of escalating court responses that are governed by statute and R. 7:8-9. The first court response is the issuance of a notice informing the defendant of the consequences of a failure to appear, instructing the defendant to appear in court on a particular date or to contact the court, and advising of the potential consequences of a continued failure, i.e., issuance of a bench warrant or a license suspension. If a defendant fails to respond to the notice, the court may issue a bench warrant for the defendant's arrest. R. 7:8-9. At the same time the warrant is issued or after, a Municipal Court may also seek to have a defendant's license suspended. N.J.S.A. 2B:12-31; N.J.S.A. 39:4-139.10.

A defendant who appears or responds to the Municipal Court matter can dispose of the charge through a guilty plea and payment of fine either in court, or for parking and motor vehicle offenses only, online via [www.NJMCdirect.com](http://www.NJMCdirect.com)<sup>19</sup>; plead guilty by way of a plea agreement and satisfaction of the penalty; or plead not guilty and try the matter to disposition.<sup>20</sup> In the event of a guilty plea or verdict, legal financial obligations—fines, fees, and surcharges—are expected due in full at the time of sentencing. However, there are a variety of sentencing alternatives available to defendants who are unable to pay their court-imposed legal financial obligations.

### Time Payments

Sentencing alternatives fall into two general categories: (1) those available at the time of sentencing and (2) those available after default. Defendants who are unable to pay a penalty in full at sentencing may be entitled to a time payment order, a short-term payment order, or community service when the financial portion of the sentence is converted. N.J.S.A. 2B:12-23.1a; N.J.S.A. 39:4-203.1. Time payment orders allow a defendant to pay a fine in monthly installments over a period of time, while short-term payment orders<sup>21</sup> are utilized where a defendant is logistically unable to access funds to pay a legal financial obligation at the time of sentencing.

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<sup>19</sup> The Judiciary is currently working to expand payment on [www.NJMCdirect.com](http://www.NJMCdirect.com) to all case types, not just traffic and parking matters.

<sup>20</sup> Eligible defendants may also participate in diversionary programs available in Municipal Court, such as conditional dismissal, N.J.S.A. 2C:43-13.1, and conditional discharge, N.J.S.A. 2C:36A-1.

<sup>21</sup> As many Municipal Courts do not accept credit cards, short-term payment orders provide a defendant the flexibility, generally a few days or weeks, to secure the funds needed to pay a fine. Moreover, although Municipal Courts may not accept credit cards, the defendant can pay by credit card through the State's NJMCdirect payment website for most matters.

To obtain a time payment order, a defendant must complete a Financial Questionnaire to Establish Indigency that is then reviewed by the Municipal Court and a determination is made as to whether the defendant is statutorily eligible for a time payment plan. Eligibility is established where a defendant is found to be unable to pay the fine in full on the day of sentencing. N.J.S.A. 39:4-203.1; Administrative Directive #02-10—Authorizing Municipal Courts to Provide Payment Alternatives. (Appendix W-1 of 2018 Supreme Court Committee Report).

There are a number of sentencing options available after a defendant defaults on a time payment plan, although the most common resolution is for the court to modify the time payment plan. However, just as with a defendant who misses a court appearance, a failure to make a time payment triggers a sequence of notices and escalating court responses that, in the absence of a response from the defendant, can result in a bench warrant being issued and/or a license suspension. N.J.S.A. 2C:46-2; N.J.S.A. 2B:12-31; N.J.S.A. 39:4-203.2 Administrative Directive #02-10—Authorizing Municipal Courts to Provide Payment Alternatives. (Appendix W-1 of 2018 Supreme Court Committee Report).

While the vast majority of Municipal Court defendants resolve their matters in a timely fashion without the need for the court to engage in any enforcement efforts, there are many defendants who do not. The processes detailed above to bring those defendants into compliance, both before and after disposition of their cases, require significant resources. From the Judiciary's perspective, this includes printing and mailing of court notices, the time spent by court staff tracking those cases and determining when a bench warrant or license suspension may be appropriate, and the judicial review needed to issue a bench warrant or initiate/order a license suspension.

Additionally, these enforcement efforts are not limited to the Judiciary alone. Law enforcement is responsible for executing bench warrants and enforcing license suspensions. The New Jersey Motor Vehicle Commission (MVC) is responsible for first suspending and then reinstating driver's licenses, while the local jail is required to house defendants who have had warrants issued against them and who are then unable to post their bail. The following section provides detailed information on collection efforts involved when monitoring and following up on defendants to achieve satisfaction of time payment orders.

## Collection Efforts Involved when Monitoring and Following Up on Time Payments

The Working Group sought the assistance of the Administrative Office of the Courts to gauge, in detail, the efforts expended by Municipal Court staff, law enforcement, the MVC and other system stakeholders to follow up on outstanding time payment obligations. The Administrative Office of the Courts identified and tracked the case statuses of all defendants placed on a Municipal Court time payment between January 1, 2017 and March 31, 2017.<sup>22</sup> This group of defendants was selected as the data pool because the subsequent two-year plus time period (January 2017 to May 2019) provided each defendant with ample opportunity to satisfy his or her court-ordered obligation.

The data below demonstrates that Municipal Courts, law enforcement, and municipalities expend an inordinate amount of staff time, printing costs, and other resources to monitor and follow up with defendants who may owe very small amounts of money to the courts for sometimes very minor offenses. This information supports the proposals from the Supreme Court Committee and this Working Group for alternative sentences, lower maximum statutory fine amounts, and preemptive electronic notifications to defendants to remind them of court dates and penalties owed, before they get into trouble.

During the first quarter of 2017, in total, 82,644 time payments were granted by the Municipal Courts. The table below shows a general breakdown of the total amounts that defendants were required to pay. The most common time payment amount ordered was between \$101 and \$200, followed by defendants ordered to pay between \$301 and \$500. It is worth noting that time payments oftentimes include financial penalties for multiple cases and charges.

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<sup>22</sup> Note that a small number of time payments were excluded from the analysis – these were time payments that had later been modified based on new defendant convictions. The addition of these new convictions and the financial penalties to the original time payment order greatly complicated the ability to identify and follow actions and events associated with the original time payment. Due to this complexity, these cases were excluded from the analysis.

<b>Time Payments Granted Between January 1 and March 31, 2017 and Breakdown of Time Payment Amounts</b>						
	<b>\$1-\$100</b>	<b>\$101-\$200</b>	<b>\$201-\$300</b>	<b>\$301-\$500</b>	<b>\$501-\$750</b>	<b>Over \$750</b>
<b>Number of Time Payments</b>	<b>11,835</b>	<b>19,047</b>	<b>14,141</b>	<b>17,965</b>	<b>7,314</b>	<b>2,673</b>
<b>Percent of Time Payments</b>	<b>16.2%</b>	<b>26.1%</b>	<b>19.4%</b>	<b>24.6%</b>	<b>10.0%</b>	<b>3.7%</b>

Overall, 72,975 of the 82,644 time payments ordered during the first three months of 2017—almost nine in ten defendants (88.3%)—were fully satisfied as of early May 2019. However, as highlighted below, full satisfaction of financial obligations was only achieved through significant efforts by the criminal justice system, particularly those made by the Municipal Courts.

Of the 72,975 time payments ordered during the first quarter of 2017 that have been fully satisfied, meaning that defendants have paid all monies owed, the following actions were taken by the Municipal Courts and other system stakeholders to achieve that positive result<sup>23</sup>:

- Municipal Court staff generated and mailed 55,197 delinquency notices. A delinquency notice is generated by the court whenever a defendant is late or in arrears on his or her time payment obligation.
- Municipal Court staff scheduled 15,061 of these defendants for court when the delinquency notice yielded no satisfactory results, i.e., either a payment by the defendant or the defendant contacting the court.<sup>24</sup>

<sup>23</sup> It is important to note that multiple events can and do occur on the same time payment. As an example, a defendant who had his or her license suspended would also have been sent a delinquency notice and a proposed notice of suspension; a warrant may also have been issued on that same unsatisfied time payment order. Similarly, a defendant can have multiple warrants or license suspensions ordered on a single time payment order. For example, a defendant who begins to make payments after a bench warrant was issued, and then stops making payment, is subject to a new bench warrant being issued for non-compliance.

<sup>24</sup> Scheduling a defendant for court who is in arrears on a time payment obligation is not required. Rather, it is an optional step some courts provide to enable the defendant to meet with the judge to discuss his or her obligation and ability to pay. Importantly, Recommendation 12 of the Supreme Court Committee called for the scheduling of an ability-to-pay hearing for all defendants who have failed to pay, prior to the court suspending the defendant’s license or issuing a bench warrant.

Scheduling a defendant requires specific action in the court's computer system, as well as printing and mailing the court notice.

- Municipal Court staff generated and mailed 19,319 notices of proposed suspension (PSUS). A PSUS notice is sent following a defendant's non-action to the delinquency notice and advises the defendant that further non-action, i.e., not making a payment, not contacting the court and not coming to court, may result in a license suspension and/or a warrant for the person's arrest.
- Municipal Court judges ordered the suspension of 7,928 licenses when the above efforts proved ineffective. An additional 6,547 time payments were placed in "closed" status by the Municipal Courts, which means that the license suspension was to be ordered by the MVC, not the Municipal Court. Collectively, between the court-ordered license suspensions and the cases placed on a "closed" status, the MVC had to take action on 14,475 drivers.
- Municipal Courts issued 16,719 bench warrants for these defendants as a result of not satisfying their payment obligation, not coming to court, and/or not contacting the court.
- Those bench warrants resulted in 4,236 arrests by law enforcement. If a bail amount was set by the court on those bench warrants, law enforcement either worked with the defendant to post the monetary bail amount, which required completion of Judiciary required paperwork, or the defendant was transported and lodged in the county jail until the bail amount was satisfied.<sup>25</sup>
- 315 cases were turned over to a Private Collection Agency for follow up, consistent with the provisions of P.L. 2009, c.233.

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<sup>25</sup> Based on the data available, it is not possible to identify the number of defendants who required transport to the jail by law enforcement.

<b>Follow-up Actions Taken to Achieve Compliance on Time Payments Granted Between January 1 and March 31, 2017</b>								
<b>Total Time Payments Granted</b>	<b>Time Payments Paid in Full</b>	<b>Actions Taken to Achieve Compliance</b>						
		<b>Delinquency Notices</b>	<b>FTA Notices</b>	<b>PSUS Notices</b>	<b>License Suspensions</b>	<b>Bench Warrants</b>	<b>Bench Warrant Arrests</b>	<b>Sent to Collections</b>
<b>82,644</b>	<b>72,975</b>	<b>55,197</b>	<b>15,061</b>	<b>19,317</b>	<b>14,475</b>	<b>16,719</b>	<b>4,236</b>	<b>315</b>

Significantly, this data reveals the “success cases” from efforts expended to achieve compliance, i.e., cases in which defendants paid all court-ordered financial penalties. However, not all defendants fulfill their time payment obligation. Specifically, more than one in ten (11.7%) defendants granted a time payment during the first quarter of 2017, after more than two years, still have not satisfied their court-ordered financial obligation. Most of these matters (95.8%) are in what the court defines as an “inactive” status, which means that the defendant currently has a bench warrant for his or her arrest or a license suspension as a result of non-compliance. The remaining cases (4.2%) do not have an open court-ordered warrant and/or license suspension and are in “active” status, i.e., they are actively being worked on by the Municipal Courts.

Regarding the 9,669 time payment cases that have not yet been fully satisfied (82,644 time payments that were granted during the first quarter of 2017 less the 72,975 time payments that were paid in full by May 2019), the Municipal Courts, and the broader justice system, expended significant resources in an effort to achieve compliance. The following actions were taken to try to achieve compliance:

- Municipal Court staff generated and mailed 21,759 delinquency notices to defendants.
- Municipal Court staff generated and mailed 3,112 Failure to Appear (FTA) notices following the defendant’s failure to appear in court as required to discuss the non-payment.
- Municipal Court staff generated and mailed 14,307 PSUS notices advising the defendant that further inaction may result in a license suspension and/or a warrant for the defendant’s arrest.

- Municipal Court judges suspended 7,415 licenses, with an additional 3,029 matters referred to the MVC for that agency to suspend the licenses. This totals 10,444 possible license suspensions.
- Municipal Courts issued 10,817 bench warrants due to continued non-compliance.
- Those bench warrants resulted in 3,690 arrests made by law enforcement.<sup>26</sup>
- 2,477 cases were turned over to a Private Collection Agency for handling.

<b>Time Payments Granted Between January 1 and March 31, 2017 that Remain Outstanding and Require Follow-up Action</b>							
<b>Outstanding Time Payments</b>	<b>Actions Taken to Achieve Compliance</b>						
	<b>Delinquency Notices</b>	<b>FTA Notices</b>	<b>PSUS Notices</b>	<b>License Suspensions</b>	<b>Bench Warrants</b>	<b>Bench Warrant Arrests</b>	<b>Sent to Collections</b>
<b>9,669</b>	<b>21,758</b>	<b>3,112</b>	<b>14,307</b>	<b>10,444</b>	<b>10,817</b>	<b>3,690</b>	<b>2,477</b>

The efforts taken to achieve compliance on time payments lend support to the numerous proposals to move away and/or modify monetary penalties and utilize new methods of gaining compliance (such as email and text notifications and greater flexibility when paying on-line) – all in the interest of the efficient and effective use of public, governmental resources. It also highlights the importance of judges initially setting time payments that defendants can realistically be expected to meet, given their financial circumstances.

### Surcharges

Additionally, there are other mandatory penalties and costs that the Municipal Court must collect. These are generally referred to as surcharges, which must be imposed as part of sentencing, and are statutorily required. The mandated surcharges are dependent on the type of offense for which a defendant has been convicted and can

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<sup>26</sup> An unknown number of these defendants were placed in the county jail because the defendant could not promptly make bail.



at times be quite high. Collected surcharges are electronically conveyed to the appropriate fund, as established by the State.

Fines, enforcement practices, and mandatory surcharges have very real consequences for defendants, particularly those who are impoverished, and can quickly become economically overwhelming, pushing a person living on the margins of low income into further financial distress. Moreover, in many instances the consequences, in all likelihood, are disproportionately harsh compared to the original underlying action.

The following recommendations focus on addressing and lessening the inequity that enforcement practices and surcharges can create for Municipal Court defendants.

#### **RECOMMENDATION 6**

#### **The Judiciary Should Continue to Promote Greater Use of Time Payment Plans that are Reasonable and Achievable.**

Time payment orders allow a defendant to pay a fine in monthly installments over a period of time. To obtain a time payment order, a defendant must complete a Financial Questionnaire to Establish Indigency that is then reviewed by the Municipal Court and a determination is made as to whether the defendant is statutorily eligible for a time payment plan. Eligibility is established where a defendant is found to be unable to pay the fine in full on the day of sentencing. Defendants who are not indigent, but who have a logistical inability to pay a penalty in full at sentencing, are also entitled to a short-term time payment order for a limited period of time. N.J.S.A. 2B:12-23.1a; N.J.S.A. 39:4-203.1; Administrative Directive #02-10—Authorizing Municipal Courts to Provide Payment Alternatives. (Appendix W-1 of 2018 Supreme Court Committee Report).

The following sentencing options are available after a defendant defaults<sup>27</sup> on a time payment plan:

- Reduction or suspension of the penalty, or modification of the installment plan. N.J.S.A. 2B:12-23.1a(1); N.J.S.A. 39:4-203.1;

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<sup>27</sup> Defaults that go unresolved will generally result in a driver's license suspension and/or the issuance of a warrant. N.J.S.A. 2B:12-31(a)(2), R. 7:8-9.

- Give credit against the amount owed for each day of confinement, if the court finds that the person has served jail time for the default. N.J.S.A. 2B:12-23.1a(2);
- Revocation of any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment. N.J.S.A. 2B:12-23.1a(3);
- Community service in lieu of payment of the penalty. N.J.S.A. 2B:12-23.1a(4);
- Community service in lieu of incarceration related to nonpayment of the fine. N.J.S.A. 2B:12-23a;
- Modification of the sentence with the person's consent. N.J.S.A. 2B:12-23a;  
or
- Imposition of any other alternative permitted by law in lieu of payment of the penalty. N.J.S.A. 2B:12-23.1a(5).

Despite the above statutorily-created options, the most commonly used sentencing alternative is a new time payment plan. To further encourage the use of time payment plans, the Working Group proposes that long-term time payment plans be made available to *all* defendants in need of that accommodation, regardless of whether the defendant is indigent. This is a common-sense approach, given the fact that many Municipal Courts do not accept credit cards and a defendant can be saddled with paying hundreds of dollars in fines. In addition, many defendants do not have large sums of money on hand at a court hearing. Thus, in those instances, time payment plans should be liberally approved.

However, the Working Group acknowledges the apparent disconnect between the recommended increased use of time payment orders for Municipal Court defendants and the extraordinary efforts, detailed earlier, that the New Jersey Municipal Courts and other system stakeholders already expend to get defendants to satisfy their court-imposed financial obligations.

Recommendation 6 is unique in that it provides for the broader use of properly crafted time payment plans in order to provide greater flexibility, sensitivity, and customer service to defendants who may simply need additional time to satisfy their court-ordered obligation. Time payments should be closely tailored to the ability of

the defendant to pay, thus ideally leading to fewer cases of non-compliance and reduced efforts/resources to achieve compliance. Additionally, this recommendation should be viewed in concert with other initiatives advocated for by not only this Working Group, but also the Supreme Court Committee. Initiatives that will ideally reduce the number of defendants who need time payments. These include:

- increased use of text messaging and email reminders for defendants placed on a time payment;
- technological changes to the NJMCdirect.com website to allow more charges to be paid online without a court appearance;
- allowing for more partial payments;
- additional training for judges and staff, focusing on the need to ensure that payment plans granted are achievable;
- greater use of the authority judges have under N.J.S.A. 2B:12-23.1 to convert outstanding monies owed to other sentencing options, which includes vacating certain outstanding obligations in the interest of justice;
- automatically scheduling an ability-to-pay hearing for any defendant who defaults on a time payment order *before* the court issues a warrant or license suspension; and
- the utilization of civil judgments when the defendant has clearly failed to satisfy his or her financial obligation and has made no effort to come to court or contact the court.

Thus, the Working Group recommends that judges be directed to approve time payment plans liberally. Municipal Court judges should also be reminded to have realistic expectations on how long it may take a defendant to pay a fine, and what payment structure would best work for that defendant. This can be accomplished through the dialogues that Municipal Court judges have with defendants during judicial review of completed financial questionnaires.

This recommendation of the Working Group is consistent with Recommendation 4 of the Supreme Court Committee, which called for the development of policy and tools that would assist Municipal Courts in establishing payment plans, determining defendant eligibility for other post-disposition sentencing alternatives, and making ability-to-pay determinations.

## **RECOMMENDATION 7**

### **Significantly Reduce the Commonplace Usage of License Suspensions for Failure to Pay Through Legislation, Administrative Directive(s), and Judicial Training.**

The Working Group recognizes that the purpose of motor vehicle laws is driver and road safety and not revenue generation. This basic premise of ensuring public safety and welfare applies equally to all offenses within the jurisdiction of the Municipal Court, including quasi-criminal matters, disorderly persons offenses, petty disorderly persons offenses and ordinance violations. Despite this, a disproportionate number of license suspensions are initiated on the basis of conduct by the defendant that is not directly related to illegal conduct. The majority of court-ordered license suspensions are instead the result of delinquent behavior by the defendant, such as a failure to appear or a failure to pay court-ordered fines, fees, or surcharges.

The Working Group joins the Supreme Court Committee in acknowledging the harmful and far-reaching effects license suspensions can have on an individual, their dependents, and families. This was highlighted by the 2006 Motor Vehicles Affordability and Fairness Task Force Report.<sup>28</sup> (Appendix E of 2018 Supreme Court Committee Report). Therefore, the Working Group recommends limiting the discretion judges now have to order a driver's license suspension in failure to pay matters. This change should be implemented by the Judiciary through both Administrative Directive(s) and training. The Working Group also recommends that the Legislature review all statutes in which a license suspension is required or presumed to determine whether the use of license suspensions can be further reduced and to consider alternatives to license suspensions.

*The same attention needs to be paid to license suspensions because of far-reaching consequences in this area as well.*

*A study from more than a decade ago revealed that 40 percent of defendants lose their jobs as a result of a license suspension and are unable to find replacement jobs.*

*– Chief Justice Stuart Rabner, May 17, 2019*

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<sup>28</sup> A survey conducted of individuals that had at that time or previously had their license suspended indicated that 42% lost their jobs as a result of the suspension, 45% who lost their job as a result of the suspension could not find another job, and 88% of those that were unable to find another job reported a decrease in income.

This recommendation was developed in consideration of Recommendation 10 of the Supreme Court Committee, which called for legislative alternatives to license suspensions, including the denial of a renewal of a driver's license or vehicle registration, or the creation of a restricted use driver's license.

### Kavadas v. Martinez

In making this recommendation, the Working Group considered the New Jersey Law Division's recent decision in Kavadas v. Martinez (Docket No. MER-L-1004-15 Mercer County, December 7, 2018), where the Superior Court held that suspension of a driver's license is a consequence of magnitude.<sup>29</sup> The court's opinion centered around the administrative process followed by the Administrative Office of the Courts-Probation Division for the statutory automatic suspension of driver's licenses upon the issuance of a child support-related bench warrant for failure to pay child support. The trial court held that New Jersey Constitution due process guarantees and the State doctrine of fundamental fairness require that delinquent child support obligors be provided with: (1) advance notice with a date certain on which their driver's license will be suspended along with sufficient time for obligors to take action to prevent suspension from occurring or to request a hearing upon receipt of notice; (2) an opportunity to be heard at a pre-deprivation hearing, if requested, prior to the license suspension to demonstrate an inability to pay support at that time; and (3) appointed counsel when facing a driver's license suspension.

The Working Group is aware of the compounding impact of a license suspension and its sometimes tenuous relationship to illegal conduct, while acknowledging the public safety and compliance concerns that are addressed by its use. To address the category of suspensions that are deemed problematic by the Working Group and for which the Kavadas decision raises potential concerns, the Working Group recommends that license suspensions for failure to pay cases be ordered as a last resort and only ordered after an ability-to-pay hearing is held and the defendant fails to pay his or her legal financial obligations. This recommendation could largely be implemented via Judiciary-led initiatives, since a license suspension resulting from a failure to pay a Municipal-related legal financial obligation is discretionary. N.J.S.A. 2B:12-31; N.J.S.A. 2C:46-2a(1)(a), (b); N.J.S.A. 39:4-203.2.

The court's opinion in Kavadas provides instructional guidance, putting forth best practices to ensure that defendants receive procedural due process protections prior

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<sup>29</sup> [https://www.njcourts.gov/courts/assets/municipal/caselaw/kavadas\\_v\\_martinez.pdf?c=Jlp](https://www.njcourts.gov/courts/assets/municipal/caselaw/kavadas_v_martinez.pdf?c=Jlp)

to a suspension for failure to pay. The Municipal Courts currently advise defendants of the possibility of a license suspension and provide the opportunity to request a pre-deprivation hearing. However, Municipal Courts generally only provide municipal public defenders to indigent defendants that face consequences of magnitude as a possible sentence for a charged offense. To execute the maxims of Kavadas, the Working Group also recommends exploring the feasibility of the Municipal Court providing for the appointment of counsel at a hearing where a license suspension resulting from a failure to pay is under consideration. As an alternative, a determination could be made that license suspensions only be pursued in certain serious offenses or where the outstanding legal financial obligation is significant, to minimize implementation difficulties.

### Judicial Training

Another avenue that will help to reduce driver's license suspensions as part of sentencing in failure to pay matters is additional training for judges. Judges should continue to be judicious when imposing license suspensions given the dramatic consequences that a defendant may face, such as job loss. Additional judicial training would be consistent with Recommendation 5 of the Supreme Court Committee, which recommended ongoing training on the serious life consequences of license suspensions.

#### **RECOMMENDATION 8**

**The Legislature Should Consider Amending N.J.S.A. 2B:12-26 to Clarify the Authority of the Municipal Court to Docket Civil Judgments and Amending N.J.S.A. 22A:2-7(a) to Provide for Waiver of Docketing Fees Where a Defendant Defaults on a Legal Financial Obligation After an Ability-to-Pay Hearing has been Scheduled and Fails to Appear at that Hearing.**

The Working Group considered the substantial efforts involved in managing time payments, as explained in Part III of this report. Municipal Court reform efforts of recent years have also resulted in the reduced use of traditional enforcement methods—bench warrants and license suspensions. Specifically, all vicinage Assignment Judges have issued orders limiting courts from issuing warrants for failure to appear on moving violations to only the most serious matters (e.g., DWI, refusal, driving while suspended, leaving the scene of an accident). The far-reaching effects of license suspensions on defendants and their families have faced scrutiny, and the reduction in their widespread use should be anticipated.

## Civil Judgment Process

Considering the efforts expended when following up on outstanding time payment obligations, along with the decreasing use of the Municipal Courts' enforcement tools of bench warrants and license suspensions, alternatives to traditional collection methods must be considered. To that end, the Working Group recommends pursuing the automated collection of stale, outstanding Municipal Court obligations through civil judgments docketed in Superior Court for failure to appear at an ability-to-pay hearing. This would allow such monetary obligations to be collected in a passive manner—such as when assets of a defendant are sold. The process would serve as a less costly alternative to current collection methods and would further reform efforts that call for the reduced use of bench warrants and license suspensions. The civil judgment process could be implemented via amendments to N.J.S.A. 2B:12-26 and N.J.S.A. 39:8-73. (Appendix H).

Where a defendant defaults on a legal financial obligation after an ability-to-pay hearing has been scheduled, fails to appear at that hearing, and a uniform amount of time has passed, the municipal judgment would be electronically docketed in the Superior Court as a civil judgment. Upon this conversion, the defendant would no longer be able to seek a time payment plan. For that reason, the pursuit of a civil judgment should be a collection method of last resort, with all other sentencing alternatives considered first, and only after an ability-to-pay hearing and appropriate enforcement methods are exhausted.

Implementation will require legislative amendments, Court Rule changes, revised Administrative Directives, and significant technological enhancements by the Judiciary to facilitate the transfer of data between the Municipal Courts and the Superior Court Clerk's Office. Additionally, the Working recommends revising the Municipal Court judge's colloquy and notices to defendants when a time payment is authorized to advise that a failure to pay and/or respond to the court may result in the filing of a civil judgment.

This recommendation is in line with Recommendation 8 of the Supreme Court Committee, which encouraged the use of alternative collection methods instead of issuing bench warrants for failure to pay, such as reducing an outstanding fine to a judgment.

## Proposed Legislative Amendments

Currently, N.J.S.A. 2B:12-26 provides in pertinent part that “A judgment of a municipal court assessing a penalty, fine or restitution may be docketed in the Superior Court by the party<sup>30</sup> recovering the judgment.” The commonly understood meaning of “party” does not include the court. The Legislature should consider amending the first sentence of N.J.S.A. 2B:12-26 to provide clarity. The Working Group suggests the following:

A judgment of a municipal court assessing a penalty, fine or restitution may be docketed in the Superior Court by the party recovering the judgment or the authorized Municipal Court administrator or authorized deputy court administrator acting on behalf of a party pursuant to procedures established by the Supreme Court.

In addition to clarifying the authority of the Municipal Court to docket a judgment, this amendment would also serve to make clear that (1) the court does not retain the monies that may be collected from the civil judgment that is filed by the court administrator on behalf of a party and (2) that there are specific court procedures (to be formulated) that would explain when (i.e., period of time, notices) and under what reasons (i.e., failure to pay after ability-to-pay hearing) a civil judgment may be docketed. Although N.J.S.A. 39:8-73(a)<sup>31</sup> lends some credence to the position that

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<sup>30</sup> Black’s Law Dictionary defines party as:

A person concerned or having or taking part in any affair, matter, transaction, or proceeding, considered individually...The term “parties” includes all persons who are directly interested in the subject-matter in issue, who have a right to make defense, control the proceedings, or appeal from the judgment...*Hunt v. Haven*, 52 N. H. 162. “Party” is a technical word, and has a precise meaning in legal parlance. By it is understood he or they by or against whom a suit is brought, whether in law or equity; the party plaintiff or defendant, whether composed of one or more individuals, and whether natural or legal persons,...and all others who may be affected by the suit, indirectly or consequentially, are persons interested, but not parties. *Merchants’ Bank v. Cook*, 4 Pick. 405.

<sup>31</sup> N.J.S.A. 39:8-73(a) provides:

The court administrator of the municipal court shall docket in the Superior Court a municipal court judgment imposing a civil penalty pursuant to this act, or any rule or regulation adopted pursuant thereto, that remains unpaid at the time of the judgment’s entry in the municipal court. The court administrator shall give notice of the docketing to the commission in a manner prescribed by the commission.



N.J.S.A. 2B:12-26 already provides the Municipal Court with civil judgment authority, despite the use of the term “party,” a legislative amendment to N.J.S.A. 2B:12-26 would remove any doubt.

It is worth noting that in certain situations, Municipal Court judgments imposing a civil penalty pursuant to Title 39 (motor vehicles and traffic regulation) that remain unpaid at the time the judgment is entered are statutorily authorized to be docketed by the Municipal Court administrator in the Superior Court without the assessment of any docketing fee under N.J.S.A. 39:8-73. In addition, the POAA provides authority for a Municipal Court to docket a civil judgment in a parking matter.<sup>32</sup> However, in practice it is rare for such judgments to be docketed due to current court procedures and technological limitations.

The Working Group also recommends waiving all statutory docketing fees—perhaps the most obvious barrier to the current use of civil judgments, as such fees would be borne by the municipality. Unlike N.J.S.A. 39:8-73a, which provides for a waiver of fees, there is no waiver of the \$35 filing fee set forth in N.J.S.A. 22A:2-7(a), except in certain instances including certain assessments and penalties that are associated with specific Title 2C crimes. (Appendix I).

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The provisions and procedures of *N.J.S. 2B:12-26* shall apply to the docketing, except that the court administrator of the municipal court, rather than the commission, shall effect the docketing; provided that nothing in this act shall be construed to prohibit the commission or its designee from docketing the judgment on behalf of the commission and in accordance with *N.J.S. 2B:12-26* if the court administrator of the municipal court fails to do so or if the commission or its designee chooses to do so for any other reason. No fee shall be charged to docket the judgment. The docketing shall have the same force and effect as a civil judgment docketed in the Superior Court, and the commission and its designee shall have all of the remedies and may take all of the proceedings for the collection thereof that may be had or taken upon recovery of a judgment in an action, but without prejudice to any right of appeal.

<sup>32</sup> N.J.S.A. 39:4-139.8(b) allows the court to enter a default judgment against a person who fails to answer a failure to appear notice or fails to appear at a hearing, or, having admitted commission of the parking offense, fails to pay the fine and penalties assessed by the court.

## **RECOMMENDATION 9**

### **The Legislature Should Consider Increasing the Minimum Incarceration Conversion Rate Set Forth in N.J.S.A. 2C:46-2a.(3)(c) and N.J.S.A. 39:5-36b.(3).**

Where a defendant serves jail time for a default on a court-imposed financial obligation because he or she cannot make bail, there are two statutory provisions that allow the court to issue a credit of no less than \$50 for each day of confinement against the remaining money owed. N.J.S.A. 2C:46-2a.(3)(c); N.J.S.A. 39:5-36b.(3). (Appendix J). Although the \$50 referenced is a statutory floor, and Municipal Court judges have the discretion to go above that amount, the Working Group has determined that many do not.

The Working Group was concerned that the often-used \$50 conversion rate did not accurately reflect the actual cost of incarceration, or the cost to the defendant to be in jail. As an example, different sources indicate that the statewide cost to incarcerate a person in jail can range from approximately \$120 to \$166 per day.<sup>33</sup> To address this incongruence, the Working Group sets forth two proposals.

The first is to tie the daily minimum incarceration rate to the New Jersey 2024 minimum wage of \$15 per hour, setting it at \$360 for each 24-hour period of incarceration. N.J.S.A. 34:11-56a4a. The Working Group recognizes that a statutory rate of \$360 may be deemed too high by some municipal stakeholders. Therefore, the Working Group proposes as a second, alternative option, that judges be given the authority to utilize a minimum conversion rate of \$100 per day, and are strongly encouraged to vacate certain monies owed in the interest of justice. For example, if the defendant has a \$500 fine and was granted a time payment plan, but failed to make any payments and served three days in jail due to that failure, after providing credit towards the outstanding fine at \$100 per day (for a total of \$300), a judge should strongly consider vacating the remaining \$200 fine.

The Working Group intends for any minimum conversion rate to be applied retrospectively, i.e., applied only to those defendants incarcerated due to a default. This recommendation is *not* meant to encourage judges to order jail time as a regular sentencing alternative to financial penalties. See Bearden v. Georgia, 461 U.S. 660 (1983) (courts cannot incarcerate someone for not paying a court-ordered fine unless

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<sup>33</sup> The \$120 cost of incarceration, in at least one New Jersey county, includes personnel costs (e.g., salaries, wages, health and other fringe benefits), contracted costs (e.g., food, medical professional and pharmaceutical services), and additional operational expenses (e.g., inmate labor detail pay, telecommunications, bracelet monitoring, equipment leasing, vehicle and building, maintenance and other operational expenses).

the court first holds a hearing and makes a finding that the failure to pay was willful and not due to an inability to pay).

The Working Group is hopeful that savings realized from amending the statute will be redirected to rehabilitative services, including the creation and operation of additional sentencing alternatives and diversionary programs.

This recommendation was developed upon review and approval of Recommendation 11 of the Supreme Court Committee, which called for the legislative establishment of an incarceration conversion rate that reflects the actual costs of incarceration.

**RECOMMENDATION 10**

**The Legislature Should Consider Reducing Surcharges and Assessments Imposed by the Motor Vehicle Commission (MVC) and Reducing and/or Eliminating Certain Surcharges Statutorily Required to be Assessed and Imposed by the Municipal Court at the Time of Sentencing.**

The Working Group shares the concerns expressed by the Supreme Court Committee regarding imposing on defendants statutorily required financial obligations, also known as surcharges, that extend beyond the fine associated with a violation. While many of the funds supported by these surcharges are well intended, they ultimately have little to do with the fair administration of justice. Surcharges can be financially devastating on defendants, at times can exceed the fine for an offense, and have a disproportionately negative impact on the poor. These surcharges can become the starting point for a perpetual cycle of court involvement for defendants with limited financial resources.

To ensure fair sentencing and to minimize license suspensions, the Working Group recommends that the Legislature and municipal stakeholders explore approaches to make payment of surcharges both less costly and easier to satisfy through payment plans that include options for forgiveness in the face of an inability to pay.

New Jersey Motor Vehicle Commission (MVC) Surcharges

Of particular concern to both the Working Group and the Supreme Court Committee are the mandatory surcharges imposed by the MVC and whether these surcharges, which are imposed as a consequence for illegal conduct, are truly deterring or modifying behavior. Those surcharges range from the relatively minor to the

significant. Significantly, these surcharges go directly to the State Treasury and not to the MVC. The Working Group urges the Legislature to consider reducing the amount of MVC-assessed surcharges. In addition, the MVC should consider reexamining its current surcharge payment plan process and/or issuing a restricted-use license to drivers who are making a good faith effort to satisfy their obligation.

The Working Group recommends that the Legislature reexamine, with the goal to reduce, the following statute-specific surcharges, which are assessed and collected by the MVC:

- For the New Jersey Automobile Insurance Guaranty Fund, as created by N.J.S.A. 17:29A-35b(2), the following fees are assessed and collected by the MVC:
  - \$3,000 assessed for first and second convictions under N.J.S.A. 39:4-50, driving while intoxicated;
  - \$3,000 assessed for violations of N.J.S.A. 39:4-50.a4, refusal; and
  - \$4,500 assessed for third conviction of N.J.S.A. 39:4-50, driving while intoxicated.
- The following fees are also assessed and collected by the MVC, pursuant to N.J.A.C. 13:19-13.1:
  - \$300 assessed for violations of N.J.S.A. 39:3-10, unlicensed driver or driving with an expired license;
  - \$300 assessed for violations of N.J.S.A. 39:4-14.3e, failure to insure a motorized bicycle;
  - \$750 assessed for violations of N.J.S.A. 39:3-40, driving with a suspended license; and
  - \$750 assessed for violations of N.J.S.A. 39:6B-2, operating an uninsured vehicle.

A high percentage of license suspensions are not ordered by the Municipal Courts, but are instead imposed by the MVC due to a defendant's failure to pay MVC surcharges or otherwise not complying with certain MVC administrative requirements. N.J.S.A. 17:29A-35, N.J.A.C. 13:19-12.1. That suspension is ineligible for reinstatement until at least five percent of the outstanding surcharge assessment has been paid, N.J.S.A. 17:29A-35, or the surcharge is paid in full. N.J.A.C. 13:19-12.1(a). When a defendant is able to seek license reinstatement, a \$100 restoration fee must first be paid to the Motor Vehicle Commission. N.J.S.A. 39:3-10a.

There is one avenue of relief offered by the MVC. The Commission may authorize installment payments for periods of 12 to 36 months, depending on the total surcharge assessment amount.<sup>34</sup> Similarly, for defendants whose driving privileges have been suspended due to a failure to satisfy a MVC surcharge, the MVC may seek restoration after entering into an agreement to satisfy the outstanding surcharge amount on an installment basis, and when that amount has been paid partially or in full. N.J.A.C. 13:19-12.12(b). However, a failure to pay any imposed installment nullifies the installment plan and the surcharge is due immediately and in full, with no option for reinstatement until it is satisfied. N.J.S.A. 17:29A-35; N.J.A.C. 13:19-12.12(c). This relief is overly restrictive, particularly for defendants who have an inability to pay. As with court payment plans, MVC payment plans need to be flexible, to be able to match the defendant's ability to pay.

#### Statute-Specific Surcharges Imposed by the Municipal Court at the Time of Sentencing

The following surcharges<sup>35</sup> are universal and must be assessed and transferred to the appropriate fund upon a conviction for all Title 39 motor vehicle offenses, N.J.S.A. 39:5-41:

- For the Unsafe Driving Surcharge Revenue Fund, as created by N.J.S.A. 17:29A-35b(2), \$250 is assessed for violations of N.J.S.A. 39:4-97.2, unsafe driving.
- \$1 for the Body Armor Replacement Fund, as created by N.J.S.A. 52:17B-4.4;
- \$1 for the New Jersey Spinal Cord Research Fund, as created by N.J.S.A. 52:9E-9;

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<sup>34</sup> N.J.S.A. 17:29A-35 allows the MVC to authorize payment of the surcharge on an installment basis over a period of 12 months for assessments under \$2,300 or 24 months for assessments of \$2,300 or more. The MVC, for good cause, may authorize payment of any surcharge on an installment basis over a period not to exceed 36 months. A surcharged driver is not eligible for restoration of driving privileges until at least 5% of each outstanding surcharge assessment that has resulted in the suspension, including interest and cost, is paid to the MVC. N.J.A.C. 13:19-12.12 permits MVC's Chief Administrator, at his or her discretion, to issue a certificate of debt to the Clerk of the Superior Court identifying a person as indebted to the State of New Jersey under the Motor Vehicle Violations Surcharge System. The Chief Administrator may at his or her discretion permit a driver to satisfy the certificate of debt on an installment basis at such times and in such amounts as fixed by the Chief Administrator or his or her designee.

<sup>35</sup> The above list is not exhaustive.

- \$1 for the Autism Medical Research and Treatment Fund, as created by N.J.S.A. 30:6D-62.2;
- \$2 for the New Jersey Forensic DNA Laboratory Fund, as created by N.J.S.A. 53:1-20.28a; and
- \$1 for the New Jersey Brain Injury Research Fund, as created by N.J.S.A. 52:9E-9.

The Working Group also recommends that the Legislature reduce surcharges set forth in the Report of the Supreme Court Committee that are imposed for certain disorderly persons and petty disorderly persons offenses. For example, \$250 for the Computer Crime Prevention Fund for disorderly persons/petty disorderly persons violations under Title 2C, Chapter 20, N.J.S.A. 2C:43-3.8 and \$500 for the Drug Enforcement and Demand Reduction Fund (DEDR) for disorderly persons/petty disorderly persons violations under Title 2C Chapter 35, controlled dangerous substances, or Chapter 36, drug paraphernalia, N.J.S.A. 2C:35-15. These heavy, mandatory financial penalties for relatively minor illegal conduct often create unmanageable financial burdens for defendants of limited means.

These funds and surcharges all may contribute to worthy causes but are often unrelated to the conduct for which the defendant was convicted and, in the aggregate, can create a crushing financial burden. In addition, defendants may be subject to other individual statutory surcharges that are associated with certain offenses. Therefore, the Working Group recommends that the Legislature reduce and/or eliminate certain surcharges statutorily required to be imposed by the Municipal Court at the time of sentencing.

## **B. Judicial Independence—Reviewing and Modifying the Appointment and Reappointment Process (Recommendations 11-15)**

As the New Jersey Supreme Court has noted in several cases, the only exposure that most citizens will have with the New Jersey judicial system will be in our Municipal Courts. New Jersey’s Municipal Courts handle approximately six million cases each year. Municipal Court judges are the first point of contact for many court users, and set the tone for the courtroom experience. As of the publication of this report, there are approximately 314 Municipal Court judges sitting in the 515 Municipal Courts that serve New Jersey’s 565 municipalities. In In the Matter of Advisory Letter No. 7-11 of the Supreme Court Advisory Committee on Extrajudicial Activities, 213 N.J. 63, 70 (2013) the Court addressed

the importance of maintaining public confidence in the integrity of the Judiciary. (Appendix K). The Court explained:

Each year, the only experience that millions of New Jersey residents and non-residents will have with our judicial system will be in our municipal courts. *State v. McCabe*, 201 N.J. 34, 42, 987 A.2d 567 (2010) (citing *In re Mattera*, 34 N.J. 259, 275, 168 A.2d 38 (1961)). Because for most members of the public, municipal court "is the court of first and last resort," *In re Samay*, 166 N.J. 25, 43-44, 764 A.2d 398 (2001), "municipal court judges are the face of the Judiciary," *McCabe, supra*, 201 N.J. at 42, 987 A.2d 567. The public will pass judgment on our entire justice system based primarily on their impressions of the judges who preside in our municipal courts. *See ibid.*

Recent news reports, as well as the 2017 report of the New Jersey State Bar Association's Subcommittee on Judicial Independence in the Municipal Courts, have suggested waning public confidence in the integrity and impartiality of Municipal Courts. (Appendix V-1 of 2018 Supreme Court Committee Report). The perception that Municipal Courts operate with a goal to fill a town's coffers is contrary to the purpose of the courts. A judge's decision to impose a court-ordered financial obligation must be detached from, and unrelated to, any decision concerning the use to which revenues from such obligations should be attributed. Similarly, judicial performance should not be measured by or judicial or court staff compensation tied to revenue generation.

An independent Municipal Court, free from these revenue-based considerations, is therefore central to the Judiciary's ability to serve the public. While the Supreme Court Committee noted that there are many exceptional Municipal Court judges who serve with great distinction, the perception is that some judges are evaluated and appointed by local leaders based on inappropriate considerations, such as how much revenue the judge generates for the municipality. This dynamic clearly impacts the perceived independence of those judges and dampens the confidence that the public has in our judicial system.

***The independence of the Judiciary must be safeguarded in all courts, but especially in the Municipal Courts, particularly because of the way the appointment and reappointment process works.***

***It is up to each of you [judges] to maintain the independence of your courts by steadfastly refusing to yield to any pressure, no matter the source.***

***– Chief Justice Deborah T. Poritz,  
November 21, 1996***

Importantly, the Working Group acknowledges that local leaders are not regularly employing measures directing their Municipal Court judges to make decisions to generate more revenue for the municipality. In fact, the Working Group is confident that the opposite is true, in that most local leaders understand and respect the independence of the Municipal Courts and would never actively engage in such discussions. However, Municipal Court judges are not oblivious to the enormous pressures faced by local leaders to balance budgets and not raise taxes. While few local leaders likely apply direct pressure to judges to increase court revenue, it is reasonable to assume that a judge who generates more revenue for a municipality is a more attractive candidate for appointment or reappointment.

Therefore, to enhance the independence of the Municipal Courts, the Working Group makes a collection of recommendations that include: establishing a qualifications process for Municipal Court judicial candidates, extending reappointment terms for Municipal Court judges, relaxing designation requirements for Presiding Judges of the Municipal Courts, and establishing an evaluation process for Municipal Court judges prior to reappointment. In order to ensure independence of the judicial system, the Working Group also recommends extending the reappointment terms of municipal prosecutors and public defenders.

**RECOMMENDATION 11**

**The New Jersey State Bar Association’s County Judicial and Prosecutorial Appointments Committees (JPACs) Should Review the Qualifications of Municipal Court Judicial Candidates for Appointment and Reappointment and Report to the Municipal Body on Whether the Judicial Candidate is Qualified. The Municipal Body Will Retain the Discretion to Make the Final Selection Decision.**

Overview

As discussed, an independent Municipal Court is central to the Judiciary’s ability to serve the public. The creation of an impartial and transparent process for the appointment and reappointment of qualified judges is crucial to that preservation. At the same time, the Working Group recognizes the long-held tradition of ‘home rule’ in New Jersey, i.e., the desire of a local populace to govern themselves via elected officials developing and executing policies reflecting their priorities and needs. With that in mind, any recommendation regarding the appointment and reappointment of



Municipal Court judges would have to balance both the need for a consistent, transparent process that works to preserve the integrity and independence of the Municipal Court bench and the need to have local interests appropriately reflected in a Municipal Court.

### Current Appointment Process

The appointment process for Municipal Court judges is governed by statute and in most instances rests with the governing body of the municipality. N.J.S.A. 2B:12-4b. The exception is for judges of joint Municipal Courts and central Municipal Courts. Joint Municipal Court judges and judges sitting in a county or central Municipal Court must be nominated and appointed by the Governor with the advice and consent of the Senate. N.J.S.A. 2B:12-4b, c. Municipal Court judges are appointed to serve for three-year terms, and although eligible for repeated reappointment, are not eligible for tenure. N.J.S.A. 2B:12-4a. (Appendix L). Further, there is no uniform appointment or reappointment process or procedure utilized in the State of New Jersey beyond the statutory outline nor uniform salary requirements. Municipalities are left to devise and execute their own methodologies for appointment and reappointment. Many Municipal Court judges sit as judges in multiple Municipal Courts.

This stands in sharp contrast to the appointment of Superior Court judges, which is made with the advice and consent of the Senate at an open, public hearing, and includes input from key stakeholders, including the New Jersey State Bar Association. Although the specifics of that process as they relate to particular Superior Court candidates are confidential, the overarching procedures are known and transparent.

### Recommended Review Process for Appointment and Reappointment

To that end, the Working Group recommends utilizing the New Jersey State Bar Association's county Judicial and Prosecutorial Appointments Committees (JPAC) to conduct a review of Municipal Court judicial candidates for appointment and reappointment. (Appendix M). Currently, the county JPACs conduct confidential reviews of prospective Superior Court judge and county prosecutor candidates, and advise the Governor of whether the prospective candidates are qualified for appointment for those offices. This is performed under a compact established with the Governor. The role of the JPAC should be expanded to help assess the qualifications of candidates for the position of Municipal Court judge. It is the position of the Working Group that while participation in this county JPAC process

would be mandatory, the municipality would retain the final decision on which candidate to select.

The Working Group further recommends that the county JPAC be expanded to include a person with extensive Municipal Court experience to aid in the review of a Municipal Court judicial candidate. The Working Group did not reach a consensus on whom this person should be, e.g. a former municipal prosecutor, retired Municipal Court judge. In addition, the Working Group recommends that when reviewing a Municipal Court judge's qualifications for appointment and reappointment, the county JPAC should confer with the respective Assignment Judge regarding the appointment of the prospective judicial candidate. The County JPAC should confer with both the Assignment Judge and Presiding Municipal Court Judge regarding reappointment.

Under this recommendation, the county JPAC would conduct a confidential review of the qualifications of Municipal Court judicial candidates to determine whether the candidate is either qualified or not qualified. As part of implementation, current Municipal Court judges would be grandfathered in and would not have to undergo the initial qualification process, unless they are applying for an appointment in a new court. In reviewing a candidate, the Working Group recommends that the JPAC consider a candidate's demeanor, legal experience, Municipal Court experience, trial experience, and reputation for character and integrity. These factors are not exhaustive and failure to satisfy any one factor should not necessarily prohibit a candidate from being deemed qualified. Rather, the JPAC should have some flexibility in qualification aspects that are considered. The Working Group also recommends that the New Jersey State Bar Association and the Judiciary collaborate on the development of suitable criteria.

Upon the conclusion of the review of the judicial candidate, the JPAC would report to the municipal body that the candidate is either qualified or not qualified. Upon receipt of the JPAC's recommendation, the municipal body would retain the discretion to either appoint or not appoint the candidate. While a uniform process should be established and made mandatory, the Working Group has significant concerns regarding limitations on the appointment authority of a municipality. This recommendation was developed with these concerns in mind.

This JPAC-led process will serve the dual purpose of preserving local decision-making, while ensuring that there is a uniform, transparent process that engenders public confidence in the judicial appointment process. The JPACs experience in reviewing the qualifications of candidates for Superior Court judgeships will assist

in the review of candidates for Municipal Court judgeships, and inclusion of a member with extensive Municipal Court experience will help inform the JPAC's review. Further, reliance on the existing county JPAC, with the inclusion of only one additional member, will expedite implementation of this recommendation should it be adopted by Municipal Court stakeholders.

The Working Group's recommendation comes after careful review of Recommendations 24 through 31 of the Report of the Supreme Court Committee, which concerned the qualification process for the appointment and reappointment of Municipal Court judges.

**RECOMMENDATION 12**

**The Legislature Should Consider Amending N.J.S.A. 2B:12-4 to Extend the Term of Office for the Reappointment of Municipal Court Judges from Three to Five Years, with the Initial Term of Appointment Remaining at Three Years.**

The appointment process for Municipal Court judges is governed by statute. With the exception of judges in central and joint Municipal Courts, that process is handled by the governing body of the municipality. N.J.S.A. 2B:12-4b, c. (Appendix L). All Municipal Court judges are appointed to serve for three-year terms. Although eligible for repeated reappointment, they are not eligible for tenure, unlike Superior Court judges. N.J.S.A. 2B:12-4a; N.J. Const. art VI, § 6, ¶ 2.

*The Municipal Court is not an extension of the Mayor, or the Municipal manager, or the police department, or any other Executive Branch authority.*

*– Chief Justice Deborah T. Poritz,  
November 4, 2005*

The Working Group considered the need for Municipal Court judges to be treated independently, as opposed to an arm of the municipal entity. In determining how to accomplish this goal, the Working Group determined that a longer appointment term would insulate the judge from political pressure. It would also create a more experienced bench

that would provide stability to the leadership of a Municipal Court.

The Working Group considered the appointment and reappointment terms for Superior Court judges and the State Comptroller, which were designed to provide political insulation and independence. Superior Court judges are initially appointed for a term of seven years, and acquire tenure upon reappointment until the mandatory

age of retirement of 70 years. N.J. Const. art. VI, § 6, ¶ 2. The State Comptroller is appointed to a six-year term, N.J.S.A. 52:15C-3b. Both the initial terms for Superior Court judges and the State Comptroller offer political insulation and independence by extending beyond a four-year gubernatorial term, N.J. Const. art. V, § 1, ¶ 5, and the two-year Legislature terms, N.J. Const. art. IV, § 1, ¶ 3.

The Working Group recommends that the Legislature consider amending N.J.S.A. 2B:12-4 to provide that all initial terms of appointment for Municipal Court judges will be for three years, while all reappointments to that same court (provided there is no break in service) will be for five years. In the event of a break in service in a particular court appointment, or if that judge is newly appointed to another court, those future appointments are to be considered initial appointments and thus would be for three year terms.

This proposal takes into account the need for the governing body of a municipality to weigh in on the appointment of a Municipal Court judge, as well as the challenges presented when an appointed judge may not be performing adequately or appropriately. This is tempered by the extended consecutive term, which mimics the preservation of independence accomplished with the appointment terms for Superior Court judges as well as the State Comptroller.

This recommendation was developed in consideration of Recommendation 32 of the Supreme Court Committee, which called for the legislative extension of terms for Municipal Court Judges from three to five years via amendments to N.J.S.A. 2B:12-4.

### **RECOMMENDATION 13**

**The Judiciary Should Establish a Municipal Court Judge Evaluation Process and Increase the Number of Annual Municipal Court Judges' Conference Training Days to Two Days. Municipal Leaders are Encouraged to Visit the Municipal Courts for Purposes of Gaining Greater Familiarity with Court Operations.**

#### Evaluation Process

The Working Group recommends the development of an evaluation process for Municipal Court judges prior to reappointment that will be based on objective measures. These measures would be informed by the Municipal Presiding Judge

observing the judge in-court or through review of audio court session recordings. The process would involve the assessment of the Municipal Court judge's attendance at required training sessions; compliance with guidelines; and an objective review of the imposition of penalties, including discretionary fines, contempt assessments, jail terms, and license suspensions assessed by the judge.

The result of the evaluation process will be a report that is shared with vicinage leadership and, at the discretion of the Assignment Judge, with the municipality that is making the reappointment decision. Beyond the distribution to the Assignment Judge and municipality, any evaluation report generated pursuant to this proposed process would be confidential. While the Working Group agrees that an evaluation process is needed, it did not delve into the exact framework or type of evaluation process. However, there was consensus that more time is needed to discuss and collaborate on developing the parameters of an evaluation process for the Supreme Court's consideration.

The Working Group recognizes the difficulty that would be presented by implementing an evaluation process for the more than 300 sitting Municipal Court judges in addition to the review/mentoring process currently in existence. For that reason, the Working Group recommends that any implemented evaluation be conducted on: (1) Municipal Court judges that are up for their first reappointment in the upcoming year; (2) Municipal Court judges that are referred for an evaluation by the Assignment Judge or Presiding Municipal Court Judge; and (3) Municipal Court judges that voluntarily submit for an evaluation. With these limitations, it is estimated that annually, 25 to 30 Municipal Court judges will be subject to evaluation.

Altogether, this process will provide an objective measure by which a sitting Municipal Court judge can be evaluated. For those judges facing their initial reappointment, the evaluation will also serve to increase their independence by ensuring that municipalities are fully informed, at the discretion of the Assignment Judge, of the judge's performance prior to making a reappointment decision. Finally, the evaluation also would serve as an opportunity for feedback to and mentorship of Municipal Court judges seeking guidance on their performance.

This recommendation was developed after review and consideration of Recommendations 34 and 35 of the Supreme Court Committee, which together proposed an evaluation process for sitting Municipal Court judges.

## Judicial Training

The current formalized training process for all new Municipal Court judges consists of five days of classroom instruction, as well as direct one-on-one training provided by the Municipal Presiding Judge within two weeks of the new judge's appointment; required court session visits; and an annual one-day Municipal Court Judges' training conference.

Further, there are numerous other trainings conducted by the Administrative Office of the Courts and vicinages, a formal in-session visitation program that focuses on the activities of the judge and court staff at the Municipal Court session, a formal visitation program that focuses on the overall health of the Municipal Court and whether the court is complying with state and Judiciary requirements, and various trainings conducted by the Presiding Judge for the Municipal Court judges in the vicinage.

The Working Group also recommends requiring two days of annual training for Municipal Court judges, instead of the single training day currently provided by the Judiciary.

Finally, the Working Group encourages Municipality leaders to visit the Municipal Courts in their respective municipalities to gain a greater understanding and more familiarity with their judge and court operations.

### **RECOMMENDATION 14**

**The Legislature Should Consider Amending N.J.S.A. 2B:25-4 and N.J.S.A. 2B:24-3 to Extend the Term of Office for the Reappointment of the Municipal Prosecutor and Public Defender to Three Years, with the Initial Appointment Term Remaining at One Year. The Legislature Should Also Consider Amending N.J.S.A. 2B:25-10 to Allow the Attorney General to Mandate Training for Municipal Court Prosecutors.**

Every Municipal Court is required by law to have a municipal prosecutor and a municipal public defender and court users will regularly interact with one or both. Their presence was not always consistent, and came about via Legislature-led reforms initiated about 20 years ago. In considering the independence of Municipal Court judges, the Working Group discussed issues pertaining to municipal

prosecutors and municipal public defenders. The Working Group agrees that extending the terms of municipal prosecutors and public defenders will foster independence, remove the pressure on these Executive Branch employees to raise revenue for the municipality, contribute to professionalism of the Municipal Courts, and improve efficiency in the court session.

### Municipal Public Defender

In 1997, the Legislature passed a law requiring each municipality to have a municipal public defender, N.J.S.A. 2B:24-1 to -17. Specifically, each Municipal Court is required to have at least one municipal public defender who has been appointed by the governing body. N.J.S.A. 2B:24-3. (Appendix N). Appointments are for one-year terms from the date of appointment; municipal public defenders may continue to serve in office pending reappointment or appointment of a successor. N.J.S.A. 2B:24-4a. A municipal public defender may hold that position in one or more Municipal Courts. Id. To fund the public defender, N.J.S.A. 2B:24-17 allows municipalities to pass an ordinance requiring a defendant to pay up to a \$200 fee when applying for a municipal public defender. This application fee is to pay the costs of municipal public defender services and helps avoid the creation of an unconstitutional unfunded mandate. N.J. Const. art. VIII, § 2, ¶ 5. The application fee may be waived in whole or in part by the court if the defendant demonstrates an inability to pay the fee. N.J.S.A. 2B:24-17.

### Municipal Prosecutor

In 1999, legislation was passed requiring municipal prosecutors in every Municipal Court. N.J.S.A. 2B:25-1 to -12. The majority of municipal prosecutors are appointed for one-year terms and may serve in multiple Municipal Courts. N.J.S.A. 2B:25-4b. (Appendix O). Although the Attorney General may develop curricula for training programs for municipal prosecutors pursuant to N.J.S.A. 2B:25-10, municipal prosecutor participation in those programs is voluntary. (Appendix P).

### Recommended New Terms of Office for Municipal Prosecutors and Public Defenders

As an acknowledgment of the need for municipalities to ensure that appointed municipal prosecutors and public defenders meet professional and community expectations, the Working Group agrees that the initial term of appointment should remain at one year with subsequent, consecutive terms extending to three years. This

recommendation was developed in consideration of Recommendation 49 of the Supreme Court Committee.

To further enhance the professionalism of municipal prosecutors, the Working Group also recommends that the Legislature consider amending N.J.S.A. 2B:25-10 to allow the Attorney General to mandate training for Municipal Court prosecutors. Municipal prosecutors play a pivotal role in Municipal Court practice, and required training in important areas such as domestic violence, DWI laws, mental health and other areas, will best serve the citizens of New Jersey.

**RECOMMENDATION 15** **The Legislature Should Consider Amending N.J.S.A. 2B:12-9 to Relax the Designation Requirements for Presiding Judges of the Municipal Courts.**

The Chief Justice has the authority to designate a judge of the Superior Court or one of the Municipal Courts to serve as the Presiding Judge of the Municipal Courts for a vicinage. This judge may exercise powers delegated to him or her by the Chief Justice, or as established by the Rules of Court. N.J.S.A. 2B:12-9. (Appendix Q). All Presiding Municipal Court Judges are required to also sit as Municipal Court judges. Id. Presiding Judges who are Municipal Court judges are to be paid by the State for the time related to assigned duties, N.J.S.A. 2B:12-9, and Presiding Judges who are Superior Court judges are fully funded by the State.

Of the 15 current Presiding Judges, only one presently serves on a full-time basis. The other Presiding Judges fulfill their responsibilities anywhere from one to four days a week. The Working Group recognizes that despite the demonstrated capabilities of the Presiding Judges, satisfying the demands of the position on a part-time schedule is becoming increasingly difficult in the face of the myriad of judicial and administrative responsibilities that judges have. Presiding Judges have responsibilities ranging from monitoring, mentoring, and training Municipal Court judges, to handling judicial responsibilities that are directed by the Chief Justice or vicinage Assignment Judge. They are also heavily involved in administrative committee work and policy development. Further, in light of the part-time nature of Presiding judgeships, some of the Presiding Judges maintain private law practices in addition to their Municipal Court judgeship(s).

To attract and maintain appropriate leadership with the experience to perform the functions of a Presiding Judge of the Municipal Courts and to ensure the continued development of the Municipal Court system, changes to the minimum requirements



for designation should be considered. The Working Group thus proposes that the appointment requirements for Presiding Judges of the Municipal Courts be relaxed and revised to require the following:

- Must have served as a Municipal Court judge for at least three years prior to being designated the Municipal Presiding Judge by the Chief Justice;
- Must be a sitting Municipal Court judge at the time of initial designation as Presiding Judge;
- May remain a Presiding Judge at the discretion of the Chief Justice, regardless of maintaining Municipal Court judgeship(s); and
- May serve full-time as Presiding Judge at the discretion of the Chief Justice.

This proposal recognizes the need for an experienced Presiding Judge bench that provides continuity of leadership and enhanced judicial independence. Further, allowing Presiding Judges of the Municipal Court to serve full-time at the discretion of the Chief Justice supplements Recommendation 16 of the Working Group, which envisions that the Presiding Judges will serve as the primary judge in the central Municipal Courts—the anticipated foundation for a consolidated Municipal Court system. The open-ended nature of the designation is tempered by the discretion of the Chief Justice to both remove the designation of Presiding Judge and limit the full-time work of that Presiding Judge as deemed necessary.

### **C. Judicial Independence and the Efficient Administration of Justice—Consolidation and Regionalization of the Municipal Courts to Improve Efficiency of Court Operations and Delivery of Justice (Recommendations 16-17)**

By statute, every municipality in New Jersey must establish a Municipal Court to adjudicate traffic, petty criminal, and other minor offenses that occur within its borders. N.J.S.A. 2B:12-1a.; N.J.S.A. 2B:12-17. Municipalities may choose from three types of Municipal Courts that can meet the particular needs of a municipality: a single court, a joint court, or a shared Municipal Court.

Single Municipal Courts serve one municipality. Joint courts or shared service courts are created through an agreement between municipalities. A joint Municipal Court is one in which two or more municipalities commingle all operations, including caseloads and bank accounts to form a single court. N.J.S.A. 2B:12-1b. Conversely, municipalities participating in a shared services agreement share delineated resources as a way to hold down costs while retaining their individual identities. This

may include sharing courtrooms, chambers, equipment, supplies, employees, judges, and/or the court administrator. N.J.S.A. 2B:12-1c.

Finally, if a county meets certain population and density requirements, that county may establish a central Municipal Court that has county-wide jurisdiction. N.J.S.A. 2B:12-1e. Central Municipal Courts are authorized to adjudicate “cases filed by agents of the county health department, agents of the county office of consumer affairs, members of the county police department and force, county park police system, or sheriff’s office, or other cases within its jurisdiction referred by the vicinage Assignment Judge pursuant to the Rules of Court, and provide for its administration.” Id. Bergen County is presently the only county that meets the statutory population and population density requirements, and is therefore the only county with a central Municipal Court.

Only the largest Municipal Courts meet daily. Most Municipal Courts hold court sessions on a part-time basis, anywhere from a few times a week to as little as once a month. The typical Municipal Court in New Jersey employs two to three staff members and meets two to four times a month. A number of municipalities in New Jersey take advantage of the cost-saving measures presented by a shared services or joint agreement. As of the writing of this report, New Jersey has 565 municipalities and 515 Municipal Courts.<sup>36</sup>

The New Jersey Court Rules, pursuant to the Supreme Court’s constitutional rule-making authority, provide a framework for controlling the daily operations of the Municipal Courts. The New Jersey Judiciary is organized into 15 vicinages (a court region covering one or more counties), four of which are multi-county vicinages. Each vicinage is overseen by an Assignment Judge (the chief judicial officer within the vicinage), who is assisted by a Trial Court Administrator in managing the day-to-day business of their respective court(s).

Each vicinage has a Municipal Division that is responsible for the administrative functions, support and oversight of the Municipal Courts and serves as a conduit between the Assignment Judge and the Municipal Courts. The Municipal Division, which is supported by Administrative Office of the Courts’ staff, consists of a

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<sup>36</sup> Two of the 515 Municipal Courts are unique and warrant further explanation. First is the Bergen Central Municipal Court, a Municipal Court with vicinage-wide jurisdiction. Second is the Court of Palisades Interstate Park, which has the same powers and jurisdiction of a Municipal Court with respect to offenses that occur in the portion of the Palisades Interstate Park that is within the State of New Jersey. This court was also created by statute. N.J.S.A. 32:14-22, 32:14-23.

Presiding Municipal Court Judge<sup>37</sup> (designated by the Chief Justice and not appointed by any municipality), a Municipal Division Manager, an Assistant Division Manager, and support staff. Policies and procedures for the Municipal Courts are established by the Judiciary, which provides extensive training and technological support to all Municipal Court judges and staff.

Of those 565 municipalities, 299 have individual, stand-alone courts, 188 municipalities share some type of service—be it a Municipal Court judge, staff, or facilities—while the remaining 76 municipalities have agreed to form 25 separate joint Municipal Courts. Despite these consolidation efforts, there remain a significant number of Municipal Courts with a low number of annual filings, i.e., charges filed in the Municipal Court by law enforcement or private individuals.

<b>Filings Data</b>		
<b>January 1, 2018 - December 31, 2018</b>		
<b>Filings</b>	<b>Number of Courts (Including All Filings)</b>	<b>Number of Courts (Excluding Parking Filings)</b>
<b>Less than 5,000</b>	<b>318</b>	<b>369</b>
<b>Less than 4,000</b>	<b>264</b>	<b>312</b>
<b>Less than 3,000</b>	<b>223</b>	<b>261</b>
<b>Less than 2,000</b>	<b>170</b>	<b>197</b>
<b>Less than 1,000</b>	<b>98</b>	<b>112</b>
<b>Less than 500</b>	<b>72</b>	<b>76</b>
<b>Less than 250</b>	<b>52</b>	<b>53</b>
<b>Less than 100</b>	<b>37</b>	<b>37</b>

Of significance is that each year there are Municipal Courts that handle no cases at all or only a small number. As an example, during January 1, 2018 through December 31, 2018, three Municipal Courts handled no cases, while 37 Municipal

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<sup>37</sup> The Presiding Judge may exercise power delegated by the Chief Justice or established by court rules.

Courts handled less than 100 cases, which is less than two filings per week. Moreover, there were 98 Municipal Courts that handled less than 1,000 filings for the year, which averages out to less than 20 filings per week. The need for more consolidation is underscored when you consider that each of these courts is required to have a judge and staff, hold regular court sessions, operate in a secure court facility, stay current on all Municipal Court laws, policies and procedures, and receive training and mentoring from the Administrative Office of the Courts and the vicinage.

This is an area that the Supreme Court Committee and the Working Group found ripe for reform. Regionalized courts can enhance efficiencies. On a practical level, there are fiscal savings to be found in consolidating resources, particularly for those courts that do not meet on a frequent basis. More importantly, these enhancements improve the delivery of justice, access, and fairness in the Municipal Courts via the provision of more frequent court sessions, greater possibility of extended evening hours, improved court security, as well as making available programs and services currently accessible only to larger courts—including the reduction in the length of time defendants spend in jail awaiting trial. The resulting improvements in judicial independence and the public’s trust in the courts cannot be understated.

Despite these benefits, prior regionalization efforts have been unsuccessful. The first such effort was in 1958, when then Chief Justice Joseph Weintraub called for the institution of a system of regional courts with judges appointed by the governor. These sentiments were again echoed in 1969, by then Administrative Director of the Courts Edward McConnell; in 1971, via an outside consultant who urged a similar restructuring; in 1973, by then Chief Justice Pierre P. Garven; and, finally, in 1979, by then Chief Justice Richard J. Hughes, who explained that if the Legislature refuses to take initiative, the Court could do so as a “last resort.” All of these prior efforts were met with resistance, and never gained the public support needed for implementation.

Former Chief Justice Robert N. Wilentz analyzed these early attempts of regionalization and noted that the failure to restructure the municipal system was due in part to “a strong tradition of local self-government...the people who have the power to make the appointment want to keep the power to make the appointment.” Those sentiments remain true today. However, recent events highlighting the need for nationwide Municipal Court reform may have changed the narrative surrounding a call for regionalization.

The Judiciary has since been left to urge that municipalities consider consolidation of their Municipal Courts as it is authorized within the current legislative framework. More recently, in 2010, Chief Justice Stuart Rabner distributed a report to the Governor and legislative leaders in the Senate and the Assembly. That report, titled the “Municipal Court Consolidation Plan,” provided a recommended blueprint to be followed by municipalities considering the establishment of either a joint court or shared court. (Appendix J of 2018 Supreme Court Committee Report).

In its 2017 report on Judicial Independence in the Municipal Courts, the New Jersey State Bar Association concluded that some form of regionalization was necessary to ensure judicial independence and eliminate issues surrounding ‘home rule’, ultimately recommending that the Supreme Court create a new committee to study “the mechanism for the fiscal and administration of the regionalized municipal court to be created in the counties around the state.” (Appendix V-1 of 2018 Supreme Court Committee Report).

In its June 2018 report, the Supreme Court Committee called for the legislative mandating of consolidation of small courts, taking into account factors such as total annual filings, frequency of court sessions, and geography as well as the creation of this Working Group to examine the funding and efficiencies of consolidating Municipal Courts.

The creation and charge of this Working Group thus marks the culmination of a modern call for regionalization. Nonetheless, the Working Group understands that any widespread change may inspire initial resistance. For that reason, a phased strategy for regionalization, building on current court consolidation processes has been developed. For the first phase, regionalization in the form of joint, shared, and central courts will be strongly encouraged via modified procedures, new legislation, and targeted incentives. A significant component of this proposal will be the relaxing of the statutory restrictions surrounding the creation and jurisdiction of central Municipal Courts.

Second, following the three-year transitional period, smaller Municipal Courts will be mandated to consolidate and regionalize based on the court filings, court sessions, and geography. The goal will be to reduce the total number of Municipal Courts in order to provide the enhancements that will result from regionalized Municipal Courts.

Together, the Working Group is confident that these structural changes will result in streamlined Municipal Courts, enhanced efficiencies, and additional protections for the independence of the Municipal Courts.

**RECOMMENDATION 16**

**The Legislature Should Consider Establishing Additional Incentives to Encourage Municipalities to Consolidate Under the Existing Statutory Framework of Shared and Joint Courts and Modifying N.J.S.A. 2B:12-1(e) to Expand Central Municipal Courts to All Counties in the State.**

The Working Group discussed the benefits of shared or joint court arrangements for Municipal Courts, particularly those that hold infrequent court sessions. Such arrangements can provide efficiencies that are not available to smaller, single courts, including the convenience of more frequent court sessions for court users. This is particularly critical for defendants detained on bench warrants who are unable to pay their bail. More frequent court sessions would allow these individuals to have their matters heard in court sooner, with less time spent behind bars. Larger Municipal Courts are also better able to provide diversionary programs and resources for court users.

Despite these efficiencies and the improvement of customer service opportunities, there are a number of reasons why municipalities may not seek to enter into a shared or joint court agreement. For example, shared services agreements may not necessarily result in financial savings, as some municipalities will charge other municipalities who want to merge more than the actual cost of servicing their caseload. In short, some municipalities view consolidation as a way to make money from other municipalities that are interested in consolidating. In addition, there may be community resistance to a shared or joint court agreement, particularly in the absence of any fiscal benefit to the municipality. Finally, municipal leaders prefer to maintain their local control to select the judge, court staff, the municipal prosecutor and the municipal public defender—appointment and hiring decisions which might be bargained away when hammering out a consolidation agreement.

Encouraging Shared and Joint Courts

The Working Group determined that incentives to encourage shared and joint courts, and to remove existing barriers to the same should be explored. To that end, the Working Group recommends development of the following incentives:

- Municipalities that join a shared, joint, or central Municipal Court can obtain greater flexibility and incentives from the State in their local budget process with the State;

*There are more efficient ways to operate a municipal court system that will deliver justice and achieve cost savings. The Judiciary is prepared to work with towns that voluntarily wish to enter into shared or regional courts.*

– *Chief Justice Stuart Rabner, May 17, 2019*

- The creation of legislation to establish a process that results in actual savings to each municipality that participates in a shared, joint, or central Municipal Court;
- Provide State-funding to shared or joint Municipal Courts to meet Judiciary standards for security and facilities;
- Offer State funding to pay the salary of the Municipal Court judge appointed to a joint or central Municipal Court; and
- Modify the current statutory framework allowing for the expansion of central Municipal Courts in all counties, expanding the subject matter jurisdiction of those courts, and allowing any municipality to join the central Municipal Court.

### Expansion of Central Municipal Courts

Regarding the expansion of central Municipal Courts, N.J.S.A. 2B:12-1(e) imposes certain population and density requirements as a baseline for a county to establish a central Municipal Court. Currently, only Bergen County meets these requirements, and only Bergen County has a central Municipal Court. The expansion of central Municipal Courts in all counties should be encouraged by modifying this statutory framework to both allow for the creation of central Municipal Courts in each county, with additional flexibility provided to allow for the creation of multiple central courts in a county, as needed, to address the population and geographical needs of a county. This central court would become the hosting court that a municipality can join, and would form the foundational structure for regionalization of the Municipal Court system.

### Expand Jurisdiction of Central Courts

Further, the Working Group recommends that N.J.S.A. 2B:12-1e be revised to also explicitly allow the central Municipal Courts to hear any matter cognizable in any Municipal Court within a county, subject to an agreement with that municipal court or upon the direction of the vicinage Assignment Judge. Under the current statutory

construct, only certain county-initiated matters may be adjudicated in central Municipal Court, with additional authority provided to the Assignment Judge to refer certain other matters for resolution. A full expansion of jurisdiction in central Municipal Courts to all matters cognizable in a Municipal Court is necessary to ensure true regionalization and would provide significant flexibility to municipalities and the Judiciary.

### Allow Central Municipal Courts to Serve as First Appearance Court

The Working Group additionally recommends that the central Municipal Courts be able to serve as a first appearance court to support the efforts of criminal justice reform, and a repository to hear criminal indictable matters that are downgraded and remanded to the Municipal Courts, as needed. These are responsibilities that some Municipal Court Presiding Judges handle currently; therefore, it is envisioned that the central Municipal Courts will be led by the Municipal Court Presiding Judge, assisted as needed by additional full-time, State-funded Municipal Court judges, as determined by court volume.

The Working Group agrees that these incentives, particularly those created by a modified central Municipal Court structure, will encourage voluntary regionalization, result in an efficient Municipal Court system, and drastically improve customer service opportunities available in those larger Municipal Courts. These recommendations were developed after review and consideration of Recommendation 49 of the Supreme Court Committee.

**RECOMMENDATION 17 After a Three-Year Transition Period to Encourage Municipalities to Voluntarily Participate in Shared, Joint, or Central Municipal Courts, the Legislature Should Consider Mandating the Regionalization of Smaller Municipal Courts.**

The Working Group is confident that incentives and other efforts will result in many municipalities voluntarily participating in regional Municipal Courts—central, joint, or shared. Nonetheless, to ensure appropriate regionalization and a statewide improvement in the delivery of justice, access, and fairness through the Municipal Courts, the Working Group recommends that following a three-year transitional period, regionalization should be mandated by statute, with certain exceptions.



During the transitional period, the Judiciary will reach out to each municipality to provide relevant information about its Municipal Court and to discuss all available regionalization options. That information will include data regarding the operation of its Municipal Court and efficiencies in a variety of areas including staff, services, security requirements, facility requirements, technology, Judiciary policies that impact court operations, and various other pertinent factors. Municipalities will also be encouraged and incentivized to join a central, joint, or shared Municipal Court.

It is only after a three-year period has elapsed, without any such regionalization effort being made, that the Working Group proposes mandated regionalization mainly via a joint or central court, as guided by the number of annual filings and location of a Municipal Court. The Working Group recommends that consideration be given to initially mandating regionalization for Municipal Courts that have less than 3,000 annual filings for the 2017 court year. Geographical concerns involving areas of the State that are either rural and/or without public transportation will be ameliorated by anticipated technological enhancements that will allow defendants to resolve outstanding matters through technology without the need to appear in person at court.

Municipalities can avoid mandated regionalization by taking proactive steps to avail themselves of the regionalization incentives proposed by the Working Group and becoming part of a meaningful regional court, i.e. via participation in a joint or central court. Alternatively, mandated regionalization can be avoided if the Municipal Court is in a shared agreement that involves sharing a Municipal Court judge(s), court staff and facilities, and results in at least one weekly court session at which defendants from any of the participating Municipal Courts can be heard. It is worth noting that Municipal Courts participating in shared arrangements still retain their individual identity. Moreover, participation in a shared court would not in and of itself excuse a municipality with fewer than 3,000 annual filings from mandated regionalization.

The Working Group acknowledges the controversial nature of this recommendation. However, the significant legislative incentives, the contemplated three-year transition period, and the targeted mandated regionalization of only those Municipal Courts with fewer than 3,000 annual filings (approximately 58 new matters a week, or 230 new matters a month) should minimize the spirited disagreement that generally surrounds mandated regionalization.

This recommendation was developed after review and consideration of Recommendation 49 of the Supreme Court Committee.

## VI. CONCLUSION

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New Jersey's Municipal Courts handle millions of cases every year, and serve as the forum for most interactions between the public and the court system—they are truly the face of the New Jersey Judiciary. New Jersey's Municipal Court system is one of the best in the country, in areas including but not limited to, technological integration, efficiency, case processing, and standardization. However, as in all other areas of government and in society as a whole, progress must always be pursued. Thus, the logical next step in the Judiciary's ongoing commitment to improving the judicial system for the common good is a collaborative push for Municipal Court reform that focuses on decoupling of sentencing practices from a municipality's need for revenue, modifying the appointment and reappointment process of Municipal Court judges, prosecutors and public defenders, and consolidating and regionalizing the Municipal Courts.

The role of the Municipal Courts is to provide a fair and just forum to resolve disputes. A town's general need for revenue should not be at the expense of a defendant's financial livelihood. This report identifies what can be done in New Jersey to promote and safeguard the fundamental principles of equal access to the courts, fair justice for all, and judicial independence.

Recommendations 1-10 are proposals that strive to decouple sentencing practices from a municipality's need for revenue in order to enhance equal access and fairness in the courts. Separating a town's need for general operating revenue from the operation of the Municipal Courts will relieve pressure on judges to impose fines and fees, thereby ensuring judicial independence.

Recommendations 11-17 are proposals that also aim to further judicial independence of the Municipal Courts while simultaneously improving the efficient administration of justice by extending judges' terms of office, modifying the appointment process, and incentivizing the consolidation and regionalization of the Municipal Courts.

The Working Group is confident that meaningful collaboration from all three branches of government at all levels will bring Municipal Court reform to fruition and solidify our commitment to advancing the principles of equal access, fairness, and judicial independence in the Municipal Courts. Providing for and ensuring the general welfare and safety of our communities is a collective goal. This report represents the continuation of New Jersey's collaborative social justice movements to advance the common good and improve the delivery of justice.

The analytical task of determining how to improve our Municipal Courts is not a simple process. While some proposals may be more challenging to implement than others, this must not dampen our pursuit and our resolve to transform the Municipal Courts. In sum, the Working Group's 17 recommendations represent a united inter-branch initiative that aims to enhance public confidence in the Municipal Courts, ensure that the stature of the Municipal Courts continues to be elevated, and advance the ideal of good government.

Respectfully submitted,

Hon. Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts, Chair

Hon. Julio L. Mendez, A.J.S.C. (Atlantic/Cape May Vicinage), Chair, Municipal Court Regionalization Subcommittee

Hon. Stuart A. Minkowitz, A.J.S.C. (Morris/Sussex Vicinage), Chair, Inter-Branch Issues and Coordination Subcommittee

Hon. Lisa P. Thornton, A.J.S.C. (Monmouth Vicinage), Chair, Municipal Court Judicial Appointments Subcommittee

Hon. Carlo Abad, C.J.M.C., (Jersey City)

Alison Accettola, Esq., Associate Counsel to Senate Majority, designee of Senate President Stephen M. Sweeney

Paul Anzano, Esq., Mayor of Hopewell

Hon. Maisha L. Aziz, J.M.C. (Lawnside Borough), First Vice President and designee of New Jersey Muslim Lawyers Association

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Vito Bet, Chief of Police, Bound Brook

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Eugene J. Caldwell, II, President and designee of New Jersey County Jail Wardens Association (represented at meetings by Karen Taylor, Warden, Camden County Department of Corrections)

Hon. Chandra Cole, C.J.M.C. (Irvington), designee of Garden State Bar Association  
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Frankie Fontanez, Esq., Camden City Public Defender  
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Minority Leader Thomas Kean, Jr.  
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# Minority Opinion

June 5, 2019

Hon. Glen Grant J.A.D, Acting Administrative Director of the New Jersey Courts  
Chair, Working Group on the Municipal Courts  
Administrative Office of the Courts  
Richard J. Hughes Justice Complex  
P.O. Box 037  
Trenton, NJ 08625-0037

**Re: LEAGUE OF MUNICIPALITIES STATEMENT CONCERNING THE SUBCOMMITTEE  
REPORTS OF THE ADMINISTRATIVE OFFICE OF THE COURTS' WORKING GROUP  
ON THE MUNICIPAL COURTS.**

Dear Judge Grant,

The League would like to thank Chief Justice Stuart Rabner for initiating a sincere and challenging discussion about the mission of New Jersey's Municipal Courts regarding the fair, unbiased and transparent provision of justice to those who appear before those courts. The League also thanks the Honorable Glenn Grant, J.A.D. for serving as Chairman of the Working Group and providing the leadership which was critical to bringing into the discussion the various stakeholders, including elected municipal officials. The Honorable Stuart Minkowitz, the Honorable Lisa Thornton and the Honorable Julio Mendez are also thanked for volunteering to chair the three subcommittees of the Working Group and guiding the discussions of their respective Committees.

In reviewing the many recommendations of the Working Group, the League is of the opinion that there are recommendations which will provide true reform to the administration of justice at the municipal court level including an improved sense of fairness and judicial independence while reflecting community values. A few examples: a complete network of diversionary programs, alternative sentencing, incentives for efficiencies, preference for timed payment plans, alternative adjudication processes including grace periods.

On the other hand, the League also does not agree with a number of the recommendations. The League reached these conclusions by considering three significant public policies- the fair unbiased provision of justice, judicial independence which fosters judicial fairness and the recognition of representative democracy for the purposes of self-governance.

## **MANDATORY CONSOLIDATION**

Mandatory consolidation whether phased in, incentivized, or as a required shared arrangement is sacrificing self-governance at the local level for unproven benefits. Small courts do not mean less justice. Local courts provide proximity to the people using the system and reflect community values. This inclusion of the local identity extends both to the physical presence of the court and appointment of professionals. As the Working Group notes, since 1969 neither the public nor Legislature has accepted mandatory consolidation as an acceptable construct. The League believes municipal courts must remain local while other improvements or corrections are appropriately undertaken.

## **STATE MANDATED SURCHARGES**

The Working Group is rightly concerned with New Jersey Motor Vehicle Commission (MVC) imposed surcharges. Municipal courts can be a scapegoat for such surcharges. It is easy to see why the courts are perceived to be an extension of the State Treasury based on the sheer number and dollar value of surcharges and assessments which are not related to deterrence, enforcement or underlying municipal violations. These charges are created to fund specific State programs and draconian license suspensions are used by MVC to assure the surcharges are paid.

From Inter-Branch Subcommittee Recommendation 10:

The below surcharges are universal, and must be assessed and transferred to the appropriate fund upon a conviction for all Title 39 motor vehicle offenses, N.J.S.A. 39:5-41:

- \$1 for the Body Armor Replacement Fund, as created by N.J.S.A. 52:17B-4.4;
- \$1 for the New Jersey Spinal Cord Research Fund, as created by N.J.S.A. 52:9E-9;
- \$1 for the Autism Medical Research and Treatment Fund, as created by N.J.S.A. 30:6D-62.2;
- \$2 for the New Jersey Forensic DNA Laboratory Fund, as created by N.J.S.A. 53:1-20.28a; and
- \$1 for the New Jersey Brain Injury Research Fund, as created by N.J.S.A. 52:9E-9.

The above list is not exhaustive, and defendants may be subject to other individual statutory surcharges that are associated with certain offenses. The below list includes some statute-specific surcharges, most of which are assessed and collected by MVC:

For the Unsafe Driving Surcharge Revenue Fund, as created by N.J.S.A. 17:29A-35b(2), \$250 is assessed for violations of N.J.S.A. 39:4-97.2, unsafe driving. This surcharge is assessed and collected by the court.

For the New Jersey Automobile Insurance Guaranty Fund, as created by N.J.S.A. 17:29A-35b(2), the following fees are assessed and collected by MVC:

- \$3,000 assessed for first and second convictions under N.J.S.A. 39:4-50, driving while intoxicated;
- \$3,000 assessed for violations of N.J.S.A. 39:4-50.a4, refusal; and



- \$4,500 assessed for third conviction of N.J.S.A. 39:4-50, driving while intoxicated.

The following fees are also assessed and collected by MVC, pursuant to N.J.A.C. 13:19-13.1:

- \$300 assessed for violations of N.J.S.A. 39:3-10, unlicensed driver or driving with an expired license;
- \$300 assessed for violations of N.J.S.A. 39:4-14.3e, failure to insure a motorized bicycle;
- \$750 assessed for violations of N.J.S.A. 39:3-40, driving with a suspended license; and
- \$750 assessed for violations of N.J.S.A. 39:6B-2, operating an uninsured vehicle.

## **MUNICIPAL COURT JUDGE QUALIFICATION REVIEW**

Including the input of the county Judicial and Prosecutorial Appointments Committee (JPAC), as done with appointment of Superior Court judges can add to the municipal appointment process while retaining the appointment authority with the municipal body. The County JPAC information/questionnaire should be given to the appointing authority. However we must caution that this could still politicize the position if there is anything negative in that report and the judge still gets appointed. For example, if there is a minority view from the appointing authority they may focus on negative items in the report and make those the highlight of a campaign and news releases against the judge and appointing authority.

Extension of terms for municipal judges for an initial term of three years with reappointments to five years would politicize the office of municipal judge. Appointing authorities who are unsatisfied with the municipal judges' performance could resort to repeated media releases pointing to ineffective court decisions as causing problems for local code enforcement. With the ability to replace ineffective judges the responsibility for responsive courts remains with the appointing authority. For prosecutors and public defenders, only the attorneys who are appointed benefit from a two year term.

## **COURT REVENUE AS A MUNICIPAL REVENUE SOURCE**

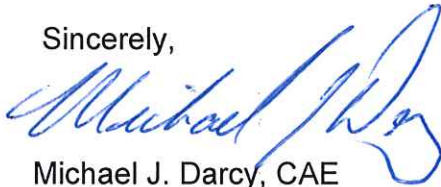
The League believes municipal budgeting should avoid the appearance of using the courts as a municipal revenue source. Removing the appearance of relying on fines and fees to fund municipal operations is understandable and contributes to public perception of unbiased judicial outcomes. The Working Group correctly wrestles with the challenge of properly funding court costs and programs. The Working Group goes as far as suggesting diverting court-collected funds to provide operational cost for specific programs and even mentions the idea of finding a way to avoid operating under a 2% budget cap. Municipal professionals are well versed in these challenges and budgeting limitations. The League believes these professionals are best trained to address these budgeting needs. The

municipal budgeting professionals are trained in making adjustments to the interrelated components of municipal budgets as required.

### **THE OVER ALL REVENUE PICTURE**

Throughout the many recommendations, there would be significant cost shifting, new programs which would require new revenue, diversion or dedication of revenue and a reallocation of uncertain savings. Although it is valuable to discuss ideas and options for further exploration, the League must comment that any additional costs, lost revenue or redirected savings create an unknown burden on local property taxpayers. New Jersey property taxpayers as reflected in numerous studies are subject to the heaviest property tax burden in the country (<https://cbsn.ws/2XioFSZ>). It would indeed be an injustice to further burden these property tax paying residents to advance unproven efforts which seek improvements in municipal court operations or perceived judicial fairness. Before burdening property taxpayers, it is incumbent upon the Judiciary and the Legislature to do their due diligence to assure fairness for these taxpayers.

Sincerely,



Michael J. Darcy, CAE  
Executive Director

MJD/sa

# Appendices

# Appendix A

## **RULE 7:1. Scope**

The rules in Part VII govern the practice and procedure in the municipal courts in all matters within their statutory jurisdiction, including disorderly and petty disorderly persons offenses; other non-indictable offenses not within the exclusive jurisdiction of the Superior Court; violations of motor vehicle and traffic, fish and game, and boating laws; proceedings to collect penalties where jurisdiction is granted by statute; violations of county and municipal ordinances; and all other proceedings in which jurisdiction is granted by statute. The rules in Part III govern the practice and procedure in indictable actions, and Rule 5:7A governs the practice and procedure in the issuance of temporary restraining orders pursuant to the Prevention of Domestic Violence Act of 1990.

**Note: Source-R.R. (1969) 7:1. Adopted October 6, 1997 to be effective February 1, 1998.**

# Appendix B

## [N.J. Stat. § 2B:12-1](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60 (except c. 58, 59), and J.R. 3

**LexisNexis® New Jersey Annotated Statutes > Title 2B. Court Organization and Civil Code (Chs. 1 — 50) > Chapter 12. Municipal Courts (§§ 2B:12-1 — 2B:12-33)**

### § 2B:12-1. Establishment of municipal courts

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**a.** Every municipality shall establish a municipal court. If a municipality fails to maintain a municipal court or does not enter into an agreement pursuant to subsection b. or c. of this section, the Assignment Judge of the vicinage shall order violations occurring within its boundaries heard in any other municipal court in the county until such time as the municipality establishes and maintains a municipal court. The municipality without a municipal court shall be responsible for all administrative costs specified in the order of the Assignment Judge pending the establishment of its municipal court.

**b.** Two or more municipalities, by ordinance, may enter into an agreement establishing a single joint municipal court and providing for its administration. A copy of the agreement shall be filed with the Administrative Director of the Courts. As used in this act, “municipal court” includes a joint municipal court.

**c.** Two or more municipalities, by ordinance or resolution, may agree to provide jointly for courtrooms, chambers, equipment, supplies and employees for their municipal courts and agree to appoint judges and administrators without establishing a joint municipal court. Where municipal courts share facilities in this manner, the identities of the individual courts shall continue to be expressed in the captions of orders and process.

**d.** An agreement pursuant to subsection b. or c. of this section may be terminated as provided in the agreement. If the agreement makes no provision for termination, it may be terminated by any party with reasonable notices and terms as determined by the Assignment Judge of the vicinage.

**e.** Any county of the first class with a population of over 900,000 and a population density of less than 4,000 persons per square mile according to the 2010 federal decennial census may establish, by ordinance, a central municipal court, which shall be an inferior court of limited jurisdiction, to adjudicate cases filed by agents of the county health department, agents of the county office of consumer affairs, members of the county police department and force, county park police system, or sheriff's office, or other cases within its jurisdiction referred by the vicinage Assignment Judge pursuant to the Rules of Court, and provide for its administration. A copy of that ordinance shall be filed with the Administrative Director of the Courts. As used in this act, “municipal court” includes a central municipal court.

**f.** Nothing in [P.L.2015, c.103](#) shall require a county that has established and maintained a central municipal court in accordance with subsection e. of [N.J.S.2B:12-1](#) prior to the date of the enactment of [P.L.2015, c.103](#) to re-establish that court.

### History

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L. [1993, c. 293](#), § 1; amended [1996, c. 95](#), § 1, eff. Oct. 24, 1996; [2008, c. 2](#), § 1, eff. Mar. 26, 2008; [2011, c. 181](#), § 1, eff. Mar. 17, 2012; [2015, c. 103](#), § 1, eff. Aug. 10, 2015.

Annotations

## LexisNexis® Notes

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### Notes

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#### Editor's Notes

Conditional dismissal program, petty disorderly persons or disorderly persons offenses, see [2C:43-13.1](#) et seq.

#### Effective Dates:

Section 18 of L. [1996, c. 95](#) provides: "This act shall take effect on the 90th day after enactment." Chapter 95, L. 1996, was approved on July 26, 1996.

Section 3 of L. [2011, c. 181](#) provides: "This act shall take effect on the 60th day after enactment." Chapter 181, L. 2011, was approved on Jan. 17, 2012.

#### Amendment Note:

2008 amendment, by Chapter 2, in the first sentence of c., substituted "judges and administrators" for "the same persons as judges and administrators."

2011 amendment, by Chapter 181, in the first sentence of e., inserted "agents of the county office of consumer affairs."

2015 amendment, by Chapter 103, in the first sentence of e., substituted "900,000" for "825,000," substituted "2010 federal decennial census" for "latest federal decennial census, with a county police department and force established in accordance with N.J.S.40A:14-106 or a county park police system established in accordance with P.L.1960, c.135 (C.40:37-261 et seq.)," and inserted "or sheriff's office"; added f.; and made a related change.

### Case Notes

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**Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: State Regulation**

**Criminal Law & Procedure: Pretrial Motions & Procedures: Disqualification & Recusal**

**Criminal Law & Procedure: Jurisdiction & Venue: Jurisdiction**

**Governments: Courts: Creation & Organization**

**Governments: Courts: Judges**

**Legal Ethics: Judicial Conduct**

**Antitrust & Trade Law: Consumer Protection: Deceptive Acts & Practices: State Regulation**

Municipal court has no jurisdiction under N.J. Stat. Ann. § [56:8-14](#) to assess a penalty for an alleged Consumer Fraud Act violation in connection with the sale of a used motor vehicle because § [56:8-14](#) only grants jurisdiction over penalty enforcement actions. [See amendments to [2B:12-1](#) and [56:8-14.1](#) by L. [2011, c. 181](#).] [State v. Tri-Way](#)



## N.J. Stat. § 2B:12-1

[Kars, Inc., 402 N.J. Super. 215, 953 A.2d 766, 2008 N.J. Super. LEXIS 179 \(App.Div.\)](#), certif. denied, 197 N.J. 259, 962 A.2d 530, 2008 N.J. LEXIS 1820 (N.J. 2008).

Central Municipal Court of Bergen County, New Jersey had no jurisdiction under N.J. Stat. Ann. § [56:8-14.1](#) to assess a penalty against a defendant in a Consumer Fraud Act case because that statute expressly limits jurisdiction over penalty assessment cases to municipalities “where the offense was committed or where the defendant may be found.” The offense at issue was committed in South Hackensack where defendant conducted business and § [56:8-14.1](#) was held to trump the general power of the Assignment Judge to refer cases to the Central Municipal Court under N.J. Stat. Ann. § [2B:12-1\(e\)](#). [See amendments to [2B:12-1](#) and [56:8-14.1](#) by L. [2011, c. 181](#).] [State v. Tri-Way Kars, Inc., 402 N.J. Super. 215, 953 A.2d 766, 2008 N.J. Super. LEXIS 179 \(App.Div.\)](#), certif. denied, 197 N.J. 259, 962 A.2d 530, 2008 N.J. LEXIS 1820 (N.J. 2008).

### **Criminal Law & Procedure: Pretrial Motions & Procedures: Disqualification & Recusal**

Part-time municipal court judges must recuse themselves whenever the judge and a lawyer for a party are adversaries in some other open, unresolved matter. [State v. McCabe, 201 N.J. 34, 987 A.2d 567, 2010 N.J. LEXIS 8 \(N.J. 2010\)](#).

Municipal court judge erred by denying a defendant' motion to have him recused with regard to pending criminal charges as the municipal judge and the defendant's counsel were opposing counsel in an unrelated probate case and recusal was mandated in such situations. [State v. McCabe, 201 N.J. 34, 987 A.2d 567, 2010 N.J. LEXIS 8 \(N.J. 2010\)](#).

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### **Governments: Courts: Creation & Organization**

Borough and town's interlocal services agreement to share municipal court administrative support services under the New Jersey Interlocal Services Act, N.J. Stat. Ann. § [40:8A-1](#), was not approved because a provision in the agreement that allowed them to appoint their own individual judges was not permitted by N.J. Stat. Ann. § [2B:12-1\(c\)](#). [2008 amendment changed § [2B:12-1\(c\)](#).] [In re Municipal Court of Borough of East Newark, 390 N.J. Super. 513, 915 A.2d 1116, 2006 N.J. Super. LEXIS 349 \(Law Div. 2006\)](#).

To the extent N.J. Stat. Ann. § [2B:12-1\(c\)](#) and N.J. Stat. Ann. § [2B:12-4\(b\)](#) conflict, the more specific terms of N.J. Stat. Ann. § [2B:12-1\(c\)](#), which does not allow municipalities choosing to share municipal court services to appoint

## N.J. Stat. § 2B:12-1

their own individual judges, controls over the broader statement in N.J. Stat. Ann. § [2B:12-4\(b\)](#). [2008 amendment changed § [2B:12-1\(c\)](#)]. *In re Municipal Court of Borough of East Newark*, 390 N.J. Super. 513, 915 A.2d 1116, 2006 N.J. Super. LEXIS 349 (Law Div. 2006).

Police justice courts were constituted and established as municipal courts of their respective municipalities and designated as municipal courts under former N.J. Stat. Ann. § [2A:8-2](#) (now N.J. Stat. Ann. § [2B:12-1](#) et seq.); the transition from police court to municipal court was in name only. *State v. Celmer*, 157 N.J. Super. 242, 384 A.2d 894, 1978 N.J. Super. LEXIS 889 (App.Div. 1978), rev'd, 80 N.J. 405, 404 A.2d 1, 1979 N.J. LEXIS 1240 (N.J. 1979).

By authority of former N.J. Stat. Ann. §§ 2:8A-13, 2:8A-17 (now N.J. Stat. Ann. § [2B:12-1](#)), every municipality in the state is given a choice of establishing a municipal court or of joining with one or more municipalities in creating a municipal court; it was not the intention of the state legislature, in authorizing two or more municipalities to establish a municipal court by the adoption of ordinances based on an intermunicipal agreement, to estop any of the parties to such an agreement from ever, at any time in the future, withdrawing from such agreement and setting up its own municipal court as provided by law, whenever in the judgment of the municipal authorities the public interest so demanded. *Upper Penns Neck Tp. v. Lower Penns Neck Tp.*, 20 N.J. Super. 280, 89 A.2d 727, 1952 N.J. Super. LEXIS 885 (Law Div. 1952).

Ordinance adopted by township A that withdrew from the intermunicipal agreement that had been entered into with township B and C and the ordinance that established a separate municipal court for township A pursuant to former N.J. Stat. Ann. § 2:8A-13 (now N.J. Stat. Ann. § [2B:12-1](#)), were both within the power and authority of township A to enact, and were valid. *Upper Penns Neck Tp. v. Lower Penns Neck Tp.*, 20 N.J. Super. 280, 89 A.2d 727, 1952 N.J. Super. LEXIS 885 (Law Div. 1952).

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### **Legal Ethics: Judicial Conduct**

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## **Research References & Practice Aids**

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**Cross References:**

Definitions relative to municipal public defenders, see [2B:24-2](#).

Fines, assessments, penalties, restitution; collection; disposition, see [2C:46-4](#).

Violations of toll collection monitoring system regulations; penalties, see [27:23-34.3](#).

Violations of toll collection monitoring system regulations; penalties, see [27:25A-21.3](#).

Fines, penalties, forfeiture, disposition of; exceptions, see [39:5-41](#).

Contracts for collection of delinquent fees, fines, see [40:23-6.53](#).

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# Appendix C

# New Jersey Law Journal

Eighty Years of Publication

VOL. LXXXI—No. 48

NEWARK, N. J., THURSDAY, NOVEMBER 27, 1958

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## Digests of Recent Opinions

**STATES — POWERS OF APPOINTMENT — CONFLICTS.** In the absence of an expressed intention contra an expressed power of appointment of personality of the donor is validly exercised by a will valid under the law of the donee's domicile though such will did not comply with the formal requisites of the donor's domicile.

Digested from an opinion by Fisher, J. rendered Nov 17, 1958. Supreme Court. Guaranty v. Revens. For appellants—Charles Danzig. For defendant respondents—John J. Gibbons (Crummy, Gibbons & O'Neill attys). For plaintiff respondent—Charles W. Hutchinson (Emory, Langan, Lamb & Blake, attys).

Joseph Oathwaite died in New Jersey in 1902 leaving a will under which he bequeathed part of his estate, all personality, in trust for his daughter Margaret. The will further provided that on her death the principal of the trust was given, devised and bequeathed to such persons and in such interests and proportions as said daughter shall in her last will and testament in that behalf direct, limit and appoint and in default of such direction limitation and appointment, then absolutely unto her issue her surviving in equal shares.

Margaret died in 1958 domiciled in California and leaving an unwitnessed holographic will dated Jan. 5, 1954 which purported to exercise the power given in her father's will. Her will was valid under California law and was duly admitted to probate there. The issue is whether it is effective to constitute an exercise of the power of appointment conferred by her father's will. Appellant contends it is not an effective exercise of the power because her will was not executed in accordance with the requirements of our law for a valid effective will and hence was not a "will" under our law.

Held: While there are cases in New Jersey apparently holding contra, the rule now commonly accepted is that barring a definite testamentary expression contra, the execution of a power of appointment by will may be had by a will conforming to the formalities of the law of the donee's domicile, as a fulfillment of the donor's intention, and that such will need not conform to the requirements of the state of testator's domicile.

By common intentment the donor had in view an exercise of the delegated appointive power by will, an ambulatory instrument to the exclusion of an inter vivos act, and this testamentary design was fulfilled by the donee's will authenticated in the mode and manner ordained by the law of her own domicile such as his intent and purpose is well high irresistible. To hold otherwise would be to induce in the arbitrary and illusive and to distort the sense and significance of the words "last will and testament" and thus to subvert the donor's essential plan of an appointment by an instrument executed by the donee animo testandi. The donor's will did not constitute appointment to a will executed in accordance with New Jersey statute but merely to a writing animo testandi which would be the donee's "last will and testament". The instrument here involved is the donee's "last will and testament" under the law of her domicile and is a will

sufficient in law to dispose of her personality wherever situate, in New Jersey or elsewhere.

The English law and the Restatement of the Law of Conflicts now set forth the rule as being that unless otherwise confined by the donor, the donee's execution of a power of appointment of movables is valid if the execution complies with the formalities of either the domicile of the donor or that of the donee. The rule of "either domicile" is grounded in reason and logic, as in aid of intention not otherwise confined.

The validity of bequests of personality depends on the law of the testator's domicile and such a will executed according to the lex domicilii is operative on personal property wherever situate. By the same token such a will is equally effective as an appointment barring an expressed intention contra by the donor. Affirmed.

## Penna. Court Rules On Jersey Alimony and Property Settlement Law

The Supreme Court of Pennsylvania recently considered the effect of a judgment nisi and the law of New Jersey with respect to alimony and property settlements, deciding somewhat novel questions of New Jersey law in the course of its decision.

In the matter before the court a New Jersey decedent had entered into an arrangement with his former wife whereby he agreed to pay her \$50 per week for her life in lieu of alimony; would continue life insurance policies on his life with the former wife to receive \$250 per month therefrom after his death for her life; and would give sole use and possession of their home at Collingswood to her for life, decedent to pay taxes, and fire insurance on the property and to paint the exterior. The provisions of this oral agreement were incorporated in the decree nisi.

The former wife's claim for continuance of the \$50 weekly payments was resisted by the decedent's widow and beneficiaries who argued that New Jersey is an "alimony" state and that alimony payments as such terminate on the death of the husband.

In rejecting this defense, the court ruled that the claim is governed by New Jersey law irrespective of whether it arises out of the decree, which is entitled to full faith and credit, or out of contract executed in New Jersey by residents thereof; that property settlements and contracts and decrees embodying them are valid in New Jersey and are not terminated by death unless the parties so provide; that an agreement whereby a husband agrees to pay his wife a weekly sum for life in lieu of alimony is lawful and is not alimony but a contractual obligation which continues against the husband's estate, and that the agreement and decree here involved both provide for a property settlement, which continues as an obligation of decedent, and not for alimony, which would terminate on his death.

The Supreme Court of Pennsylvania accordingly ruled in favor of the former wife's claim.

The decision was rendered in Estate of William H. Scott, opinion by Bell, J. filed Nov. 10, 1958. John Henry Reiners, Jr., of Camden, was one of the attorneys engaged in the litigation.

## Union Daily Calls At 9:30 A.M.

### SUPERIOR COURT OF NEW JERSEY

Starting December 1st, 1958, the daily calendar call of all Superior and County civil cases in Union County will be made by the Assignment Judge, Walter L. Heitfeld, III, at 9:30 A. M.

## AmBar Foundation Will Research Space Law

The board of directors of the American Bar Foundation, at its recent meeting here, approved the establishment of a new research project on "The Law of Outer Space." It will embrace a comprehensive study of all available space law material, including a review and summary of various proposals made to date for the control and use of outer space.

The proposal for the inauguration of this timely project was submitted to the foundation by the ABA special committee on the law of outer space, a unit of the section of international and comparative law.

David F. Maxwell of Philadelphia, past president of ABA, is chairman. The project report will be used by the special committee in assisting and counseling the house select committee on astronautics and space exploration which meets early next year in Washington to review the subject.

The foundation's survey report will be indexed and catalogued, to make available a complete bibliographic record of all existing material in this relatively new field of law.

## Bar Urged To Make More Use of Psychiatry In Legal Practice

NEW YORK (ACCN)—A research project with the purpose of seeking better ways for lawyers to determine guilt, settle disputes, fix punishment and arrive at compensation for injuries was suggested at a recent seminar on "Psychiatry as a Tool for Lawyers."

The seminar was sponsored by the New York County Lawyers Assn. and was attended by judges, lawyers, psychiatrists and physicians.

Dr. Lawrence S. Kubie, New York neurologist, psychiatrist and psychoanalyst, who suggested the research project at the seminar, said lawyers and psychiatrists should organize a foundation to sponsor the project.

He added that the research projects would take 25 and even 50 years to carry out. Present legal procedures, he suggested, should be tested in mock trials with faithful reproduction of all kinds of actual trials.

The tests would try to establish scientifically such questions, he said, as whether trials before a jury alone, before a judge alone or before judge and jury came closest to the truth and consumed the least time and expenditure.

Another psychiatrist, Prof. Herbert C. Modin of the Menninger foundation told the seminar that people gained understanding of others as they studied the motivating effects of their own needs and wants.

Yale law school asserted that lawyers' assessment of psychiatric and related factors "needs to become as commonplace as parking tickets."

## The Municipal Courts

By the Hon. Joseph Weintraub\*

I need scarcely repeat that in terms of human experiences our magistrates preside in the most important courts in the state. To appreciate that this is so, we need but look at the nature and number of the matters they handle.

Our municipal courts have jurisdiction over local ordinance violations, a wide variety of disorderly persons offenses (you will recall that in 1951 the Legislature augmented the list by downgrading some 56 offenses from crimes to disorderly conduct); violations of the motor

vehicle and traffic laws and of the fish and game laws; a number of crimes when the accused waives indictment and trial by jury; and a host of miscellaneous offenses scattered throughout our statutes. The penalties range from a modest fine for overtime parking to revocation of the important license to drive; they include a maximum of one year's imprisonment and a fine of \$1000 for disorderly persons offenses and three years in State's prison and a fine of \$1000 for petit larceny. During the last full year for which information is available, the municipal courts collected fines, costs and forfeitures totaling \$8,658,867, placed 3,371 convicted defendants on probation, and sent 19,702 persons to jail. Thus while the municipal court is of limited criminal jurisdiction, it nonetheless is vested with extensive power affecting property and liberty.

Last year the municipal courts disposed of 1,315,491 cases, not including the 13,006 matters referred to the grand jury and 10,598 neighborhood disputes handled in informal notice in lieu of complaint. The bulk of these cases, of course, involved traffic law violations, most of which were handled in the violations bureaus following guilty pleas. There were, however, 215,487 traffic matters and 74,697 criminal or quasi-criminal cases actually heard in court. Compare this record with the fact that during the same period our county courts disposed of 10,056 indictments and accusations and all of the courts in the state, other than the municipal court, handled a total of 206,471 cases, most of which never reached the trial stage.

These figures show that a very substantial percentage of our citizens are directly involved with our municipal courts, to say nothing of the thousands who appear as witnesses or spectators. For most of them, it is their only contact with the judicial process. The impressions they receive serve to shape their opinion of the judicial system, our laws and law enforcement. We cannot permit that opinion to be anything but one of confidence and respect.

I am sure everyone will agree that the municipal courts of today are a vast improvement over the haphazard assortment of local courts that preceded them. The majority of our magistrates are capable and conscientious and are doing a good job. But there are limitations upon overall performance which inhere in the very nature and structure of the municipal court system. So long as our present arrangement continues, we cannot hope to achieve the quality of justice and the high degree of public confidence and respect which we must have.

We have 567 municipalities ranging from the City of Newark with a population in excess of half a million to Island Beach Borough with all of 13 inhabitants. Some 39 municipalities have no municipal court and rely upon the county district court. The remaining 528 maintain a total of 469 separate courts, 19 of which are joint courts serving more than one municipality. These 469 courts are presided

## Judges To Address Essex Bar

Annual Meeting and Election of Officers December 1

Chief Justice Weintraub and representatives of all of the divisions of the courts sitting in Essex County, will address the Essex County Bar Association at its annual meeting on Monday evening, Dec. 1, at the Downtown Club in Newark. The meeting at which the judges address the association, report on the work in the courts and discuss mutual problems has become an annual custom. In addition to the Chief Justice, guests will include Judges Harold A. Price, Alexander P. Waugh, Mark A. Sullivan, Jr., James F. Cullinan, Harry W. Lindeman, Jacob S. Gluckenhau and Nicholas Castellano as representatives of their respective courts.

The election of officers for the coming year will also take place at this meeting. The slate submitted by the nominating committee, thus far unopposed is:

- President—David Stoffer
- V. President—Alfred L. Padula
- Secretary—James R. Lacey
- Treasurer—Vincent P. Blunno
- Trustee (3 year term)—Joseph D. Lintott
- Delegate to the House of Delegates of the American Bar Association (2 year term)—Joseph H. Stamler
- Judiciary Committee (3)—Joseph A. Hayden, Joseph A. Weisman, Alfred C. Clapp
- Nominating Committee (3)—Adrian M. Foley, Jr., Ward J. Herbert

## Bergen Bar To Get Preview of New County Building Wing

The Annual Meeting and Election of Officers and Trustees of the Bergen County Bar Association will be held in Room 16, Court House, Hackensack, on Tuesday, December 2nd, 1958 at 4 P. M.

Architect's renderings of the jury court rooms and hearing rooms which will be in the new wing of the County Administrative Building will be shown at the meeting and representatives of York and Sawyer, architects for the administrative building will present slides showing the various facilities of special interest to attorneys, including the plans for the Prosecutor's Office, identification department and the County Clerk and Surrogate's offices. Freeholder E. Merrill Seaberg, chairman of the special building committee, also will be present to answer questions.

(Continued on page 5, col. 1)

\*Address delivered by Chief Justice Weintraub to the New Jersey League of Municipal Attorneys on Thursday, November 20, 1958 at the Hudson Hall, Atlantic City.

### The Municipal Courts

(Continued from page 1)

over by 425 magistrates, some of whom have more than one court. All of these magistrates serve part-time and 118 are still laymen.

The limitations upon overall performance to which I referred to a moment ago arise from the sheer number of courts, magistrates and clerical personnel involved; the multiple sources of budget appropriation; the multiple appointive authorities; the inescapable shortcomings of the part-time judge; in short, from the nature of the basic concept. They are limitations which cannot be overcome by the best effort we can sensibly expect. May I say emphatically that my portrayal of the problems should not be understood to reflect upon the substantial body of magistrates, clerks and appointive authorities who are doing a creditable job. The long and short of the matter is that we cannot hope to equip, man and staff 489 courts and achieve quality performance through the present system. There will always be some failures; and the incidence of failure must inevitably be increased by the very number of individual efforts involved. Nor can it be expected that the Supreme Court and the Chief Justice can effectively discharge their constitutional duty to supervise the municipal courts when their number is so vast, and control over budget and personnel is scattered among some 500 governing bodies. Let me get down to specifics.

The major portion of the time of the staff of the Administrative Director of the Courts is spent with the municipal courts. In 1957 a program was instituted for the detailed inspection of each court once every two years, the best rate of inspection we can presently achieve. Of the 24 courts inspected between February 1, 1957 and August 31, 1958, the following conditions were found: Courts were being held in private homes in every room but the kitchen and bathroom, in garages, firehouses and in a pump house. In 44 instances the places of holding court were so unsatisfactory that it was necessary to notify local officials that unless adequate facilities were provided their courts would have to close; in another 30 instances the courtroom facilities were found to be in immediate need of improvement; 31 courts were found to have inadequate equipment, such as filing cabinets and other necessary office furniture; 229 courts were not maintaining adequate traffic ticket control records; in 26 courts the traffic and criminal dockets were not being

kept properly; in 183 courts the cash book was not being properly maintained; and 124 courts were found to need improvement in the handling of money.

The Administrative Office of the Courts receives a monthly report from each municipal court showing the number of cases filed and disposed of. These reports are compared with the records of the Division of Motor Vehicles in order to ascertain whether the municipal courts are sending to the Division reports of dispositions in all traffic cases as required by statute. These reports, as you know, supply the data for the Division's driver record files and form the very basis of the point system. In the last month for which a complete cross-check was made, there were 62 courts with a discrepancy of more than 10% between the number of dispositions reported to the Administrative Office and the number of reports received by the Division of Motor Vehicles, a failure to send a total of 617 reports to that Division. Of course, corrective action was directed immediately.

Each year the fiscal records of every municipal court are audited by a registered municipal accountant, with copies of the audit reports going to the Administrative Office of the Courts and the Division of Local Government as well as to the municipal authorities. On the average each year these audits reveal shortages in the funds of 4 courts of a nature warranting referral to the county prosecutor. In addition there are a considerable number of minor discrepancies resulting from honest mistake or carelessness.

Now let me hasten to point out that in every instance where a municipal court is found to be deficient or in need of improvement in any of the respects I have mentioned, steps are taken toward remedying the situation. In rough terms, correction has already been achieved in about 75 percent of the cases. The cure, however, is not always easy and in some instances is impossible for a variety of reasons. Generally the difficulty lies in the fact that the municipal court has either inadequate or incompetent clerical assistance, a matter over which the local governing body has exclusive control. Not infrequently, because of some local considerations, the governing bodies will not respond to pleas for corrective action. Occasionally the magistrate is completely indifferent. In two instances within the last year, after repeated letters, telegrams and telephone calls from the Administrative Director failed to produce a re-

sponse, the Director had to refer the matters to me for direct communication with the magistrates concerned. In another instance I felt obliged to request the local governing body to reappoint a magistrate who had repeatedly ignored his responsibilities. In several instances the Administrative Director has had to ask the Assignment Judge of the County to step in to convince the magistrate and the local authorities of the need for adhering to the rules laid down by the Supreme Court for the administration of the municipal courts.

With so many courts and with such a high degree of local control and autonomy, it is impossible to secure a satisfactory level of compliance with even the most basic rules and directives relating to matters of administration. The burden of correspondence alone is almost prohibitive. And when improvement in the administration of a court is effected, it too frequently proves to be but a temporary triumph because of the high rate of turnover of the judicial and clerical personnel.

Thus far I have been talking of some of the administrative problems inevitably inherent in our present system of municipal courts. I should like to mention now two other matters of great importance. One is the part-time judge and the other is the relation of the municipal court to local law enforcement authorities.

All of our magistrates are part-time and only two municipalities, Newark and Jersey City, are large enough to require more than one magistrate. It cannot be denied that full-time judges are preferable to part-time judges. Most magistrates will agree that this is so even though for personal reasons they may prefer the present arrangement. A man who is a judge one hour and a lawyer the next cannot do his best in either capacity. Not only does the judge find it difficult to keep the demands of one position from infringing upon the demands of the other, but also lawyers are uncomfortable when, for example, they negotiate a settlement with or try to sue against an attorney who is also a judge before whom they must practice. However fair the judge may be in fact, the impression is inevitably created in the minds of litigants and lawyers that he has an unfair advantage or may in given situations be affected by subtle influences.

With the exception of the few magistrates of joint municipal courts who are appointed by the Governor, all of the magistrates receive their appointment either from the local governing body, the mayor or the director of the department to which the municipal court has been assigned, depending on the form of government in the municipality. We all know that as a practical matter the appointment, frequently, perhaps usually, is a reward for partisan activity. While the Canons of Judicial Ethics bar every judge from engaging in politics, the magistrate is in the unhappy position of knowing that if he eschews politics he is apt to be replaced at the end of his term by another who has labored for the organization. A change in the appointing authority almost without exception results in a change in magistrates. Whatever the effect upon the magistrate, the impact upon the public cannot be a healthy one. No matter how successful the magistrate disassociates himself from such influences, there will be many who believe or suspect that he failed. Appearances are as important as the fact. If we are to have the confidence and respect of the public, we cannot

### ABA Life Insurance Benefits Increased

Jacob M. Lashly, President of the American Bar Association Endowment, announced today: "We are pleased that the New York Life Insurance Company has agreed with the Endowment that, effective December 1, 1958, the amount of insurance provided by the American Bar Association Endowment \$20-A-Year Group Life Plan will be increased without any increase in premium contribution."

The increases range from \$50 to \$2,000 and will affect more than 24,000 members.

The \$20-A-Year Life Plan, now in its fourth successful year, is administered by the American Bar Association Endowment—a nonprofit Illinois corporation having the same membership as the American Bar Association.

The new life insurance benefits will be automatic for all present members of the Plan and new enrollees at no increase in contribution. Following is a thumbnail comparison of the new benefits available to \$20-A-Year Plan members effective December 1, 1958 as compared with those given in 1957 and 1955:

Age 25 & Under: New plan—

\$12,000. 1957—\$10,000. 1955—\$8,000.

Age 40: New plan—

4,500. 1957—3,000. 1955—3,000.

Age 50: New plan—

1,750. 1957—1,500. 1955—1,500.

Age 55: New plan—

1,000. 1957—1,000. 1955—1,000.

Amounts of insurance at intermediate ages are formed by an established decreasing scale.

At age 50, enrollees in the \$20-A-Year Plan have an option to enroll in a companion life insurance plan offered through the Endowment—the "50 Plus Plan"—which provides the insured an additional \$5,000 of protection without evidence of insurability. This Plan is available to members of the Endowment between the ages of 50 and 70.

Today the Endowment, through its two life programs, insures more than 28,000 lawyers and judges in the United States and foreign countries and affords over \$130 million of insurance protection.

### Assignment Order

SUPREME COURT OF NEW JERSEY

ORDERED that Judge Harold Kolovsky is assigned to the Law Division of the Superior Court, Passaic County, and is further designated as Acting Assignment Judge for Passaic County effective December 1, 1958;

FURTHER ORDERED that Judge Everett M. Scherer is assigned to the Chancery Division of the Superior Court, Vincennes No. 3, effective December 1, 1958;

FURTHER ORDERED that Judge Frederic R. Colle is relieved of his temporary assignment to the Law Division of the Superior Court, Passaic County, and as Acting Assignment Judge of Passaic County; Judge Harold Kolovsky is relieved of his assignment to the Chancery Division of the Superior Court, Vincennes No. 3; and Judge Everett M. Scherer is relieved of his assignment to the Law Division of the Superior Court, Essex County, effective December 1, 1958, provided, however, that such assignments shall continue for the purpose of their finally disposing of any matters presently pending before them.

/s/ Joseph Weintraub  
C. J.

Dated: November 17, 1958.

### Announcement

Harris & Harris have moved their offices to Suite 308, 1516 Atlantic Ave., Atlantic City. Irwin N. Goldberg will continue his association with the firm at the new address.

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(Continued on page 6, col. 1)

**The Municipal Courts**

(Continued from page 5)

not ignore circumstances which promote misunderstanding or suspicion.

The same popular misunderstanding and suspicion arise with respect to the relationship between the magistrate and local law enforcement officials. The feeling is still prevalent in many places that a defendant does not stand a chance in the municipal courts; that the magistrate feels compelled to accept the testimony of the local police or of the local witness. I am confident that this belief has no general foundation in fact. Indeed about 15 percent of those who appear in municipal courts to contest the charges against them are acquitted. But it is easy to see why this impression exists. The magistrate is in weekly if not daily contact with the police and knows many of them personally. The court is usually grouped with the police for local government purposes. The courtroom is frequently in the same building with the police officer to serve as clerk of the court. With no prosecutor, the judge has the burden of presenting the State's case. Hence it is difficult for a magistrate to dispel the feeling that the municipal court is not wholly detached from the executive agency charged with law enforcement.

The shortcomings I have de-

scribed will necessarily persist so long as we continue a system which structurally is cumbersome, unwieldy and archaic. We cannot afford to continue to think of municipal courts as local matters of purely local concern. These courts are a part of a Statewide judicial system. They administer justice under State laws, and their jurisdiction extends to all citizens wherever resident and not merely to the inhabitants of the locality in which the court sits. Hence these courts must be so constituted and operated as to assure independence from purely local interests and control. Responsibility for performance cannot properly be diffused among 567 municipalities. Responsibility must be centralized. It is idle and incongruous to charge the Supreme Court with administrative supervision, as the Constitution does, while the capacity to frustrate effective supervision and performance remains with 567 autonomous bodies.

The solution is to replace the municipal courts with 21 courts of county-wide jurisdiction manned by full-time judges appointed by the Governor with the approval of the Senate, appointments to be made upon a bipartisan basis which will virtually assure reappointment regardless of political fortunes for those who do a competent job. The centralization of the record keeping, reporting and other clerical work of the court would permit the employment of full-time qualified personnel and the utilization of mechanical equipment in the interest of both accuracy and economy. Adequate courtrooms and other facilities fitting the dignity of a court could be provided. It would be feasible to provide a prosecutor to represent the state and, I would hope, either a stenographer or electronic recorder to eliminate the necessity of a full retrial in the event of an appeal. Effective administrative supervision and control could be obtained through the presiding judge, aided by a supervisory clerk, who would be responsible to the assignment judge, and through him, to the Chief Justice. All this can be had at no more and probably at considerably less cost than under our present

municipal courts. For example, during the last full fiscal year (1957) the magistrates, salaries for the then 468 courts totaled \$899,238. This would pay for 56 full-time judges at \$16,000 a year, a number more than sufficient to handle the work of all the municipal courts, to say nothing of the savings that would undoubtedly result from increased efficiency and reduction in the cost of facilities and clerical personnel.

I am fully aware of the problems which this program immediately suggests. There is the need for providing essential services now handled at the local level, such as the arraignment of accused, taking of bail and the settlement of family and neighborhood disputes. There is the matter of arranging the times and places for sessions of the court to meet the convenience of those who have business with it. Consideration would have to be given to the financial impact upon municipalities which apparently have found the operation of a local court to be profitable. Last year, according to budgets filed with the Division of Local Government, some \$2,030,667 was spent on salaries and other expenses of the municipal courts, as compared with \$4,363,571 received by the municipalities during the last court year by way of fines, costs and forfeitures. We of course should not think of courts as revenue producers. Yet I recognize an existing equity and see no reason why a fair adjustment cannot be made. All of these matters are details which can be worked out. What we need now is agreement upon the basic principle—agreement that we should strive for a better system of justice in the vital area now occupied by 489 separate tribunals.

Some program for the consolidation of our present municipal courts is inevitable. As the public becomes more aware of the inherent shortcomings of the present system, it will become less tolerant of it. The people of our State expect the best in a judicial system and have every right to insist upon it.

Although we have achieved notable reforms elsewhere in our judicial system, we have defaulted in the area of the largest incidence of citizen exposure to the judicial process. I say "defaulted" because, in spite of the significant advance beyond the earlier system of local courts, we still persist in a structural concept which is at war with the very principles we embraced in fashioning the remainder of our judicial organization.

Few states are as well situated as ours to move ahead with respect to courts of limited criminal jurisdiction. I say this because territorially our State is small and compact and hence we do not have to wrestle with the problems of sprawling vicinages. Moreover, our Constitution wisely permits a solution by acts of legislation. Yet we have stood still while other states have either acted or at least considered the matter.

Within the past decade significant steps toward centralization and integration of these courts have been taken in California, Michigan, Missouri and Ohio. Proposals of similar effect have been made in Arkansas, Colorado, Connecticut, Illinois, Indiana, Iowa, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Tennessee, and Washington.

May I repeat that I am not critical of the substantial majority of magistrates and other officials who have been doing a good job often under difficult conditions. On the contrary, we should all be most appreciative of their efforts. But I am con-

**Harvard Law Prof. Defends Supreme Court**

Says State Chief Justices Erred

WALTHAM, Mass. (ACCN)—A Harvard Law School authority on the Supreme Court has come to its defense. Prof. Paul A. Freund, in a lecture at Brandeis University, said that if as much energy were spent in devising ways of complying with school desegregation as in resisting it the problem would yield to "reason, goodwill and practical sense."

Moreover, he asserted, criticism of the court by the Conference of State Chief Justices last August was misdirected.

The real concern, he went on, is the court's "tendency to make broad principles do service for specific problems that call for differentiation."

Prof. Freund occupies the Carl M. Loeb chair at Harvard. He is editing a seven-volume history of the Supreme Court.

He delivered the annual Louis D. Brandeis memorial lecture at the university that bears the name of the late Supreme Court justice.

Prof. Freund said all court criticism ran the risk of "fanning the fires of lawlessness and cynicism that have been ignited in the wake of the school desegregation cases."

He added that even with further improvement we have gone about as far as we can under our present system and the distance we have travelled is not enough. I hope we can put aside all personal and local concerns and approach this problem objectively for the best interests of the entire State.

The Court did not inject itself into the issue, he noted, but the issue was put before it inescapably. Moreover, he continued, the court recognized the problems of transition and took the moderate course of setting a standard of "deliberate speed."

The course allowed for adaptation to local conditions, "provided always that bona fide use of time is made to bring about ultimate desegregation," he said. In addition, Prof. Freund held, the court decisions on desegregation did not mark an abrupt departure in constitutional law or a novel interpretation of the guarantee of equal protection.

The old doctrine of separate but equal opportunities had been eroding for a generation before the school cases, he declared.

The state chief justices, he recalled, in a report released Aug. 23, said a review of Supreme Court decisions in recent years had shown an "accelerating trend toward increasing the power of the national government and correspondingly contracting that of the state governments."

Over the last 20 years, Prof. Freund declared, the court has shown a marked degree of self-restraint in the fields of state regulation, state taxation and political self-determination.

Indeed, he said, the greatest contrast between the court and its immediate predecessors is in the deference shown now to social and economic measures enacted by states.

On jurisdiction and procedure, Prof. Freund conceded, the record of the court is not reassuring, confronted as it is with about 2,000 cases a year.

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# New Jersey Law Journal

Ninety-Five Years of Publication

VOL. XXVI—No. 43

NEW JERSEY, THURSDAY, OCTOBER 25, 1973

96 N. J. L. J. Index Page 1237

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## CHIEF JUSTICE GARVEN

A Tribute delivered at the Meeting of the State Bar Association Council by Harold J. Ruvoldt, President, on October 19, 1973.

Honorable Chief Justice Weintraub, distinguished member of the judiciary, my fellow officers, trustees and delegates of the New Jersey State Bar Association, my colleagues of the Bar and guests, the Judiciary, the bar and the people of New Jersey, pause in memorial tribute to our Chief Justice Pierre P. Garven of the New Jersey Supreme Court.

In a short space of years, the advocate of the law, Pierre P. Garven, judge, and counsel for Governor Cahill, presented the true profile of the advocate. His driving force of dedication to the law; to hold sacred, the trust of public office, was early recognized and there was conferred upon him, the honor at the age of 47, to become Chief Justice of our New Jersey Supreme Court.

It was his appointed task, to follow in the path of his distinguished predecessors, Chief Justice Arthur T. Vanderbilt and Chief Justice Weintraub, to move forward to achieve in his words, "the highest quality of justice." Judicial history will never record a greater magnetic force of unity of the bench, bar and people of our state that took place to unite all in the determination to achieve justice as Chief Justice Garven, took the oath, as Chief Justice of the New Jersey Supreme Court.

Unflinching in his efforts, he was tireless in hours and days in the preparation, the sketching and the

guides for implementation of a plan of unity that would bring about his goal of a new era of judicial administration in New Jersey to serve the people of our state. God had destined for him that he would leave for present and future posterity, the plan for excellence in judicial administration for our state. The plan was characteristic of the life of Chief Justice Garven, for it was founded upon integrity, quality of performance and devotion and responsibility to the interest and welfare for the people of New Jersey.

The heritage of Chief Justice Garven to his beloved New Jersey is found in his address to the Judges seminar delivered on September 5, 1973.

In the wisdom of the divine providence on October 19, 1973, God called home for eternal peace and happiness, our Chief Justice Pierre P. Garven.

In this memorial to his beloved wife and family, we express our love and understanding for them; may there be Gods Blessings in the consolation that their loved one, devoted husband and loving father, shall be ever remembered, for the name of Chief Justice Pierre P. Garven is encribed, not upon the sands of time, but engraved upon the hearts of his fellow man.

We his brothers of the Bar, will embrace the heritage that he has transmitted to us, our tribute to our Chief Justice Pierre P. Garven shall be perpetual for we do believe in his words, "working together, we can accomplish our mutual goal of true justice."

## Chief Justice Garven

Early Friday, October 19, 1973, Chief Justice Pierre P. Garven, 47, passed away at Teaneck Holy Name Hospital. Justice Garven was sworn in as Chief Justice in September, having been appointed late last April.



Pierre P. Garven

Justice Garven leaves his wife and 5 children.

Donations may be made in his memory to the Pierre P. Garven Memorial Dialysis Foundation, 40 West Ridgewood Ave., Ridgewood, N.J.

## Opinions Approved For Publication

October 16 to October 19, 1973

NOTE: This digest of opinions approved for publication has been prepared by the Administrative Office of the Courts for the information of the bar. Copies of the opinions have been sent to each county law library and, prior to publication in the Advance Sheets, any member of the bar may secure, without charge, a copy of the opinion in a particular case upon request either to the Administrative Office of the Courts or to the Clerk of the Supreme Court, State House Annex, Trenton. In requesting a copy of an opinion, include the docket number. Requests for copies of all opinions approved for publication cannot be filled.

### SUPERIOR COURT APPELLATE DIVISION

**State of New Jersey v. Angelo's Motor Sales, Inc., et als.** (A-1361-72, decided October 1, 1973). Excessively narrow construction must not defeat statutory purpose of penal statute; false swearing statute (N.J.S.A. 2A:131-4) encompasses false statements in interrogatories certified in lieu of oath.

**Fablok Mills, Inc. v. Cocker Machine & Foundry Company.** (A-188-72, decided October 12, 1973). U.C.C. question as to reasonable time in connection with buyer's right to revoke acceptance is a matter of fact to be determined by jury.

**State of New Jersey v. William R. Williamson.** (A-870-72, decided October 11, 1973). Sequestration not required as matter of course, on request, in traffic court cases and not allowable as of right.

**Jeremiah Lyons v. Hartford Insurance Group, et als.** (A-476-72 and A-1226-72, decided October 10, 1973). Coverage question in insurance policy exclusion with regard to unintentional results arising out of intentional act.

(Please turn to page 12, col. 4)

(Please turn to page 12, col. 3)

## Chief Justice Garven's Proposed Municipal Court Reform

Opening remarks of Pierre P. Garven, Chief Justice of the Supreme Court of New Jersey at the Judicial Conference of Municipal Court Judges, October 17, 1973, New Brunswick. Chief Justice Garven's remarks were delivered, in his absence due to illness, by Justice Mark A. Sullivan. This is the last major address prepared by the late Chief Justice.

You, judges of the municipal courts of this State, represent the first bastion of our judicial system. Thousands of our citizens are exposed to justice in New Jersey through the municipal courts. They are unaware of the activities of any other court. To these people, you are the judicial system. This alone places a heavy burden upon you. Overall, you have met that burden responsibly.

The cold undisputed statistics underscore the responsibility you bear and the achievements you have accomplished.

Last year\* the municipal courts handled a staggering number of complaints, approximately 3 million, all of which realized revenue in excess of \$32 million from fines, court costs, and forfeiture of bail. Of the 3 million matters disposed of, close to 2 million involved parking cases, 859,000 related to non-parking traffic cases, and approximately 200,000 comprised non-traffic violations.\*

## ETHICS OPINIONS

### ADVISORY COMMITTEE ON PROFESSIONAL ETHICS

NOTE: The Advisory Committee on Professional Ethics is appointed by the Supreme Court pursuant to R. 1:19-1. Under the Rule it may only consider inquiries from state, county or local bar associations or from individual attorneys. All inquiries should be in writing and mailed to the Administrative Director of the Courts, State House Annex, Trenton, and should

- (a) state specifically the ethics question posed,
- (b) set forth in detail the pertinent facts with respect thereto,
- (c) indicate whether the inquiry concerns the inquirer, a member of his firm or an office associate or whether it concerns another attorney,
- (d) contain a certification that the inquiry does not involve a pending case or controversy or, in the event a pending case or controversy is involved, set forth fully the facts with respect thereto and the extent to which an opinion of the Committee may affect the matter and,
- (e) be accompanied by a short memorandum giving the inquirer's views on the question, specifying the canons of ethics or court rules involved, and citing pertinent opinions of this or other ethics committees, court opinions or other authorities.

OPINION NO. 263

### Conflict of Interest Municipal Attorney—Appealing for Zoning Board

The inquirer is township attorney. An application for garden apartments was denied by the township zoning board of adjustment. An appeal, which was handled by the attorney for the zoning board, resulted in a reversal. The township committee has instructed the township attorney further to appeal the adverse result. The following query has been presented:

Conceding the potential or actual conflict which exists or may exist between the positions of

(Please turn to page 3, col. 3)

In the face of the huge number of cases, long hours in many situations, minimal compensation considering the time and effort involved, you are to be congratulated for the job you have done. Many of you can be proud of this contribution to society in general and to justice in particular.

While your accomplishments are evident, we cannot overlook the attacks leveled against the municipal court, some with glaring justification. The municipal court system has been criticized for not providing sufficient significant training for its judges, most of whom are part time. Fault has been found in the absence from many municipal courtrooms of permanent prosecutors and defense attorneys. This lack of legal representation, according to the critics, compels the municipal court judge to wear the mantle of judge and prosecutor. It has been frequently voiced that municipal court judges cannot avoid forms of political pressures of the municipalities in which they serve. Some persons point to unreasonable delays in probable cause hearings for defendants incarcerated after arrest, and others assert delays in drunk driving cases.

Critics have constantly admonished the municipal court system for its overabundance of courts. There exists in our geographically small state a total of 524 municipal courts. Bergen County itself possesses 71 such courts. This large number of municipal courts throughout the State alone significantly supports the criticism, but relevant statistics buttress this observation. During the year ending August 31, 1972, approximately 90 municipal courts in our State required the annual expenditure of 50 hours or less of judicial bench time. Thus, in 17% of our municipal courts the judge's time in court was less than one hour per week. In a few municipal courts there were no more than five cases per year.

Accompanying the criticism has been a wide breadth of proposals from technical changes to complete elimination of the municipal court. While I cannot subscribe fully to the entire gambit of charges leveled at the municipal court, it is clear to me that substantial reforms are required. We should provide an educational program for our incoming judges and a continuing worthwhile educational process for all our municipal court judges; we should man all municipal courtrooms with prosecutors and public defenders; we must isolate our municipal court judges from the potential of political pressures; we must assure the acceleration of probable cause hearings for those charged with indictable offenses; and it is imperative we dispose of drunken driving cases forthwith. We should insure frequency of trials within reasonable hours of the day and night to accommodate our citizens and their legal representatives.

Some very conscientious persons have proposed in the traffic violation jurisdiction, the substitution of the municipal court by an administrative centralized traffic agency. I would be very cautious in

(Please turn to page 6, col. 1)

\* 1971-1972 Statistics; Statistics in the year ending August 31, 1973 unavailable at this time.

## Governor Supports State Bar Judicial Selection Plan

### Misunderstanding Cleared

Richard W. DeKorte, Counsel to Governor William T. Cahill, announced that the Governor strongly supports a New Jersey State Bar Association proposal calling for a Judicial Selection Commission to find and submit to the Governor persons best qualified for judicial office.

Editor's Note: The proposal will be printed in full next week.

The Governor's endorsement of the proposal for the merit selection of judges followed release of the plan adopted by the board of trustees of the State Bar Association.

"During the course of Governor Cahill's Administration," DeKorte said, "the Governor employed extreme care and vigilance in an effort to get the best possible judges. The Governor has the highest degree of confidence in the persons he has appointed, but he still feels that procedures for the appointment of judges can be improved.

The Governor has stated that the screening process now in effect is a function in eliminating unqualified candidates for the bench. What cannot do, however, is produce for consideration by the Governor the most qualified members of the legal profession."

Under the proposal offered by the Bar Association, a Judicial Selection Commission would be set up, consisting of three lawyers appointed by the Bar Association, three named by the Governor and one judge designated by the Chief Justice of New Jersey.

The plan proposes that for each judicial vacancy or anticipated vacancy, the selection commission would furnish the Governor with a

list of three names. If the Governor is not satisfied with any of the three candidates, a second list of three would be furnished by the commission.

The proposal endorsed by Governor Cahill carries with it a moral commitment from the State's chief executive to select judges from those names supplied by the Judicial Selection Commission.

DeKorte stressed that the Governor would still retain his constitutional right to initiate an appointment, "but having committed to the Bar's proposals for the merit selection of judges, any Governor would have a difficult time were he not to select from among those names supplied by the Judicial Selection Commission."

"The Governor thinks the proposal adopted by the Bar Association represents a substantial improvement which does violence neither to the constitutional prerogatives of the Governor nor to the proper prerogatives of the Senate to advise and consent on judicial appointments," De Korte said.

"He does not believe his successor will feel inhibited by the proposed selection procedure, and he does feel it can contribute to the maintenance, if not the improvement, of a judiciary which continues to be acknowledged as one of the leading in this nation," DeKorte stated.

The only portion of the Bar's proposals not endorsed by Governor Cahill is that portion dealing with the practice of Senatorial Courtesy. "It would be gratuitous and ineffectual for the Governor to comment on the practice," said DeKorte. "While he certainly doesn't

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### Justice Garven's Municipal Court Proposals

(Continued from page 1)

adopting a proposal of this nature. We already possess in the municipal court system a Violations Bureau which disposes of many uncontested administrative matters. In the year ending August 31, 1972, these bureaus finalized 1.7 million parking complaints. Equally important is the fact that judging is for judges. Administrators are desirable in situations requiring technical expertise, not in weighing evidence and ultimately imposing sentences. A person accused of speeding or driving while intoxicated faces rather serious consequences if convicted, including a jail sentence. Matters such as these are not small or technical. They deserve the attention of the specialist in our society best equipped to evaluate evidence and structure penalties, namely the judge. The municipal court is particularly suited for sentences which are often personalized and creative. I recognize that administrative traffic agencies are frequently advanced on grounds of increased efficiency over the judicial system

they replace. Clearly much of the credit for any efficiency increment may be attributed to the accompanying use of modern management techniques and computerization, not the replacement of judges by administrators. Modern techniques in our municipal court system may well achieve the same desired results with the retention of the additional benefits of a judge dispensing justice, rather than a far-removed person employed by an agency which itself is promulgating the rules and regulations which are being adjudged.

Presently, jurisdiction of the municipal court includes violations of the motor vehicle and traffic laws, ordinances of municipalities, the disorderly persons law, fish and game laws, certain sections of Title 44 ("The Poor Law"), various penalty actions, certain sections of Title 9 ("Laws Concerning Small Children"), Title 30 (Institutions and Agencies), certain offenses of a lesser grade than misdemeanors and a wide variety of offenses where indictments and trial by jury can be waived. In addition, municipal courts handle probable

cause hearings in which the defendant is charged with an indictable offense which has not been formalized by a Grand Jury indictment. Totally, this is a wide and diversified panoply of offenses in which the municipal court plays an integral part.

The most severe proposal is the complete elimination of the municipal court and its entire functions as presently constituted and in its place the establishment of a single criminal district court. We must seriously scrutinize this proposal. Voicing my own opinion, I cannot at this time accept such a radical change. We should not overlook or relegate to nothingness the advantages of a municipal court. There exists enviable features which might be swept away by the adoption of a fully consolidated district court system in which all functions of the municipal court are transferred to that system or otherwise removed. Municipal courts can provide an informal courtroom atmosphere that can combine dignity with practicality. Municipal courts are peculiarly well-adapted to handle family altercations, disputes between neighbors, and juvenile problems, among other things. Local courts

are flexible and can permit development of thoughtful, individualized treatment. In traffic violation cases a municipal court judge is more likely to be familiar with the neighborhood than a district judge or centralized administrator. The multitude of municipal court-houses, and the non-business hours of their sessions make them convenient and acceptable to many litigants for whom a district court would be burdensome. The waiting period itself is far less in a municipal court than in any district court due to the volume involved. This results in a time advantage to the defendants and lawyers alike. All in all, these are assets which should not be readily cast aside.

While I feel it would be ill-advised at this time to obliterate the municipal court, I do believe we should consider needed reforms and re-organization. Basically, this is not the province of the Judiciary, but the Legislature. Nonetheless, it may be beneficial to consider and ultimately propose recommendations to the Legislature for its review and consideration.

The first area of concern is the scope of jurisdiction of the municipal court. It may be advantageous to continue within the jurisdic-

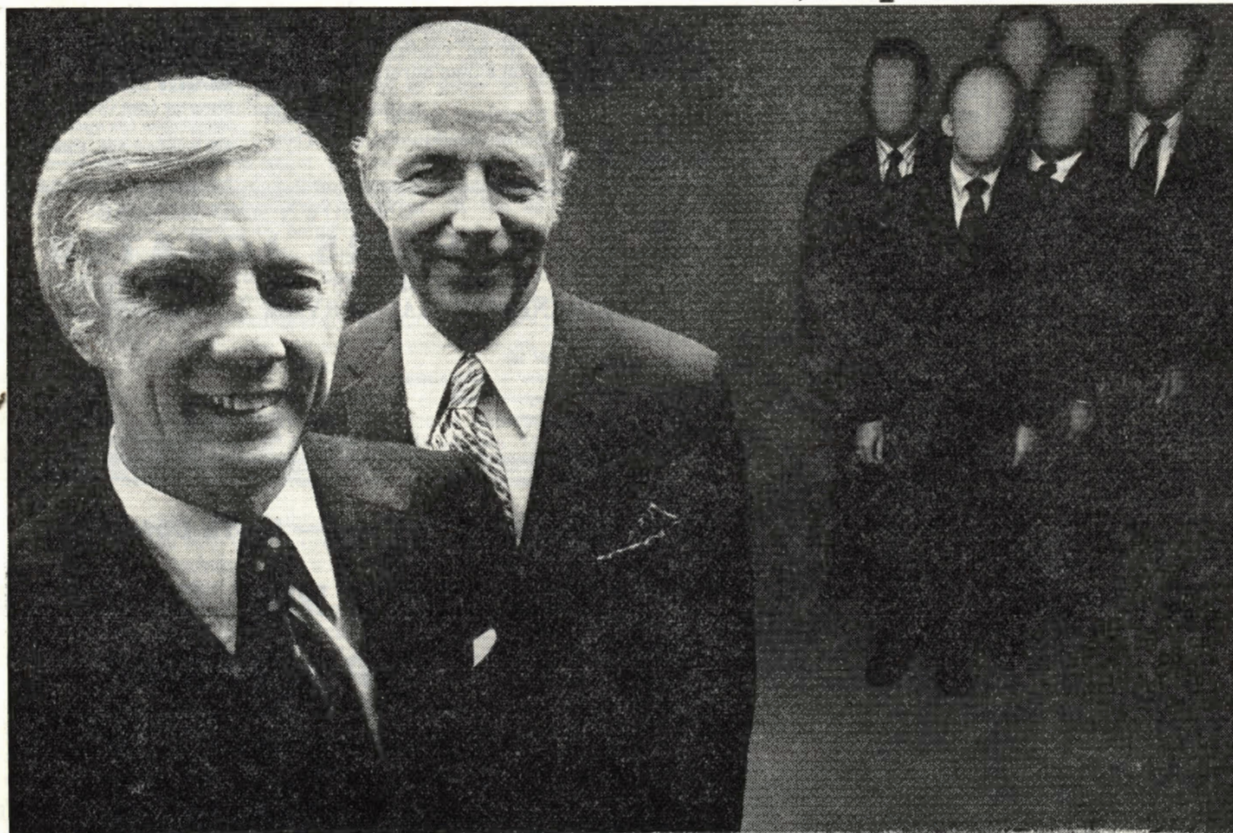
tion of the municipal court such categories as traffic violations, disorderly persons matters, municipal ordinance disputes, intra-family and inter-neighbor squabbles. Under this proposal waivable indictable offenses would be transferred to a newly created criminal district court which would be a division of the County District Court system. This new court would determine probable cause applications, and fully dispose of criminal offenses for which indictments and trial by jury have been waived. As envisioned, we should explore the feasibility of this criminal district court handling all pre-trial matters, including motions to suppress. Such a procedure may free county court judges to concentrate exclusively upon the trial of the remaining criminal cases. This court would be manned by full-time judges appointed by the Governor with the advice and consent of the Senate. There would exist in each county a number of parts within the criminal district court division, the number of which would depend upon need and the convenience of litigants, counsel and law enforcement officers. Prosecuting attorneys and public defender lawyers would be assigned to each part. The State would finance this court. Each part would schedule daily and evening sessions depending upon the volume of work.

The division of responsibility between the municipal court and a newly created criminal division of the county district court does have some potential. Certainly it is worthy of our attention and review. Upon the establishment of the Criminal Practice Committee, I shall suggest to that Committee its examination of this and other

(Please turn to page 7, col. 1)

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**Justice Garven's Municipal Court Proposals**

(Continued from page 6)

proposals. I would urge you to make known your thoughts on these important issues affecting the municipal court. You are the experts and your advice should be given serious consideration.

We do not possess the luxury of time to await some form of re-organization of the municipal court system. Certain reforms deserve our immediate attention and review.

It is imperative that the new municipal court judge be prepared for the important office he assumes. Our other new full-time judges receive orientation sessions. There is no reason why a municipal court judge should not receive the same form of indoctrination in his specialty. I am, therefore, requesting in the next Judiciary Budget sufficient monies to establish a two-day educational session for newly appointed municipal court judges with a provision that continuation of office be predicated upon attendance at this session. It is far better to learn of the intricate details of adjudication through education, rather than through experimentation with basic justice. In addition, periodic seminars of learning must be continually maintained and upgraded for all municipal court judges. Each citizen is entitled to a knowledgeable, objective judge, whatever the case involves, small or large.

In many situations the change of personnel in municipal governing bodies forecasts a change in the municipal court judge. Retention of good, seasoned municipal court judges must be encouraged. I would recommend to the Supreme Court Committee on Municipal Courts consideration of tenure for those judges who have proven their capabilities. A probation period would be necessary before final determination is made, which determination if feasible, could be guided, not mandated, by the County Judicial Appointments Committee of the Bar Association. As envisioned, this procedure would be similar to that which is presently employed on a state level by the Governor and the Judicial and County Prosecutor Appointments Committee of the State Bar. In this manner the elected officials of the municipality would have the non-binding, but useful advice of lawyers as to the abilities and disabilities of a municipal court judge.

While only a few municipal court judges may be tempted, consciously or unconsciously, to be guided by political considerations, this new procedure would place municipal court judges in the same category as our full-time judges in this respect and dilute any apparent, but not necessarily actual, tendency to be motivated by outside forces.

There are alternatives to the recommendation of tenure. For example, rather than the three-year appointive period, there may be substituted a five or seven-year period. This would coincide with the time allotted to our full-time non-municipal judges. The extension of time would assist in shielding a judge from the constant re-appointive procedure and insure more stability in the system.

The Committee on Municipal Courts should also consider the possibility of recommending a screening procedure by the County Bar Association in the selection of candidates for the municipal court. This method would not trespass upon the rights of our local officials, but it may be of assistance to them.

Consideration should be given to the abolishment of those municipal courts where there is a very minimal amount of judicial work. To the same degree, a review should be conducted in those areas where a proliferation of municipal courts exists and circumstances are present which may make consolidation attractive. In each category, the time may be right for consolidation of two or more municipal courts. The savings to our taxpayers from such a procedure is self-evident. These adjustments can be made without any substantial inconvenience to the public, defendants or law enforcement personnel. One argument which is advanced to support the continuation of the multitude of existing municipal courts is the revenue inuring to the municipalities. This argument in my opinion is specious. First, justice cannot be measured by revenue received. Secondly, a revenue distribution formula can be devised under which needed revenue will not be substantially lost to the municipalities participating in any consolidation plan.

There must be other suggestions in the field of reform and re-organization which would prove helpful. You are experts in this area. It is you, who, I know, have a strong desire to improve the municipal court system. Make your suggestions and recommendations, whether they be procedural or substantive, to the Committee on Municipal Courts. Your participation and serious advice can trigger improvements which would show our citizenry of your concern and your willingness to promote and accept needed alterations which would benefit those you serve, namely, the public. You are proud of what you have done and undoubtedly you desire to upgrade the system you represent.

You are an integral part of the finest judicial system in the United States. It is axiomatic that any one part of the whole affects the remainder. Each part must bear its own weight and perform accordingly. It is, therefore, incumbent upon you to recognize that no system is perfect and that changes and reforms are essential. This is particularly true of the municipal court in light of the substantial and sometimes justified criticism which it is encountering. Reform is warranted. If it is not forthcoming, radical changes will follow and perhaps the total elimination of the municipal court as we know it will ensue. The responsibility for substantive and structural modifications resides with you initially. If you recommend and promote responsible reforms, not window dressing, but rational, meaningful changes, I am convinced the Legislature will listen and consider. Alternatively, a reliance on the status quo may ultimately render the municipal court short-lived as a judicial entity. In effect, ladies and gentlemen, your own fate rests with you. Wisely used, you can continue to serve the judicial system with dignity and utility. We must pursue methods of implementing additional improvements, administrative and otherwise, to enable municipal courts to function in the most efficient manner possible, that they may meet the ever-increasing number of cases while at the same time dispensing justice in a fair and equitable manner. I know each of you feels an abiding desire to do that which is right and to continue to serve and promote the welfare of the people. To this end, may we all strive. Thank you.

**Ethics Opinions**

(Continued from page 3)

when the information pertaining thereto is forwarded by the latter with the request that the attorney prepare and return the appropriate legal documents for execution by the parties."

The inquirer also informed the committee that neither the real estate broker nor the title insurance company was a party to the various instruments prepared and that the attorney had no personal contact with the parties to the transaction. The committee decided that it would be improper for a lawyer to prepare such documents, stating

that "Such a transaction lacks the personal contact which should exist between attorney and client. Such relationship is necessary to a proper representation of any client." The committee also quoted the pertinent provisions of the Canons of Professional Ethics, Canon 35 and Canon 47.

Our views on the use of intermediaries and aiding in the unauthorized practice of law have been expressed in several opinions. In N.J. Advisory Committee on Professional Ethics, Opinion 17, 87 N.J.L.J. 113 (1964), we held it would be improper for an attorney to be engaged by a collection agency for the purpose of instituting

suit against debtors of the customers of the agency; in Opinion 31, 87 N.J.L.J. 169 (1964), we disapproved an arrangement whereby attorneys for a lending institution would prepare estate planning tax studies for selected customers to show the advantage of a corporate fiduciary; and in Opinion 93, 89 N.J.L.J. 248 (1966), we decided it was improper for an attorney to participate in an arrangement in which a municipality set and collected a legal fee for services he rendered.

We are of the opinion that the proposed procedure outlined in this inquiry would violate DR 5-107(B) and DR 3-101(A) and that it would be improper for the inquirer to participate in such an arrangement.



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## Garven: Heritage of Reform

NOV. 11, 1973

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TRENTON—In what may become his legacy to New Jersey's judicial system, Pierre. P. Garven, the late Chief Justice of the State Supreme. Court, urged Municipal Court judges to accept reforms or face removal from the bench.

Mr. Garven, who died last month after serving less than two months as Chief Justice, had promised to emphasize improved administration and a streamlining of the state's courts. In one of his last official acts, Mr. Garven outlined what he considered the vital changes needed to modernize the Municipal Courts, which have been under severe attack for many years.

Although he did not live to carry, out the program, legislative observers feel that Mr. Garven's recommendations could form the basis for action by the new Democratic administration of Gov.-elect Brendan T. Byrne.

### **Legislature Never Acted**

Governor Cahill, who appointed Mr. Garven to the Supreme Court, proposed earlier in his tenure that the. Municipal Courts be reformed. But the ideas were never acted upon in the Legislature, as scandals undermined the lame-duck Republican administration.

Last week, Mr. Cahill announced that he would nominate former Gov. Richard J. Hughes, a Democrat, to become the next Chief Justice of the Supreme Court. Mr.

Hughes, it is felt, may not demonstrate the same interest in court reforms as Mr. Garven; instead, many observers believe that he will leave that task to the Byrne administration and next year's Democratic-controlled Legislature.

The late Chief Justice's proposals included longer terms and eventual tenure for those Municipal Court judges of demonstrated proved ability. He also recommended that the judges be appointed for at least five years, instead of three, in order to lessen local political pressure.

Mr. Garven said that county bar associations should screen candidates for the local courts, thus improving the caliber of the judges and increasing public confidence.

### **\$32-Million in Fines**

In the 1971–72 court year, Municipal- Courts handled approximately three million complaints” and collected more than \$32-million in fines, court costs and forfeitures of bail. About two-thirds of the cases involved parking infractions, and more than 800,000 were related to other traffic violations.

While Governor Cahill proposed a new administrative system to deal with motor-vehicle violations, Mr. Garven said that he would prefer to leave those cases in the Municipal Courts, but improve the techniques to handle them:

The late Chief Justice urged instead that other indictable offenses be transferred to a proposed new Criminal Court system, in which the defendants could be tried and sentenced if they waived their rights to both grand jury and trial jury proceedings.

One advantage of leaving traffic cases in Municipal Court, Mr. Garven contended, would be the personalized attention that the defendant could receive.

In a speech delivered by a stand-in last month—Mr. Garven was dying from a stroke at the time—the late Chief Justice said:

“A person accused of speeding or driving while intoxicated faces rather serious consequences, if convicted. They deserve the attention of the specialist best equipped to evaluate the evidence and structure penalties, namely the judge.”

Mr. Garven also declared that those Municipal Courts that handled only a small number of cases annually should be eliminated. At the same time, he said that those courts that handled significant case loads should be upgraded by assigning them prosecutors and public defenders to conduct cases with greater legal expertise and to aid the spoor.

“Reform is warranted,” Mr. Garven asserted. “If it as not forthcoming, radical changes will follow and perhaps the total elimination of the Municipal Court, as we know, it, will ensue.”

A version of this archives appears in print on November 11, 1973, on Page 107 of the New York edition with the headline: Garven: Heritage of Reform.

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# Appendix E

## [N.J. Stat. § 40A:4-45.3](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60 (except c. 58, 59), and J.R. 3

**LexisNexis® New Jersey Annotated Statutes > Title 40A. Municipalities and Counties (Chs. 1 — 66) > Chapter 4. Local Budget Law (§§ 40A:4-1 — 40A:4-89)**

### § 40A:4-45.3. Municipalities; budget limitation exceptions

In the preparation of its budget a municipality shall limit any increase in said budget to 2.5% or the cost-of-living adjustment, whichever is less, over the previous year's final appropriations subject to the following exceptions:

a. (Deleted by amendment, [P.L. 1990, c. 89.](#))

b. Capital expenditures, including appropriations for current capital expenditures, whether in the capital improvement fund or as a component of a line item elsewhere in the budget, provided that any such current capital expenditure would be otherwise bondable under the requirements of [N.J.S. 40A:2-21](#) and [40A:2-22](#);

c.

(1) An increase based upon emergency temporary appropriations made pursuant to [N.J.S. 40A:4-20](#) to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the municipality, and over which the governing body had no control and for which it could not plan and emergency appropriations made pursuant to [N.J.S. 40A:4-46](#). Emergency temporary appropriations and emergency appropriations shall be approved by at least two-thirds of the governing body and by the Director of the Division of Local Government Services, and shall not exceed in the aggregate 3% of the previous year's final current operating appropriations.

(2) (Deleted by amendment, [P.L. 1990, c. 89.](#))

The approval procedure in this subsection shall not apply to appropriations adopted for a purpose referred to in subsection d. or j. below;

d. All debt service, including that of a Type I school district;

e. Upon the approval of the Local Finance Board in the Division of Local Government Services, amounts required for funding a preceding year's deficit;

f. Amounts reserved for uncollected taxes;

g. (Deleted by amendment, [P.L. 1990, c. 89.](#))

h. Expenditure of amounts derived from new or increased construction, housing, health or fire safety inspection or other service fees imposed by State law, rule or regulation or by local ordinance;

i. Any amount approved by any referendum;

j. Amounts required to be paid pursuant to (1) any contract with respect to use, service or provision of any project, facility or public improvement for water, sewerage, parking, senior citizen housing or any similar purpose, or payments on account of debt service therefor, between a municipality and any other municipality, county, school or other district, agency, authority, commission, instrumentality, public corporation, body corporate and politic or political subdivision of this State; (2) the provisions of article 9 of P.L. 1968, c. 404 ([C. 13:17-60](#) through [13:17-76](#)) by a constituent municipality to the intermunicipal



## N.J. Stat. § 40A:4-45.3

account; (3) any lease of a facility owned by a county improvement authority when the lease payment represents the proportionate amount necessary to amortize the debt incurred by the authority in providing the facility which is leased, in whole or in part; and (4) any repayments under a loan agreement entered into in accordance with the provisions of section 5 [[C.40:48-2.5b](#)] of [P.L.1992, c.89](#);

**k.**(Deleted by amendment, P.L.1987, c.74.)

**l.**Appropriations of federal, county, independent authority or State funds, or by grants from private parties or nonprofit organizations for a specific purpose, and amounts received or to be received from such sources in reimbursement for local expenditures. If a municipality provides matching funds in order to receive the federal, county, independent authority or State funds, or the grants from private parties or nonprofit organizations for a specific purpose, the amount of the match which is required by law or agreement to be provided by the municipality shall be excepted;

**m.**(Deleted by amendment, P.L.1987, c.74.)

**n.**(Deleted by amendment, P.L.1987, c.74.)

**o.**(Deleted by amendment, [P.L.1990, c.89](#).)

**p.**(Deleted by amendment, P.L.1987, c.74.)

**q.**(Deleted by amendment, [P.L.1990, c.89](#).)

**r.**Amounts expended to fund a free public library established pursuant to the provisions of [R.S.40:54-1](#) through [40:54-29](#), inclusive;

**s.**(Deleted by amendment, [P.L.1990, c.89](#).)

**t.**Amounts expended in preparing and implementing a housing element and fair share plan pursuant to the provisions of P.L.1985, c.222 ([C.52:27D-301](#) et al.) and any amounts received by a municipality under a regional contribution agreement pursuant to section 12 [[C.52:27D-312](#)] of that act;

**u.**(Deleted by amendment, [P.L.2004, c.74](#).)

**v.**(Deleted by amendment, [P.L.1990, c.89](#).)

**w.**(Deleted by amendment, [P.L.2004, c.74](#).)

**x.**Amounts expended to aid privately owned libraries and reading rooms, pursuant to [R.S.40:54-35](#);

**y.**(Deleted by amendment, [P.L.1990, c.89](#).)

**z.**(Deleted by amendment, [P.L.1990, c.89](#).)

**aa.**Extraordinary expenses, approved by the Local Finance Board, required for the implementation of an interlocal services agreement;

**bb.**Any expenditure mandated as a result of a natural disaster, civil disturbance or other emergency that is specifically authorized pursuant to a declaration of an emergency by the President of the United States or by the Governor;

**cc.**Expenditures for the cost of services mandated by any order of court, by any federal or State statute, or by administrative rule, directive, order, or other legally binding device issued by a State agency which has identified such cost as mandated expenditures on certification to the Local Finance Board by the State agency;

**dd.**Expenditures of amounts actually realized in the local budget year from the sale of municipal assets in extraordinary cases and with the permission of the Local Finance Board;

**ee.**Any local unit which is determined to be experiencing fiscal distress pursuant to the provisions of P.L.1987, c.75 ([C.52:27D-118.24](#) et seq.), whether or not a local unit is an "eligible municipality" as defined in section 3 of P.L.1987, c.75 ([C.52:27D-118.26](#)), and which has available surplus pursuant to the spending limitations imposed by P.L.1976, c.68 ([C.40A:4-45.1](#) et seq.), may appropriate and

## N.J. Stat. § 40A:4-45.3

expend an amount of that surplus approved by the director and the Local Finance Board as an exception to the spending limitation. Any determination approving the appropriation and expenditure of surplus as an exception to the spending limitations shall be based upon:

- (1) the local unit's revenue needs for the current local budget year and its revenue raising capacity;
- (2) the intended actions of the governing body of the local unit to meet the local unit's revenue needs;
- (3) the intended actions of the governing body of the local unit to expand its revenue generating capacity for subsequent local budget years;
- (4) the local unit's ability to demonstrate the source and existence of sufficient surplus as would be prudent to appropriate as an exception to the spending limitations to meet the operating expenses for the local unit's current budget year; and
- (5) the impact of utilization of surplus upon succeeding budgets of the local unit;

**ff.** Newly authorized operating appropriations for the municipal court or violation's bureau when approved by the vicinage Presiding Judge of the Municipal Court after consultation with the mayor and governing body of the municipality;

**gg.** (Deleted by amendment, [P.L.2004, c.74.](#))

**hh.** (Deleted by amendment, [P.L.2004, c.74.](#))

**ii.** Subject to the approval of the Local Finance Board, expenditures related to the cost of conducting and implementing a total property tax levy sale pursuant to section 16 of [P.L.1997, c.99](#) ([C.54:5-113.5](#));

**jj.** Amounts expended for a length of service award program pursuant to [P.L.1997, c.388](#) ([C.40A:14-183](#) et al.);

**kk.** Amounts expended to provide municipal services or reimbursement amounts to multifamily dwellings for the collection and disposal of solid waste generated by the residents of the multifamily dwellings. This subsection shall cease to be operative at the end of the first local budget year in which the municipality has fully phased in its reimbursement amount expenses;

**ll.** Amounts expended by a municipality under an interlocal services agreement entered into pursuant to the "Interlocal Services Act," P.L.1973, c.208 ([C.40:8A-1](#) et al.) entered into after the effective date of [P.L.2000, c.126](#) ([C.52:13H-21](#) et al.). The governing body of the municipality that will receive the service may choose to allow the amount of projected annual savings to be added to the amount of final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 ([C.40A:4-45.2](#));

**mm.** Amounts expended under a joint contract pursuant to the "Consolidated Municipal Service Act," P.L.1952, c.72 ([C.40:48B-1](#) et seq.) entered into after the effective date of [P.L.2000, c.126](#) ([C.52:13H-21](#) et al.). The governing body of each participating municipality may choose to allow the amount of projected annual savings to be added to the amount of final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 ([C.40A:4-45.2](#));

**nn.** (Deleted by amendment, [P.L.2004, c.74.](#))

**oo.** Amounts appropriated in the first three years after the effective date of [P.L.2003, c.92](#) ([C.18A:7F-5b](#) et al.) for liability insurance, workers' compensation insurance and employee group insurance;

**pp.** Amounts appropriated in the first three years after the effective date of [P.L.2003, c.92](#) ([C.18A:7F-5b](#) et al.) for costs of domestic security preparedness and responses to incidents and threats to domestic security;

**qq.** Amounts required to be paid by a municipality pursuant to the provisions of section 4 of [P.L.2007, c.311](#) ([C.13:1E-96.5](#)).

## N.J. Stat. § 40A:4-45.3

In the first full year when an existing appropriation or expenditure that is subject to budget limitations is made an exception to budget limitations, a municipality shall deduct from its final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 ([C.40A:4-45.2](#)), the amount which the municipality expended for that purpose during the last full budget year, or portion thereof, in which the purpose so excepted was funded from appropriations in the municipal budget.

In the first full year when an existing appropriation or expenditure that is not subject to budget limitations is made subject to budget limitations, a municipality shall add to its final appropriations upon which its permissible expenditures are calculated pursuant to section 2 of P.L.1976, c.68 ([C.40A:4-45.2](#)), the amount which the municipality expended for that purpose during the last full budget year, or portion thereof, in which the purpose so excepted was funded from appropriations in the municipal budget.

## History

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L. 1976, c. 68, § 3; amended 1977, c. 10, § 1; 1980, c. 66; 1981, c. 56, § 1; 1983, c. 49, § 5; 1985, c. 22; 1985, c. 82, § 1; 1987, c. 74, § 2; [1988, c. 66](#); [1989, c. 3](#), § 17; [1989, c. 100](#), § 19; [1990, c. 89](#), § 2; [1990, c. 95](#), § 3; [1992, c. 89](#), § 6; [1993, c. 269](#), § 16; [1994, c. 72](#), § 6; [1997, c. 99](#), § 9; [1997, c. 388](#), § 12; [2000, c. 26](#), § 4, eff. May 11, 2000; [2000, c. 126](#), § 19, eff. Sept. 21, 2000; [2001, c. 25](#), § 5, eff. Feb. 27, 2001; [2001, c. 342](#), § 10, eff. Jan 5, 2002; [2003, c. 92](#), § 1, eff. June 18, 2003; [2004, c. 74](#), § 3, eff. July 7, 2004; [2007, c. 311](#), § 17, eff. Jan. 13, 2008.

Annotations

## LexisNexis® Notes

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## Notes

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### OLS Corrections:

Pursuant to [R.S.1:3-1](#), the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected a technical error in L. [2007, c. 311](#), § 17.

### Publisher's Note:

The bracketed material was added by the Publisher to provide a reference.

### Effective Dates:

Section 6 of L. [2001, c. 25](#) provides: "This act shall take effect immediately; however, reimbursement or provision of services to a multifamily dwelling shall commence for local budget year 2002 for municipalities operating on a calendar year basis and local budget year 2003 for municipalities operating on a State fiscal year basis, and reimbursement payments shall be phased in over a five-year period pursuant to section 4 of [P.L.2001, c.25 \(C.40:66-1.5\)](#)." Chapter 25, L. 2001, was approved on Feb. 27, 2001.

Section 12 of L. [2004, c. 74](#) provides: "This act shall take effect upon the enactment into law of [P.L.2004, c.40 \(C.54A:9-29](#) et al.), [P.L.2004, c.73 \(C.18A:7F-5](#) et al.), and [P.L.2004, c.85](#)." Chapter 40, L. 2004, was approved on June 28, 2004; c. 73, L. 2004, was approved on July 1, 2004; c. 74, L. 2004, was approved on July 1, 2004; and c. 85, L. 2004, was approved on July 7, 2004.

**Amendment Note:**

2007 amendment, by Chapter 311, added “qq. Amounts required to be paid by a municipality pursuant to the provisions of section 4 of P.L.2007, c.311 (C.13:1E-96.5).”

**Case Notes**

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**Education Law: Administration & Operation: Boards of Elementary & Secondary Schools: Authority****Governments: Local Governments: Finance****Education Law: Administration & Operation: Boards of Elementary & Secondary Schools: Authority**

Court found that there was no doubt whatever of the correctness of respondent’s interpretation that the tax rate to be utilized in computing the new construction and improvements exception, which was set forth under N.J. Stat. Ann. § [40A:4-45.3](#), was the tax rate fixed for local municipal purposes only, and not the aggregate of the local municipal rate, the school rate, and the county rate. [Clifton v. Laezza, 149 N.J. Super. 97, 373 A.2d 410, 1977 N.J. Super. LEXIS 836 \(App.Div.\)](#), certif. denied, 75 N.J. 19, 379 A.2d 250, 1977 N.J. LEXIS 649 (N.J. 1977).

**Governments: Local Governments: Finance**

In an action brought by a city and unions against a local finance board seeking a declaratory judgment that arbitral awards need not be considered in budgetary planning under the Local Government Cap Law (cap law), [N.J. Stat. Ann. 40A:4-45.1](#) et seq., a trial court judgment holding that the arbitral awards were expenditures that could be excluded from the city’s cap law calculations was reversed because the expenses incurred by the city in financing the awards did not fall within the ambit of N.J. Stat. Ann. § [40A:4-45.3](#). [Atlantic City v. Laezza, 80 N.J. 255, 403 A.2d 465, 1979 N.J. LEXIS 1233 \(N.J. 1979\)](#).

In an action arising from an arbitration proceeding, a judgment holding that a town would have to accommodate the costs incurred in implementing a compulsory arbitration award within the five percent limit on budgetary allocations imposed by the Local Government Cap Law, N.J. Stat. Ann. § [40A:4-45.1](#) et seq., was affirmed because such compulsory arbitral costs under the Employer-Employee Relations Act, N.J. Stat. Ann. § [34:13A-16\(c\)\(6\)](#), were not excepted from the cap law’s limitations. [New Jersey State Policemen's Benevolent Ass'n v. Irvington, 80 N.J. 271, 403 A.2d 473, 1979 N.J. LEXIS 1231 \(N.J. 1979\)](#).

Township’s appropriation for a jointly-run public library with a borough, rather than remaining in the county library system did not fall within an exception to the “cap law,” under N.J. Stat. Ann. § [40A:4-45.3](#), which would have permitted expenditures in excess of the five percent limitation upon referendum approval. [Hopewell v. State, 156 N.J. Super. 225, 383 A.2d 758, 1978 N.J. Super. LEXIS 718 \(Ch.Div. 1978\)](#).

Court found that there was no doubt whatever of the correctness of respondent’s interpretation that the tax rate to be utilized in computing the new construction and improvements exception, which was set forth under N.J. Stat. Ann. § [40A:4-45.3](#), was the tax rate fixed for local municipal purposes only, and not the aggregate of the local municipal rate, the school rate, and the county rate. [Clifton v. Laezza, 149 N.J. Super. 97, 373 A.2d 410, 1977 N.J. Super. LEXIS 836 \(App.Div.\)](#), certif. denied, 75 N.J. 19, 379 A.2d 250, 1977 N.J. LEXIS 649 (N.J. 1977).

**Opinion Notes**

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**OPINIONS OF ATTORNEY GENERAL**

FORMAL OPINION No. 16 — 1979, [1979 N.J. AG LEXIS 12](#).

FORMAL OPINION No. 4 — 1980, [1980 N.J. AG LEXIS 23](#).

FORMAL OPINION No. 21 — 1980, [1980 N.J. AG LEXIS 6](#).

FORMAL OPINION No. 4 — 1982, [1982 N.J. AG LEXIS 4](#).

FORMAL OPINION No. 7 — 1980, [1980 N.J. AG LEXIS 20](#).

**Research References & Practice Aids**

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**Cross References:**

“Diesel Risk Mitigation Fund”; money credited, use, see [26:2C-8.53](#).

Schedule for reimbursement for portion of cost, see [40:67-23.6](#).

Powers of municipalities; finances; ordinance, see [40:68A-43](#).

Assistance provided to municipalities in which fiscal year has been changed, see [40A:4-3.3](#).

Permissible increase in appropriations, see [40A:4-45.14](#).

Transfer of funds from appropriation subject to limitation, see [40A:4-45.38](#).

Referendum; when held, applicability, see [40A:4-45.3a](#).

Proceeds of sale of municipal assets for immediately preceding year as exceptions, see [40A:4-45.3b](#).

Local Finance Board authorized to grant additional exceptions, see [40A:4-45.3d](#).

Additional exceptions to limits on increases to certain appropriations of local units, see [40A:4-45.3e](#).

Exemption on limits on increases for certain appropriations for pension contributions, see [40A:4-45.43](#).

Transfer of funds authorized by s. [40A:4-58](#) from appropriation not subject to limitation to appropriation subject to limitation; prohibition, see [40A:4-45.4a](#).

Provision of polling places; election worker compensation, see [40A:4-45.3a1](#).

Additional exceptions to limits on increases to appropriations, see [40A:4-45.43a](#).

**Administrative Code:**

[N.J.A.C. 5:30-7.5](#) (2013), CHAPTER LOCAL FINANCE BOARD, Qualifying for budget local examination.

[N.J.A.C. 5:30-7.6](#) (2013), CHAPTER LOCAL FINANCE BOARD, Completion of local examination.

[N.J.A.C. 5:30-7.7](#) (2013), CHAPTER LOCAL FINANCE BOARD, Revocation of qualification.

N.J. Stat. § 40A:4-45.3

[N.J.A.C. 5:30-14.6](#) (2013), CHAPTER LOCAL FINANCE BOARD, LOSAP budget provisions.

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End of Document

# Appendix F

## [N.J. Stat. § 40:49-5](#)

This section is current through New Jersey 218th First Annual Session, L. 2018, c. 138, and J.R. 12

**LexisNexis® New Jersey Annotated Statutes > Title 40. Municipalities and Counties (Subts. 1 — 13) > Subtitle 3. Municipality Provisions (Chs. 42 — 69) > Chapter 49. Municipality Ordinances and Resolutions (Arts. 1 — 6) > Article 2. Ordinances; General Procedure (§§ 40:49-2 — 40:49-5)**

### **§ 40:49-5. Penalties for violations of municipal ordinances**

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The governing body may prescribe penalties for the violation of ordinances it may have authority to pass, by one or more of the following: imprisonment in the county jail or in any place provided by the municipality for the detention of prisoners, for any term not exceeding 90 days; or by a fine not exceeding \$2,000; or by a period of community service not exceeding 90 days.

The governing body may prescribe that for the violation of any particular ordinance at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$100.

The governing body may prescribe that for the violation of an ordinance pertaining to unlawful solid waste disposal at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$2,500 or a maximum penalty by a fine not exceeding \$10,000.

The court before which any person is convicted of violating any ordinance of a municipality shall have power to impose any fine, term of imprisonment, or period of community service not less than the minimum and not exceeding the maximum fixed in such ordinance.

Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance, but shall be calculated separately from the fine imposed for the violation of the ordinance.

Any municipality which chooses not to impose an additional fine upon a person for a repeated violation of any municipal ordinance may waive the additional fine by ordinance or resolution.

Any person convicted of the violation of any ordinance may, in the discretion of the court by which he was convicted, and in default of the payment of any fine imposed therefor, be imprisoned in the county jail or place of detention provided by the municipality, for any term not exceeding 90 days, or be required to perform community service for a period not exceeding 90 days.

Any municipality that chooses to impose a fine in an amount greater than \$1,250 upon an owner for violations of housing or zoning codes shall provide a 30-day period in which the owner shall be afforded the opportunity to cure or abate the condition and shall also be afforded an opportunity for a hearing before a court of competent jurisdiction for an independent determination concerning the violation. Subsequent to the expiration of the 30-day period, a fine greater than \$1,250 may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the abatement has not been substantially completed.

### **History**

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Amended 1953, c. 37, § 175; 1968, c. 30; 1983, c. 410, § 1; 1987, c. 411, § 1; [1989, c. 114](#), § 1; [2001, c. 274](#), § 1, eff. Dec. 26, 2001; [2003, c. 231](#), § 6, eff. Jan. 9, 2004; [2005, c. 269](#), § 1, eff. Jan. 5, 2006.

Annotations

## LexisNexis® Notes

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### Case Notes

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**Criminal Law & Procedure: Defenses: Statutes of Limitations**

**Criminal Law & Procedure: Sentencing: Cruel & Unusual Punishment**

**Criminal Law & Procedure: Sentencing: Fines**

**Governments: Courts: Judges**

**Governments: Local Governments: Duties & Powers**

**Governments: Local Governments: Ordinances & Regulations**

**Real Property Law: Zoning & Land Use: General Overview**

**Real Property Law: Zoning & Land Use: State & Regional Planning**

#### **Criminal Law & Procedure: Defenses: Statutes of Limitations**

One-year period of limitation expressed in N.J. Stat. Ann. § [2C:1-6\(b\)\(2\)](#) for disorderly and petty disorderly person offenses was applicable to prosecutors for violation of municipal ordinances under N.J. Stat. Ann. § [40:49-5](#); accordingly, an apartment building owner could not be prosecuted for failing to install common-area smoke detectors after a lapse of more than one year. [Caldwell Terrace Apts. v. Caldwell, 224 N.J. Super. 588, 541 A.2d 221, 1988 N.J. Super. LEXIS 129 \(App.Div. 1988\)](#).

#### **Criminal Law & Procedure: Sentencing: Cruel & Unusual Punishment**

Nominal fines imposed against defendants for their violation of a sidewalk and snow removal ordinance, adopted pursuant to the specific authority conferred by N.J. Stat. Ann. § [40:65-12](#), were authorized by N.J. Stat. Ann. § [40:49-5](#) and N.J. Stat. Ann. § [40:69A-29\(b\)](#) and were not excessive and cruel and unusual; it was not necessary for the court to decide if the penalty provided by the ordinance might be excessive in some cases, as defendants were assessed only nominal fines. [State v. Giacchetto, 166 N.J. Super. 351, 399 A.2d 1031, 1979 N.J. Super. LEXIS 675 \(App.Div. 1979\)](#).

#### **Criminal Law & Procedure: Sentencing: Fines**

Nominal fines imposed against defendants for their violation of a sidewalk and snow removal ordinance, adopted pursuant to the specific authority conferred by N.J. Stat. Ann. § [40:65-12](#), were authorized by N.J. Stat. Ann. § [40:49-5](#) and N.J. Stat. Ann. § [40:69A-29\(b\)](#) and were not excessive and cruel and unusual; it was not necessary for the court to decide if the penalty provided by the ordinance might be excessive in some cases, as defendants were

## N.J. Stat. § 40:49-5

assessed only nominal fines. [State v. Giacchetto, 166 N.J. Super. 351, 399 A.2d 1031, 1979 N.J. Super. LEXIS 675 \(App.Div. 1979\)](#).

**Governments: Courts: Judges**

N.J. Stat. Ann. § [40:49-5](#) confers upon magistrates, in their discretion, the power to commit as an aid in the collection of the fines imposed. [Hunter v. Teaneck Tp., 128 N.J.L. 164, 24 A.2d 553, 1942 N.J. Sup. Ct. LEXIS 167 \(Sup. Ct. 1942\)](#).

**Governments: Local Governments: Duties & Powers**

Property owner's conviction violation of a lead paint municipal ordinance enacted pursuant to N.J. Stat. Ann. §§ [24:14A-1](#) to [24:14A-11](#) was reversed because N.J. Stat. Ann. § [24:14A-3](#) deemed violators to be disorderly persons, and such persons would be punishable by imprisonment for up to six months pursuant to N.J. Stat. Ann. § [2C:43-8](#), but the authority of a municipality to prescribe penalties for ordinance violations in N.J. Stat. Ann. § [40:49-5](#) limits that authority to terms not exceeding 90 days; therefore, the ordinance penalty provision was invalid as exceeding the municipal authority, and the court could not blue pencil the unlawful provision to delete the offending portion and rescue the valid remainder, even though property owner received a sentence that would have been proper under a lawful ordinance provision. [State v. Capaci, 260 N.J. Super. 65, 615 A.2d 275, 1992 N.J. Super. LEXIS 372 \(App.Div. 1992\)](#).

Local municipality was prohibited from enacting an ordinance that contained a minimum fine, as N.J. Stat. Ann. § [40:49-5](#) prohibited municipalities from enacting minimum fines which would deprive judges of their statutory discretion to impose any fine; where the invalid part of the ordinance was severable, its invalidity did not require striking down the whole ordinance. [State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 465 A.2d 545, 1983 N.J. Super. LEXIS 945 \(App.Div.\)](#), certif. denied, 95 N.J. 198, 470 A.2d 420, 1983 N.J. LEXIS 3344 (N.J. 1983).

**Governments: Local Governments: Ordinances & Regulations**

Local municipality was prohibited from enacting an ordinance that contained a minimum fine, as N.J. Stat. Ann. § [40:49-5](#) prohibited municipalities from enacting minimum fines which would deprive judges of their statutory discretion to impose any fine; where the invalid part of the ordinance was severable, its invalidity did not require striking down the whole ordinance. [State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 465 A.2d 545, 1983 N.J. Super. LEXIS 945 \(App.Div.\)](#), certif. denied, 95 N.J. 198, 470 A.2d 420, 1983 N.J. LEXIS 3344 (N.J. 1983).

Nominal fines imposed against defendants for their violation of a sidewalk and snow removal ordinance, adopted pursuant to the specific authority conferred by N.J. Stat. Ann. § [40:65-12](#), were authorized by N.J. Stat. Ann. § [40:49-5](#) and N.J. Stat. Ann. § [40:69A-29\(b\)](#) and were not excessive and cruel and unusual; it was not necessary for the court to decide if the penalty provided by the ordinance might be excessive in some cases, as defendants were assessed only nominal fines. [State v. Giacchetto, 166 N.J. Super. 351, 399 A.2d 1031, 1979 N.J. Super. LEXIS 675 \(App.Div. 1979\)](#).

Ordinance which penalized a landlord for noncompliance with state and county codes in addition to ordinances and codes adopted by the municipality was invalid as imposing a penalty authorized by law; although a municipality was expressly authorized by N.J. Stat. Ann. § [40:49-5](#) to prescribe penalties for the violation of ordinances it had authority to pass, there existed no such authorization for penalizing violations of enactments adopted by other levels of government, each of which carried with it its own penalty for noncompliance; moreover, even with respect to a municipality's own ordinance, the monetary penalty for a violation was limited to \$500; under the ordinance enacted, forfeiture of an annual rent increase could far exceed that amount, and the landlord's exposure to monetary penalties imposed by the county or state, pursuant to their enactments, could stockpile penalties for a

## N.J. Stat. § 40:49-5

single violation to an unacceptable level. [Modular Concepts, Inc. v. South Brunswick Township, 146 N.J. Super. 138, 369 A.2d 32, 1977 N.J. Super. LEXIS 721 \(App.Div.\)](#), certif. denied, 74 N.J. 262, 377 A.2d 667, 1977 N.J. LEXIS 738 (N.J. 1977).

Judgment that dismissed a complaint against a chemical company for violating a municipal air pollution ordinance was affirmed, because the ordinance provided for minimum penalties that were not permitted under N.J. Stat. Ann. § 40:49-5. [State v. Hatco Chemical Co., 96 N.J. Super. 238, 232 A.2d 838, 1967 N.J. Super. LEXIS 485 \(App.Div. 1967\)](#).

Penalty provision provided in the local zoning ordinance, being greater than was permitted by N.J. Stat. Ann. § 40:49-5, the statutory authority for the imposition of penalties by municipalities, was void. [State v. Laurel Mills Sewerage Corp., 46 N.J. Super. 331, 134 A.2d 720, 1957 N.J. Super. LEXIS 408 \(App.Div. 1957\)](#).

**Real Property Law: Zoning & Land Use: General Overview**

N.J. Stat. Ann. § 40:49-5 authorizes penalties for violation of an ordinance enacted thereunder. [State v. Gargiulo, 103 N.J. Super. 140, 246 A.2d 738, 1968 N.J. Super. LEXIS 399 \(App.Div. 1968\)](#).

**Real Property Law: Zoning & Land Use: State & Regional Planning**

Penalty provision provided in the local zoning ordinance, being greater than was permitted by N.J. Stat. Ann. § 40:49-5, the statutory authority for the imposition of penalties by municipalities, was void. [State v. Laurel Mills Sewerage Corp., 46 N.J. Super. 331, 134 A.2d 720, 1957 N.J. Super. LEXIS 408 \(App.Div. 1957\)](#).

# Appendix G



## OVERVIEW

Launched in Spring 2011, Newark Community Solutions is a community justice initiative that applies a problem-solving approach to low-level cases in Newark, New Jersey's municipal courthouse. Newark Community Solutions's goals are twofold: to provide judges with increased sentencing options for non-violent offenses such as drug possession, prostitution, and shoplifting and to improve public perceptions of justice. By combining punishment with help, Newark

Community Solutions seeks to promote the use of community service and social service mandates, reduce the court's reliance on ineffective fines and expensive short-term jail sentences, and build public confidence in justice. Newark Community Solutions builds on lessons learned from successful community courts throughout the country, which have reduced local crime, improved compliance with sanctions, and strengthened the connections between courts and communities.

## HOW IT WORKS

Newark Community Solutions offers the judges of the Newark Municipal Court a broad range of sentencing options—community service, short-term group counseling and treatment readiness classes, educational assessments, and monitored placement in community-based treatment.

Before arraignment, Newark Community Solutions staff, in consultation with the prosecution and



defense, identify appropriate sanction options for each defendant. A typical Newark Community Solutions sentence might be two days of community service combined with a three-day counseling program targeting problems such as prostitution or drug abuse. For defendants facing longer sentences, a social worker or case manager administers a psychosocial assessment and works with the court to determine meaningful alternatives to jail, including closely-supervised drug treatment.

## PARTNERS

Newark Community Solutions is an initiative of the [City of Newark](#) and the [New Jersey Administrative Office of the Courts](#), in collaboration with the [New Jersey Institute for Social Justice](#). Newark



Community Solutions is supported by the City of Newark and its [Municipal Council](#), the U.S. Department of Justice's [Bureau of Justice Assistance](#), the [New Jersey State Bar Foundation](#), and the [Nicholson Foundation](#).

## IN THE NEWS

- Victoria Pratt, chief judge of Newark Municipal Court, [talks procedural justice](#) on MSNBC's "The Docket."
- Judge Pratt describes her work on procedural justice [during an appearance](#) on "The Melissa Harris-Perry Show" on MSNBC.
- *The Guardian* [profiles](#) Newark Community Solutions, examining the origins and evolution of the program and the growing national interest in procedural justice.
- Judge Pratt [sits down](#) with Allan







# Jersey City Community Solutions

City of Jersey City » City Hall » Municipal Court » Jersey City Community Solutions

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Home

City Hall

Municipal Court

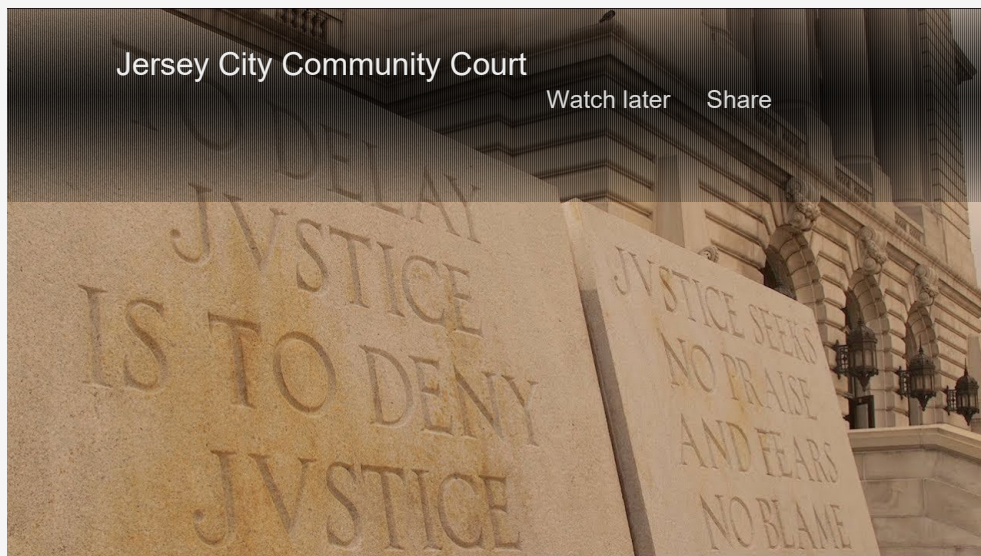
Jersey City Community Solutions

## Department Contact Info

- 201-209-6734
- [communitysolutions@jcnj.org](mailto:communitysolutions@jcnj.org)

## About JCCS

Jersey City Community Solutions (JCCS) is dedicated to administering justice, using restorative solutions, in a manner that steers low-level-non-violent offenders away from further criminal activity. Using sentences that combine rehabilitative social services with community reparation, the court ultimately seeks to promote safety, trust, and growth within the community it serves. We are located in the Jersey City Municipal Court at 365 Summit Avenue Jersey City, New Jersey. Opened in 2017, JCCS is funded by a grant from the Department of Justice and managed by the Jersey City Municipal Court. A collaboration between federal, state, and local agencies, as well the Center for Court Innovation, JCCS is one of many programs nationwide using evidence-based practice to promote restorative justice.



## Mission and Goal

We are dedicated to creating restorative solutions for low-level, non-violent offenders that promote growth and strength in the community. JCCS seeks to administer justice in a manner that steers such offenders away from further criminal activity. Using sentences that combine rehabilitative social services with community reparation, the court ultimately seeks to promote

safety, trust, and growth within the community it serves.

What is it?

JCCS is a court-based problem-solving program for low-level, non-violent offenders. Using a rehabilitation-focused approach, Jersey City Municipal Court judges will have the option to sentence offenders to social services and community service rather than fines and incarceration. Enrollment in the program will operate on a voluntary basis for eligible individuals. Defendants who choose to participate will complete a customized screening with community court staff which will guide mandates for effective alternatives to traditional sentences, such as incarceration.

How does it work?

Potential participants will be made aware of their eligibility during their first court appearance and given the opportunity to opt-in to the Community Solutions program. Only charges pending in the Jersey City Municipal Court will be eligible. Eligible offenses, which are exclusively low-level and non-violent, may include: Drug Possession, Disorderly Conduct, Shoplifting, and Trespassing, among others. Individuals with certain prior charges and convictions may be ineligible for the program. Once enrolled in the program, participants will complete community and social services based on their assessed needs. These community and social service days may be completed as a part of the court sentence.

What are the types of mandates?

Participants enrolled in the program are mandated for both community and social services. Judges will have the option to mandate JCCS participants to attend rehabilitative social services. Based on a screening from Community Solutions staff, this may include required participation in drug treatment, mental health services, or job readiness programs. Judges use community service as a primary sentencing option. The length of the community service

opportunity will be determined by the judge based upon the nature of the offense, with additional mandates for noncompliance. Participants will meet with Community Solutions staff to determine their placements. JCCS participants will work in a variety of sites and roles at organizations throughout the city.

How did it start?

Early in his tenure as mayor, Steven Fulop advocated for community justice initiatives. Problem-solving courts were identified as a viable community justice practice, as it could bring new approaches to difficult cases where social, human and legal problems intersect.

In April 2016, following a national solicitation and peer review process of over 70 proposals, Jersey City was chosen as one of 10 sites to receive funding and technical assistance under the 2016 Community Court Grant Program, a joint initiative of the Center for Court Innovation and the U.S. Department of Justice's Bureau of Justice Assistance. Jersey City Community Solutions was founded under this grant.

Common Principles of Community Courts

The first community court in the country was the Midtown Community Court, launched in 1993 in New York City. Several dozen community courts, inspired by the Midtown model, are in operation or planning around the country. The community court model seeks to respond to crime through a combined strategy of holding community court participants accountable and offering to help defendants with a range of social needs, including drug treatment under judicial supervision.

The Center for Court Innovation's six common principles of community courts include:

- Enhanced information

Community courts are dedicated to the idea that better staff training combined with better information (about litigants, victims, and the

community context of crime) can help improve the decision making of judges, attorneys, and other justice officials. The goal is to help practitioners make more nuanced decisions about individual defendants, ensuring that they receive an appropriate level of supervision and services.

- Community Engagement

Community courts recognize that citizens, merchants and neighborhood groups have an important role to play in helping the justice system identify, prioritize and solve local problems. By actively engaging citizens in the process, community courts seek to improve public trust in justice.

- Collaboration

Community courts engage a diverse range of people, government agencies, and community organizations in collaborative efforts to improve public safety. By bringing together justice players and reaching out to potential partners beyond the courthouse (e.g., drug treatment and other social service providers, victims groups, schools), community courts improve inter-agency communication, encourage greater trust between citizens and government, and foster new responses to local problems.

- Individualized Justice

By using evidence-based risk and needs assessment instruments, community courts seek to link offenders to individually tailored community-based services (e.g., drug treatment, job training, safety planning, mental health counseling) where appropriate. In doing so (and by treating defendants with dignity and respect), community courts help reduce the use of incarceration and recidivism, improve community safety, and enhance confidence in justice. Linking offenders to services can also aid victims, improving their safety, and help restore their lives.

- Accountability

Community courts send the message that all criminal behavior—even low-

level “quality-of-life” crime—has an impact on community safety. By promoting community restitution and insisting on regular and rigorous compliance monitoring (including by the judge)—and clear consequences for non-compliance—community courts seek to improve the accountability of offenders.

- Outcomes

Community courts emphasize the active and ongoing collection and analysis of data—measuring outcomes and process, costs and benefits. Dissemination of this information is a valuable symbol of public accountability.

### Community Engagement

A crucial aspect of JCCS is community engagement. JCCS will gather feedback and direction from a Community Advisory Board made up of local citizens. Input from the Community Advisory Board will allow JCCS staff to continually develop the program to meet the needs of participants and the community.

As part of the planning process to create JCCS, a community needs assessment was conducted. A total of 26 meetings were held with stakeholders and community groups to solicit input to shape a community court program that would be responsive to community needs.

### Community Partners

The list of partners is not exhaustive and JCCS is still seeking partnerships with organizations in an effort to serve the residents of our community. Interested organizations can email JCCS at [jccommunitysolutions@jcnj.org](mailto:jccommunitysolutions@jcnj.org) or call 201-209-6734.

2018 Jersey City: Community Court Ceremony

Watch later Sha

# Appendix H

## [N.J. Stat. § 2B:12-26](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60 (except c. 58, 59), and J.R. 3

**LexisNexis® New Jersey Annotated Statutes > Title 2B. Court Organization and Civil Code (Chs. 1 — 50) > Chapter 12. Municipal Courts (§§ 2B:12-1 — 2B:12-33)**

### **§ 2B:12-26. Docketing judgment**

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A judgment of a municipal court assessing a penalty, fine or restitution may be docketed in the Superior Court by the party recovering the judgment.

A judgment docketed in the Superior Court shall operate, from the time of the docketing, as though the judgment was obtained in an action originally commenced in the Superior Court.

After a judgment has been docketed in the Superior Court, the municipal court shall not issue an execution or hold proceedings in the case except that the municipal court may grant a new trial or process an appeal.

If a new trial is granted or an appeal taken after a judgment is docketed, the Superior Court shall not issue an execution on the judgment pending the final determination of the proceedings.

### **History**

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L. [1993, c. 293](#), § 1.

Annotations

### **Research References & Practice Aids**

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#### **Cross References:**

Docketing of judgments; enforcement, see [39:8-73](#).

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## [N.J. Stat. § 39:8-73](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60 (except c. 58, 59), and J.R. 3

**LexisNexis® New Jersey Annotated Statutes > Title 39. Motor Vehicles and Traffic Regulation (Subts. 1 — 2) > Subtitle 2. Additional Motor Vehicle Regulations (Chs. 6 — 14) > Chapter 8. Motor Vehicle Inspection (§§ 39:8-1 — 39:8-91)**

### **§ 39:8-73. Docketing of judgments; enforcement**

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**a.** The court administrator of the municipal court shall docket in the Superior Court a municipal court judgment imposing a civil penalty pursuant to this act, or any rule or regulation adopted pursuant thereto, that remains unpaid at the time of the judgment's entry in the municipal court. The court administrator shall give notice of the docketing to the commission in a manner prescribed by the commission. The provisions and procedures of [N.J.S. 2B:12-26](#) shall apply to the docketing, except that the court administrator of the municipal court, rather than the commission, shall effect the docketing; provided that nothing in this act shall be construed to prohibit the commission or its designee from docketing the judgment on behalf of the commission and in accordance with [N.J.S. 2B:12-26](#) if the court administrator of the municipal court fails to do so or if the commission or its designee chooses to do so for any other reason. No fee shall be charged to docket the judgment. The docketing shall have the same force and effect as a civil judgment docketed in the Superior Court, and the commission and its designee shall have all of the remedies and may take all of the proceedings for the collection thereof that may be had or taken upon recovery of a judgment in an action, but without prejudice to any right of appeal.

**b.** If the defendant is the owner or lessee of a vehicle that is the subject of the violation, and if the defendant fails to pay a civil penalty imposed pursuant to this act or any rule or regulation adopted pursuant thereto, the commission may suspend the registration privileges of the defendant in this State.

**c.** Any vehicle that is registered or present in this State and for which a civil penalty has been assessed pursuant to this act or any rule or regulation adopted pursuant thereto may be placed out of service by the commission or the Division of State Police if the civil penalty remains unpaid after the date on which it became due and owing. A vehicle placed out of service pursuant to this act by either the commission or the Division of State Police shall not be operated until all civil penalties that are due and owing are paid to the commission. When a vehicle is placed out of service pursuant to this act, an administrative out-of-service order shall be prepared on a form or forms specified by the commission and a copy served upon the operator of the vehicle or upon the owner or lessee of the vehicle. The operator of a vehicle served with an out-of-service order pursuant to this act shall report the issuance of the out-of-service order to the owner and the lessee, if any, of the vehicle within 24 hours. When a vehicle is placed out of service pursuant to this act it shall be the responsibility of the owner or lessee of that vehicle to arrange for the prompt removal of that vehicle, by means other than operating the vehicle, and to pay all costs associated therewith. The vehicle shall be removed to a secure storage place where the commission and the Division of State Police can readily confirm its non-operation. If the owner or lessee fails to comply, or is otherwise incapable of complying with this subsection, the commission or the Division of State Police may make such arrangements for the removal of the vehicle to a secure storage place where the commission and the Division of State Police can readily confirm its non-operation, with all attendant charges and expenses to be paid by the owner, lessee, or bailee. No entity of government of this State or any political subdivision thereof shall be held liable for costs associated with or incurred in the enforcement of this subsection. Upon payment by cashier's check or money order, or in such other form as may be determined by the commission, subject to law or the Rules Governing the Courts of the State of New Jersey, of all unpaid civil penalties and attendant storage charges and expenses for a vehicle that has been placed out of service, the

## N.J. Stat. § 39:8-73

commission shall remove the out-of-service order. Any person who operates, and any owner or lessee who causes or allows to be operated, a vehicle in violation of an out-of-service order prepared and served in accordance with the provisions of this subsection shall be liable for a civil penalty of \$1,500, and, if the person has the vehicle registered in this State, the commission may suspend the registration privileges of the vehicle.

**d.**The commission shall exercise all duties, powers and responsibilities set forth in this section with respect to the periodic inspection program for diesel buses and the roadside enforcement program for diesel buses under the jurisdiction of the commission as set forth in subsection b. of section 6 of this act.

## History

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L. [1995, c. 157](#), § 15; amended [2003, c. 13](#), § 88.

Annotations

## Notes

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### Effective Dates:

Section 127 of L. [2003, c. 13](#) provides: "Sections 1, 2, 3, 12, 38, 109, 110 and 121 shall take effect immediately, sections 105, 106, 107, 108, and 120 shall take effect on July 1, 2003 and the remainder of this act shall take effect on the date the Commissioner of Transportation certifies to the Governor (hereinafter the 'date of certification') that a majority of the members of the commission have been appointed or are in office and that all necessary anticipatory actions have been accomplished, provided, that the amount of revenues received pursuant to sections 109 and 110 prior to the date of certification are hereby appropriated to the division. Upon the date of certification, all such collected revenue shall be revenue of the commission. The Commissioner of Transportation, the Director of the Division of Motor Vehicles and the commission may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act." Chapter 13, L. 2003, was approved on January 28, 2003.

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# Appendix I

## [N.J. Stat. § 22A:2-7](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60, and J.R. 4

**LexisNexis® New Jersey Annotated Statutes > Title 22A. Fees and Costs (Chs. 1 — 5) > Chapter 2. Civil Causes (Arts. 1 — 5) > Article 1. Supreme Court and Superior Court (§§ 22A:2-1 — 22A:2-24)**

### § 22A:2-7. Law division of Superior Court; other fees; use

a. Upon the filing, entering, docketing or recording of the following papers, documents or proceedings by either party to any action or proceeding in the Law Division of the Superior Court, the party or parties filing, entering, docketing or recording the same shall pay to the clerk of said court the following fees:

Filing of the first paper in any motion, petition or application, if not in a pending action or proceeding under section [22A:2-6](#) of this Title, or if made after dismissal or judgment entered other than withdrawal of money deposited in court, the moving party shall pay \$30.00 which shall cover all fees payable on such motion, petition or application down to and including filing and entering of order therein and taxation of costs.

For withdrawal of money deposited in court where the sum to be withdrawn is less than \$100.00, no fee; where the sum is \$100.00 or more but less than \$1,000.00, a fee of \$5.00; where such sum is \$1,000.00 or more, a fee of \$10.00.

Entering judgment on bond and warrant by attorney and issuance of one final process, \$15.00 in lieu of the fee required by section [22A:2-6](#) of this Title.

Recording of judgment in the civil judgment and order docket, \$35.00 shall be paid to the clerk for use by the State, except as provided in subsection b. of this section.

Docketing judgments or orders from other courts or divisions except from the Special Civil Part, including Chancery Division judgments, \$35.00 shall be paid to the clerk for use by the State, except as provided in subsection b. of this section and except that no fee shall be paid by any municipal court to docket a judgment of conviction and amount of assessment, restitution, fine, penalty or fee pursuant to subsection a. of [N.J.S. 2C:46-1](#).

Docketing judgments or orders from the Special Civil Part, \$10.00 shall be paid to the clerk for use by the State, except as provided in subsection b. of this section.

Satisfaction of judgment or other lien, \$35.00.

Recording assignment of judgment or release, \$5.00.

Issuing of executions and recording same, except as otherwise provided in this article, \$5.00.

Recording of instruments not otherwise provided for in this article, \$5.00.

Filing and entering recognizance of civil bail, \$5.00.

Signing and issuing subpoena, \$5.00.

b. Moneys collected under the provisions of subsection a. of this section for the recording and docketing of judgments and satisfactions of judgments or other liens shall be deposited in the temporary reserve fund created by section 25 of [P.L. 1993, c. 275](#). After December 31, 1994, the moneys collected under the provisions of subsection a. shall be for use by the State.

### History

N.J. Stat. § 22A:2-7

L. 1953, c. 22, p. 387, § 11; amended 1975, c. 340, § 1; [1991, c. 177](#), § 7; [1993, c. 275](#), § 11; [1994, c. 81](#), § 1; [1995, c. 135](#), § 10; [2002, c. 34](#), § 27, eff. July 1, 2002.

Annotations

## **Research References & Practice Aids**

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### **LAW REVIEWS & JOURNALS:**

[37 Seton Hall Legis. J. 241](#), ARTICLE: STATE OF NEW JERSEY LAW REVISION COMMISSION: FINAL REPORT\* RELATING TO THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT.

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# Appendix J

## [N.J. Stat. § 2C:46-2](#)

This section is current through New Jersey 218th First Annual Session, L. 2018, c. 115, and J.R. 9

**LexisNexis® New Jersey Annotated Statutes > Title 2C. The New Jersey Code of Criminal Justice (Subts. 1 — 3) > Subtitle 3. Sentencing (Chs. 43 — 104) > Chapter 46. Fines and Restitutions (§§ 2C:46-1 — 2C:46-5)**

### § 2C:46-2. Consequences of nonpayment; summary collection

a. When a defendant sentenced to pay an assessment imposed pursuant to section 2 of P.L. 1979, c. 396 ([C.2C:43-3.1](#)), a penalty imposed pursuant to section 11 of [P.L. 2001, c. 81](#) ([C.2C:43-3.6](#)), a penalty imposed pursuant to section 1 of [P.L. 2005, c. 73](#) ([C.2C:14-10](#)), monthly probation fee, fine, a penalty imposed pursuant to section 1 of [P.L. 1999, c. 295](#) ([C.2C:43-3.5](#)), other court-imposed financial obligations or to make restitution or pay child support or other support or maintenance ordered by a court defaults in the payment thereof or of any installment, upon the motion of the person authorized by law to collect the payment, the motion of the prosecutor, the motion of the victim entitled to payment of restitution, the motion of the Victims of Crime Compensation Office, the motion of the State or county Office of Victim and Witness Advocacy or upon its own motion, the court shall recall him, or issue a summons or a warrant of arrest for his appearance. The court shall afford the person notice and an opportunity to be heard on the issue of default. Failure to make any payment when due shall be considered a default. The standard of proof shall be by a preponderance of the evidence, and the burden of establishing good cause for a default shall be on the person who has defaulted.

(1) If the court finds that the person has defaulted without good cause, the court shall:

- (a) Order the suspension of the driver's license or the nonresident reciprocity driving privilege of the person; and
- (b) Prohibit the person from obtaining a driver's license or exercising reciprocity driving privileges until the person has made all past due payments; and
- (c) Notify the Chief Administrator of the New Jersey Motor Vehicle Commission of the action taken; and
- (d) Take such other actions as may be authorized by law.

(2) If the court finds that the person defaulted on payment of a court-imposed financial obligation, restitution, or child support or other support or maintenance ordered by a court without good cause and finds that the default was willful, the court may, in addition to the action required by paragraph (1) of this subsection a., impose a term of imprisonment or participation in a labor assistance program or enforced community service to achieve the objective of the court-imposed financial obligation, restitution, or child support or other support or maintenance ordered by a court. These options shall not reduce the amount owed by the person in default. The term of imprisonment or enforced community service or participation in a labor assistance program in such case shall be specified in the order of commitment. It need not be equated with any particular dollar amount but, in the case of a fine it shall not exceed one day for each \$50 of the fine nor shall it exceed a period of 90 consecutive days. In no case shall the total period of imprisonment in the case of a disorderly persons offense for both the sentence of imprisonment and for failure to pay a fine exceed six months.

(3) Except where incarceration is ordered pursuant to paragraph (2) of this subsection a., if the court finds that the person has defaulted the court may take one or more of the following actions:

- (a) the court shall take appropriate action to modify or establish a reasonable schedule for payment;

## N.J. Stat. § 2C:46-2

**(b)**in the case of a fine, if the court finds that the circumstances that warranted the fine have changed or that it would be unjust to require payment, the court may revoke or suspend the fine or the unpaid portion of the fine; or

**(c)**if the defendant has served jail time for default on a court-imposed financial obligation, the court may order that credit for each day of confinement be given against the amount owed. The amount of the credit shall be determined at the discretion of the court but shall be not less than \$50 for each day of confinement served.

**(4)**When failure to pay an assessment imposed pursuant to section 2 of P.L.1979, c.396 ([C.2C:43-3.1](#)), monthly probation fee, restitution, a penalty imposed pursuant to section 1 of [P.L.1999, c.295 \(C.2C:43-3.5\)](#), a penalty imposed pursuant to section 11 of [P.L.2001, c.81 \(C.2C:43-3.6\)](#), a penalty imposed pursuant to section 1 of [P.L.2005, c.73 \(C.2C:14-10\)](#), or other financial penalties or to perform enforced community service or to participate in a labor assistance program is determined to be willful, the failure to do so shall be considered to be contumacious.

**(5)**When a fine, assessment imposed pursuant to section 2 of P.L.1979, c.396 ([C.2C:43-3.1](#)), other financial penalty or restitution is imposed on a corporation, it is the duty of the person or persons authorized to make disbursements from the assets of the corporation or association to pay it from such assets and their failure so to do may be held to be contumacious.

**b.** Upon any default in the payment of a fine, assessment imposed pursuant to section 2 of P.L.1979, c.396 ([C.2C:43-3.1](#)), monthly probation fee, a penalty imposed pursuant to section 1 of [P.L.1999, c.295 \(C.2C:43-3.5\)](#), a penalty imposed pursuant to section 11 of [P.L.2001, c.81 \(C.2C:43-3.6\)](#), a penalty imposed pursuant to section 1 of [P.L.2005, c.73 \(C.2C:14-10\)](#), other financial penalties, restitution, or any installment thereof, execution may be levied and such other measures may be taken for collection of it or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt.

**c.** Upon any default in the payment of restitution or any installment thereof, the victim entitled to the payment may institute summary collection proceedings authorized by subsection b. of this section.

**d.** Upon any default in the payment of an assessment imposed pursuant to section 2 of P.L.1979, c.396 ([C.2C:43-3.1](#)) or any installment thereof, the Victims of Crime Compensation Office or the party responsible for collection may institute summary collection proceedings authorized by subsection b. of this section.

**e.** When a defendant sentenced to make restitution to a public entity other than the Victims of Crime Compensation Office, defaults in the payment thereof or any installment, the court may, in lieu of other modification of the sentence, order the defendant to perform work in a labor assistance program or enforced community service program.

**f.** If a defendant ordered to participate in a labor assistance program or enforced community service program fails to report for work or to perform the assigned work, the comprehensive enforcement hearing officer may revoke the work order and impose any sentence permitted as a consequence of the original conviction.

**g.** If a defendant ordered to participate in a labor assistance program or an enforced community service program pays all outstanding assessments, the comprehensive enforcement hearing officer may review the work order, and modify the same to reflect the objective of the sentence.

**h.** As used in this section:

**(1)** "Comprehensive enforcement program" means the program established pursuant to the "Comprehensive Enforcement Program Fund Act," sections 1 through 9 of [P.L.1995, c.9 \(C.2B:19-1 et seq.\)](#).

**(2)** The terms "labor assistance program" and "enforced community service" have the same meaning as those terms are defined in section 5 of the "Comprehensive Enforcement Program Fund Act," [P.L.1995, c.9 \(C.2B:19-5\)](#).



(3)“Public entity” means the State, any county, municipality, district, public authority, public agency and any other political subdivision or public body in the State.

(4)“Court-imposed financial obligation” means any fine, statutorily-mandated assessment, surcharge, or other financial penalty imposed by a court, but does not include restitution or child support or other support or maintenance ordered by a court.

## History

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L. 1978, c. 95; amended 1985, c. 252, § 2; [1991, c. 329](#), § 11; [1993, c. 275](#), § 17; [1995, c. 9](#), § 11; [1999, c. 295](#), § 3, eff. Dec. 23, 1999; [2001, c. 81](#), § 14, eff. May 4, 2001; [2005, c. 73](#), § 4, eff. Apr. 26, 2005; [2013, c. 180](#), § 1, eff. Jan. 13, 2014.

Annotations

## LexisNexis® Notes

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## Notes

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### Amendment Note:

2013 amendment, by Chapter 180, in the first sentence of a., substituted “other court-imposed financial obligations” for “other court imposed financial penalties” and inserted “or pay child support or other support or maintenance ordered by a court”; in a.(2), inserted “restitution, or child support or other support or maintenance ordered by a court” twice in the first sentence and substituted “one day for each \$50 of the fine nor shall it exceed a period of 90 consecutive days” for “one day for each \$20.00 of the fine nor 40 days if the fine was imposed upon conviction of a disorderly persons offense nor 25 days for a petty disorderly persons offense nor one year in any other case, whichever is the shorter period” in the fourth sentence; in a.(3), added (c), designated former provisions as (a) and (b), and inserted “the court may take one or more of the following actions:” in the introductory language; added h.(4), and in h.(1), inserted “sections 1 through 9 of”; substituted “Victims of Crime Compensation Office” for “Victims of Crime Compensation Board” three times; and made stylistic changes and related changes.

## Case Notes

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**Bankruptcy Law: Individuals With Regular Income: Plans: Contents**

**Criminal Law & Procedure: Sentencing: Fines**

**Criminal Law & Procedure: Sentencing: Restitution**

### Bankruptcy Law: Individuals With Regular Income: Plans: Contents

Where below median income debtor in Chapter 13 case proposed to separately classify and make full payment of unsecured dischargeable municipal court fines, while offering no payments to remaining general unsecured claims, such treatment was unfair discrimination and debtor's possible incarceration alone was not reasonable basis to support argument that discrimination substantially enhanced or was necessary to feasibility of plan; moreover,

possibility of incarceration for failing to pay Municipal Court Fines appeared remote in light of alternatives under New Jersey statutes. [In re Osorio, 522 B.R. 70, 2014 Bankr. LEXIS 4964 \(Bankr. D.N.J. 2014\)](#).

### **Criminal Law & Procedure: Sentencing: Fines**

Pursuant to N.J. Stat. Ann. § [2C:46-2\(a\)](#), defendant was entitled to monetary credit for the time that he served in jail while waiting for the hearing at which the trial court ordered the fine to be paid. [State v. Joseph, 238 N.J. Super. 219, 569 A.2d 819, 1990 N.J. Super. LEXIS 38 \(App.Div. 1990\)](#).

### **Criminal Law & Procedure: Sentencing: Restitution**

In a declaratory judgment action brought by a crime victim against the State of New Jersey, two agencies that processed restitution payments, and its directors, the system of paying restitution on a first-in-time, rather than automatic pro-rata basis, was upheld as valid. The trial court properly dismissed the victim's complaint, rejecting his multi-faceted challenge, finding the method of distribution violated neither his substantive due process nor equal protection rights under the federal and New Jersey constitutions; nor his State constitutional rights under the Victims Rights Amendment, [N.J. Const. art. I, para. 22](#); nor his statutory rights under New Jersey's Crime Victim's Bill of Rights, N.J. Stat. Ann. §§ [52:4B-34](#) to -70; nor the Civil Rights Act, N.J. Stat. Ann. §§ [10:6-1](#) to -2. [Felicioni v. Administrative Office of Courts, 404 N.J. Super. 382, 961 A.2d 1207, 2008 N.J. Super. LEXIS 263 \(App.Div. 2008\)](#), certif. denied, 203 N.J. 440, 3 A.3d 1228, 2010 N.J. LEXIS 921 (N.J. 2010), abrogated in part, [Perez v. Zagami, 217 N.J. 502, 90 A.3d 1244, 2014 N.J. LEXIS 484 \(N.J. 2014\)](#), abrogated in part, [Perez v. Zagami, LLC, 218 N.J. 202, 94 A.3d 869, 2014 N.J. LEXIS 1076 \(N.J. 2014\)](#).

Where defendant had pleaded guilty to 25 offenses of burglary and theft pursuant to a plea agreement, and the trial court ordered defendant to make restitution to the victims, the trial court, upon remand, did not violate defendant's rights against double jeopardy when it increased the amount of restitution required; the imposition of restitution did not violate the plea agreement where it was not essentially penal in nature under N.J. Stat. Ann. § [2C:46-2](#), and the trial court had taken into account defendant's financial resources and the burden payment would impose on him. [State v. Rhoda, 206 N.J. Super. 584, 503 A.2d 364, 1986 N.J. Super. LEXIS 1094 \(App.Div.\)](#), certif. denied, 105 N.J. 524, 523 A.2d 167, 1986 N.J. LEXIS 1670 (N.J. 1986).

## **Opinion Notes**

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### **OPINIONS OF ATTORNEY GENERAL**

FORMAL OPINION No. 21 — 1979, [1979 N.J. AG LEXIS 7](#).

## [N.J. Stat. § 39:5-36](#)

This section is current through New Jersey 218th First Annual Session, L. 2018, c. 115, and J.R. 9

**LexisNexis® New Jersey Annotated Statutes > Title 39. Motor Vehicles and Traffic Regulation (Subts. 1 — 2) > Subtitle 1. Motor Vehicles Generally; Traffic Laws (Chs. 1 — 5H) > Chapter 5. Enforcement (§§ 39:5-1 — 39:5-56)**

### **§ 39:5-36. Incarceration for default on certain penalties, surcharges; other actions by court**

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**a.** The court may incarcerate in the county jail or workhouse of the county where the offense was committed any person upon whom a penalty or surcharge pursuant to subsection f. of section 1 of [P.L.2000, c.75 \(C.39:4-97.2\)](#) has been imposed for a violation of any of the provisions of this subtitle where the court finds that the person defaulted on payment of the penalty or surcharge pursuant to subsection f. of section 1 of [P.L.2000, c.75 \(C.39:4-97.2\)](#) without good cause and that the default was willful. Incarceration ordered under this subsection shall not reduce the amount owed by the person in default. In no case shall such incarceration exceed one day for each \$50 of the penalty or surcharge so imposed, nor shall such incarceration exceed a period of 90 consecutive days.

**b.** Except where incarceration is ordered pursuant to subsection a. of this section, if the court finds that the person has defaulted on the payment of a penalty the court may take one or more of the following actions:

**(1)** the court shall take appropriate action to modify or establish a reasonable schedule for payment;

**(2)** if the court finds that the circumstances that warranted the penalty have changed or that it would be unjust to require payment, the court may revoke or suspend the penalty or the unpaid portion of the penalty; or

**(3)** if the defendant has served jail time for default on a penalty, the court may order that credit for each day of confinement be given against the amount owed. The amount of the credit shall be determined at the discretion of the court but shall be not less than \$50 for each day of confinement served.

When such person shall have been confined for a sufficient number of days to establish credits equal to the aggregate amount of such penalties and costs, and is not held by reason of any other sentence or commitment, he shall be discharged from such imprisonment by the officer in charge of the county jail or workhouse.

**c.** For the purposes of this section, “penalty” means any fine, statutorily-mandated assessment, surcharge, or other financial penalty imposed by a court pursuant to this subtitle, but does not include a surcharge imposed pursuant to subsection f. of section 1 of [P.L.2000, c.75 \(C.39:4-97.2\)](#).

### **History**

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Amended by L. 1942, c. 334, p. 1183, § 7; L. 1963, c. 142, § 4, eff. Aug. 26, 1963; L. 1975, c. 144, § 4, eff. July 7, 1975; [2013, c. 180](#), § 2, eff. Jan. 13, 2014.

Annotations

## LexisNexis® Notes

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### Notes

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#### Amendment Note:

2013 amendment, by Chapter 180, deleted the former section heading, which read: "Imprisonment on default of payment of fine"; and rewrote the section, which formerly was two paragraphs and read: "Unless otherwise expressly provided in this subtitle, any person who shall be convicted of a violation of any of the provisions of this subtitle, and upon whom a fine shall be imposed, shall, in default of payment thereof, be imprisoned in the county jail or workhouse of the county where the offense was committed, but in no case shall such imprisonment exceed 1 day for each \$20.00 of the fine so imposed, nor shall such imprisonment exceed, in any case, a period of 3 months. Whenever a person is imprisoned by reason of default in the payment of a fine or fines and costs imposed and assessed upon conviction of any violation of this subtitle wherein the committing court, as a part of the sentence, ordered that such person stand committed to the county jail or workhouse until such fine and costs are paid, he shall be given credit against the amount of such fines and costs at the rate of \$20.00 for each day of such confinement. When such person shall have been confined for a sufficient number of days to establish credits equal to the aggregate amount of such fines and costs, and is not held by reason of any other sentence or commitment, he shall be discharged from such imprisonment by the officer in charge of the county jail or workhouse."

### Case Notes

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#### **Criminal Law & Procedure: Criminal Offenses: Miscellaneous Offenses: Disruptive Conduct: General Overview**

#### **Criminal Law & Procedure: Sentencing: Fines**

#### **Criminal Law & Procedure: Criminal Offenses: Miscellaneous Offenses: Disruptive Conduct: General Overview**

Where the county court determined that defendant had willfully refused to pay fines and costs when defendant was financially able to do so, the county court was not prohibited by N.J. Stat. Ann. § [39:5-36](#) from refusing to accept the eventual tender of the fines and instead substituting a jail term because the custodial term was not conditioned on defendant's tender of the fines but a resentencing. [State v. O'Toole, 162 N.J. Super. 339, 392 A.2d 1225, 1978 N.J. Super. LEXIS 1083 \(App.Div. 1978\)](#).

#### **Criminal Law & Procedure: Sentencing: Fines**

Where the county court determined that defendant had willfully refused to pay fines and costs when defendant was financially able to do so, the county court was not prohibited by N.J. Stat. Ann. § [39:5-36](#) from refusing to accept the eventual tender of the fines and instead substituting a jail term because the custodial term was not conditioned on defendant's tender of the fines but a resentencing. [State v. O'Toole, 162 N.J. Super. 339, 392 A.2d 1225, 1978 N.J. Super. LEXIS 1083 \(App.Div. 1978\)](#).

# Appendix K

## [In re Advisory Letter No. 7-11 of the Supreme Court Advisory Comm.](#)

Supreme Court of New Jersey

November 27, 2012, Argued; March 6, 2013, Decided

A-12 September Term 2011, 068633

### Reporter

213 N.J. 63 \*; 61 A.3d 136 \*\*; 2013 N.J. LEXIS 187 \*\*\*; 2013 WL 811863

IN THE MATTER OF ADVISORY LETTER NO. 7-11 OF THE SUPREME COURT ADVISORY COMMITTEE ON EXTRAJUDICIAL ACTIVITIES (A-12-11)(068633).

**Prior History:** [\*\*\*1] On petition for review of a decision of Supreme Court Advisory Committee on Extrajudicial Activities.

[In re IMO Advisory Letter No. 7-11, 212 N.J. 570, 58 A.3d 1175, 2011 N.J. LEXIS 1462 \(N.J., 2011\)](#)

### Core Terms

Canon, police officer, cases, municipal court judge, impartiality, Advisory, municipal court, appearance, municipality, disqualification, judicial conduct, Directive, police department, Extrajudicial, Activities, disqualify, partiality, bias, sit, judge's impartiality, public confidence, justice system, appointment, presides, judicial process, law enforcement, fully informed, chief judge, questioned, mandated

### Case Summary

#### Procedural Posture

Appellant, a municipal court judge, appealed from the decision of the Supreme Court Advisory Committee on Extra-judicial Activities (New Jersey) (Advisory Committee), which opined that the judge should not continue to serve in the same municipality where his son was a police officer. Respondent, the county assignment judge, had requested the opinion from the Advisory Committee.

#### Overview

The judge had served as a municipal court judge in the city since 1991 and was also the chief judge, supervising two other municipal court judges. His son entered active service in the city's police department in

2011, and the judge advised the assignment judge of his son's appointment and his intent to disqualify himself from any case involving his son. The assignment judge sought the opinion from the Advisory Committee. The Advisory Committee concluded that the judge could not continue to serve in the same municipality where his son was a police officer because the appearance of partiality or bias arising from a direct familial relationship with law enforcement was too great to overcome by simply transferring the son's cases out of the municipality. The Court agreed that the judge could not hear any cases involving the police department nor supervise the other judges who heard those cases but that he could continue to preside over other matters. The Court noted that the city and the judge were going to have to decide whether his continued presence on the court was warranted to handle the remaining cases, including conflict cases transferred from other municipalities.

#### Outcome

The Court agreed with the Advisory Committee and held that the judge may not serve as chief judge of the city's municipal court or hear any cases involving the city's police department or its employees. The Court directed that the judge may continue to preside over other matters.

### LexisNexis® Headnotes

Civil Procedure > ... > Disqualification & Recusal > Grounds for Disqualification & Recusal > General Overview

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Disqualification & Recusal

Legal Ethics > Judicial Conduct

### [HN1](#) **Disqualification & Recusal, Grounds for Disqualification & Recusal**

The mere appearance of bias in a judge, however difficult, if not impossible, to quantify is sufficient to erode respect for the judiciary. To that end, judges must refrain from sitting in any causes where their objectivity and impartiality may fairly be brought into question. Therefore, ensuring both conflict-free, fair hearings and the appearance of impartiality in municipal court is vital to maintaining public confidence in our system of justice.

Legal Ethics > Judicial Conduct

### [HN2](#) **Legal Ethics, Judicial Conduct**

All judges in New Jersey must abide by the [Code of Judicial Conduct, R. 1:18](#). The Code is comprised of seven canons that provide both broad and specific standards governing the conduct of judges. The canons set a high bar by which judges must guide themselves. They are not just aspirational yearnings but enforceable rules, and they certainly are not mere platitudes. The over-arching objective of the Code of Judicial Conduct is to maintain public confidence in the integrity of the judiciary.

Legal Ethics > Judicial Conduct

### [HN3](#) **Legal Ethics, Judicial Conduct**

[Canon 1 of the Code of Judicial Conduct](#), in part, proclaims that a judge should personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. That canon recognizes that judges are the personification of the judicial system and that public respect for that system depends on how jurists comport themselves on and off the bench. Correspondingly, Canon 2 exhorts judges to avoid the appearance of impropriety in all activities. Canon 2 provides that a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, Canon 2(A), and should not allow family, social, political, or other relationships to influence judicial conduct or judgment, Canon 2(B). The commentary to Canon 2 emphasizes that judges must be sensitive to public perception. Thus, a judge must avoid even the appearance of impropriety

and must expect to be the subject of constant public scrutiny. Additionally, judges must accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Civil Procedure > ... > Disqualification & Recusal > Grounds for Disqualification & Recusal > Personal Bias

Legal Ethics > Judicial Conduct

### [HN4](#) **Grounds for Disqualification & Recusal, Personal Bias**

Canon 1 of the [Code of Judicial Conduct 3\(C\)](#) counsels judges on when recusal is appropriate. Canon 3(C)(1) instructs that a judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. For instance, disqualification is mandated whenever a judge has a personal bias concerning a party. Canon 3(C)(1)(a). Moreover, a judge must disqualify himself if a close relative is a party to the proceeding, Canon 3(C)(1)(e)(i), is known by the judge to have an interest that could be affected by the outcome of the proceeding, Canon 3(C)(1)(e)(iii), or is to the judge's knowledge likely to be a witness in the proceeding, Canon 3(C)(1)(e)(iv). Canon 3(C)(1)(e) uses the more precise term of a person within the third degree of relationship to either the judge or the judge's spouse.

Legal Ethics > Judicial Conduct

### [HN5](#) **Legal Ethics, Judicial Conduct**

[R. 1:12-1](#), as cited by Canon 3(C), provides additional guidance on disqualification when close relatives are parties or attorneys in a case. A judge of any court shall be disqualified on the court's own motion and shall not sit in any matter, if his or her child is either a party or an attorney in an action. [R. 1:12-1\(a\)](#) and [\(b\)](#). Where the judge's child is an attorney in a firm or office, disqualification is also mandated in cases involving the partners, employers, employees or office associates of any such attorney except where the Chief Justice for good cause otherwise permits. [R. 1:12-1\(b\)](#). The disqualification rule applies if the judge (a) is by blood or marriage the second cousin of or is more closely related to any party to the action; or (b) is by blood or marriage

the first cousin of or is more closely related to any attorney in the action. [R. 1:12-1\(a\)](#) and [\(b\)](#).

Civil Procedure > ... > Disqualification & Recusal > Grounds for Disqualification & Recusal > Appearance of Partiality

Legal Ethics > Judicial Conduct

Civil Procedure > ... > Disqualification & Recusal > Grounds for Disqualification & Recusal > Personal Bias

### [HN6](#) **Grounds for Disqualification & Recusal, Appearance of Partiality**

The catch-all provision of [R. 1:12-1\(g\)](#) requires judges to disqualify themselves when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so. [R. 1:12-1\(g\)](#), like [Canon 3\(C\)\(1\) of the Code of Judicial Conduct](#), which mandates disqualification when a judge's impartiality might reasonably be questioned, is intended to apply to scenarios that cannot be neatly catalogued. The situations in which a judge should grant a motion for recusal are varied. Thus, neither Canon 3C nor [R. 1:12-1](#) recite an exclusive list of circumstances which disqualify a judge and require recusal from a matter.

Civil Procedure > ... > Disqualification & Recusal > Grounds for Disqualification & Recusal > General Overview

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Disqualification & Recusal

Legal Ethics > Judicial Conduct

### [HN7](#) **Disqualification & Recusal, Grounds for Disqualification & Recusal**

It is clear from the canons of the Code of Judicial Conduct, the New Jersey Court Rules, and the Guidelines for Extra-judicial Activities that justice must satisfy the appearance of justice. The purpose of New Jersey's judicial disqualification provisions is to maintain public confidence in the integrity of the judicial process, which in turn depends on a belief in the impersonality of

judicial decision making. Even a righteous judgment will not find acceptance in the public's mind unless the judge's impartiality and fairness are above suspicion. In other words, judges must avoid acting in a manner that may be perceived as partial, otherwise the integrity of the judicial process will be cast in doubt.

Civil Procedure > ... > Disqualification & Recusal > Grounds for Disqualification & Recusal > General Overview

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Disqualification & Recusal

Legal Ethics > Judicial Conduct

### [HN8](#) **Disqualification & Recusal, Grounds for Disqualification & Recusal**

Disqualification is mandated if a judge's impartiality might reasonably be questioned, [Canon 3\(C\)\(1\) of the Code of Judicial Conduct](#), or if there is a basis which might reasonably lead counsel or the parties to believe that the judge is unable to render a fair and unbiased judgment, [R. 1:12-1\(g\)](#). Thus, judges must refrain from sitting in any causes where their objectivity and impartiality may fairly be brought into question. Those principles have been distilled to a simple question: Would a reasonable, fully informed person have doubts about the judge's impartiality?

Civil Procedure > ... > Disqualification & Recusal > Grounds for Disqualification & Recusal > Appearance of Partiality

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Disqualification & Recusal

Legal Ethics > Judicial Conduct

### [HN9](#) **Grounds for Disqualification & Recusal, Appearance of Partiality**

The separation between New Jersey's municipal court judges and the local law enforcement authorities must be as near complete as possible. If a judge's impartiality might reasonably be questioned, disqualification is mandated. [Canon 3\(C\)\(1\) of the Code of Judicial](#)



Conduct.**Syllabus**

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interest of brevity, portions of any opinion may not have been summarized.)

***In the Matter of Advisory Letter No. 7-11 of the Supreme Court Advisory Committee on Extrajudicial Activities (A-12-11) (068633)***

**Argued November 27, 2012 -- Decided March 6, 2013**

**ALBIN, J., writing for a unanimous Court.**

In this appeal, the Court determines whether a chief municipal court judge whose son became a member of the police department in the same municipality may hear cases involving that police department.

George M. Boyd has served as a municipal court judge in the City of Perth Amboy since 1991. As the chief judge, he has supervised two other municipal court judges. His son, Ethan Boyd, entered active service in the Perth Amboy Police Department on January 1, 2011. Judge Boyd advised Middlesex County Assignment Judge Travis Francis of his son's appointment and his intent to disqualify [\*\*\*2] himself from any case involving his son. Judge Francis informed Judge Boyd that all cases involving his son "shall be transferred to a neighboring court for disposition." Soon after, Judge Francis expressed that a "conflict" existed that required Judge Boyd to resign from the municipal court, and he requested an opinion from the Advisory Committee on Extrajudicial Activities. In Advisory Letter No. 7-11, the Committee expressed the opinion that Judge Boyd could not continue to serve as a municipal court judge in the same municipality where his son is a police officer because the appearance of partiality or bias arising from a direct familial relationship with law enforcement was too great to overcome by simply transferring the son's cases out of the municipality. The Court granted Judge Boyd's petition for review. [212 N.J. 570, 58 A.3d 1175 \(2011\)](#).

**HELD:** A fully informed and reasonable person could question a judge's ability to be impartial in ruling on matters concerning law enforcement colleagues of the

judge's child. Thus, consistent with the canons of the *Code of Judicial Conduct*, a municipal court judge whose child becomes a police officer in the same municipality may not hear any cases involving [\*\*\*3] that police department. The judge also may not supervise other judges who hear those cases.

1. Each year, the only experience millions of people will have with our judicial system will be in municipal court. The public will lose faith in the justice system if it believes judges are hearing cases despite conflicting interests that strain their ability to be impartial. The mere appearance of bias can erode respect for the judiciary. Thus, "ensuring both conflict-free, fair hearings and the appearance of impartiality in municipal court is vital" to maintaining public confidence in our justice system. [State v. McCabe, 201 N.J. 34, 987 A.2d 567\(2010\)](#). (pp. 8-9)

2. All judges must abide by the canons of the [Code of Judicial Conduct. Canon 1](#) states that a judge "should personally observe [] high standards of conduct so that the integrity and independence of the judiciary may be preserved." This recognizes that judges are the personification of the judicial system and that public respect for the system depends on judges' conduct on and off the bench. Canon 2 exhorts judges to avoid "the Appearance of Impropriety in All Activities." [Canon 2](#) provides that judges "should act at all times in a manner that promotes [\*\*\*4] public confidence in the integrity and impartiality of the judiciary" and "should not allow family . . . or other relationships to influence" their judgment. The commentary emphasizes that judges must be sensitive to public perception. They must avoid even the "appearance of impropriety" and must willingly accept restrictions on their personal conduct that ordinary citizens might find burdensome. (pp. 9-11)

3. A judge should disqualify himself in a case "in which the judge's impartiality *might reasonably* be questioned." Canon 3(C)(1). Disqualification is required if a close relative is a party, has an interest in the outcome of the case, or is likely to be a witness. [Rule 1:12-1](#) requires disqualification if the judge's child is a party or attorney in the case. If the child is an attorney in an office, disqualification is required in cases involving the child's partners, employers, employees or "office associates." [R. 1:12-1\(b\)](#). A judge whose son was an assistant prosecutor in the same county was required to disqualify himself from hearing criminal cases presented by the county prosecutor's office, even though the judge's son was not involved in the case. That was so because the judge's [\*\*\*5] son was "an office associate" of the

prosecutor who tried the case. *State v. Connolly*, 120 N.J. Super. 511, 295 A.2d 204(App. Div.), certif. denied, 62 N.J. 88, 299 A.2d 86 (1972). *Rule 1:12-1(g)* requires judges to disqualify themselves "when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." *Rule 1:12-1(g)* and Canon 3(C)(1) are intended to apply to scenarios that cannot be neatly catalogued. (pp. 11-13)

4. To implement the Code, the Court adopted *Guidelines for Extrajudicial Activities* (1987), which instruct judges to "always guard against the appearance of bias or partiality." Judges can also find direction in the *Annotated Guidelines for Extrajudicial Activities* (Nov. 2007), a catalogue of Advisory Committee opinion summaries. A clear theme of many opinions is that judges must avoid any appearance of having a special relationship with law enforcement. The purpose of our judicial disqualification provisions is to maintain public confidence in the integrity of the judicial process. This requires judges to avoid acting in any way that might be perceived as partial. (pp. 13-15)

5. Judge Boyd presides over [\*\*\*6] cases involving violations of motor vehicle laws, ordinances, and the Code of Criminal Justice. Perth Amboy police officers will offer testimony against a defendant, which, if believed, will lead to a conviction for which the judge may impose a jail sentence, license suspension, or fines. A reasonable and fully informed person, knowing that Judge Boyd's son is a Perth Amboy police officer, would have doubts about his impartiality in deciding a case that pits the credibility of an officer against that of a litigant. *Connolly* involved the explicit disqualification provisions of Canon 3(C)(1) and *Rule 1:12-1(b)* because the judge's son was a lawyer in the prosecutor's office. The logic of *Connolly* is at least as compelling when a judge's son is a police officer in the same municipality. Also, *Connolly* applied to a judge hearing a jury trial. As a municipal court judge, Judge Boyd is the fact-finder. He must render final judgment on the credibility of his son's colleagues, including his son's supervisors and patrol partners. Judge Boyd might have to issue rulings that would be displeasing to Officer Boyd's fellow officers. It would not be unnatural for a father to ponder the consequences [\*\*\*7] of his decisions on his son's career-even if he were to do his best to disregard such considerations in deciding a case. It is the appearance of the conflict between public duty and filial ties that will strain public confidence in the integrity of the judicial process. The issue is not whether Judge Boyd can maintain impartiality in cases involving Perth Amboy

police officers. Because the workings of a judge's mind cannot be put on display, public perception matters. Judges must appear to be impartial. (pp. 16-18)

6. The separation between municipal court judges and local law enforcement authorities must be as near complete as possible. If a judge's impartiality might reasonably be questioned, disqualification is mandated. Judge Boyd's involvement in cases involving his son or his son's colleagues on the police force might raise reasonable questions in the minds of litigants and the public about the fairness of the proceedings and the overall integrity of the process. The Court agrees with the opinion of the Advisory Committee on Extrajudicial Activities that Judge Boyd may not sit on any case involving the Perth Amboy Police Department or serve as the chief judge supervising the two [\*\*\*8] judges who decide such cases. Judge Boyd may continue to preside over other matters. The municipality and Judge Boyd are in the best position to decide whether his continued presence on the court is warranted to handle the remaining cases, including conflict cases transferred to the Perth Amboy Municipal Court from other municipalities.(pp. 18-20)

**Counsel:** *Frank E. Catalina* argued the cause for appellant George M. Boyd (*Margulies Wind*, attorneys; *George M. Boyd*, submitted a brief pro se).

*Kim D. Ringler*, Deputy Attorney General, argued the cause for respondent Supreme Court of New Jersey Advisory Committee on Extrajudicial Activities (*Jeffrey S. Chiesa*, Attorney General, attorney).

**Judges:** JUSTICE ALBIN delivered the opinion of the Court. CHIEF JUSTICE RABNER; JUSTICES LaVECCHIA, HOENS and PATTERSON; and JUDGES RODRIGUEZ and CUFF (both temporarily assigned) join in JUSTICE ALBIN's opinion.

**Opinion by:** ALBIN

## Opinion

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[\*\*137] [\*\*\*65] JUSTICE ALBIN delivered the opinion of the Court.

The figure of justice blindfolded, holding a scale equally balanced, is a common feature atop many courthouses. That symbol carries a simple message -- all stand before the law as equals, and justice will be

administered fairly and impartially. If the public is to [\*\*\*9] keep faith in the ideals represented by that symbol, then it must have complete confidence in the integrity of the judges who administer our system of justice. That confidence will come only when judges are above reproach and suspicion in the eyes of those [\*66] who appear in their courtrooms. Appearances matter when justice is dispensed, and therefore public perception that a judge might be partial to one party over another -- whether true or not -- cannot be reconciled with the ideal of blind justice.

This case involves a long-serving and respected chief municipal court judge whose son has become a member of the police force in the same municipality where he presides. The issue is whether the judge may hear cases involving police officers who serve in the same police department as his son. We hold that, consistent with the canons of the *Code of Judicial Conduct* and our case law, he may not. That is so because a fully informed and reasonable person, particularly a litigant, could question the judge's ability to be impartial in issuing rulings on matters concerning his son's law enforcement colleagues. We therefore conclude that he may not hear cases involving police department officers and [\*\*\*10] employees who serve with his son in the same municipality where he presides as a judge, nor may he act as the chief judge supervising other judges who hear such cases.

I.

A.

George M. Boyd has served as a municipal court judge in the City of Perth Amboy [\*\*138] since 1991.<sup>1</sup> As the court's chief judge, he has exercised administrative responsibilities and has supervised two other municipal court judges. Together, all three judges hold at least six court sessions each week in the Perth Amboy Municipal Court. No one has raised any question about Judge Boyd's ability or integrity during his years of service on the bench. The sole issue is whether his son's appointment as a police officer in Perth Amboy creates either a conflict or the appearance of a conflict of interest in Judge Boyd's presiding over cases involving the Perth Amboy Police Department.

[\*67] In July 2010, Ethan Boyd, the judge's then twenty-seven year-old son, was sworn in as a police officer in the Perth Amboy Police Department, and, after

<sup>1</sup> He also serves as a municipal court judge in Monroe Township.

training at the police academy, entered active service on January 1, 2011. Officer Boyd was born, raised, and educated in Perth Amboy, but [\*\*\*11] had not resided with his parents in the five years preceding his employment as a police officer.

During the week of his son's swearing-in ceremony, Judge Boyd advised Middlesex County Assignment Judge Travis Francis of his son's appointment as a Perth Amboy police officer. By letter dated November 17, 2010, Judge Boyd expressed to Judge Francis his intent to disqualify himself from any case involving his son. He left to Judge Francis to decide whether his son's cases should be assigned to the other two Perth Amboy Municipal Court judges or transferred to a judge of a neighboring municipal court. On December 1, 2010, Judge Francis informed Judge Boyd that "all cases involving [his] son shall be transferred to a neighboring court for disposition."

On March 1, 2011, based on his reading of Administrative Directive # 1-92 (Jan. 1, 1992), Judge Francis expressed to Judge Boyd that a "conflict" existed that required "his resignation from the Perth Amboy Municipal Court bench." Directive # 1-92 is entitled "Supreme Court Policy Governing Municipal Court Administrators and Deputy Administrators Who are Married To or are the Parents or Children of Police Officers." The Directive, among other [\*\*\*12] things, prohibits the appointment of a municipal court administrator or deputy court administrator whose child is a police officer in the same municipality. *Ibid.* Under the Directive, an administrator is not subject to removal if, after appointment, the administrator's "child becomes a police officer." *Ibid.* In that circumstance, however, the administrator is disqualified from any involvement in a matter concerning his or her child. *Ibid.*

Judge Boyd took the position that Directive # 1-92 did not apply to municipal court judges. Ten days later, Judge Francis requested by email that the Advisory Committee on Extrajudicial [\*68] Activities (Advisory Committee) render an opinion on the issue.<sup>2</sup> On March

<sup>2</sup> The Supreme Court appoints the members of the Advisory Committee. [R. 1:18A-1](#). As of March 2011, the Committee was composed of seven sitting judges, two retired judges, a practicing attorney, and a public member. The Advisory Committee "accepts inquiries concerning extrajudicial activities" from judges. [R. 1:18A-2](#). "In every matter, the secretary [of the Committee] shall convey the Committee's response in writing to the judge making the inquiry. Such written response to the judge shall be in the form of [\*\*\*13] an

17, 2011, Judge Boyd wrote to the Committee, explaining that Directive # 1-92 "dealt specifically with court administrators and deputy court administrators" and that he was unaware of any "directive which deals directly with a similar issue involving municipal court **[\*\*139]** judges." Alternatively, he noted that even if Directive # 1-92 did apply, his son became "a police officer after [his] continual appointment and service as a municipal judge." Last, he emphasized that the steps taken to transfer cases involving his son served to "cure any conflict."

B.

On April 8, 2011, the Committee issued to Judge Francis -- the requestor -- Advisory Letter No. 7-11. The Advisory Committee expressed its opinion that Judge Boyd could "not continue to serve as the Chief Municipal Court Judge in the same municipality where his son is a police officer." In the Committee's view, "transferring the son's cases out of the municipality [did] not serve to rectify the conflict." Ultimately, "the Committee believe[d] that because the conflict arises from a direct familial relationship with law enforcement, the appearance of partiality or bias is too great to overcome." In reaching **[\*\*\*14]** that conclusion, the Committee relied on the canons of the *Code of Judicial Conduct*, in particular [Canon 2](#) ("A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.") and [Canon 2\(A\)](#) ("A judge should . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.").

**[\*69]** On April 14, Judge Francis provided the Advisory Letter to Judge Boyd and then contacted the Committee to determine whether Judge Boyd's resignation as the chief judge of the municipal court would put him in compliance with the *Code of Judicial Conduct*. That same day, the Committee responded that, in its view, "Judge Boyd may neither sit as the Chief Municipal Court Judge nor as Municipal Court Judge in Perth Amboy where his son also serves as a police officer."

Judge Boyd then filed with the Committee a request for reconsideration of Advisory Letter No. 7-11. See [R. 1:18A-6](#). Judge Boyd noted again that Directive # 1-92 only requires disqualification, not removal, of a court administrator whose child becomes a police officer. Judge Boyd urged the Committee to consider that its "advisory opinion would . . . have [an] 'excessively severe' and **[\*\*\*15]** profound impact upon [his] personal life and economic livelihood," (quoting Directive # 1-92).

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informal opinion." [R. 1:18A-4](#).

The Advisory Committee did not modify its earlier opinion. It advised Judge Boyd that he "may not continue to serve as a Municipal Court judge, even without supervisory responsibilities, in the same municipality where [his] son is a police officer." The Committee hewed to the position that Judge Boyd's "close familial relationship with law enforcement in the same municipality" where he sits as a judge gives rise to an irredeemable conflict of interest. The Committee maintained that "the potential for the appearance of a lack of impartiality or bias is too great to overcome."

We granted Judge Boyd's petition for review. [IMO Advisory Letter No. 7-11 of the Supreme Court Advisory Comm. on Extrajudicial Activities, 212 N.J. 570, 58 A.3d 1175 \(2011\)](#).

II.

A.

Judge Boyd argues that the Advisory Committee's opinion "fails to take into consideration the profound impact, both economic and professional, that the opinion would have on [him] and, **[\*70]** tangentially, on [his] police officer son." He maintains that "the simple and traditional expedient" of having all three Perth Amboy Municipal Court judges disqualify themselves **[\*\*\*16]** from hearing matters involving **[\*\*140]** his son "completely cure[s]" any potential appearance of partiality. He does not believe that there is a "logical basis to assume that an appearance of bias or partiality could arise" from his hearing cases involving other Perth Amboy police officers -- cases in which his son has played no part.

The ultimate question, based on our jurisprudence, is whether a reasonable person, fully informed that Judge Boyd's son is a Perth Amboy police officer -- say, a defendant charged with a violation or offense by a Perth Amboy police officer who will testify against him -- would have doubts about Judge Boyd's impartiality in deciding the case. The answer to that question is important not only to Judge Boyd, but also to the public whose most frequent contact with our judicial system is in municipal court.

B.

Each year, the only experience that millions of New Jersey residents and non-residents will have with our judicial system will be in our municipal courts. [State v. McCabe, 201 N.J. 34, 42, 987 A.2d 567 \(2010\)](#) (citing [In re Mattera, 34 N.J. 259, 275, 168 A.2d 38 \(1961\)](#)). Because for most members of the public, municipal

court "is the court of first and last resort," *In re Samay*, 166 N.J. 25, 43-44, 764 A.2d 398 (2001), "municipal [\*\*\*17] court judges are the face of the Judiciary," *McCabe, supra*, 201 N.J. at 42, 987 A.2d 567. The public will pass judgment on our entire justice system based primarily on their impressions of the judges who preside in our municipal courts. See *ibid*. Certainly, the public will lose faith in our justice system if it believes that judges are hearing cases despite conflicting interests that strain their ability to be impartial. [HN1](#) [↑] The mere appearance of bias in a judge -- however difficult, if not impossible, to quantify -- is sufficient to erode respect for the judiciary. See *DeNike v. Cupo*, 196 N.J. 502, 514, 958 A.2d 446 (2008). To that end, judges must "refrain . . . from sitting in any [\*71] causes where their objectivity and impartiality may fairly be brought into question." *Ibid*. (quoting *State v. Deutsch*, 34 N.J. 190, 206, 168 A.2d 12 (1961)).

Therefore, "ensuring both conflict-free, fair hearings and the appearance of impartiality in municipal court is vital" to maintaining public confidence in our system of justice. *McCabe, supra*, 201 N.J. at 42, 987 A.2d 567. To accomplish that goal, we have in place exacting standards of judicial conduct to which we now turn.

C.

[HN2](#) [↑] All judges in New Jersey must abide by the *Code of Judicial Conduct*. *R. 1:18*.<sup>3</sup> [\*\*\*18] The Code is comprised of seven canons that provide both broad and specific standards governing the conduct of judges. *Code of Judicial Conduct*, Pressler&Verniero, *Current N.J. Court Rules*, Appendix to Part 1 at 481 (2013). The canons set a high bar by which judges must guide themselves. They are not just aspirational yearnings but enforceable rules, and they certainly "are not mere platitudes." *In re Seaman*, 133 N.J. 67, 95, 627 A.2d 106 (1993). The overarching objective of the *Code of Judicial Conduct* is to maintain public confidence in the integrity of the judiciary. *Id.* at 96, 627 A.2d 106. A review of the relevant canons and accompanying commentary will shed light on their application to this case.

[\*\*141] [HN3](#) [↑] *Canon 1*, in part, proclaims that a judge "should personally observe [] high standards of conduct so that the integrity and independence of the

judiciary may be preserved." This canon recognizes that judges are the personification of the judicial system and that public respect for that system [\*\*\*19] depends on how jurists comport themselves on and off the bench.

[\*72] Correspondingly, *Canon 2* exhorts judges to avoid "the Appearance of Impropriety in All Activities." *Canon 2* provides that a judge "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary," *Canon 2(A)*, and "should not allow family, social, political, or other relationships to influence judicial conduct or judgment," *Canon 2(B)*. The commentary to *Canon 2* emphasizes that judges must be sensitive to public perception. Thus, a judge must avoid even the "appearance of impropriety and must expect to be the subject of constant public scrutiny." *Code of Judicial Conduct, supra*, comment on *Canon 2*. Additionally, judges must "accept restrictions on personal conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." *Ibid*.

*Canon 3(C)* [HN4](#) [↑] counsels judges on when recusal is appropriate. *Canon 3(C)(1)* instructs that "[a] judge should disqualify himself or herself in a proceeding in which the judge's impartiality *might reasonably* be questioned." (Emphasis added). For instance, disqualification is mandated whenever a "judge has a personal [\*\*\*20] bias . . . concerning a party." *Canon 3(C)(1)(a)*. Moreover, a judge must disqualify himself if a close relative,<sup>4</sup> such as a son, "is a party to the proceeding," *Canon 3(C)(1)(e)(i)*, "is known by the judge to have an interest that could be affected by the outcome of the proceeding," *Canon 3(C)(1)(e)(iii)*, or "is to the judge's knowledge likely to be a witness in the proceeding," *Canon 3(C)(1)(e)(iv)*.

*Rule 1:12-1*, [HN5](#) [↑] cited by *Canon 3(C)*, provides additional guidance on disqualification when close relatives are parties or attorneys in a case.<sup>5</sup> A "judge of any court shall be disqualified on the court's [\*73] own motion and shall not sit in any matter, if" his or her child


<sup>4</sup> We refer to a close relative for ease of reference. *Canon 3(C)(1)(e)* uses the more precise term of "a person within the third degree of relationship to either" the judge or the judge's spouse.

<sup>5</sup> The [\*\*\*21] disqualification rule applies "if the judge (a) is by blood or marriage the second cousin of or is more closely related to any party to the action; [or] (b) is by blood or marriage the first cousin of or is more closely related to any attorney in the action." *R. 1:12-1(a)* and *(b)*.

<sup>3</sup> Administrative Directive # 1-92, which was the subject of much discussion between Judge Boyd and Judge Francis, applies to municipal court administrators, and not municipal court judges, and therefore is not part of our analysis.

is either a party or an attorney in an action. [R. 1:12-1\(a\)](#) and [\(b\)](#). Where the judge's child is an attorney in a firm or office, disqualification is also mandated in cases involving "the partners, employers, employees or office associates of any such attorney except where the Chief Justice for good cause otherwise permits." [R. 1:12-1\(b\)](#).


For example, under [Rule 1:12-1\(b\)](#), an Essex County trial judge, whose son was an assistant prosecutor in the same county, was required to disqualify himself from hearing criminal cases presented by the Essex County Prosecutor's Office. [State v. Connolly, 120 N.J. Super. 511, 514-15, 295 A.2d 204 \(App.Div.\), certif. denied, 62 N.J. 88, 299 A.2d 86 \(1972\)](#). It made no difference that "the judge's son never participated in any way in the preparation of the case or the conduct of the trial." [Id. at 515, 295 A.2d 204](#). The disqualification provision of [Rule 1:12-1\(b\)](#) applied because "[t]he judge's son was, at least, an office **[\*\*142]** associate of the attorney who tried the case for the prosecutor." *Ibid.*

**HNG**  The final catch-all provision, [Rule 1:12-1\(g\)](#), requires judges to disqualify themselves "when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." [Rule 1:12-1\(g\)](#) **[\*\*\*22]** -- like [Canon 3\(C\)\(1\)](#), which mandates disqualification when a "judge's impartiality might reasonably be questioned" -- is intended to apply to scenarios that cannot be neatly catalogued. See [State v. Tucker, 264 N.J. Super. 549, 554, 625 A.2d 34 \(App.Div.1993\)](#) ("The situations in which a judge should grant a motion for recusal are varied . . . ."), *certif. denied, 135 N.J. 468, 640 A.2d 850 (1994)*. Thus, "[n]either [Canon 3C](#) nor [Rule 1:12-1](#) recite an exclusive list of circumstances which disqualify a judge and require recusal from a matter." [State v. Kettles, \[74\] 345 N.J. Super. 466, 470, 785 A.2d 925 \(App.Div.2001\), certif. denied, 171 N.J. 443, 794 A.2d 182 \(2002\)](#).


This Court has also adopted *Guidelines for Extrajudicial Activities* (1987), available at [http://njlegallib.rutgers.edu/misc/ExtraJudicial\\_Guidelines\\_1995.pdf](http://njlegallib.rutgers.edu/misc/ExtraJudicial_Guidelines_1995.pdf) ("Guidelines") to implement the *Code of Judicial Conduct*. Significantly, consonant with [Canon 3\(C\)\(1\)](#) and [Rule 1:12-1\(g\)](#), the Guidelines instruct judges to "always guard against the appearance of bias or partiality or the perception of prejudgment of issues likely to come before them." Guideline II. B.

Judges can find further direction through ethical thickets by referring to a booklet entitled *Annotated Guidelines for Extrajudicial [\*\*\*23] Activities* (Nov. 2007), available

at [http://njlegallib.rutgers.edu/misc/Extrajudicial\\_Guidelines\\_2007.pdf](http://njlegallib.rutgers.edu/misc/Extrajudicial_Guidelines_2007.pdf). The booklet catalogues a summary of opinions issued by the Advisory Committee. Many of those opinions carry a clear theme -- judges must avoid any appearance of having a special relationship or an entangling alliance with law enforcement. See, e.g., *id.* at 25, *Opinion 19-88* ("Judges may not attend a dinner to honor a prosecutor . . . . Attendance might create an appearance of favoring law enforcement."); *id.* at 4, *Opinion 71-94* ("Superior Court judge may not assist a police department in developing a training video for their officers . . . ."); *id.* at 29-30, *Opinion 24-00* (finding that municipal court judge should not attend retirement dinner for police chief of same municipality as attendance "undermines the structural separation of the court from the police that is necessary to preserve the appearance of [the court's] independence and impartiality"); *id.* at 6, *Opinion 16-04* (finding that municipal court judge serving as hearing officer for internal police disciplinary actions in different municipality "could create the appearance of bias or partiality").

**HNT**  It is clear from the canons **[\*\*\*24]** of the *Code of Judicial Conduct*, the Court Rules, and the *Guidelines for Extrajudicial Activities* that "justice must satisfy the appearance of justice." [Deutsch, supra, 34 N.J. at 206, 168 A.2d 12](#) (quoting [Offutt v. \[75\] United States, 348 U.S. 11, 14, 75 S. Ct. 11, 13, 99 L. Ed. 11, 16 \(1954\)](#)). The purpose of our judicial disqualification provisions "is to maintain public confidence in the integrity of the judicial process, which in turn depends on a belief in the impersonality of judicial decision making." [United States v. Nobel, 696 F.2d 231, 235 \(3d Cir.1982\)](#) (emphasis added), *cert. denied, 462 U.S. 1118, 103 S. Ct. 3086, 77 L. Ed. 2d 1348 (1983)*. Even a "righteous judgment" will not find acceptance in the public's mind unless the judge's impartiality and fairness are above suspicion. [State v. Muraski, 6 N.J. Super. 36, 38, 69 A.2d 745 \(App.Div.1949\)](#). In other words, judges must avoid acting in . . . a manner **[\*\*143]** that may be perceived as partial," otherwise the integrity of the judicial process will be cast in doubt. [DeNike, supra, 196 N.J. at 514, 958 A.2d 446](#).

D.

In summary, **HNG**  disqualification is mandated if a "judge's impartiality might reasonably be questioned," [Canon 3\(C\)\(1\)](#), or if there is a basis "which might reasonably **[\*\*\*25]** lead counsel or the parties to believe" that the judge is unable to render a "fair and

unbiased . . . judgment," [R. 1:12-1\(g\)](#). Thus, judges must "refrain . . . from sitting in any causes where their objectivity and impartiality may fairly be brought into question." [DeNike, supra, 196 N.J. at 514, 958 A.2d 446](#) (quoting [Deutsch, supra, 34 N.J. at 206, 168 A.2d 12](#)). Those principles have been distilled to a simple question: "Would a reasonable, fully informed person have doubts about the judge's impartiality?" [Id. at 517, 958 A.2d 446](#).

We now apply the facts of this case to that question.

III.

A.

As a judge of the Perth Amboy Municipal Court, Judge Boyd presides over cases involving violations of state motor vehicle laws and municipal ordinances, provisions of the New Jersey Code of [\[\\*76\]](#) Criminal Justice, and other laws. See [McCabe, supra, 201 N.J. at 41-42, 987 A.2d 567](#). The vast majority of those cases will be initiated when a Perth Amboy police officer files a summons or complaint. Further, in most of those cases Perth Amboy police officers will offer testimony, which, if believed, will lead to a conviction. Depending on the nature of the conviction, a municipal court judge may have authority to impose a jail sentence, a license suspension, a [\[\\*\\*\\*26\]](#) significant fine, and/or restitution.

Would a reasonable, fully informed person, knowing that Judge Boyd's son is a Perth Amboy police officer, have doubts about Judge Boyd's impartiality in deciding a case that pits the credibility of a Perth Amboy police officer against that of a litigant? We believe that the answer to that question is yes. If a Superior Court judge, whose son is an Assistant Prosecutor, must disqualify himself from a criminal case presented by an Assistant Prosecutor who works in the same office as his son, [Connolly, supra, 120 N.J. Super. at 514-15, 295 A.2d 204](#), the same result should apply with equal if not greater force in this case. It is true that in [Connolly](#) the judge faced the explicit disqualification provisions of [Canon 3\(C\)\(1\)\(e\)\(ii\)](#) and [Rule 1:12-1\(b\)](#) because his son was a *lawyer* in the prosecutor's office. [Connolly, supra, 120 N.J. Super. at 514, 295 A.2d 204](#). But the logic of [Connolly](#) is at least as compelling in its application to a municipal court judge whose son is a police officer in the same municipality where he presides. Moreover, [Connolly](#) applied to a judge hearing a jury trial. [Id. at 515, 295 A.2d 204](#). Municipal court judges, such as Judge Boyd, are the actual fact-finders.

In his [\[\\*\\*\\*27\]](#) capacity as a municipal court judge trying

routine cases involving police witnesses, Judge Boyd must render final judgment on the credibility of his son's colleagues, some of whom may be his supervisors, others of whom may be his partners on patrol, and many of whom may be his friends. In some instances, Judge Boyd might have to issue adverse rulings against the police department that would be extremely displeasing to Officer Boyd's fellow officers. It would not be unnatural for any father to ponder [\[\\*77\]](#) the consequences of his decisions on the life and career of his son -- even if he were to do his best to disregard such extraneous considerations in deciding a case. It is the appearance [\[\\*\\*144\]](#) of the conflict between public duty and filial ties that will strain public confidence in the integrity of the judicial process.

The issue is not whether Judge Boyd can faithfully maintain impartiality in cases involving Perth Amboy police officers who serve with his son. The workings of his mind cannot be put on display. That is why public perception matters. Judges must appear to be impartial, for in a democracy the standing of our system of justice depends on the people's confidence in the judicial process. [\[\\*\\*\\*28\]](#) In any particular case, Judge Boyd will have to decide whether to accept the credibility of a citizen-litigant over that of a Perth Amboy police officer. Will the litigant reasonably believe that, given Judge Boyd's filial ties to the Perth Amboy Police Department, he will receive a fair shake or that the scales of justice are tilted against him? Ultimately, a litigant should not be left to wonder about the judge's objectivity or impartiality.

[HN9](#)<sup>↑</sup> The separation between our municipal court judges and the local law enforcement authorities must be as near complete as possible, a point made clear in opinions issued by the Advisory Committee on Extrajudicial Activities. If a "judge's impartiality might reasonably be questioned," disqualification is mandated. [Canon 3\(C\)\(1\)](#); accord [DeNike, supra, 196 N.J. at 517, 958 A.2d 446](#). We believe that Judge Boyd's involvement in cases involving either his son or his son's colleagues on the police force might raise "reasonable questions in the minds of litigants and the public about the fairness of the proceedings and the overall integrity of the process." See [McCabe, supra, 201 N.J. at 46, 987 A.2d 567](#).

Accordingly, Judge Boyd may not sit on any case involving the Perth Amboy Police [\[\\*\\*\\*29\]](#) Department nor may he serve as Chief Judge supervising the two judges who adjudicate matters pertaining to Perth Amboy Police Department officers and employees.

[\*78] B.

Judges must comply with extremely high standards of conduct, on and off the bench. To be sure, meeting those standards imposes considerable personal and professional burdens on members of the judiciary -- burdens that may require significant sacrifices by judges and their families. Those standards are for the benefit of the public whom we, as judges, serve in administering our system of justice. By requiring disqualification whenever a fully informed person might reasonably question the impartiality of a judge, we guarantee that the judicial process will retain its high, preferred place in our democracy.

IV.

We agree with the Advisory Committee on Extrajudicial Activities and hold that Judge Boyd may not serve as Chief Judge of the Perth Amboy Municipal Court or hear any cases involving the Perth Amboy Police Department or its employees. Judge Boyd may continue to preside over other matters. The municipality and Judge Boyd are in the best position to decide whether his continued presence on the court is warranted to handle the [\*\*\*30] remaining cases, including conflict cases transferred to the Perth Amboy Municipal Court from other municipalities.

CHIEF JUSTICE RABNER; JUSTICES LaVECCHIA, HOENS and PATTERSON; and JUDGES RODRIGUEZ and CUFF (both temporarily assigned) join in JUSTICE ALBIN's opinion.

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# Appendix L

## [N.J. Stat. § 2B:12-4](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60 (except c. 58, 59), and J.R. 3

**LexisNexis® New Jersey Annotated Statutes > Title 2B. Court Organization and Civil Code (Chs. 1 — 50) > Chapter 12. Municipal Courts (§§ 2B:12-1 — 2B:12-33)**

### **§ 2B:12-4. Judge of municipal court; term of office appointment**

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**a.** Each judge of a municipal court shall serve for a term of three years from the date of appointment and until a successor is appointed and qualified. Any appointment to fill a vacancy not caused by the expiration of term shall be made for the unexpired term only. However, if a county or municipality requires by ordinance that the judge of the municipal court devote full time to judicial duties or limit the practice of law to non-litigated matters, the first appointment after the establishment of that requirement shall be for a full term of three years.

**b.** In municipalities governed by a mayor-council form of government, the municipal court judge shall be appointed by the mayor with the advice and consent of the council. Each judge of a joint municipal court shall be nominated and appointed by the Governor with the advice and consent of the Senate. In all other municipalities, the municipal judge shall be appointed by the governing body of the municipality.

**c.** In a county that has established a central municipal court, the judge of the central municipal court shall be nominated and appointed by the Governor with the advice and consent of the Senate. In those counties having a county executive, the county executive may submit the names of judicial candidates for judge of the central municipal court to the Governor. In all other counties, the governing body may submit the names of judicial candidates for judge of the central municipal court to the Governor.

### **History**

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L. [1993, c. 293](#), § 1; amended [1996, c. 95](#), § 3.

Annotations

### **LexisNexis® Notes**

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### **Case Notes**

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**Governments: Courts: Creation & Organization**

**Governments: Courts: Judges**

**Governments: Local Governments: Duties & Powers**

**Governments: Local Governments: Employees & Officials**

**Governments: Local Governments: Police Power**

**Legal Ethics: Judicial Conduct****Legal Ethics: Law Firms****Governments: Courts: Creation & Organization**

To the extent that N.J. Stat. Ann. § [2B:12-1\(c\)](#) and N.J. Stat. Ann. § [2B:12-4\(b\)](#) conflict, the more specific terms of N.J. Stat. Ann. § [2B:12-1\(c\)](#), which does not allow municipalities choosing to share municipal court services to appoint their own individual judges, controls over the broader statement in N.J. Stat. Ann. § [2B:12-4\(b\)](#). *In re Municipal Court of Borough of East Newark, 390 N.J. Super. 513, 915 A.2d 1116, 2006 N.J. Super. LEXIS 349 (Law Div. 2006)*.

To the extent N.J. Stat. Ann. § [2B:12-1\(c\)](#) and N.J. Stat. Ann. § [2B:12-4\(b\)](#) conflict, the more specific terms of N.J. Stat. Ann. § [2B:12-1\(c\)](#), which does not allow municipalities choosing to share municipal court services to appoint their own individual judges, controls over the broader statement in N.J. Stat. Ann. § [2B:12-4\(b\)](#). *In re Municipal Court of Borough of East Newark, 390 N.J. Super. 513, 915 A.2d 1116, 2006 N.J. Super. LEXIS 349 (Law Div. 2006)*.

Creation of local offices by ordinance, pursuant to former N.J. Rev. Stat. § [40:48-1](#), was not applicable to the position of magistrate when that position was mandated by the legislature as part of a state judicial system plan under former N.J. Stat. Ann. § [2A:8-5](#) (now N.J. Stat. Ann. § [2B:12-4](#)). *Krieger v. Jersey City, 27 N.J. 535, 143 A.2d 564, 1958 N.J. LEXIS 219 (N.J. 1958)*.

**Governments: Courts: Judges**

To the extent that N.J. Stat. Ann. § [2B:12-1\(c\)](#) and N.J. Stat. Ann. § [2B:12-4\(b\)](#) conflict, the more specific terms of N.J. Stat. Ann. § [2B:12-1\(c\)](#), which does not allow municipalities choosing to share municipal court services to appoint their own individual judges, controls over the broader statement in N.J. Stat. Ann. § [2B:12-4\(b\)](#). *In re Municipal Court of Borough of East Newark, 390 N.J. Super. 513, 915 A.2d 1116, 2006 N.J. Super. LEXIS 349 (Law Div. 2006)*.

To the extent N.J. Stat. Ann. § [2B:12-1\(c\)](#) and N.J. Stat. Ann. § [2B:12-4\(b\)](#) conflict, the more specific terms of N.J. Stat. Ann. § [2B:12-1\(c\)](#), which does not allow municipalities choosing to share municipal court services to appoint their own individual judges, controls over the broader statement in N.J. Stat. Ann. § [2B:12-4\(b\)](#). *In re Municipal Court of Borough of East Newark, 390 N.J. Super. 513, 915 A.2d 1116, 2006 N.J. Super. LEXIS 349 (Law Div. 2006)*.

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**Governments: Local Governments: Duties & Powers**

Board of commissioners, not the head of any one department, was the “governing body” of the city designated to act as statutory agent under former N.J. Stat. § [2A:8-5](#) (now N.J. Stat. Ann. § [2B:12-4](#)) appointing a municipal court magistrate to exercise the power of the state court system. *Kagan v. Caroselli, 30 N.J. 371, 153 A.2d 17, 1959 N.J. LEXIS 183 (N.J. 1959)*.

Board of commissioners, not the head of any one department, was the “governing body” of the city designated to act as statutory agent appointing a municipal court magistrate, in accordance with former N.J. Stat. Ann. § [2A:8-5](#)

## N.J. Stat. § 2B:12-4

(now N.J. Stat. Ann. § [2B:12-4](#)), to exercise the power of the state court system. [Kagan v. Caroselli, 30 N.J. 371, 153 A.2d 17, 1959 N.J. LEXIS 183 \(N.J. 1959\)](#).

**Governments: Local Governments: Employees & Officials**

Appointment of a municipal judge was to be made by a municipal council and not by a mayor, because the municipality was not a mayor-council community provided by the Faulkner Act, former N.J. Stat. Ann. § [40:69A-139](#) et seq., as it was not “a mayor-council form” within the meaning of former N.J. Stat. Ann. § [2A:8-5](#) (see now N.J. Stat. Ann. § [2B:12-4](#)); the municipality could not have been a mayor-council community, because the mayor was also a council member. [In re Fairfield Township, 240 N.J. Super. 83, 572 A.2d 660, 1990 N.J. Super. LEXIS 104 \(App.Div.\)](#), certif. denied, 122 N.J. 315, 585 A.2d 336, 1990 N.J. LEXIS 961 (N.J. 1990).

Mayor's, city council's, and city's attempted term limitation of the municipal judge was improper under former N.J. Stat. Ann. § [2A:8-5](#) (now N.J. Stat. Ann. § [2B:12-4](#)), and subject to remedial action by the court; the municipal resolution was void, and sitting municipal judge was appointed by the court to the statutory three year term. [Levine v. Mayor of Passaic, 233 N.J. Super. 559, 559 A.2d 485, 1988 N.J. Super. LEXIS 519 \(Law Div. 1988\)](#), certif. denied, 117 N.J. 136, 564 A.2d 860, 1989 N.J. LEXIS 612 (N.J. 1989).

Where former N.J. Stat. Ann. § [2A:8-5](#) (now N.J. Stat. Ann. § [2B:12-4](#)) was amended to provide that vacancies could be filled for an unexpired term only, plaintiff's appointment was against public policy, and should have been set it aside because the entire township committee did not ask for the resignation of plaintiff's predecessor, but only a lame-duck majority who wished to keep the post in the hands of one of their political faith. [Higgins v. Denver, 85 N.J. Super. 277, 204 A.2d 597, 1964 N.J. Super. LEXIS 295 \(App.Div. 1964\)](#).

Municipality's resolution to abolish the office was set aside, even though the office had been appointed by a prior resolution of the municipality's governing body, and not by ordinance, and the resolution at issue had been adopted in the interest of the municipality's economy; former N.J. Stat. § [2A:8-5](#) (now N.J. Stat. Ann. § [2B:12-4](#)) declared that an office holder was to serve a three-year term and did not impliedly grant to the municipal governing body the power to abolish the office during such three-year term. [Krieger v. Jersey City, 48 N.J. Super. 280, 137 A.2d 437, 1958 N.J. Super. LEXIS 309 \(App.Div.\)](#), aff'd, 27 N.J. 535, 143 A.2d 564, 1958 N.J. LEXIS 219 (N.J. 1958).

**Governments: Local Governments: Police Power**

Mayor's, city council's, and city's attempted term limitation of the municipal judge was improper under former N.J. Stat. Ann. § [2A:8-5](#) (now N.J. Stat. Ann. § [2B:12-4](#)), and subject to remedial action by the court; the municipal resolution was void, and sitting municipal judge was appointed by the court to the statutory three year term. [Levine v. Mayor of Passaic, 233 N.J. Super. 559, 559 A.2d 485, 1988 N.J. Super. LEXIS 519 \(Law Div. 1988\)](#), certif. denied, 117 N.J. 136, 564 A.2d 860, 1989 N.J. LEXIS 612 (N.J. 1989).

**Legal Ethics: Judicial Conduct**

Part-time municipal judge did not violate [N.J. Code Jud. Conduct Canon 7A\(4\)](#) when the law firm he was one of two partners in made four political contributions from the joint business checking account. However, the ban on making political contributions from a law firm's business account was held to apply in the future not only to part-time municipal judges but to the law firm and the lawyers with whom they practice. [In re Boggia, 203 N.J. 1, 998 A.2d 949, 2010 N.J. LEXIS 701 \(N.J. 2010\)](#).

**Legal Ethics: Law Firms**

N.J. Stat. § 2B:12-4

Part-time municipal judge did not violate [N.J. Code Jud. Conduct Canon 7A\(4\)](#) when the law firm he was one of two partners in made four political contributions from the joint business checking account. However, the ban on making political contributions from a law firm's business account was held to apply in the future not only to part-time municipal judges but to the law firm and the lawyers with whom they practice. [In re Boggia, 203 N.J. 1, 998 A.2d 949, 2010 N.J. LEXIS 701 \(N.J. 2010\)](#).

## Research References & Practice Aids

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### LAW REVIEWS & JOURNALS:

[51 Rutgers L. Rev. 637.](#)

[53 Rutgers L. Rev. 1.](#)

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# Appendix M

## REAFFIRMATION OF THE JUDICIAL COMPACT PROCEDURE FOR RELATIONSHIP BETWEEN THE GOVERNOR AND THE NEW JERSEY STATE BAR ASSOCIATION

WHEREAS, since 1969, the Governor of the State of New Jersey and the New Jersey State Bar Association have found substantial public benefit in devising, developing and implementing a process for the nonpartisan evaluation of candidates for judicial and prosecutorial office; and

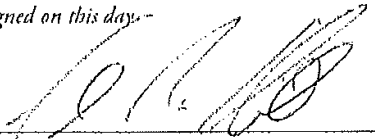
WHEREAS, the Governor and the New Jersey State Bar Association recognize the value of reaffirming such a process to assure the continued nomination of highly qualified judges and prosecutors;

THEREFORE, it is on this, 12<sup>th</sup> day of March 2018, agreed that the relationship between the Governor and the New Jersey State Bar Association with respect to the process of evaluating such candidates is, as follows:

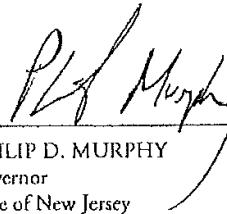
1. Names of candidates being considered by the Governor as nominees for judicial appointment or reappointment to the Supreme Court and Superior Court, and for appointment or reappointment as a County Prosecutor will be referred to the New Jersey State Bar Association (NJSBA) Judicial and Prosecutorial Appointments Committee ("State JPAC" or "Committee") for review and report to the Governor.
2. The State JPAC shall be appointed by the NJSBA and composed of NJSBA members. The membership of the State JPAC shall include at least one representative from each county in New Jersey and at least three additional members representing underrepresented segments of the legal profession.
3. In furtherance of this referral and review process, the Governor will submit to the State JPAC a completed questionnaire for each candidate providing biographical material regarding the candidate's educational background, professional qualifications, experience and civic activities.
4. The State JPAC shall meet with all candidates under consideration for an original appointment. If the Committee deems it appropriate, candidates for reappointment will appear before the Committee.
5. The State JPAC will contact the County Bar Association Judicial and Prosecutorial Appointments Committee ("County Committee") from the candidate's home county. The State JPAC shall provide a copy of the candidate questionnaire to the County Committee, which will interview the candidate and provide a recommendation of the County Committee to the State JPAC concerning the qualifications of the candidate.
6. Both the State JPAC and the County Committees are required to adhere to the uniform policies and procedures as set forth in the New Jersey State Bar Association's Judicial and Prosecutorial Appointments Committee Manual, as adopted and as may be amended.
7. The State JPAC will provide the Governor with a "Qualified" or "Not Qualified" determination for each candidate reviewed. When asked by the Governor, the State JPAC will also provide an explanation of its determination.

8. No member of the State JPAC or County Committees shall speak to anyone outside of the Committees, with the exception as noted in Paragraph 9 of this Compact, regarding deliberations or recommendations concerning any candidate. Strict confidentiality is particularly important in view of the fact that some candidates who come before the Committee may never be appointed.
9. The Chair of the State JPAC will communicate the Committee's determination of candidates to the Governor's office only. In the event the Governor appoints a nominee despite a "Not Qualified" determination by the State JPAC, the NJSBA may appear and testify before the State Senate Judiciary Committee concerning its determination and the reasons therefore.
10. The State JPAC will make every effort to make a recommendation to the Governor within twenty (20) calendar days of receiving a candidate's name. Recognizing the importance of providing the NJSBA with sufficient time to consider a candidate's qualifications and submit an accurate report to the Governor, the State JPAC may require more than twenty (20) calendar days to perform an evaluation and will timely notify the Governor when additional time is needed.

*Signed on this day:-*

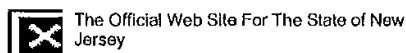


ROBERT B. HILLE  
President  
New Jersey State Bar Association



PHILIP D. MURPHY  
Governor  
State of New Jersey





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**State of New Jersey  
Executive Order #36**

**Governor Jon S. Corzine**

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WHEREAS, the fair and impartial administration of justice lies at the cornerstone of our system of government; and

WHEREAS, the citizens of New Jersey rightly insist on maintaining a standard of excellence for those entrusted to administer our courts; and

WHEREAS, the Governor has the authority and obligation to nominate highly qualified individuals to serve as judges in our courts; and

WHEREAS, by longstanding tradition, Senators have recommended judicial candidates to the Governor for vacant restricted seats; and

WHEREAS, the Governor nominates judges subject to the advice and consent of the Senate; and

WHEREAS, it is vitally important that the people be served by judges of the highest legal and ethical caliber;

NOW, THEREFORE, I, JON S. CORZINE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. A Judicial Advisory Panel is hereby established, whose mission will be to review the background and abilities of potential nominees to the judiciary. This Panel will meet periodically to consider the qualifications of attorneys for nomination to the Superior Court.
2. The Office of Chief Counsel will supply the Panel with a copy of the Confidential Judicial Questionnaire completed by each potential nominee. This questionnaire may be circulated only among the Panel's members and may be used only for purposes of the Panel's work pursuant to this Order.
3. The Panel will establish internal procedures for reviewing potential nominees in order to ensure consistency and fairness in the review process.
4. Upon completion of the review of a particular candidate, the Panel will submit a written evaluation to the Governor through the Office of Chief Counsel. The evaluations shall constitute advisory, consultative and deliberative materials for the Governor's review. In order to encourage complete candor in evaluating potential judicial candidates, these evaluations will remain confidential with the Governor and Counsel's Office. Confidential Judicial Questionnaires submitted by judicial candidates, written evaluations prepared by the Panel, and related documents shall be deemed to be confidential, non-public, and not subject to the Open Public Records Act, P.L. 1963, c. 73, as amended and supplemented.

5. The Governor will rely heavily on the Panel's evaluations in deciding whether to nominate an individual to the court.
6. In the event the Governor decides to proceed with a particular candidate, the Governor will then forward the prospective nominee's name to the State Bar Association for an independent, subsequent review. The Governor will likewise rely heavily on the State Bar's recommendation in deciding whether to submit an individual's nomination to the Senate for its advice and consent.
7. Consistent with Article VI, Section VI, Par. 1, of the New Jersey State Constitution, the Governor retains sole authority to determine whom to nominate to all judicial positions.
8. The Judicial Advisory Panel will be comprised of up to seven (7) members. The Panel shall include five (5) or more retired judges. The Panel may also include up to two (2) members of the public who are either non-lawyers or non-practicing lawyers. (Practicing attorneys participate in the review conducted by the State Bar Association; as a result, they are not being asked to serve on this Panel.)
9. Members of the Panel shall serve for a term of five (5) years.
10. This Order shall take effect immediately.

GIVEN, under my hand and seal this 22nd day of September, Two Thousand and Six, and of the Independence of the United States, the Two Hundred and Thirty-First.

/s/ Jon S. Corzine


Governor

[seal]

Attest:

/s/ Stuart Rabner

Chief Counsel to the Governor

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EXECUTIVE ORDER NO. 32

WHEREAS, the Governor has the constitutional responsibility to nominate judges subject to the advice and consent of the Senate; and

WHEREAS, Executive Order No. 36 (2006) formalized a long standing practice whereby the Governor seeks the independent and objective counsel of a group of former jurists and legal practitioners regarding the suitability of candidates under consideration for judicial appointment through the establishment of a Judicial Advisory Panel (sometimes referred to herein as "the Panel"); and

WHEREAS, the Governor places a high value on the input of the Judicial Advisory Panel in connection with his consideration of candidates for judicial appointments; and

WHEREAS, the Governor will continue to utilize the Judicial Advisory Panel as a component of his review process as he exercises his constitutional authority to nominate individuals to serve as judges;

NOW, THEREFORE, I, CHRIS CHRISTIE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Executive Order No. 36 (2006) sets forth the purpose and role that the Judicial Advisory Panel shall have in the Governor's process of evaluating judicial appointment candidates. Except as expressly modified herein, the Judicial Advisory Panel's work shall continue in accordance with the terms established by Executive Order 36 (2006) and long standing tradition.

2. Paragraph 8 of Executive Order No. 36 (2006), which sets forth the composition of the Judicial Advisory Panel, shall be superseded by this paragraph. The Judicial Advisory Panel will be comprised of seven (7) members. The Panel shall include no fewer than three (3) former judges. The Panel may include practicing attorneys who shall not otherwise serve concurrently as a member of the New Jersey State Bar Association's Judicial and Prosecutorial Appointments Committee. The Governor shall designate the Chair, who shall be responsible for the overall administration of the Panel's responsibilities and establishing its procedures for candidate evaluation.

3. All other provisions of Executive Order No. 36 (2006) not expressly modified herein shall remain in full force and effect.

4. This Order shall take effect immediately.

GIVEN, under my hand and seal this  
9<sup>th</sup> day of June,  
Two Thousand and Ten, and  
of the Independence of the  
United States, the Two  
Hundred and Thirty-Fourth.

[seal]

/s/ Chris Christie  
Governor

Attest:

/s/ Jeffrey S. Chiesa  
Chief Counsel to the Governor

EXECUTIVE ORDER NO. 16

WHEREAS, the Constitution of the State of New Jersey assigns to the Governor, with the advice and consent of the Senate, responsibility for nominating judges to serve in our State Judiciary; and

WHEREAS, the Governor has historically relied on guidance and counsel from former judges and respected legal practitioners in the process of reviewing potential judicial nominees and making judicial appointments; and

WHEREAS, Executive Order No. 36 (2006), as amended by Executive Order No. 32 (2010), formalized this practice by establishing a Judicial Advisory Panel comprised of former jurists and practicing attorneys to evaluate candidates for positions on New Jersey's State courts and provide the Governor with recommendations regarding those candidates' qualifications and fitness to serve as judges; and

WHEREAS, the Governor will continue to rely on the Judicial Advisory Panel in considering candidates for judgeships on the Superior Court of New Jersey and the Supreme Court of New Jersey;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Executive Order No. 36 (2006), as modified by Executive Order No. 32 (2010), which set forth the purpose and role that the Judicial Advisory Panel shall have in the Governor's process of evaluating candidates for appointment to the State Judiciary, is hereby continued and shall remain in full force and effect except as expressly provided by this Order.

2. Paragraph 9 of Executive Order No. 36 (2006), which provided that members of the Judicial Advisory Panel shall serve terms of five years, is hereby rescinded. Members of the Judicial Advisory Panel shall serve at the pleasure of the Governor.

3. All other provisions of Executive Order No. 36 (2006), as modified by Executive Order No. 32 (2010), shall remain in full force and effect.

4. This Order shall take effect immediately.

[seal] GIVEN, under my hand and seal this  
20th day of March,  
Two Thousand and Eighteen,  
and of the Independence of  
the United States, the Two  
Hundred and Forty-Second.

/s/ Philip D. Murphy  
Governor

Attest:

/s/ Matthew J. Platkin  
Chief Counsel to the Governor

NJLSBA

NOTICE

NJLSBA

**Restores role for county bars and expands membership to be more inclusive**

*The following is a message from NJLSBA President Robert D. Hill:*

The New Jersey State Bar Association, through its Judicial and Prosecutorial Appointments Committee (JPAC), has been honored to play an important, non-partisan role in the review and vetting of candidates for the bench and prosecutor's positions. Since 1969, in an agreement initially outlined with Gov. Richard J. Hughes, the Association has had a Judicial Compact with every governor's office to review candidates in a confidential process.

I am pleased today to report that Gov. Phil Murphy has renewed the Judicial Compact. On behalf of the Association's over 18,000 members, I am grateful to the Governor for taking this important step toward ensuring an independent and well-qualified judiciary in our state. You can read the newly executed Compact here.

The NJSBA's role in the process protects and promotes a fair, impartial and independent judiciary, which is a hallmark of the rule of law in a vigorous democracy. Our JPAC conducts an extensive investigation into a lawyer's qualifications to serve as a justice, judge or county prosecutor. That investigation includes interviewing judicial and personal references, as well as reviewing a list of matters the person has handled. During the past 49 years, the committee has reviewed thousands of candidates with the purpose of providing information, insight and guidance to numerous governors to evaluate the candidates who will preside in the state's courts and prosecutor offices.

**RESTORING A ROLE FOR COUNTY BARS**

We are especially pleased that this updated Compact brings the county bar associations back into the process. The NJSBA successfully worked to restore a significant role for county bars, outlined in the Compact itself, as part of the confidential candidate review process. We know how important it is to hear from the practitioners who are most likely to have worked with candidates and are confident that the process will benefit as a result of this additional input.

**EXPANDED MEMBERSHIP**

In that same vein, I am pleased that Gov. Murphy agreed to expand the size of JPAC so that three seats can be designated for members from underrepresented groups in the legal profession. New Jersey is one of the nation's most diverse states. It benefits from residents who represent a richness of different experiences and backgrounds. It is critical that our legal system be equally inclusive. Adding members to the vetting committee who bring a diversity of professional and life experiences will enrich our review and ensure that it is as thorough as possible.

The NJSBA is proud to provide this service on behalf of the legal community and citizens of this state. It is a duty we will continue to perform with the highest degree of integrity. This is an important day for the NJSBA, the legal community and the public at large.

To learn more about how JPAC works, read on:

**JPAC REVIEW AT-A-GLANCE**

The Committee review process is independent and confidential, and the committee's deliberations are separate and apart from those of the association's Board of Trustees and reported only to the Governor's office. The only goal is to ensure that qualified people are appointed as judges and prosecutors. The result is that New Jersey's judges reflect people from every political party, from every area of practice and from all walks of life. In its evaluation of judges for initial appointment to the bench, the committee has identified eight criteria to instruct their deliberations.

The criteria the committee uses in determining whether a candidate is qualified include:

- Undisputed integrity
- A high degree of knowledge of established legal principles and procedures, and a high degree of ability to interpret and apply them to factual situations
- That they have been a licensed attorney in New Jersey for at least 10 years
- An appropriate judicial temperament, which includes common sense, compassion, decisiveness, firmness, humility, open-mindedness, patience, tact and understanding
- A commitment to diligence, punctuality and effective management skills
- The requisite physical and mental abilities to be able to perform the essential functions of the job
- Demonstrated financial responsibility
- Demonstrated participation in public service activities

## **BAR REPORT - State Bar Trustees Approve JPAC Manual Revisions**

New Jersey Law Journal (Online)

April 30, 2018 Monday

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### **New Jersey Law Journal**

Length: 388 words

#### **Body**

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The New Jersey State Bar Association Board of Trustees approved revisions to the manual that guides the association's Judicial and Prosecutorial Appointments Committee (JPAC) at its regular meeting on April 20.

The revisions largely address changes made when Gov. Phil Murphy signed the Hughes Compact in March, continuing the non-partisan role the NJSBA has played in reviewing candidates for bench and prosecutors' positions across the state. The new agreement restores a significant role for county bars, outlined in the Compact itself, as part of the confidential candidate review process. It also adds three seats to the committee, to be designated for members from underrepresented groups in the legal profession.

The association has had a Compact with every governor's office to review candidates in a confidential process since 1969, when an agreement was initially outlined with Gov. Richard J. Hughes.

In other business, the trustees approved James Newman to serve in the Monmouth County seat on the Board of Trustees that is being vacated in May when Timothy McGoughran is sworn in as secretary. Newman is a former president of the Monmouth County Bar Association.

In addition, Glennon Troublefield will be representing the association on the American Bar Association's House of Delegates. He takes over the seat from Lynn Newsome, former NJSBA president and current New Jersey State Bar Foundation president, who is the first woman from New Jersey to join the American Bar Association's Board of Governors.

Newsome is among several trustees whose terms will expire in May, and the board took time to recognize all of them at the meeting. In addition to Newsome, they are: Supti Bhattacharya, Anthony M. Carlino, Shanna McCann, Michael L. Testa Jr., Marisa B. Trofimov and Ronald J. Uzdavinis.



BAR REPORT - State Bar Trustees Approve JPAC Manual Revisions

The trustee board appointed Mikeisha Anderson Jones to the New Jersey State Bar Foundation's board. They also reappointed others. They are: Kelly Ann Bird, Norberto A. Garcia, Ralph J. Lamparello, Thomas J. Manzo, Brian J. Neary and Kenneth Sharperson.

In other board business, the trustees voted to submit comments on several Supreme Court reports, renew USI as the association's insurance administrator for plans offered to association members and approve an agreement to provide members with discounts on new and leased Audis.

**Load-Date:** May 1, 2018

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STATE OF NEW JERSEY

GOVERNOR PHIL MURPHY

## GOVERNOR MURPHY ANNOUNCES SELECTION OF JUDICIAL ADVISORY PANEL

**Trenton** – Governor Phil Murphy today announced his selection of seven individuals to serve on the Judicial Advisory Panel which advises the Governor on judicial nominations. The Judicial Advisory Panel is comprised of former jurists and practicing attorneys who assist the Governor in evaluating candidates for judgeships.

"I am honored to select a panel of respected and experienced former judges and attorneys that will ensure that the Judiciary is comprised of the highest caliber and most qualified attorneys," said **Governor Phil Murphy**. "I look forward to working with the members of the advisory panel and I am confident we will lead New Jersey towards enhancing the fairness and effectiveness of our justice system."

The Judiciary Advisory Panel will be chaired by Chief Justice James R. Zazzali (Ret.), who will be joined on the panel by:

- Chief Justice Deborah T. Poritz (Ret.)
- Justice Stewart Pollock (Ret.)
- Justice Virginia Long (Ret.)
- Justice John E. Wallace, Jr. (Ret.)
- the Honorable Peter E. Doyno, J.S.C. (Ret.)
- John E. Keefe, Jr., Esq.

The Judicial Advisory Panel was created by an Executive Order signed by Governor Corzine, and was continued by Governor Christie. Prior to announcing the membership of the Judicial Advisory Panel, Governor Murphy signed Executive Order No. 16 formally reaffirming the importance of the Judicial Advisory Panel and continuing its role in the Governor's process of nominating judges to New Jersey's state courts.

### Judiciary Advisory Panel Nominees

**Chief Justice James R. Zazzali** is Of Counsel at Gibbons P.C.. He previously served as New Jersey's Attorney General from 1981-1982, under Governor Brendan Byrne. Zazzali was nominated and appointed to the New Jersey State Supreme Court as an Associate Justice in 2000, and continued to serve in that role until 2006, when he was appointed Chief Justice. He has served as General Counsel for the New Jersey Sports and Exposition Authority; Chairman of the New Jersey State Commission of Investigation (SCI); Chief of the Appeals Division of the Office of the Essex County Prosecutor; and Vice Chair of both the State's Disciplinary Review Board (attorney ethics) and the Judicial Review Board.

**Chief Justice Deborah T. Poritz** serves as Of Counsel to DrinkerBiddle in their Princeton, New Jersey office. After law school, the former Chief Justice joined the office of the New Jersey Attorney General as a Deputy Attorney General in the Division of Law, Environmental Protection Section. She later was named Deputy Attorney General in charge of appeals and chief of the Banking, Insurance and Public

Securities Section. From 1986 to 1989, as Assistant Attorney General and Director of the Division of Law and was then appointed Chief Counsel to Governor Thomas H. Kean. In 1994, Governor Christine T. Whitman appointed Chief Justice Poritz as New Jersey's first female Attorney General.

**Justice Stewart Pollock** served for two decades as an Associate Justice of the New Jersey Supreme Court. Mr. Pollock served from 1958 to 1960 as an Assistant United States Attorney. Leaving federal service, he joined a law firm, rising to partner. In 1974, he became a Commissioner of the New Jersey Board of Public Utilities. He also later served as a member of the New Jersey State Commission of Investigation. After returning to private practice, Mr. Pollock served from 1978 through 1979 as Chief Counsel to Governor Brendan T. Byrne. In 1979, Governor Byrne nominated Mr. Pollock to the Supreme Court for an initial seven-year term. He gained tenure on the high court following reappointment by Governor Thomas H. Kean. Mr. Pollock left the New Jersey State Supreme Court in 1999.

**Justice Virginia Long** is a retired New Jersey Supreme Court Justice. She joined Fox Rothschild as Counsel in March 2012 after 15 years on the Appellate Division and 12 years as a pivotal player on the New Jersey State Supreme Court. Long began her career as a Deputy Attorney General and later served as Director of the New Jersey Division of Consumer Affairs and as Commissioner of the former New Jersey Department of Banking. In 1978, Gov. Brendan T. Byrne appointed her to the New Jersey Superior Court. Long was appointed to the New Jersey Supreme Court in 1999 and was reconfirmed by the Senate and granted tenure.

**Justice John E. Wallace, Jr.** is Counsel to the firm Brown & Connery. Appointed to the Superior Court of New Jersey in 1984, he was elevated to the Appellate Division in 1992 and nominated and confirmed to the Supreme Court in 2003. While in the Superior Court, Justice Wallace served in the Criminal and Civil Divisions, as well as the Family Part in Gloucester County. He has served on the New Jersey Supreme Court Task Force for Minority Concerns, the New Jersey Ethics Commission, the Judiciary Advisory Committee on Americans with Disabilities Act, the Supreme Court Special Committee on Matrimonial Litigation, the Appellate Division Rules Committee and he was the Chair of the Supreme Court Ad Hoc Committee on Admissions, Chair of the Advisory Board for the Assistance Fund for New Jersey Court Families (Fund Advisory Board), and Vice Chair of the Supreme Court Ad Hoc Committee on the Uniform Bar Examination.

**Judge Peter E. Doyne** chairs the alternative dispute resolution and corporate investigations practices of Ferro, Labella & Zucker, LLC. He was formerly the Assignment Judge of the Superior Court of New Jersey, Bergen County. Doyne was a distinguished Member of the Judiciary for twenty-two years. While serving in the Judiciary, Judge Doyne received appointments to a number of Supreme Court committees, including the Supreme Court Working Group on Business Litigation, for which he served as the Chair, and the Supreme Court Ad Hoc Committee on the Code of Judicial Conduct.

**John E. Keefe, Jr., Esq.** is the managing member of Keefe Law Firm. He founded Keefe Law Firm in 1996, and currently leads the firm's personal injury, mass tort litigation and complex litigation department. John was lead counsel on behalf of plaintiffs in one of the largest pollution cases in New Jersey, *Janes v. Ciba Geigy Corporation* and filed the first New Jersey complaint seeking reimbursement under the New Jersey Consumer Fraud Act and the New Jersey Civil RICO Laws for the alleged wrongful conduct of Schering Plough to market these drugs for non-FDA approved use. Mr. Keefe is the incoming President of the New Jersey State Bar Association.

Text of Executive Order 16 (<http://nj.gov/infobank/eo/056murphy/pdf/EO-16.pdf>) is online.

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# Appendix N

## [N.J. Stat. § 2B:24-3](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60 (except c. 58, 59), and J.R. 3

**LexisNexis® New Jersey Annotated Statutes > Title 2B. Court Organization and Civil Code (Chs. 1 — 50) > Chapter 24. Municipal Public Defenders (§§ 2B:24-1 — 2B:24-17)**

### **§ 2B:24-3. Appointment of municipal public defenders, chief municipal public defender**

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Each municipal court in this State shall have at least one municipal public defender appointed by the governing body of the municipality in accordance with applicable laws, ordinances and resolutions. Any municipal court with two or more municipal public defenders shall have a “chief municipal public defender” who shall be appointed by the governing body of the municipality. The chief municipal public defender of a joint municipal court shall be appointed upon the concurrence of the governing bodies of each municipality. The chief municipal public defender shall have authority over other municipal public defenders serving that court with respect to the performance of their duties.

### **History**

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L. [1997, c. 256](#), § 3.

Annotations

### **LexisNexis® Notes**

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### **Case Notes**

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**Labor & Employment Law: Discrimination: Retaliation: Statutory Application: Whistleblower Protection Act**

**Labor & Employment Law: Employment Relationships: General Overview**

**Labor & Employment Law: Wrongful Termination: Whistleblower Protection Act: General Overview**

**Labor & Employment Law: Discrimination: Retaliation: Statutory Application: Whistleblower Protection Act**

Municipal public defender performed that task in fulfillment of a municipal duty on a regular and continuous basis throughout the year, and was engaged to fulfill a city’s statutorily-required public defender function; therefore, under the standard set out in [Pukowsky v. Caruso, 312 N.J. Super. 171 \(App. Div. 1998\)](#), he set forth a prima facie case that he was an “employee” for purposes of New Jersey’s Conscientious Employee Protection Act, N.J. Stat. Ann. § [34:19-1](#) et seq. [Stomel v. City of Camden, 192 N.J. 137, 927 A.2d 129, 2007 N.J. LEXIS 909 \(N.J. 2007\)](#).

**Labor & Employment Law: Employment Relationships: General Overview**

Municipal public defender performed that task in fulfillment of a municipal duty on a regular and continuous basis throughout the year, and was engaged to fulfill a city's statutorily-required public defender function; therefore, under the standard set out in [Pukowsky v. Caruso, 312 N.J. Super. 171 \(App. Div. 1998\)](#), he set forth a prima facie case that he was an "employee" for purposes of New Jersey's Conscientious Employee Protection Act, N.J. Stat. Ann. § [34:19-1](#) et seq. [Stomel v. City of Camden, 192 N.J. 137, 927 A.2d 129, 2007 N.J. LEXIS 909 \(N.J. 2007\)](#).

**Labor & Employment Law: Wrongful Termination: Whistleblower Protection Act: General Overview**

Public defender, who was terminated by a mayor after reporting that he was asked for a contribution to the mayor's campaign to secure his position, was an employee of the city, and therefore a trial court erred in dismissing the attorney's claims against the city under the Conscientious Employee Protection Act, N.J. Stat. Ann. §§ [34:19-1](#) to - 8; contrary to the trial court's conclusion, the public defender did fit the definition of an employee under the control and relative nature of the work tests and the city was statutorily required to have a public defender. [Stomel v. City of Camden, 383 N.J. Super. 615, 893 A.2d 32, 2006 N.J. Super. LEXIS 71 \(App.Div. 2006\)](#), aff'd in part and rev'd in part, [192 N.J. 137, 927 A.2d 129, 2007 N.J. LEXIS 909 \(N.J. 2007\)](#).

# Appendix O

## [N.J. Stat. § 2B:25-4](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60 (except c. 58, 59), and J.R. 3

**LexisNexis® New Jersey Annotated Statutes > Title 2B. Court Organization and Civil Code (Chs. 1 — 50) > Chapter 25. Municipal Prosecutors (§§ 2B:25-1 — 2B:25-12)**

### **§ 2B:25-4. Appointment, qualifications for municipal prosecutor; compensation**

---

**a.** Each municipal court in this State shall have at least one municipal prosecutor appointed by the governing body of the municipality, municipalities or county in accordance with applicable laws, ordinances and resolutions.

**b.** A municipal prosecutor shall be an attorney-at-law of this State in good standing, and shall serve for a term of one year from the date of his or her appointment, except as determined by the governing body of a county or a city of the first class with a population greater than 270,000, according to the latest federal decennial census, or the governing body of a city of the second class with a population of greater than 30,000 but less than 43,000, according to the latest decennial census, which city of the second class is located in a county of the first class with a population less than 600,000 according to the latest federal decennial census, and may continue to serve in office pending re-appointment or appointment of a successor. A municipal prosecutor may be appointed to that position in one or more municipal courts. The provisions of this act shall apply to each such position held.

**c.**

**(1)** A municipal prosecutor of a joint municipal court shall be appointed upon the concurrence of the governing bodies of each of the municipalities in accordance with applicable laws, ordinances or resolutions.

**(2)** A municipal prosecutor of a central municipal court shall be appointed by the governing body of the county.

**d.** Municipal prosecutors shall be compensated either on an hourly, per diem, annual or other basis as the county, municipality or municipalities provide. In the case of a joint municipal court, municipalities shall, by similar ordinances, enter into an agreement fixing the compensation of the municipal prosecutor and providing for its payment. In the case of a central municipal court, the county shall fix the compensation of the municipal prosecutor and provide for its payment.

The compensation of municipal prosecutors shall be in lieu of any and all other fees; provided, however that when a municipal prosecutor is assigned to prosecute a de novo appeal in the Superior Court, the prosecutor shall be entitled to additional compensation unless the municipality expressly provides otherwise at the time the compensation is fixed.

**e.** In accordance with applicable laws, ordinances and resolutions, a municipality may appoint additional municipal prosecutors as necessary to administer justice in a timely and effective manner in its municipal court. Such appointments shall be subject to this act. This subsection also applies to joint municipal courts and central municipal courts.

**f.** Any municipal court having two or more municipal prosecutors shall have a “chief municipal prosecutor” who shall be appointed by the governing body of the county or the municipality. The chief municipal prosecutor of a joint municipal court shall be appointed upon the concurrence of the governing bodies of each municipality. The



## N.J. Stat. § 2B:25-4

chief municipal prosecutor shall have authority over other prosecutors serving that court with respect to the performance of their duties.

**g.**

**(1)** Nothing in this act shall affect the appointment of municipal attorneys in accordance with [N.J.S.40A:9-139](#); provided, however, that a person appointed to the positions of both municipal prosecutor and municipal attorney shall be subject to all of the provisions of this act while serving in the capacity of municipal prosecutor.

**(2)** In addition to any other duties proscribed by the provisions of this act, a person serving as both a municipal prosecutor and a municipal attorney may prosecute county or municipal ordinance violations.

## History

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L. [1999, c. 349](#), § 4, eff. April 13, 2000.

Annotations

## Notes

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### Effective Dates:

Section 12 of L. [1999, c. 349](#) provides: "This act shall take effect 90 days after enactment." Chapter 349, L. 1999, was approved on January 14, 2000.

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# Appendix P

## [N.J. Stat. § 2B:25-10](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60 (except c. 58, 59), and J.R. 3

**LexisNexis® New Jersey Annotated Statutes > Title 2B. Court Organization and Civil Code (Chs. 1 — 50) > Chapter 25. Municipal Prosecutors (§§ 2B:25-1 — 2B:25-12)**

### **§ 2B:25-10. Training programs, certification**

---

The Attorney General in consultation with the county and municipal prosecutors may develop curricula for training programs for all municipal prosecutors. Participation in such training programs shall be voluntary. An attorney successfully completing a training program shall receive such certification or recognition as deemed appropriate by the Attorney General.

### **History**

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L. [1999, c. 349](#), § 10, eff. April 13, 2000.

Annotations

### **Notes**

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#### **Effective Dates:**

Section 12 of L. [1999, c. 349](#) provides: “This act shall take effect 90 days after enactment.” Chapter 349, L. 1999, was approved on January 14, 2000.

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# Appendix Q

## [N.J. Stat. § 2B:12-9](#)

This section is current through New Jersey 218th Second Annual Session, L. 2019, c. 60 (except c. 58, 59), and J.R. 3

**LexisNexis® New Jersey Annotated Statutes > Title 2B. Court Organization and Civil Code (Chs. 1 — 50) > Chapter 12. Municipal Courts (§§ 2B:12-1 — 2B:12-33)**

### **§ 2B:12-9. Presiding judge of the municipal courts**

---

If the Chief Justice designates a judge of the Superior Court or a judge of one of the municipal courts in a vicinage to serve as presiding judge of the municipal courts for that vicinage, that judge may exercise powers delegated by the Chief Justice or established by the Rules of Court.

If the presiding judge is a municipal court judge, the presiding judge shall be paid by the State for the time devoted to duties as Presiding Judge, unless that judge is also assigned duties at the request of a county, in which case compensation, pension and other benefits shall be as determined by the Assignment Judge and the governing body of the county, with the approval of the Chief Justice.

### **History**

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L. [1993, c. 293](#), § 1; amended [1996, c. 95](#), § 8.

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**ADMINISTRATIVE OFFICE OF THE COURTS**

**STUART RABNER**

CHIEF JUSTICE

**GLENN A. GRANT, J.A.D.**

ACTING ADMINISTRATIVE DIRECTOR OF THE COURTS

**JENNIFER M. PEREZ**

DIRECTOR, OFFICE OF TRIAL COURT SERVICES

**STEVEN A. SOMOGYI**

ASSISTANT DIRECTOR, MUNICIPAL SERVICES DIVISION

**JULY 8, 2019**