

**February 1, 2008 House Resolution Regarding the Report and Recommendations of the Task Force on Town and Village Justice Courts**

WHEREAS, in June 2006 Chief Judge Kaye and then Chief Administrative Judge Lippman announced the undertaking by the Office of Court Administration of a comprehensive review of New York State's Justice Court system, which culminated in November 2006 in OCA's release of the Action Plan for Justice Courts; and

WHEREAS, the Action Plan identified four primary areas of reform (Justice Court operation and administration; auditing and financial controls; education and training for justices and clerks; and facility security and public protection) to address shortcomings and deficiencies identified in the Justice Court system; and

WHEREAS, the New York State Bar Association thereafter appointed the Task Force on Town and Village Justice Courts for the purposes of developing a set of recommendations for the Association to consider with respect to appropriate next steps in addressing access to justice in the town and village courts across the state; and

WHEREAS, the Task Force has released its report commenting on various aspects of OCA's Action Plan, and set forth recommendations for improving the Justice Court system, including measures to facilitate implementation of this Association's position, adopted in January 2001, that all justices in town and village courts be lawyers; it is hereby

RESOLVED, that the New York State Bar Association approves the report and recommendations of the Task Force on Town and Village Justice Courts; and it is further

RESOLVED, that the officers of the Association are hereby authorized to submit the report and recommendations to Chief Judge Kaye and Chief Administrative Judge Pfau for appropriate consideration, and to take such further action as they may deem warranted to implement this resolution; and it is further

RESOLVED, that the Association shall continue to study the fiscal implications of the Task Force's recommendations and to consider ways to improve the efficiency of New York's town and village justice courts.

**NEW YORK STATE BAR ASSOCIATION**

# **NYSBA**

**Report of the New York State  
Bar Association Task Force  
on Town and Village Justice  
Courts**

**Albany, New York  
January 2008**

**The Task Force is solely responsible for the contents of this report. Unless and until adopted in whole or in part by the Executive Committee and / or the House of Delegates of the New York State Bar Association, no part of this report should be considered the official position of the Association.**

## I. Introduction

In July 2007, New York State Bar Association President Kathryn Grant Madigan appointed a Special Task Force on Town and Village Justice Courts for the purpose of developing a set of recommendations for the Bar Association to consider with respect to appropriate next steps in addressing access to justice in the town and village courts across the State. The Task Force met six times—on July 17, August 1, August 22, August 29, December 5, and December 12, 2007. Task Force Members are listed in Appendix A.

The Task Force began its work by reviewing the prior work and currently stated positions of the Association. Beginning in 1979, in a report on court reorganization, NYSBA suggested that future consideration be given to merging local courts into regional tribunals.<sup>1</sup> In 2001, NYSBA asserted that judges in the justice courts (“justices”) should be lawyers, stating that “It is unfair for litigants in civil or criminal cases to have matters determined by a person who may be unfamiliar with the law.” Most recently, in late 2006 and early 2007 in testimony before the NYS Assembly Committee on the Judiciary and Committee on Codes, NYS Senate Judiciary Committee, then-President Mark Alcott strongly urged significant reform.

In his legislative testimony, President Alcott pointed out that for many citizens, the Justice Courts may be the only contact they have with the court system. He reiterated that it is the longstanding position of the Bar Association that all justices who preside over these courts should be lawyers. While supporting the Office of Court Administration’s (OCA) plan that training be doubled, he stressed that even two weeks is insufficient—noting that many people providing other services in New York State (such as those who give manicures) require greater training and testing than justices. President Alcott made the point that there have been increased complexities in the law over the past 40 years since the Legislature last affirmed the use of non-lawyers as justices. He noted that the exact same matters that come before these justices, if occurring within a city, would require a lawyer-judge to adjudicate the matter. Due to the increasing complexities in the law, he noted that this archaic position must be re-examined. President Alcott stated that NYSBA supports OCA’s Action Plan (discussed below) with particular endorsement of access to justice for indigents and the disabled. The Association supports the decision of OCA to require real-time recording of Justice Court proceedings and to integrate these courts into the judiciary’s technology system, and also supports OCA’s plan to increase security in Justice Courts. NYSBA supported OCA’s request for \$10 million to implement these plans, and reiterated the need to adequately fund the Commission on Judicial Conduct, which has had its staff cut in half over the past 30 years while its complaints have doubled (an increase in the Commission’s funding was approved as part of the NYS FY 2007–2008 Budget). Lastly, President Alcott

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<sup>1</sup> Report of Action Unit No. 4 on court reorganization, approved by the NYSBA House of Delegates, September 29, 1979.

encouraged the education of the public on the ethical obligations of the judiciary as a means to increase public confidence in the judiciary. A copy of President Alcott's testimonies is attached as Appendix B.

When the Task Force was created, we were asked to expand upon the established NYSBA policy in light of recent information and commentary. While the Task Force did not stray from this mandate, it is clear that concerns over the operation of justice courts and the administration of justice have grown. The Task Force also notes that NYSBA has an active Special Committee on Court Structure, and that some issues in this report may be appropriate for its consideration as well.

## **II. Background**

Questions surrounding access to justice at the town and village justice court level are not new. Recently, however, based upon increasing public awareness of allegations of unethical conduct on the part of justices, media accounts of inappropriate conduct by some justices, the substandard condition of many town and village courtroom facilities and the administration of justice in the town and village courts, a number of entities have studied the current town and village justice court system.

### **A. Office of Court Administration—Action Plan**

In June 2006, Chief Judge Judith Kaye and Chief Administrative Judge Jonathan Lippman announced the creation of a comprehensive review by the OCA of New York State's Justice Court system. The OCA released the *Action Plan for Justice Courts* in November 2006.<sup>2</sup> The Action Plan identifies four primary areas of reform:

1. Justice Court Operation and Administration
2. Auditing and Financial Controls
3. Education and Training for Justices and Clerks
4. Facility Security and Public Protection

To achieve these reforms, the Action Plan recommends various legislative actions including:

1. An appropriation of \$10 million in new funds
2. An increase in the Justice Court Assistance Program (JCAP) grant limit to \$30,000
3. An increase in penalties for threats and crimes against justices and staff

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<sup>2</sup> The Action Plan is available at: <http://www.courts.state.ny.us/publications/pdfs/ActionPlan-JusticeCourts.pdf> (cite visited January 2008).

4. A statutory amendment to allow town and village justices to live in the county or adjoining county rather than the town or village where they sit
5. An amendment to the Uniform Justice Court Act (UJCA) to authorize the Chief Administrative Judge to designate a town justice or a city court judge where a temporary incapacity exists in a justice court
6. Approval in the selection of temporary town/village justices
7. A requirement that every justice court employ at least one clerk independent of municipal control

### **B. Special Commission on the Future of New York State Courts (Dunne Commission)**

Following the publication of *The New York Times* series titled *Broken Bench*,<sup>3</sup> Chief Judge Kaye extended the service of the Special Commission on the Future of New York State Courts (Dunne Commission). The multitude of individuals, agencies, and organizations that have testified before the state legislature and the Dunne Commission expressed support for most of the recommendations proposed in the OCA Action Plan. Only nominal concerns were raised by the New York Conference of Mayors and the Association of Towns of the State of New York, namely that additional costs of these mandates not fall upon the town and villages.

In addition, various organizations and individuals have provided testimony regarding the issue of town/village justice educational requirements.

### **C. Association of the Bar of the City of New York**

The New York City Bar Association appointed a Task Force on Town and Village Courts in 2006. The Task Force formed three subcommittees and issued reports in March, June and October of 2007. They recommend, among other things, working within the existing framework to provide additional support structures for both lawyer and non-lawyer justices, and endorse in large part the OCA Action Plan.<sup>4</sup> The City Bar emphasizes the need for OCA to provide a sufficient number of attorneys to aid justices with research and legal analysis “to address substantive, procedural, and judicial-conduct needs.” The City Bar also suggests that qualified individuals should be hired to assist in court and fiscal management, and they recommend increasing funding for the Resource Center so that it is comparable to the service available to state-paid judges through law secretaries.

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<sup>3</sup> See

<http://www.nytimes.com/2006/09/25/nyregion/25courts.html?ei=5088&en=54523845bb7394f2&ex=1316836800> (site visited January 2008).

<sup>4</sup> To review all three of the City Bar’s reports on the subject, see <http://www.nycbar.org/Publications/reports/reportsbycom.php?com=132>.

The City Bar also addresses the technological shortcomings of the Justice Courts. The Task Force makes the following six recommendations:

1. Every case should be recorded by a court reporter or using digital recording.
2. All justices and court clerks should have computer hardware and training to use software that provides assistance for case management, financial management and reporting tasks.
3. Each justice should be given access to computers for legal research and judicial operations.
4. Study the possibility of developing video conferencing capability.
5. Expand the use of electronic communications.
6. Provide access to portable computers for justices and clerks.

The October 2007 Report offers the following ten additional recommendations:

1. Amend the Criminal Procedure Law to require that the justices of the Town and Village Courts who preside over pretrial suppression hearings and jury trials in criminal cases be lawyers and, to meet this requirement, that pretrial suppression hearings and jury trials be transferred to justices who are lawyers or to judges. Further, amend the Criminal Procedure Law to require that in all other cases in which the crimes charged are A, B, or unclassified misdemeanors and the presiding town or village justice is not a lawyer, on request of a party, the case be transferred to a justice who is a lawyer or to a judge.
2. Apply newly amended Uniform Justice Court Act § 106 (Session Laws 2007 Chapter 321)—and rules promulgated pursuant to that section—to facilitate the transfer of cases from town and village lay justices to town and village lawyer justices or judges in order to effectuate Recommendation 1.
3. Issue plain language forms for pleading in summary proceedings for eviction that are comprehensible to the litigants and require disclosure in the eviction petition of special circumstances, including the presence of an immovable mobile home, building code violations, government rent subsidies, and possible violations of the warranty of habitability.
4. Provide town and village justices with intensive training on procedural and substantive law applicable to summary proceeding eviction cases.
5. Summary proceedings in eviction cases should be decided by lawyer justices or judges when the respondent is pro se and when, on review of the plain language pleadings, there is disclosed the presence of (1) an immovable mobile home, (2) disrepair of the premises raising a question as to whether there is a violation of the warranty of habitability, (3) pending building code violations, or (4) government rent subsidies.

6. Conduct further study of civil cases within the jurisdiction of Town and Village Courts to determine whether any additional civil matters present the types of issues that should be heard by lawyer justices or judges, whether there is additional need for plain language forms, and whether intensive training is needed on any specific areas of procedural or substantive law.

7. Each town should examine and determine whether consolidation of Town Courts would be beneficial to the town and the Town Court and, where appropriate, pursue consolidation pursuant to Session Laws of 2007, Chapter 237 (amending Uniform Justice Court Act § 106-a).

8. Each village should examine and determine whether abolition of the office of village justice would benefit the village and the Village Court and, where appropriate, initiate local legislation pursuant to Village Law § 3-301(2)(a), or, if an inconsistent charter provision pre-exists the Village Law, seek state legislation pursuant to Article 17(b) of the New York Constitution.

9. Every Town and Village Court should have a court clerk who is trained to prepare the records and documents and satisfy the financial reporting and safeguarding of funds requirements of the applicable statutes and regulations. The clerks should be full time employees of the courts and be fairly compensated. Courts may combine resources to retain a shared court clerk if the work of a single court does not warrant a full time clerk. The clerks should be supervised by a State-compensated employee who also is available to provide assistance to the court clerks.

10. In planning for consolidation of Town Courts, the elimination of the position of village justice, or the transfer of misdemeanor cases from the Town and Village Courts when there is no available lawyer justice, the Office of State Comptroller should reevaluate the allocation of the revenues of the Town and Village Courts so that legislation can provide to municipalities an appropriate share of the courts' revenues.

Representatives from the City Bar participated in one meeting of the Task Force for the purpose of discussing the October 2007 report.

#### **D. The Bar Association of Nassau County**

In September 2007, the Bar Association of Nassau County issued a Report and Recommendations of its Justice Courts Task Force. As a result of the Report, the County Bar Association endorsed the following six recommendations submitted by the Task Force:

1. Unfunded Mandates from OCA to be imposed upon Village governments regarding the administration and operation of the Justice Courts should be strongly discouraged.
2. Security measures in Village Courts should remain “local” and a partnership with the State, in funding and requiring specific types of security devices, will be in the best interests of optimizing the justice function of the Court.
3. Villages should have the option of using live court stenographers, and this should be a permitted alternative to digital recording devices.
4. Any efforts by OCA to enable the Justice Courts to accept credit card payments without incurring any cost to the Village should do so.
5. The method of providing interpreter services for Court proceedings should be uniform, as well as within the discretion of the individual Village
6. The Action Plan proposition to enhance the current two-tiered sequential legal education program consisting of basic and advanced curricula should be supported, and the cost and administration of the education’s programs should continue to be a State function.

While the County Bar Task Force took no position as to whether Justice Court Judges should be lawyers, they recommended that there be no mandate that Village Judges be attorneys. Rather, the Task Force concluded that there should be new minimum qualification standards that would apply in the future to all new non-attorney justice court judges and that a provision be adopted to allow for the removal of a criminal case to a superior court at the defendant’s request where the presiding Justice is not an attorney.

A representative of the Nassau County Bar Association participated in one meeting of the Task Force for the purpose of discussing this report.



## **E. Legislative Activity**

The Legislature has taken an interest in reforming the current town and village court system. Both houses of the state Legislature held hearings on the subject in December 2006 and January 2007. In June, the Senate and Assembly passed, and the Governor signed into law, A.2582. The bill amends the Uniform Justice Court Act (UJCA) to allow two or more towns from contiguous geographic areas to establish a single town court. Another bill, S.2709, has passed both houses of the Legislature and was delivered to the Governor on August 16, 2007. This bill would prohibit convicted felons from being eligible to serve as a town or village justice. In addition, Senate Judiciary Committee Chair, John DeFrancisco has introduced a series of bills to implement proposals made by Chief Judge Kaye and Chief Administrative Judge Lippman in the OCA Report. Specifically, S.4257 would authorize the Chief Administrative Judge to temporarily assign a justice from another Town or Village Justice Court, or a judge of a City Court who resides in the same or adjoining county to the Justice Court. The temporary assignments would be based upon consultation with local officials. Other legislation seeks to increase training for clerks. In addition, Governor Spitzer has signed into law S.4246, which increases the JCAP grant ceiling to \$30,000 annually. Lastly, Chair DeFrancisco has introduced S.4222, which calls for increased training for non-judicial staff.

## **F. Office of the State Comptroller**

In his testimony before the Dunne Commission, Comptroller Thomas DiNapoli endorsed the OCA Action Plan and reiterated recommendations made in the past by the Office of the State Comptroller. Specifically the Comptroller recommends the following:

1. Implementation of a uniform state-wide technology system that includes financial management and software training.
2. Ability of the Justice Courts to accept payment via credit card
3. Increased oversight of Justice Courts

## **III. Recommendations**

In developing this report, the Task Force reviewed and considered the published research and recommendations of the other bar associations and governmental entities. Collectively, these reports demonstrate the complexity of myriad issues that must be addressed to better ensure access to justice at the town and village justice court level. Many of the recommendations suggested by others are worthy of further research and consideration by NYSBA. Furthermore, the Office of Court Administration is expected to release a report of the Dunn Commission in early 2008 that will also address these issues. NYSBA should review and comment on their recommendations as well.

The Task Force began its work considering implementation of the current NYSBA position that requires all justices to be attorneys. The Task Force acknowledges that this presents a number of challenges. The paramount concern that has been raised with such a change is the availability of lawyers to serve in this role, since a number of practical restrictions limit the pool of lawyer candidates. For instance, the Chief Administrative Judge's Rules ("*Rules of Judicial Conduct*") limit the practice of a lawyer who serves as justice, and most municipalities do not offer a salary for justices that would compensate justices for these losses. Moreover, many lawyers are not prepared for the administrative functions of a justice and some courts lack effective administrative support. The lack of lawyer candidates in some parts of the state requires new approaches for those towns or villages that will not be able to attract a lawyer-justice under the current regime.

The Task Force is of the opinion, as are other entities who have examined this issue, that the State Legislature may be unwilling to amend the law in the near term to require every local justice to be an attorney in good standing. As a result, the Task Force offers recommendations designed both to remove barriers for lawyers who would not otherwise consider running for office, as well as recommendations to strengthen the training, education and support for all justices, whether or not attorneys. With respect to the removal of barriers for lawyers, the Task Force believes that these disincentives should be eliminated or minimized as much as possible in order to encourage attorneys to run and serve in these critically important posts. Section A below contains a series of recommendations with respect to barrier removal so that more attorneys will be encouraged to seek justice positions. Section B contains another series of recommendations relative to the smoother implementation of a requirement that all justices be licensed attorneys. Section C relates to training for all justices.

## **A. Recommendations to Remove Barriers for Lawyer-Justices**

### **1. Residency Restrictions**

"Current law requires that, unless otherwise provided, town and village justices live in their localities, except for certain village justices who may live anywhere in the county." Unified Court System, *Action Plan for the Justice Courts* at 60 (November 2006) ("*Action Plan*"); Town Law § 23(1); Village Law § 3-300. Under the current regime, municipalities with few attorneys would be hard pressed to find a lawyer willing to serve the post, given the low pay and the restrictions on practice discussed below. In her Action Plan for the Justice Courts, Chief Judge Kaye recommends easing the residency requirements.<sup>5</sup>

***The Task Force recommends NYSBA support action necessary to amend the requirement that justices reside within the county in which their jurisdiction is located, rather than within a smaller unit of local***

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<sup>5</sup> *Action Plan* at 60.

**government. This would be consistent with the county-wide method used to select jurors.**

## 2. Restrictions on Practice

Justices are required to abide by § 100 of the Rules of the Chief Administrative Judge. Violations of the rules are subject to the jurisdiction of the Commission on Judicial Conduct. A serious violation could affect a justice's ability to practice law. Although the rules allow part-time lawyer-justices to practice law, "their judicial duties must take priority and there are restrictions on the scope of their law practice. For example, a part-time judge may not appear in cases before another part-time lawyer-judge in the same county."<sup>6</sup> Moreover, some Judicial Departments, such as the Third, have additional restrictions on lawyer-justice practice. Particularly in rural counties, the restrictions can be a serious impediment to the financial viability of a lawyer's practice.

The current practice restrictions for justices are intended to "avoid even the appearance that [justices] would accommodate each other with favorable rulings."<sup>7</sup> While the appearance of impartiality of the justice courts must always be protected, the current rules seem to be arbitrary. For instance, they only prohibit lawyer-justices from practicing before other lawyer-justices in the county. Prohibitions against conduct which creates the appearance of impropriety should and do apply to all part-time justices, regardless of their primary vocation. Lawyer-justices, who have both judicial ethics and attorney ethics constraints, should not be singled out in this regard. In addition, further examination should consider whether it makes sense for the restriction to stop at the county line, since the appearance of impartiality could be just as strong in the justice courts of two adjacent towns that happen to be in different counties. It would be beneficial to conduct a comprehensive review of all the practice restrictions for lawyer-justices. This review should include, as appropriate, consideration of alternative tools to protect impartiality, such as disclosure and stronger recusal provisions.

An attorney serving as a justice is subject to a number of limitations on her or his private practice. For many upstate attorneys—those with general practices in relatively small communities—some of these limitations represent a significant sacrifice. Some arise from important ethical concerns imposed in order to avoid conflicts of interest or other possible improprieties. For example, a lawyer-justice may not serve as a county attorney, district attorney or public defender. However, other prohibitions on practice, adopted in the past, may no longer be necessary to insure adherence to the code of judicial conduct. In the Third Department, pursuant to local rules, lawyer-justices cannot accept most assigned

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<sup>6</sup> Statement of Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, before the New York State Assembly Committee on the Judiciary's Standing Committee on Codes, Public Hearing on Reform of the New York State Justice Courts, December 14, 2006, at 7 ("*Tembeckjian Testimony*") ; *Rules of Judicial Conduct*, Rule 100.6.

<sup>7</sup> *Tembeckjian Testimony* at 6; *Rules of Judicial Conduct*, Rule 100.6(B)(2).

cases. Lawyer-justices may not accept assignments pursuant to § 35 of the Judiciary Law or § 722 of the County Law. This rule precludes accepting assignments in all criminal matters and in many Family Court matters including abuse and neglect matters, family offenses or custody proceedings. Local Rule 835.3 also prohibits assignments as law guardian in juvenile delinquent matters, family offense and abuse cases. The Third Department also restricts lawyer-justice service as a referee in mortgage foreclosure actions. Furthermore, there are inconsistencies between the rules in the different departments.

***The Task Force recommends NYSBA support a comprehensive review of all limitations on the legal practice of lawyer-justices that should be conducted for the purpose of assessing how best to maintain the highest principles of judicial conduct while encouraging more attorneys to serve as justices.***

### **3. Compensation**

Justice courts are unique in the New York State Court system in that they are locally financed. The town or village in which the court sits determines the compensation for the position of Justice. See Town Law, § 8-116; Village Law, § 4-410(2). Not surprisingly, compensation varies greatly across the state. In rural counties, where restrictions on practice can take their greatest toll on a lawyer-justice, the compensation tends to be the lowest. There are justices who serve for as little as \$1 or \$600 a year. The result is that lawyer-justices may be asked to make an unreasonable financial sacrifice to serve, leading to disinterest in service.

***The Task Force recommends NYSBA urge OCA to develop a mechanism that enables municipalities to achieve a level of adequate compensation for justices. Furthermore, the Task Force urges NYSBA to recognize that there should be some level of support from the state to accomplish this increase in compensation.***

***The Task Force also recommends that NYSBA support an increase in compensation for court clerks.***

***The Task Force recommends that NYSBA urge the State Comptroller to conduct additional comprehensive fiscal studies with respect to the allocation of revenues derived from town and village justice courts to better understand how court revenues are used.***

#### **B. Recommendations Regarding Implementation of the Lawyer-Justice Requirement**

In furtherance of NYSBA's stated position requiring all justices to be attorneys, the Task Force has identified the following issues that require attention to enable implementation of this goal.

## 1. Consolidation

To further ease the burden of finding a lawyer willing to serve as justice, towns and villages should be able to consolidate their courts. Currently, two adjacent towns may consolidate their courts, but consolidation of 3 or more is prohibited. Allowing broader consolidation, particularly in rural areas, would reduce the number of Justice Courts requiring lawyer-justices.

***While a new law enacted in 2007 allows two or more towns that form a contiguous geographic area within the same county to establish a single town court, the Task Force recommends that NYSBA support further legislative changes to allow both towns and villages to consolidate.***

## 2. Temporary Assignment

Should the Legislature follow the recommendation of NYSBA and require justices to be lawyers, a series of provisions will be required in the event a Justice Court cannot attract a lawyer-Justice. Currently, the UJCA authorizes the Chief Administrative Judge to temporarily assign a justice from one locality to serve another locality, but only if both the sending and receiving localities consent.<sup>8</sup> The Chief Judge's Action Plan calls for clarification of the Chief Administrative Judge's temporary assignment power.

***The Task Force recommends NYSBA urge that the Chief Administrative Judge's authority to temporarily assign justices be clarified, making clear the assignment can be due to a lack of qualified candidates and may continue as long as the locality lacks a lawyer-justice. Moreover, the financing of such long-term assignments should be addressed, i.e., what entity is responsible for paying the assigned justice's compensation.***

## 3. Circuit Justices

***The Task Force recommends that NYSBA support new authority for the Chief Administrative Judge to assign a "circuit justice" to a particular town. Specifically, the state could employ one or more lawyer-justices whose job it is to regularly conduct court in those towns and villages that do not have lawyer-justices. The roving justice could be a permanent, on-staff position whose responsibilities include supporting elected justices when not conducting court.***

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<sup>8</sup> Action Plan 61; Justice Court Act §106(2).

#### 4. Administrative Functions

Justices have administrative responsibilities that full-time judges do not. For example, justices are responsible for collecting, depositing and remitting to the State Comptroller court funds (such as fines and bails).<sup>9</sup> In Courts of Record, administrative staff independent from the justice fulfills those tasks.<sup>10</sup> Unlike Courts of Record that are funded and administered by the Unified Court System, “the broad fiscal and operation independence of each Justice Court renders . . . unified court management . . . effectively inapplicable to the Justice Courts.”<sup>11</sup> Accordingly, the technical tools and centralization of tasks that can greatly ease the administrative burden of the Justice Courts are not always available. Some Justice Courts lack computers, appropriate software and the system-wide technological support.<sup>12</sup> Such administrative burdens may act as a disincentive to some lawyers who wish to serve in this position.

***The Task Force recommends NYSBA continue to support the recommendations in the OCA Action Plan that call for upgrades and access to technology for the justice courts, as well as critically needed upgrades to the physical facilities housing these courts. The Task Force further recommends support for the OCA Action Plan calling for enhanced security of these court facilities.***

#### C. Training and Education

Every task force and commission that has studied this subject has identified the woefully inadequate training and lack of ongoing educational support for town and village justices. Justices are not required to undergo the same intensity of training offered to state-funded judges through the State Judicial Institute. While the Task Force believes that NYSBA already provides some support for justices through its CLE Department, we urge NYSBA to explore additional ways in which the Association could support continuing training and education.

***The Task Force recommends NYSBA support OCA’s request for increased funding to support the development and implementation of enhanced training and educational programs, specifically for town and village justices.***

***In addition, the Task Force recommends NYSBA consider what resources the Association and its members have that could be used for a variety of programs including, by way of example, mentoring/ training programs for justices that could use the pro bono talents of retired judges and retired attorneys.***

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<sup>9</sup> *Tembeckjian Testimony* at 6

<sup>10</sup> *Id.*

<sup>11</sup> *Action Plan* at 17.

<sup>12</sup> *Action Plan* at 25.

***Furthermore, the Task Force recommends NYSBA consider how retired attorneys could best be utilized to complement the efforts of the Town and Village Justice Court Resource Center in the provision of legal advice for justices.***

#### **IV. Conclusion**

The New York State Bar Association continues to study and advocate for the effective, fair, and efficient administration of justice at all levels of courts in this state. The challenges and shortcomings of town and village justice courts that have been identified by a number of organizations and entities are of concern to the Association. The recommendations outlined in this report represent a series of strategies to restore confidence in the town and village justice court system.

# **Appendix A**

Members of Task Force on Town and Village Justice Courts



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**Total Records: 8**

## **Appendix B**

Testimony by New York State Bar Association President Mark H. Alcott on reform of the New York State Justice Courts before the New York State Assembly Committees on Judiciary and Codes  
December 14, 2006

Testimony by New York State Bar Association President Mark H. Alcott on reform of the New York State Justice Courts before the New York State Senate Standing Committee on Judiciary,  
January 29, 2007

REFORM OF THE NEW YORK STATE JUSTICE COURTS  
Before the New York State Assembly Committees on Judiciary and Codes  
December 14, 2006

I am Mark Alcott, President of the New York State Bar Association. With 72,000 members, we are the largest bar association in New York; and we have been the voice of the state's legal community for 130 years. On behalf of the Association, I thank you for the opportunity to share our views concerning the reform of the New York State Justice Courts.

Independence of the courts and the bar are the twin pillars of our legal system. These pillars are buttressed by public confidence in the court system and by the perception that, when litigants step into a courtroom and appear before a judge, whether that court is located in a bustling city or quaint village, they will receive justice and equal treatment according to the law.

Unfortunately, as we have learned from the widely circulated *New York Times* series on the Justice Courts, it is a fact that, at least in some cases, the designation "Justice Court" is a misnomer. This fact is incredibly troubling to the bar; I can think of few issues that have caused lawyers to reach out to me, as President, with such a high-level of concern. I share their dismay, because the reputation of the Justice Courts directly affects the members of the bar. When public confidence in any facet of the court system is weak, the pillars of our legal system crumble, and the authority of our entire system of justice is undermined. Public confidence in every judge in this state is crucial to the continued vitality of the bench and the bar. Indeed, due to the nature of the cases that come before Justice Courts, public confidence in those tribunals is particularly crucial.

New York's Justice Courts – often referred to as "the first line of defense of our justice system" – handle cases that affect the everyday lives of New Yorkers: DWIs, Requests for Orders of Protection, Landlord-Tenant Disputes. Those appearing before a Justice Court could face loss of the right to drive a car and, thus, their livelihood. They could

face imprisonment or eviction from their homes. They could be there seeking a much-needed order of protection to save them from further episodes of domestic violence. For many of New York's citizens, the Justice Courts may be the only contact they have with the court system. In addition, many of these litigants have limited resources and must take refuge in the lower tier of our judicial system. Therefore, it is essential to public confidence in our judicial system that the Justice Courts are open to all and treat each person with the dignity, respect and fairness that is expected from all of New York State's tribunals.

To ensure public confidence in the court system, the Justice Courts must be fundamentally reformed. It is the long-standing position of the Bar Association that all justices who preside over these courts should be lawyers. Currently, the Constitution authorizes the Legislature to fix qualifications for those to serve in the Justice Courts, and the Legislature allows non-attorneys to fill the positions. There is an urgent need for legislation to reform this system.

Of the nearly 2000 justices in these courts, 72% are not attorneys. Until recently, the Office of Court Administration required just one week of training for non-attorney justices; under OCA's new Action Plan for the Justice Courts, which we applaud, training will be doubled to two weeks. However, while the OCA is doing the best that it can with the limited resources and authority it holds, even two weeks of training is insufficient, given the scope of power and breadth of issues that come before the Justice Courts.

Indeed, greater education is required to perform other services in New York State. For example, the state requires hair removal waxing technicians to complete 75 hours of training and pass an examination.<sup>1</sup> The state requires nail specialists to receive 250 hours of training;<sup>2</sup> and massage therapists must have a high school diploma, complete 500 hours of training and pass an examination.<sup>3</sup>

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<sup>1</sup> Department of State, Legal Memorandum L107

<sup>2</sup> 19 NYCRR 162.1

<sup>3</sup> NY Educ § 7806

It is offensive that nail specialists and massage therapists are required to receive more training than the Justice Court's non-attorney justices. These justices are responsible for, among other things, selecting juries, admitting evidence, conducting criminal and civil trials, reporting dispositions, assessing fines, issuing orders of protection, arraigning felons and securing defendants in local or county jails. New York's Justice Courts handle one-third of the state's case load, hearing more than 2 million cases annually and collecting more than \$210 million in fines. The law has become increasingly more complex in the 40 years since the Legislature most recently approved the use of justices who are not lawyers, and it is no longer acceptable for non-attorneys to preside in our Justice Courts.

Moreover, the same matter, occurring within a city, would come before a judge who must be admitted to the bar. For justice to truly be equal, New York's citizens, whether they reside in a city or in a rural area, deserve to have their cases heard by judges who are attorneys. Further, it is unfair for litigants in civil or criminal cases to have matters determined by a person who may be unfamiliar with the law and not bound by the Code of Professional Responsibility and the Code of Judicial Conduct. According to the *New York Times* series of articles, when many of these justices made a mistake, they used their non-lawyer status as an excuse, acknowledging their mistakes and stating, "I'm not a lawyer." We have to eliminate this excuse. In modern times, there is no reason that all judges cannot and should not be lawyers, and public confidence requires that local justices have appropriate training and are held to enforceable ethical standards.

In addition, the Bar Association supports many of the reforms highlighted in OCA's Action Plan for the Justice Courts. Among these reforms, the most important is access to justice for the indigent and for those with disabilities.

It is imperative that criminal defendants are afforded their constitutional right to an attorney. It is shocking that, in this day and age, any New York State court would deny such a basic right. Yet, it has happened. In the *Times* series, it was reported that some of the judges have told the New York State Commission on Judicial Conduct that they

disagree with the constitutional guarantee that a defendant is entitled to a lawyer. One justice was unaware that defendants were owed a new hearing and a lawyer when they are unable to pay their court-imposed fine; this justice was summarily jailing those who were unable to pay their fines. Another justice was ordering defendants to perform community service work to pay for their court-appointed lawyers – even if they were found not guilty.

According to the Action Plan, town and village justices will be required to report that they complied with legal mandates governing determinations of eligibility for public defense and assignment of counsel. Further, the OCA plans to evaluate all Justice Courts to identify any barriers to access for court users who are mobility-impaired or who have other disabilities.

We also support OCA's decision to supply Justice Courts with digital recorders and to require that they create real-time records of court proceedings. Currently, verbatim records are not required by statute. Many Justice Courts do not keep any records of proceedings; some justices depend only upon their handwritten notes that they take during the proceedings. In some cases, justices are required to reconstruct proceedings from their notes or even from memory when no notes are available to facilitate a party's appeal, and these reconstructions often have been found to be insufficient for appellate review. Not only will records of court proceedings ensure accountability, compliance with the law and enforcement of litigant rights, they will also provide a more reliable record from which litigants may appeal.

We also commend OCA's decision to fully integrate the Justice Courts into the State Judiciary's technology system. Resources like computers, case management software, online databases and court manuals will help bring the Justice Courts, which were derived from 17<sup>th</sup> Century tribunals, up-to-date with modern technology. Further, these resources will also enhance accountability, allowing OCA to determine how many cases are heard annually and how long cases languish in the system. With this information, OCA will be able to track cases and establish much-needed performance benchmarks.

Hopefully, this will eliminate reprehensible situations such as that which occurred in the Finger Lakes area of Schuyler County, where defendants were reportedly jailed for months waiting for court to convene again.

Finally, as OCA has determined in its Action Plan, it is vital that OCA take steps to ensure the safety of all court users. OCA plans to assess the security of every Justice Court, identifying and limiting any potential threats. OCA also plans to distribute a comprehensive set of best practices for Justice Court security. We must ensure that these best practices are followed by every Justice Court to the extent possible and practicable. We also must provide the Justice Courts with the capability to screen for weapons and other items that pose security risks, as well as give them the resources to upgrade the security of their facilities where needed. The Justice Courts are not immune to attack; the justices, attorneys and litigants of the Justice Courts deserve the same protections afforded to court users in other courts throughout the state.

Many of these reforms will require funding. OCA has asked for \$10 million to implement its requested reforms. We ask that the Legislature approve the appropriation request in the Judiciary's 2007-2008 budget.

In addition, we renew our request that the Commission on Judicial Conduct be adequately funded. Never again should we hear of these severe problems by way of the *Times* or other media outlets. Rather than depending on the media to shed light on judicial offenses, public confidence demands that we maintain the integrity of the Judiciary within the profession. Yet, the Commission, which is tasked with investigating complaints against judges, has been chronically and seriously under-funded for a long time. Over the past 30 years, the staff has been cut in half, while the number of complaints received has more than doubled. The Commission has a responsibility to complainants, judges under accusation and the public to resolve complaints as expeditiously as possible. Additional funding would enable the Commission to hire the staff and purchase the equipment necessary to properly and quickly resolve complaints. Further, additional funds would allow the Commission to carry out another important part

of its mission – educating the public about the ethical responsibilities of judges. We cannot overlook the importance of public education as an important part of maintaining public confidence in the Judiciary.

I commend all of these suggested reforms to you, and offer any assistance we can provide toward the greater goal of maintaining public confidence in the court system. Thank you again for the invitation to be a part of this important discussion and reform effort.



REFORM OF THE NEW YORK STATE JUSTICE COURTS  
Before the New York State Senate Standing Committee on Judiciary  
January 29, 2007

I am Mark Alcott, President of the New York State Bar Association. With 72,000 members, we are the largest bar association in New York; and we have been the voice of the state's legal community for 130 years. On behalf of the Association, I thank you for the opportunity to share our views concerning the reform of the New York State Justice Courts.

Independence of the courts and the bar are the twin pillars of our legal system. These pillars are buttressed by public confidence in the court system and by the perception that, when litigants step into a courtroom and appear before a judge, whether that court is located in a bustling city or quaint village, they will receive justice and equal treatment according to the law.

Unfortunately, as we have learned from the widely circulated *New York Times* series on the Justice Courts, the designation "Justice Court" is sometimes a misnomer. I can think of few issues that have caused lawyers to reach out to me, as President, with such a high-level of concern. I share their dismay. When public confidence in any facet of the court system is weak, the authority of our entire system of justice is undermined. Public confidence in every judge in this state is crucial to the continued vitality of the bench and the bar. Indeed, due to the nature of the cases that come before Justice Courts, public confidence in those tribunals is particularly crucial.

New York's Justice Courts – often referred to as "the first line of defense of our justice system" – handle cases that affect the everyday lives of New Yorkers: DWIs, Requests for Orders of Protection, Landlord-Tenant Disputes. Those appearing before a Justice Court could face loss of the right to drive a car and, thus, their livelihood. They could face imprisonment or eviction from their homes. They could be seeking a much-needed order of protection to save them from further episodes of domestic violence.

For many of New York's citizens, the Justice Courts are the only contact they have with the court system. Therefore, it is essential to public confidence in our judicial system that the Justice Courts be open to all and treat each person with the dignity, respect and fairness that is expected from all of New York State's tribunals.

To ensure public confidence in the court system, the Justice Courts must be fundamentally reformed. It is the long-standing position of the Bar Association that all justices who preside over these courts should be lawyers. The Constitution authorizes the Legislature to fix qualifications for those serving in the Justice Courts, and current law allows laymen to fill the positions. There is an urgent need to upgrade these qualifications.

Of the nearly 2000 justices in these courts, 72% are not attorneys. Until recently, the Office of Court Administration required just one week of training for non-attorney justices; under OCA's new Action Plan for the Justice Courts, which we applaud, training will be doubled to two weeks. We support the initiative for expanded training and stand ready to assist OCA in implementing this initiative. However, while the OCA is doing the best that it can with the limited resources and authority it holds, even two weeks of training is insufficient, given the scope of power and breadth of issues that come before the Justice Courts.

Indeed, greater education is required to perform other services in New York State. For example, the state requires hair removal waxing technicians to complete 75 hours of training and pass an examination.<sup>1</sup> The state requires nail specialists to receive 250 hours of training;<sup>2</sup> and massage therapists must complete 500 hours of training and pass an examination.<sup>3</sup>

It is offensive that nail specialists and massage therapists are required to receive more training than the Justice Court's non-attorney justices. These justices are

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Moreover, the same matter, occurring within a city, would come before a judge who must be admitted to the bar. For justice to truly be equal, New York's citizens, whether they reside in a city or in a rural area, deserve to have their cases heard by judges who are attorneys. It is inequitable for litigants in civil or criminal cases to have matters determined by a person who may be unfamiliar with the law and not bound by the Code of Professional Responsibility and the Code of Judicial Conduct. According to the *New York Times* series of articles, when many of these justices made a mistake, they used their non-lawyer status as an excuse, acknowledging their mistakes and stating, "I'm not a lawyer." We have to eliminate this excuse. In modern times, there is no reason that all judges cannot and should not be lawyers, and public confidence requires that local justices have appropriate training and are held to enforceable ethical standards.

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