

REPORT

of the

QUALITY OF JUSTICE SUBCOMMITTEE

of the

INTERGOVERNMENTAL TASK FORCE

TO STUDY THE

DISTRICT JUSTICE SYSTEM

EXECUTIVE SUMMARY

This report is submitted by the Quality of Justice Subcommittee of the Intergovernmental Task Force to Study the District Justice System. The Quality of Justice Subcommittee was established as part of the Task Force on May 30, 2001. The Subcommittee was invited to formulate recommendations concerning special issues or problems impacting upon the quality of justice in the district justice courts.

The membership of the Subcommittee included a president judge of the court of common pleas, two district justices, and staff members of the legislative and executive branches of government. The Subcommittee was supported by the staff of the Administrative Office of Pennsylvania Courts.

The Subcommittee met four times to consider the current state of the district justice system and focused on issues concerning retention elections, terms of office, qualifications for office, courtroom security, the termination of inactive cases, pension benefits and matters relating to jurisdiction. As part of its undertaking, the Subcommittee reviewed the relevant legal authorities, statistics and information gathered from the federal government and other states, pending legislation in the Pennsylvania Senate and House of Representatives, and comments received from district justices and president judges across the Commonwealth.

After extensive analysis and discussion, the Subcommittee devised the following set of seven recommendations:

1. The Subcommittee recommends that the question of retention elections for district justices should be put to the people by way of a constitutional referendum.
2. The Subcommittee recommends that in consideration of its proposal regarding retention elections, district justices' terms of office should remain at six years. The Subcommittee also recommends that the Rules Governing the Standards of

Conduct of District Justices should be amended to restrict outside employment of district justices, as is done for judges in the Code of Judicial Conduct, and accordingly that consideration be given to compensation, commensurate with the full-time status.

3. The Subcommittee recommends that the Pennsylvania Constitution be amended so that (1) a non-lawyer district justice candidate must be certified prior to filing a nominating petition for that office, (2) as a precondition to gubernatorial nomination to the office of district justice, any non-lawyer nominee must be certified by the Minor Judiciary Education Board (MJEB) and, (3) attorney candidates and appointees must complete the MJEB course of training and instruction before assuming the office of district justice.
4. The Subcommittee recommends that: (1) statewide proposed standards or recommended guidelines be developed with regard to courtroom security in magisterial district offices and (2), that each president judge should appoint a security committee to assess the conditions and security related needs of each magisterial district office in the county. The committee should report its findings to the president judge, the county governing authority and the Administrative Office of Pennsylvania Courts. In addition, the Subcommittee recommends the implementation of statistical reporting to the Administrative Office of Pennsylvania Courts to record security-related incidents.
5. The Subcommittee recommends that the Supreme Court appoint a committee to explore the problems associated with the collection of fines and costs imposed at the district justice level and to recommend appropriate solutions. The Subcommittee further recommends that the Minor Court Rules Committee develop and propose a statewide rule providing for the termination of inactive cases along the contours of Rule of Judicial Administration 1901 that recognizes the special circumstances and jurisdictional issues at the district justice level.
6. The judicial members of the Subcommittee recommend that the Pennsylvania Retirement Code be amended so that district justices are entitled to identical pension benefits as those currently enjoyed by common pleas and appellate court judges.
7. The Subcommittee recommends that while some increase in a district justice's jurisdiction may be warranted, caution should be exercised for the reasons expressed in the commentary following Recommendation No. 7 and in light of the district justice system as presently constituted.

INTRODUCTION

Quality of Justice Subcommittee Mandate and Issues

As part of the decennial redistricting process, the Supreme Court called for the creation of an Intergovernmental Task Force to study the district justice system in Pennsylvania. From the twenty-two member task force, eight were assigned to the "Quality of Justice" Subcommittee. Members and staff of the Subcommittee were:

Honorable Samuel J. Magaro, *District Justice, Dauphin County, Chair*

Honorable John B. Leete, *President Judge, Potter County*

Honorable Bernard J. Yanich, *District Justice, Dauphin County*

General Counsel Stephen C. MacNett, Esquire, *Senate Republican Caucus*

Chief Counsel C.J. Hafner, II, Esquire, *Senate Democratic Caucus*

Chief of Staff Brian J. Preski, Esquire, *House Republican Caucus*

General Counsel Michael P. Edmiston, Esquire, *House Democratic Caucus*

Deputy General Counsel Gregory E. Dunlap, Esquire, *Office of General Counsel*¹

Andrea B. Tuominen, *Esquire, Assistant Court Administrator*

Darren M. Breslin, *Esquire, Staff Attorney, Legal Department*

The Quality of Justice Subcommittee was asked to consider the current state of the minor judiciary in Pennsylvania and recommend any changes to improve the district justice system. The Subcommittee's mandate was broad: any issue relevant to the quality of justice at the district justice level was appropriate for its consideration and any accompanying recommendation. Specific issues suggested for the Subcommittee's consideration included: retention elections for district justices, terms of office, qualifications for office, courtroom security in magisterial district offices, the termination

¹ The executive and legislative members of the Subcommittee wish to note that while the issues addressed by the Task Force are of interest to the clients they represent, the perspectives held by those clients are numerous and diverse. These Subcommittee members emphasize that while they view the efforts of the Task Force as a sensible investment in the harmonious cooperation that strengthens public confidence in government, their comments and contributions to the Subcommittee's recommendations, and the recommendations themselves, have not been approved by, nor do they necessarily represent the positions of, their clients or principals.

of inactive cases in the minor judiciary and the differences in pension benefits between district justices and other jurists in Pennsylvania.

Facts and Research Compiled for the Quality of Justice Subcommittee

The issues before the Quality of Justice Subcommittee are governed by a variety of authorities.² Most importantly, Pa.Const.art.V, §§ 12, 13 and 15 provide the basic source of law governing qualifications for office, terms of office and retention elections for the judiciary. Of course no examination of the issues before the Subcommittee would have been complete without reference to Article V, §1 (Unified Judicial System), §7 (Justices of the peace; magisterial districts), §10 (Judicial administration), and §17 (Prohibited activities). In addition to constitutional provisions, statutes, both past and present, particularly those in Titles 16 (County Code), 42 (Judicial Code), 71 (Retirement Code) and 75 (Vehicle Code), were reviewed. In its deliberations, the Subcommittee also referenced judicial interpretations (case law) of the relevant constitutional provisions and statutes. Finally, supreme court orders and rules of court (state and local) were considered by the Subcommittee.

For an understanding of the composition and history of the minor judiciary, the Subcommittee looked to the 1967-68 Pennsylvania Constitutional Convention. The debates of that Convention were examined for insight into how and why the delegates reached consensus on the issues relevant to the minor judiciary.³

² A complete list of the authorities that the Subcommittee relied upon is attached to this report as Appendix A.

³ However, it became apparent that the convention debates did not record the analysis or reasons why various proposals and amendments (particularly those relating to selection and retention, qualifications and terms of office for district justices) were either accepted or rejected.

The Subcommittee also reviewed selected portions of Reference Manual No. 5, The Judiciary, compiled by the Preparatory Committee to the Constitutional Convention. In particular, the Subcommittee reviewed Part I, §5 (Pennsylvania's [pre-1967] Court Structure); Part I, §6 (Broad Topical Subjects Usually Considered in Framing a Judicial Article); Part II, §2 (Method of Selection and Tenure of Judges in Pennsylvania); Part II, §4 (Qualifications for Judges in Pennsylvania); Part II, §5 (Current Proposals for Change in the Selection and Tenure of Judges); Part III, §§1-4 (Tenure of Judges); Part IV, §§1-5 (Incompatible Activities); and Part VIII (Submissions to and Oral Testimony Before the Preparatory Committee). Additionally, selected portions of Pennsylvania Constitutional Law, written by a former jurist and delegate to the convention, Robert E. Woodside, were also reviewed.

Information was gathered from other states and the federal government. In particular, Department of Justice statistics from 1998 on state court organization provided valuable insight into how other states select and retain judges, the terms of office for those judges, and the qualifications for office in each state's equivalent of Pennsylvania's minor judiciary. On the issue of courtroom security, information was provided by the National Center for State Courts, specifically court rules and guidelines from other states, including Wisconsin, Indiana, Ohio and Colorado. Also consulted was the Court Security Guide, published by the National Association for Court Management (June 1995).

The Subcommittee considered information compiled from the District Justice Automated System ("DJS") maintained by the Administrative Office of Pennsylvania Courts. This information was most relevant to the Subcommittee's consideration of a recommendation on the termination of inactive cases.

Legislation pending in both the Pennsylvania House and Senate was considered and discussed by the Subcommittee. Specifically, Senate Bills 518 (qualifications for district justices, specifically education on domestic violence matters), 856 (retention for district justices) and 857 (requiring certification before filing nominating petitions for the office of district justice), and House Bills 220 (adding actions in replevin to the jurisdiction of district justices), 909 (retention for district justices), 1381 (license suspension for failure to pay a fine imposed by a district justice), 1541 (increasing the civil jurisdiction of district justices to \$12,000) and 1604 (altering the superannuation provisions for district justice) were all examined.

Finally, in an attempt to understand the concerns and perspectives of Pennsylvania's judiciary, comments were solicited from members of the minor judiciary and president judges across the Commonwealth. Fifty-eight responses were received, including several from Special Court Judges Association District Presidents and Directors. Additionally, the Special Court Judges Association responded to the request for comments, and the positions presented by a special committee of that organization were considered by the Subcommittee.

SUBCOMMITTEE PROCEDURES AND WORK PRODUCTS

The initial meeting of the Quality of Justice Subcommittee was held on May 30, 2001. At that time, District Justice Magaro asked the members to provide their initial thoughts on each of topics before the subcommittee so that they could be compared and discussed at the next meeting. Additionally, it was agreed that comments should be solicited from interested parties, including the district justice community. Specifically, individuals, including representatives from the Special Court Judges Association, were

asked to comment on the issues of: retention, terms of office, qualifications for office, courtroom security, the termination of inactive cases and pensions. Respondents were invited to make any comments relevant to the quality of justice at the district justice level.

On July 16, 2001 the Subcommittee reconvened in Mechanicsburg, Pennsylvania. At that meeting each member present expressed his initial thoughts on the issues before the Subcommittee. The Subcommittee was advised that comments had been received from district justices, president judges and other interested parties and the Subcommittee members were apprised of the comments received as of that date. Information compiled by counsel and brought by Subcommittee members was distributed and discussed. Questions were raised and several of the members indicated that they would require additional information before they could make recommendations. A third meeting was scheduled for August 7, 2001 to discuss the additional information gathered by counsel and to determine if a consensus could be reached on any recommendations.

Prior to the August 7th meeting, counsel gathered the information requested and sent it to the Subcommittee members. At the August 7th meeting a discussion was had on each of the issues before the Subcommittee and consensus was reached on several recommendations.

On August 22nd, the Subcommittee reconvened to review a draft report based on the areas where a consensus was reached. Each recommendation was reviewed and some changes were made. Agreement was reached on some additional issues and it was decided that an amended draft report would be prepared and circulated to the Subcommittee members for their approval and ultimate submission to the Task Force by September 4, 2001. The approved recommendations are as follows.

RECOMMENDATIONS

Recommendation 1: The Subcommittee recommends that the question of retention elections for district justices should be put to the people by way of a constitutional referendum.

Under the current election system, Pennsylvania Supreme Court Justices, as well as Commonwealth, Superior, Common Pleas, Philadelphia Municipal and Philadelphia Traffic Court judges are permitted to run in retention elections. Pa.Const. art. V, §15(b); 42 Pa. C.S. § 3131. District justices do not have the opportunity to run for reelection via retention election. If they wish to remain in office, they must run in partisan elections after each term. Pittsburgh Magistrates Court judges are appointed by the Mayor. 42 Pa. C.S. §3131(d).

The Subcommittee considered the current law governing the availability of retention elections for district justices. The Subcommittee noted that the issue of retention elections for district justices is presently before the Pennsylvania General Assembly in the form of SB 856 and HB 909. Both bills call for a referendum to amend the Pennsylvania Constitution and allow district justices the option of running for reelection via retention elections.

The Subcommittee sought and received numerous comments from the district justice community and president judges on the issue of retention. Approximately 90 percent of the respondents stated that they favored retention elections for district justices.

A representative sample of those comments follows:

"[Retention is needed], if only to avoid the 'look' of impropriety. The Minor Judiciary needs retention." Hon. George W. Herzberger, District Justice for Mag. District 30-3-04 (Crawford County)

"District Justices should not be disadvantaged politically by being required to compete politically once every six years. District Justices should be above the 'wheeling and dealing' associated with politics. A District Justice is in a very different professional and personal position after twelve years to be required to compete politically. Requiring District Justices to run politically undermines the concept of an independent and impartial judiciary." Hon. C.F. Darlington, District Justice for Mag. District 15-2-05 (Chester County)

"I believe retention would help to eliminate political overtones from the office of District Justice. Currently, every six years you must make the rounds of the political functions, and then, suddenly after the election, become a non-political person. It is hard to convince some people that politics does not play a role in this system." Hon. Jeffrey L Mensch, District Justice for Mag. District 17-3-02 (Union County)

"In order to be a truly unified judicial system, the District Courts cannot be treated differently than the other levels of the judiciary. This includes the issue of retention. Although retention is available to all other levels of the judiciary for the very important purpose of removing the judiciary from the political spectrum, the District Justices are not provided this opportunity or protection. In order to be a truly unified judicial system, we must be given the opportunity to have retention elections for all the same reasons that other levels of the judiciary are afforded that option." Hon. Richard M. Cappelli, Chairman of the Response Committee of the Special Court Judges Association

Some members of the Subcommittee expressed curiosity as to why Philadelphia Municipal Court and Traffic Court judges, who also serve six-year terms, had the option of running in retention elections, but that the option was not available to district justices. The Subcommittee concluded that the office of district justice should be "depoliticized" and that a first step toward accomplishing this could be making retention elections an option. Since this change would require a constitutional amendment, the Subcommittee recommends that this issue be put to the electorate by way of a constitutional referendum.

Recommendation 2: The Subcommittee recommends that in consideration of its proposal regarding retention elections, district justices' terms of office should remain at six years. The Subcommittee also recommends that the rules governing the standards of conduct of district justices should be amended to restrict outside employment of district justices, as is done for judges in the Code of Judicial Conduct, and accordingly that consideration be given to compensation, commensurate with the full-time status.

Terms of Office

The Subcommittee considered the current law governing terms of office in the Minor Judiciary. The terms of office for district justices differs from that of common pleas and appellate court judges. Supreme Court Justices and the aforementioned judges are elected to ten year terms; district justices and Philadelphia Municipal and Traffic Court judges are elected to six year terms. The term of office for judges of Pittsburgh Magistrates Court is (mayoral appointment for) four years. Pa.Const.art.V, §15(a); 42 Pa.C.S. §§3131(d), 3152(a).

The Subcommittee sought and received numerous comments from the district justice community and president judges regarding the present six-year term of office. Approximately 45 percent of the respondents favored a ten-year term of office, while approximately 30 percent supported the present six-year term. A representative sample of the comments received follows:

"[Six] years is a satisfactory term of office." Hon. Jeffrey L. Mensch, District Justice for Mag. District 17-3-02 (Union County)

"I believe that the current term of office for district justices is appropriate." Hon. William E. Baldwin, President Judge of Schuylkill County

"A longer term would be more beneficial if retention is out of our grasp, then we would not be faced with the political issue as often." Hon. Ola E. Stackhouse, District Justice for Mag. District 26-3-01 (Columbia County)

"The term should be changed to 10 years." Hon. Valarie S. Costanzo, District Justice for Mag. District 27-3-06 (Washington County)

The Subcommittee reviewed the terms of office for judges who serve the equivalent function of district justices in other states, including those that border Pennsylvania. On balance, those terms seem to range from between four to ten years. Some members of the Subcommittee suggested that it was important to keep the terms of office for district justices equal to that of Philadelphia Municipal Court and Traffic Court judges. The Subcommittee concluded that in light of its recommendation on retention elections, it also recommends that the terms of office for district justices should remain at six years.

Full-Time vs. Part-Time

In response to the Subcommittee's request for comments, many president judges and district justices also commented on the issue of whether district justices should work "full-time" or "part-time." The Subcommittee recognized that many district justices devote "full-time" to their offices and that many district justices work more than a "forty-hour" workweek because they must often perform their official duties after hours (while serving on night court, for example). It was also noted that district justices receive no additional compensation for performing additional duties after hours. Conversely, the committee received information that, apparently, some district justices are only performing their judicial duties on a "part-time" basis while they pursue other employment during the week.

A representative sample of the comments received on this issue follows:

"Working a part-time job in the community doesn't do much for the dignity of the office." Hon. C.F. Darlington, District Justice for Mag. District 15-2-05 (Chester County)

"It is my belief that with the current caseload and with the continuing increase in responsibilities assigned to our District Justices, they should be full-time. I realize that adding that requirement may eliminate some very qualified people who do not want to make it a full-time career, but I believe the pressures of the office are going to dictate that they do so in the future. If the position is going to be allowed to continue as a potentially part-time position, there should be some requirement for a minimum number of hours for the district justice to be present in his or her office each week." Hon. William E. Baldwin, President Judge of Schuylkill County

"[I]f an attorney is elected to this position [of District Justice], [I] strongly favor the elimination of any right to practice law at nights or otherwise." Hon. George E. Hoffer, President Judge of Cumberland County

"Quite simply, I believe that all district justices should be required to work on a 'full time' basis. Perhaps the 'full time' requirement could be defined as not being permitted to work at any part-time job, business or profession during normal office hours. Normal office hours, of course, should be defined by the president judge in each respective county. This requirement would not prevent one from working at some other endeavor during non-business hours." Hon. David E. Brian, District Justice for Mag. District 02-2-05 (Lancaster County)

During the discussion of this issue, some members of the Subcommittee commented that as the workload of district justices increases, and of more immediate concern, if the replevin and jurisdiction bills (House Bills 220 and 1541) are passed, the job of district justices will certainly require "full-time" attention. Other members of the Subcommittee opined that making the job "full-time" would further professionalize and "de-politicize" district justices. Additionally, the Subcommittee agreed that the existence of "night court" duty must be recognized when deciding what constitutes "full-time employment." Moreover, the Subcommittee suggested that if the outside employment of

district justices is limited, a salary adjustment would seem to be an appropriate consideration.

The Subcommittee recognized that many of the Supreme Court Rules Governing Standards of Conduct of District Justices ("DJ Conduct Rules") and Rules and Standards with Respect to Offices of District Justices ("DJ Office Rules") limit, to an extent, the type and amount of extra-judicial employment in which a member of the minor judiciary may engage. However, the Subcommittee believed, and therefore recommends that in light of the comments received, as well as the factors detailed above, the Supreme Court should explicitly prohibit the extra-judicial activities of the minor judiciary consistent with the related Canons in the Code of Judicial Conduct applicable to appellate and trial court jurists.

Recommendation 3: The Subcommittee recommends that the Pennsylvania constitution be amended so that (1) a non-lawyer district justice candidate must be certified prior to filing a nominating petition for that office, (2) as a precondition to gubernatorial nomination to the office of district justice, any non-lawyer nominee must be certified by the Minor Judiciary Education Board (MJEB), and (3) attorney candidates and appointees must complete the MJEB course of training and instruction before assuming the office of district justice.

The Subcommittee considered the qualifications for office in the Pennsylvania minor judiciary. Supreme Court Justices, appellate, common pleas and Philadelphia Municipal Court judges must be members of the Pennsylvania bar. District justices, Philadelphia Traffic and Pittsburgh Magistrates Court judges must either be members of the bar or must complete a course of training and instruction in the duties of their office and pass an examination prior to assuming office. Pa. Const.art. V, §12. The Minor Judiciary Education Board, ("MJEB"), administers the instruction and examination. 42

Pa.C.S. §§2131-35; 3111-3119. The Subcommittee was informed that approximately 20 percent of Pennsylvania's district justices are also attorneys.

The Subcommittee sought and received numerous comments from the district justice community and from president judges regarding the qualifications for office in the minor judiciary. Of the 58 responses received, approximately 51 percent stated that district justices should be certified (by completing the course of instruction and passing an exam by the MJEB) prior to running for office. Approximately eleven percent of the respondents stated that the certification requirement should apply to attorney and non-attorney candidates alike. A small minority of the respondents, approximately five percent, recommended a variety of educational prerequisites ranging from an associate's degree through membership in the Pennsylvania bar. An additional five percent of the respondents stated that the system should remain as it is now. A representative sample of the comments received follows:

"With regard to qualifications, some have advocated that district justices should have a degree in law, but based on my experience, some of our very best justices have been non-lawyers who bring to the office a well developed sense of fairness and common sense. Of course, the requirement of taking the course and passing the test should remain." Hon. William E. Baldwin, President Judge of Schuylkill County

"I would recommend no change in the current requirement." Hon. C. Roger McRae, District Justice for Mag. District 29-3-03 (Lycoming County)

"I do not believe it necessary to require that district justices be lawyers. Most of the people I meet and deal with respect the idea that this is truly a 'people's court' and that while they expect to be treated fairly and respectfully they don't need or expect the formality of such a requirement. Additionally, they seem more comfortable dealing with someone with a similar 'lay' background. Certification prior to candidacy and/or election seems to be a good idea. This will assure the public a qualified and serious candidate and someone who can take office as

scheduled." Hon. Carmine W. Prestia Jr., District Justice for Mag. District 49-1-01 (Centre County)

The Subcommittee recognized that there is presently a bill in the Pennsylvania Senate, SB 857, proposing a joint resolution to amend the Pennsylvania Constitution and require that Philadelphia traffic court judges and Pennsylvania district justices complete a training course and pass examination before filing a nominating petition for office. Some members of the Subcommittee commented that SB 857 may not be applicable to appointed district justices and that perhaps it should be amended to do so. Accordingly, the Subcommittee recommends that the Pennsylvania Constitution be amended so that non-lawyer district justices must be certified by the MJEB, or any "successor" agency, prior to filing a nominating petition for that office. Moreover, the Subcommittee recommends that as a precondition to gubernatorial nomination to the Senate (to fill a vacancy in the office of district justice⁴) any non-lawyer nominee must also be certified by the MJEB. The term "certified" means that the candidate or gubernatorial nominee has completed a course of training and instruction and passed an examination as prescribed by the MJEB.

Other members of the Subcommittee noted that many of the adjudicative and administrative responsibilities of district justices are not taught in law school and that even attorneys who seek the office of district justice could benefit from the training provided by the MJEB. The Subcommittee agreed, however, that attorneys should not be required to take the examination given by the MJEB, nor should attorney candidates be

⁴ See Pa.Const.art.V, §13(b) (Vacancies in the office of district justice are filled by gubernatorial appointment with the advice and consent of a majority of the senate.)

required to take the MJEB course before the filing of nominating petitions, but rather, the MJEB course, or that of any "successor" agency, should be completed before the individual assumes the office of district justice. With respect to gubernatorial appointees to the office of district justice, the Subcommittee agreed that attorney appointees should complete the MJEB course of training and instruction before assuming the office of district justice.⁵

Recommendation 4: The Subcommittee recommends that: (1) statewide proposed standards or recommended guidelines be developed with regard to courtroom security in magisterial district offices and (2), that each president judge should appoint a security committee to assess the conditions and security related needs of each magisterial district office in the county. The Committee should report its findings to the president judge, the county governing authority and the Administrative Office of Pennsylvania Courts. In addition, the Subcommittee recommends the implementation of statistical reporting to the Administrative Office of Pennsylvania Courts to record security-related incidents.

The issue of security in magisterial district offices was also considered by the Subcommittee. On this issue, the Subcommittee found that courtroom security for district justices varies widely in the Commonwealth. Some district courts have, among other things, secure holding cells, bullet-proof glass equipped counters, steel doors, panic buttons, quick and easy access to law enforcement officers and constables. Others have no security devices or protocols whatsoever. There are no statewide uniform security rules or guidelines presently in place for magisterial district offices.

⁵ The Subcommittee recognized that the Supreme Court can regulate the conduct of attorneys through the Rules of Professional Conduct, however in light of *Flegal v. Dixon*, 472 Pa. 249, 372 A.2d 406 (1977), any requirements for the office of district justice that are more stringent than those found in Pa.Const.art.V, §12(b) may not be permissible without a constitutional amendment.

It was the Subcommittee's consensus that if the facilities for the minor judiciary are primarily within the purview of Pennsylvania's county governments, any funding of security measures in the approximately 550 magisterial district offices should also be primarily the responsibility of the counties. *See* 42 Pa. C.S. §§3701-3727 (facilities and supplies); Pa. Rules and Standards with Respect to Offices of District Justices, Rule 101 (Establishment of Offices).

The Subcommittee sought and received numerous comments from the district justice community and president judges regarding the issue of courtroom security. Approximately twenty percent of the respondents stated that improvement is greatly needed in this area. Nine percent of the respondents stated that there should be uniform statewide guidelines on security. A representative sample of those comments follows:

"Minimum standards should be established for passive and active security measures." Hon. C.F. Darlington, District Justice for Mag. District 15-2-05 (Chester County)

"On the issue of courtroom security, I think that is a subject that should best be left to each county. As President Judges we are very concerned about the security in our district offices, particularly since they are so far removed from the courthouse and the protection of the Sheriff's Office. However, security problems are fiscal problems, and each Courthouse, as well as offices for District Justices have their own problems. I do not believe that the issue is one that can be addressed on a statewide level." Hon. William E. Baldwin, President Judge of Schuylkill County

"In many of the small jurisdictions, such as mine, security is non-existent. Without funding from the state, security will be a low priority for most counties." Hon. Jeffrey L. Mensch, District Justice for Mag. District 17-3-02 (Union County)

"The judicial district should provide security. Particularly, in very rural areas. In my particular case, State Police are assigned to cover my area. When needed, which has happened in my court, it takes them from 30 minutes to an hour to

arrive." Hon. M. Kay DuBree, District Justice for Mag. District 7-3-03 (Bucks County)

"[I] strongly urge state funding to improve the security of the district justices' offices. These offices face equal, if not greater, likelihood of volatility as our courthouses, but, generally, they have no or very inadequate security measures." Hon. Michael A. Georgelis, President Judge of Lancaster County

"[Courtroom security] should be the same or better [than the] Court of Common Pleas. When people come to DJ Court many are still agitated, upset and possibly intoxicated. By the time they get to higher courts they have cooled down." Hon. Daniel B. Garber, District Justice for Mag. District 19-2-03 (York County)

The Subcommittee considered information detailing reports of threats and violence experienced by Pennsylvania judges and the probability that the longer a judge serves, the more likely it is that he or she will be the victim of some sort of inappropriate, threatening or abusive behavior.⁶ Several members of the Subcommittee also expressed concern for district justices' employees, who may be subject to violence both within and outside of the office.

In addition to the above, the Subcommittee considered the approaches other states have taken with respect to courtroom security.⁷ The Subcommittee found that several states have published either mandatory or recommended security guidelines, such as Wisconsin⁸ and Indiana,⁹ and that some states have formed committees on the local level to review courtroom facilities and make recommendations to the appropriate entity or

⁶ Neil Alan Weiner, et al., Safe and Secure: Protecting Judicial Officials (Court Review - Winter, 2000, Pgs 26-33).

⁷ The Subcommittee also found informative the Court Security Guide, published by the National Association for Court Management, 1995.

⁸ See Wisconsin Supreme Court Rules 70.38-39.

⁹ See Indiana Court Security Guidelines and Priorities.

entities (such as Wisconsin, see n.7 and Colorado¹⁰). The Subcommittee also found that some state court administrative offices had in place a method for recording security-related incidents on a statewide level.¹¹

The Subcommittee recommends that uniform guidelines or standards should be developed with regard to courtroom security in magisterial district offices. It also recommends that the president judge of each county appoint a security committee, which should include, among others, the county sheriff, to assess the conditions and security-related needs of each magisterial district office within the county. That committee should report its findings to the president judge, the county commissioners or other county governing authority, and to the Administrative Office of Pennsylvania Courts. The Subcommittee further recommends that security related incidents should be reported to the Administrative Office of Pennsylvania Courts for information gathering and statistical reporting.

Recommendation 5: The Subcommittee recommends that the Supreme Court appoint a committee to explore the problems associated with the collection of fines and costs imposed at the district justice level and to recommend appropriate solutions. The Subcommittee further recommends that the Minor Court Rules Committee develop and propose a statewide rule providing for the termination of inactive cases along the contours of Rule of Judicial Administration 1901 that recognizes the special circumstances and jurisdictional issues at the district justice level.

Another issue the Subcommittee considered was the termination of inactive cases in the minor judiciary. Rule of Judicial Administration ("R.J.A.")1901, which is the

¹⁰ See Colorado Courthouse Security Guidelines.

¹¹ See e.g., Ohio Court Security Standards Rule 12.

primary authority in this area, expresses the policy of the Unified Judicial System that pending matters should be brought to a prompt disposition. The rule authorizes each court of common pleas to implement this policy with regard to pending matters before, among others, district justices. Pa.R.J.A. 1901(a)-(b). However, many other factors are relevant to any discussion of this issue, such as case law and statutes, including, but not limited to, 42 Pa.C.S. §§3571-73 (disposition of fines and costs), 42 Pa.C.S. §3733 a.1 (additional fees for the Judicial Computer System), 42 Pa.C.S. §9728 (CCP judgment), 42 Pa.C.S. §9730(a) (use of credit and bank cards to pay court costs and fines), 42 Pa.C.S. §9730.1 (use of collection agencies) and 42 Pa.C.S. §9758(b-c) (installment payments and use of alternative sentences). Additionally, the Subcommittee considered intangibles, such as defining whether the term "inactive" encompasses the pre-adjudication stage of a case if no activity occurs for a specified period of time, or if it also includes the post-adjudication stage where all that remains is the payment of fines and costs.

The Subcommittee considered reports that inactive cases pose a significant problem in the minor judiciary. Research showed that many cases must be retained long past the date of disposition because the payment of fines and costs remains outstanding. Reports indicate that some cases have been finally adjudicated, but the payment of fines and costs remains outstanding for more than 10 years. However, it was reported that for a multitude of reasons, there is little likelihood that any payment will ever be received on many of these "inactive cases."

The Subcommittee sought and received numerous comments from the district justice community and president judges regarding the issue of inactive cases. Approximately 21 percent of the respondents stated that a uniform method for

terminating cases should be established. A representative sample of those comments follows:

"There should be rules in place for district justices to dispose of inactive cases; including cases which have had a disposition and even a partial payment agreement after an extended period of time with no activity. The court can place a monetary limit on these cases, but in no event should the district court be required to maintain cases past the existing Records Retention Schedule." Hon. M. Kay DuBree, District Justice for Mag. District 7-3-03 (Bucks County)

"Defendants should be allowed to pay fines and costs by credit card both at the District Justice offices and the county cost clerk's office. This would eliminate time payment schedules, the need to revise those schedules when defendants default, and would assure prompt payment and expedite revenue enforcement." Hon. James H. Sortman, District Justice for Mag. District 29-3-04 (Lycoming County)

"This is badly needed. We need a consistent rule across the commonwealth that would allow each court to dispose of old, uncollectable cases." Hon. Douglas Gerwick, District Justice for Mag. District 28-3-04 (Venango County)

"An array of differing opinions and practices seems to govern current termination of inactive cases pursuant to Rule [of Judicial Administration] 1901. This rule does not address the majority of inactive magisterial cases we would wish to terminate. . . traffic and non-traffic. While there is indeed a significant waste of public funds in pursuing insignificant balances due, one must weigh the practice of terminating inactive cases in the interest of fiscal efficacy against public perception that defendants are 'avoiding their sentences' if they hide from the law." Hon. Ronald E. Vican, President Judge of Monroe County

Collection of Fines and Costs Presently Due

The Subcommittee believes that all reasonable steps should be taken to collect any money owed as a result of a court's rulings, however, there should be some point at which old, "uncollectable" cases should be administratively closed. District justices report that they spend a considerable amount of time processing "uncollectable" cases and that they must use a significant amount of storage space to preserve these cases when

there is very little likelihood that the fines and costs will be fully collected; thus the cases could theoretically remain open indefinitely.

The Subcommittee agreed that there are many factors that must be considered before deciding what would be the best resolution to the problem of terminating inactive cases. For example, administratively closing cases before the collection of all fines and costs could have an impact on the budget of state and local governments. The Subcommittee also agreed that since millions of dollars could potentially be deemed "uncollectable," the effects of administratively closing a large number of cases must be carefully considered before settling on a course of action. Careful consideration must be given to the potential (either real or perceived) perception that individuals are "getting away with" avoiding the sentence of a judicial officer. Therefore, there are policy implications that must be considered before making a recommendation on how to solve this problem.

Based on the comments received, information compiled from the District Justice Automated System and several of the Subcommittee members' own experiences, a consensus was reached that there is a significant problem with regard to inactive cases and the collection of past due fines and costs imposed by district justices. After lengthy discussions, the Subcommittee agreed that the Supreme Court should establish a committee to completely address this issue. That committee should include the individuals and entities most familiar with the problems and who are critical to a successful solution. At a minimum, the Subcommittee recommends participation by the AOPC, the Minor Court Rules Committee, the Special Court Judges Association and PennDot. The committee should consider: (1) the input and recommendations from

district justices, as well as the interested state and local governmental entities; (2) all relevant statutory provisions and court rules, some of which have been included in this report; (3) a district justice's ability to determine indigency and reduce fines and costs as deemed appropriate; and (4) what other states have done to collect fines and costs imposed by the judges of their limited jurisdiction courts.

After examining the issues, the committee should recommend whatever changes would be needed to correct the problems identified. A set of recommendations aimed at correcting the problems identified should then be forwarded to the Supreme Court, as well as to the relevant committees within the General Assembly.

Termination of Cases Generally

In addition to the recommendation above, the Subcommittee agreed that R.J.A.1901 seems inadequate to address the termination of inactive cases in the minor judiciary and that a statewide rule to accomplish this for all classes of cases (criminal and civil) would be beneficial to the administration of justice. The Subcommittee believes that the first step should be a definition for what constitutes an "inactive case" at the district justice level. R.J.A. 1901 seems to contemplate the termination of cases in the pre-adjudication stage while the major problems presented to the Subcommittee seem to occur post adjudication for district justice matters. Accordingly, a definition for what constitutes an inactive case in the minor judiciary is essential.

Because of the diversity and complexity of the issues involved, the Subcommittee recommends that the Minor Court Rules Committee examine this issue and develop a proposed statewide rule, similar to R.J.A. 1901, regarding the termination of inactive

cases that recognizes the special circumstances and jurisdictional issues at the district justice level.

Recommendation 6: The judicial members of the Subcommittee recommend that the Pennsylvania Retirement Code be amended so that district justices are entitled to identical pension benefits as those currently enjoyed by common pleas and appellate court judges.¹²

The Subcommittee examined the pensions that district justices may receive after obtaining the requisite eligibility requirements. Under the Commonwealth's Retirement Code, 71 Pa.C.S. §5101 *et seq.*, district justices are eligible for pension benefits that are somewhat different from the benefits available to common pleas and appellate court judges. During the first ten years of their terms, common pleas and appellate court judges may contribute 10% of their income to their pension, and receive a corresponding 4% benefit in their pensions. After that period, judges may only contribute 7.5% of their income toward retirement, and receive a corresponding benefit of 3%. The 7.5% rate continues for the remainder of their time on the bench. Conversely, district justices may only contribute 7.5% of their income toward retirement, and receive a corresponding 3% benefit.

Superannuation provisions are identical for judges and district justices (eligibility is now at any age with 35 years of service or at age 60 with three years of service). However, House Bill 1604 would lower superannuation age for District Justices "at any age upon accrual of 24 eligibility points [years of service] or age 50."

¹² In deference to the important and sensitive nature of this issue, the executive and legislative staff members on the Subcommittee did not deem it appropriate to participate in the development of this recommendation.

The Subcommittee sought and received numerous comments from the district justice community and president judges regarding the issue of pensions. Approximately seventy-one percent of the respondents stated that the pensions of district justices should be equal to that of common pleas and appellate court judges. A representative sample of those comments follows:

"Much like the issues of retention and terms of office, pension equity is a question of fairness and unification. If the District Courts are to be truly part of the Unified Judicial System, then they should be afforded the same opportunities and the same pensions as the rest of the Unified Judicial System. This would include the ability to elect the E-1 Pension Option." Hon. Richard M. Cappelli, Chairman of the Response Committee of the Special Court Judges Association

"In a truly unified judicial system, there is no legitimate rationale for having multiple retirement classifications." Hon. Richard Thomas, District Justice for Mag. District 19-3-10 (York County)

"[O]ur pension should be equal to all branches of the judiciary." Hon. Gary Havelka, District Justice for Mag. District 27-3-07 (Washington County)

In light of the comments received, and after discussing their own opinions on the issue of pensions, the judicial members of the Subcommittee agreed that pension benefits of district justices should be identical to those of other jurists in Pennsylvania. The judicial members of the Subcommittee agreed that there seems to be no valid reason supporting the difference between the pension benefits of common pleas and appellate court judges and those enjoyed by district justices, especially given the Subcommittee's recommendation pertaining to full-time employment status for district justices. Accordingly, the judicial members of the Subcommittee recommend that the Pennsylvania Retirement Code be amended so that the pension benefits for district justices are equal to those of common pleas and appellate court judges.

Recommendation 7: The Subcommittee recommends that while some increase in a district justice's jurisdiction may be warranted, caution should be exercised for the reasons expressed in the following commentary and in light of the district justice system as presently constituted.

The Subcommittee agreed that jurisdictional increases at the district justice level are another issue that should be addressed in the report to the Task Force. There are presently bills in the General Assembly that propose to increase the civil jurisdiction of district justices. Among them is HB 1541, which seeks to increase the civil jurisdiction of district justices to \$12,000. Some members of the Subcommittee expressed concern that district justices do not have the time to conduct the necessary hearings the jurisdictional increases would require. Other members of the Subcommittee suggested that if a district justice's jurisdiction increases, the compensation that a district justice receives should also be considered. The Subcommittee recommends that while some increase in the district justices' civil jurisdictional amount may be warranted, caution should be exercised for the aforementioned reasons and in light of the district justice system as presently constituted. Moreover, any other expansions of jurisdiction should be undertaken only after careful consideration of caseloads and resources.

APPENDIX A

The following is a list of the sources consulted by the Quality of Justice Subcommittee in the course of identifying issues and formulating recommendations.

PRIMARY AUTHORITIES :

Constitutional Provisions

Pa. Const art. V, §1 (Unified judicial system)

Pa. Const. art. V, §7 (Justices of the peace, magisterial districts)

Pa. Const. art. V, §10 (Judicial administration)

Pa. Const. art. V, §12 (Qualifications of justices, judges and justices of the peace)

Pa. Const. art. V, §13 (Election of justices, judges and justices of the peace; vacancies)

Pa. Const. art. V, §15 (Tenure of justices, judges and justices of the peace)

Pa. Const. art. V, §17 (Prohibited activities)

Statutory Provisions

42 Pa.C.S. §102 (West Supp. 2001) (Definitions)

42 Pa.C.S. §1725.1 (West Supp. 2001) (Costs)

42 P.S. §2101, *et seq.*, (Magisterial District Reform Act), *repealed, in part, by the Judiciary Act Repealer Act*, Apr. 28, P.L. 202, No. 53, Act 1978-53 (West 2001)

42 Pa. C.S. §2131-35 (West Supp. 2001)(Minor Judiciary Education Board)

42 Pa. C.S. §3111-19 (West Supp. 2001) (Qualifications of Certain Minor Judiciary)

42 Pa.C.S. §3131 (West Supp. 2001) (Selection of Judicial Officers)

42 Pa.C.S. §3152 (West 1981) (Tenure of judicial officers)

42 Pa.C.S. §3154 *repealed*, Sept. 30, P.L. 160, No. 39, §6(e), 1983 (Compensation for judicial officers) (West Supp. 2001)

42 Pa.C.S. §3571-73 (West Supp. 2001) (Fines, etc.)

42 Pa.C.S. §3701-27 (West Supp. 2001) (Facilities and Supplies)

42 Pa.C.S. §3733a.1 (West Supp. 2001) (Deposits into accounts; additional fees)

42 Pa.C.S. §9728 (West Supp. 2001) (Collection of restitution, reparation, fees, costs, fines and penalties)

42 Pa.C.S. §9730 (West 1998) (Payment of court costs, restitution and fines)

42 Pa.C.S. §9730.1 (West Supp. 2001) (Collection of court costs, restitution and fines by private collection agency)

42 Pa.C.S. §9758 (West 1998) (Fine)

65 P.S. §366.2a(g) (West Supp. 2001)(Judicial salaries; district justices)

71 Pa.C.S. §§5101-5955.1 (West Supp. 2001)(State Employees' Retirement Code)

75 Pa.C.S. §§101-9805 (West Supp. 2001)(Vehicle Code)

Cases

Flegal v. Dixon, 472 Pa. 249, 372 A.2d 406 (1977)

Court Rules

Pennsylvania - State

Rules Governing Standards of Conduct of District Justices

Rule 1 - Integrity and Independence of Judiciary

Rule 2 - Impropriety and Appearance of Impropriety to be Avoided; Voluntary Appearance as Character Witness Prohibited

Rule 3 - Priority of Judicial Business

Rule 13 - Incompatible Practices

Rule 14 - Prohibited Practice of Attorney District Justices

Rule 15 - Public Office and Political Activity

Rules and Standards with Respect to Offices of District Justices

Rule 101 - Establishment of Offices; Minimum office standards

Rule 103 - Office Schedules

Rules of Judicial Administration

R.J.A. 1901 - Prompt Disposition of Matters; Termination of Inactive Cases

Rules of Criminal Procedure

Pa.R.Crim.P. 103 - Definitions

Pa.R.Crim.P. 130 - Venue; Transfer of Proceedings

Pa.R.Crim.P. 131 - Location of Proceedings before Issuing Authority

Pa.R.Crim.P. 132 - Continuous Availability and Temporary Assignment of Issuing Authority

Pa.R.Crim.P. 142 - Procedures Governing Defaults in Payment of Fine Imposed as Punishment
for Contempt

Pennsylvania - Local

Adams County L.R. 10

Bradford County L.R. 1901

Forrest/Warren Counties L.R. 1901

Green County L.R. 30

Luzerne County L.R. 1901

Northampton County Admin. Order 1988-1 (Pt. C)

Somerset County L.R. RJA-1901.6

Other States

Colorado Court Security Guidelines

Indiana Court Security Guidelines and Priorities

Ohio Court Security Standards Rule 12

Wisconsin Supreme Court Rules 70.38-39

Proposed Pennsylvania Legislation

Pa. Senate Bill 518 (Session of 2001)

Pa Senate Bill 856 (Session of 2001)

Pa Senate Bill 857 (Session of 2001)

Pa House Bill 220 (Session of 2001)

Pa House Bill 909 (Session of 2001)

Pa House Bill 1381 (Session of 2001)

Pa House Bill 1541 (Session of 2001)

Pa House Bill 1604 (Session of 2001)

SECONDARY AUTHORITIES :

AOPC Record Retention Schedule

Committee to Study Pennsylvania's Unified Judicial System, Pennsylvania's Unified Judicial System, An Analysis with Recommendations, Thomas W. Pomeroy, Jr., Chairman, June 1982 (Pomeroy Report)

Hon. Frank J. Montemuro, Jr., Interim Report of the Master on the transition of state funding of the Unified Judicial System, July, 1997 (Montemuro Report)

Information obtained from the Pennsylvania District Justice Automated System (DJS), *maintained by the Administrative Office of Pennsylvania Courts*

John T. Jeffers, A History of the Special Court Judges' Association of Pennsylvania (1997)

Judicial Reform Commission, Report of the Governor's Judicial Reform Commission, Hon. Phyllis W. Beck, Chairperson, January, 1988 (Beck Report)

National Association for Court Management, Court Security Guide (1995)

Neil Alan Weiner, et al., Safe and Secure: Protecting Judicial Officials (Court Review - Winter,

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Pennsylvania Constitutional Convention (1967-1968), Debates of the Pennsylvania Constitutional Convention of 1967-68 (1969)

Reference Manual No. 5, The Judiciary, compiled by the preparatory committee to the 1967-68 Pennsylvania Constitutional Convention

Robert E. Woodside, Pennsylvania Constitutional Law (1985)

U.S. Department of Justice, Bureau of Justice Statistics - State Court Organization 1998 (June, 2000)