

***JUSTICE COURT  
OPTIONS FOR TOWNS  
AND VILLAGES***

**NYS TUG HILL COMMISSION  
27TH ANNUAL LOCAL GOVERNMENT  
CONFERENCE**

**Hon. David S. Gideon**

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**Special Counsel to the 5<sup>th</sup> Judicial District Town and Village Court  
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**Town of DeWitt Justice**

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Hon. David S. Gideon currently presides as Town Justice in the Town of DeWitt, New York; a suburb of Syracuse. Judge Gideon formerly presided as an Acting City Court Judge in the Syracuse City Court. Judge Gideon graduated from Syracuse University in 1979 with a Bachelor of Science Degree, with a dual major in Biology and Psychology; thereafter receiving his Juris Doctor Degree from Western New England College, School of Law in 1982 where he was a member of the Legal Fraternity of Phi Delta Phi.

Judge Gideon is a lifelong resident of the DeWitt, New York community and currently is employed as the Principal Law Clerk to the Hon. James C. Tormey, Administrative Judge for the Fifth Judicial District. In particular, Judge Gideon is Special Counsel to the Town and Village Courts in the Fifth Judicial District, coordinating and implementing the Action Plan for the Justice Courts within the District.

Judge Gideon was admitted to the New York State Bar and the United States District Court, Northern District of New York in 1984. Judge Gideon currently serves as a senior faculty member for the Office of Justice Court Support, Town and Village Court Education Program, having also appeared as a panel member in its statewide satellite broadcasts. Judge Gideon is also an instructor for the Onondaga County Bar Association Continuing Legal Education Program.

Judge Gideon is a Past President of the Onondaga County Magistrates Association and currently serves as First Vice-President of the New York State Magistrates Association. In 2014, Judge Gideon was the co-recipient of the Hon. Eugene W. Salisbury Magistrate of the Year Award given by the New York State Magistrates Association.

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# Justice Court Manual

Task Force for Voluntary Reform of Justice Courts

<http://www.nycourts.gov/courts/townandvillage/FinalJusticeCourtManualforUSCsite.pdf>



**Town Courts:** With limited statutory exceptions  
(Town Law §20) each Town must have a Town  
Court and Two (2) Town Justices.

*(Town Law §60-a (2) – Procedures for the “One-Judge” Town)*

**Village Courts:** Village Courts may be abolished.  
(Village Law §3-301[2][a])



## VILLAGE COURT ABOLISHMENT

- By local law/resolution, subject to permissive referendum.
- Takes effect only upon the expiration of the current term of office for the Village Justice.
- Once abolished, Town Court assumes jurisdiction.
- Criminal and Vehicle and Traffic Fine Monies Lost.  
*(Town gets it!).*
- Village continues to receive Fine Monies for Dog Control and Local Law Violations *(except speeding)* and Handicapped Parking Surcharge Monies.
- **Be Careful** of Hidden Expenses – i.e. Records Storage, “Tax Cap” implications.



## JURISDICTION

### UJCA §106 (1):

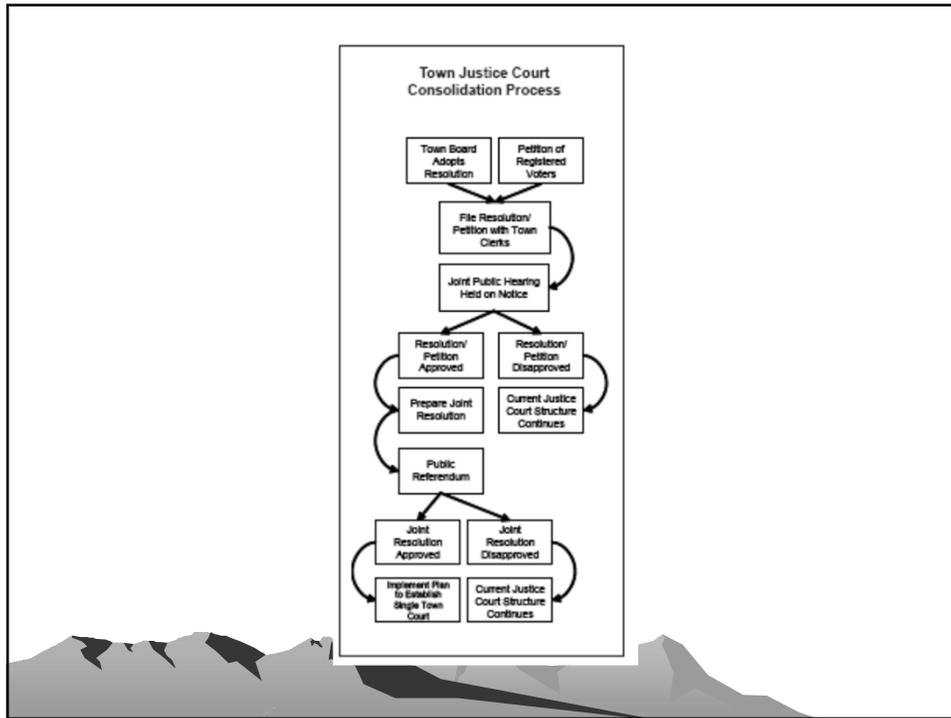
- Generally: With limited statutory exceptions, Court must be held within the municipality.
- IMA (General Municipal Law Article 5-G)  
A justice may hold court in one or more municipalities that form a contiguous geographic area, including in a town and one or more villages each of which is wholly or partly contained within such town, within the same county providing there is an agreement between such municipalities pursuant to article five-g of the general municipal law to hold all court proceedings in any of the such municipalities in a courtroom or other suitable facility open to the public.



### UJCA §106-a

- Allows two (2) or more contiguous Towns to establish one (1) justice court.
- One (1) Judge from each Town – Jurisdiction over all matters before the consolidated justice court.
- Each Judge maintains separate records and bank accounts – Each Town retains respective fine monies.
- Resolution/Petition, subject to Referendum.





## UJCA 106-b

- Allows for the election of a single Town Justice for two (2) or more contiguous Towns in the same county.

# OTHER OPTIONS

Custom Solutions to “Fit” the  
Community Needs



## TOWN LAW §60-a (2)

- The “One-Judge” Town



# QUESTIONS/COMMENTS

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# Thank You





# Justice Court Consolidation Pursuant to Article 5-G

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Association of Towns



of the State of New York

## Overview

- Consolidation pursuant to Uniform Justice Court Act (UCJA) §§ 106-a and 106-b can be a cumbersome process
- UCJA § 106, however, expressly authorizes justices to hold court in neighboring municipalities pursuant to Article 5-G of the General Municipal Law (GML)
- Article 5-G of the GML provides a broad grant of authority for sharing services, and provides for the extension of territorial jurisdiction

## Uniform Justice Court Act § 106

- Allows a town justice to hold court in one or more municipalities
- Must form a contiguous geographic area within the same county
- "... provided there is an agreement between such municipalities to pursuant to Article 5-G of the GML to hold all court proceedings in any of the such municipalities in a courtroom or other suitable facility open to the public."

## Uniform Justice Court Act § 106

- What does it mean to "hold court"?
- Does UCJA § 106 allow a Justice of Town A to use Town B courthouse only to hear cases from Town A?
- Does it allow a Justice of Town A to sit in Town B courthouse and hear cases from both Town A and Town B?
- General Municipal Law 5-G may help answer these questions.

## General Municipal Law Article 5-G

- Effectuates the provisions of the Constitution that authorize inter-municipal Cooperation
- Constitution Article 8, § 1 authorizes two or more municipalities to join together in providing any municipal facility, service, activity or undertaking that each has the power to provide separately.

## General Municipal Law § 119-o

- ...municipal corporations may enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers or duties on a cooperative basis or for the provision of a joint service....

## What is a “Joint Service”?

- GML § 119-n defines a joint service as:
  - ✦ The joint provision of any municipal facility, service, activity, project or undertaking
  - ✦ The joint performance or exercise of any function or power
  - ✦ Expressly includes the extension of appropriate territorial jurisdiction necessary therefor.

## General Municipal Law Article 5-G

- “The provisions of this article . . . shall be in addition to and not in substitution of or in limitation of any other authorization of performance by municipal corporations or districts of their functions, powers or duties on a cooperative, joint or contract basis”

## Reading GML Art. 5-G and UCJA 106 together . . .

- UCJA authorizes Justices to hold court in neighboring towns pursuant to a 5-G agreement
- GML § 119-o authorizes joint services to be performed cooperatively or one for the other
- GML § 119-n provides the requisite extension of territorial jurisdiction

## Combined with Town Law 60-a

- GML 5-G agreement can be done in conjunction with a reduction of Justices pursuant to Town Law § 60-a
- Town Law § 60-a authorizes a town board to reduce the number of justices
- Must be done by resolution subject to permissive referendum
- Can be done pursuant to an agreement under 5-G, but the agreement would be subject to permissive referendum

## Summary

- UCJA § 106 expressly authorizes justices to hold court in neighboring municipalities pursuant to Article 5-G of the General Municipal Law
- Article 5-G of the General Municipal Law provides a broad grant of authority for sharing services, and provides for the extension of territorial jurisdiction
- Process can be combined with a reduction of Justices pursuant to Town Law § 60-a to provide for a consolidated court similar to what can be accomplished under §§ UCJA 106-a and 106-b

## Questions?

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Association of Towns



of the State of New York





# REQUIEM

## *For a Village Court*

R.I.P.  
Village of Liberty Justice Court  
January 1, 1900 – April 1, 2011

## How it Happened

- Village Board of Electors voted to dissolve the Village Court effective April 1<sup>st</sup>.
- Village Judge circulated a petition seeking a referendum on the resolution to abolish the Court. (Opinion 10-63, April 22, 2010. A sample petition can be found in Uniform Justice Court Act §106-a.)
- Signatures of 20% of registered voters had to be obtained in order for the petition to be filed with the Village Clerk and go on the ballot as a permissive referendum.
- Within 30 days of filing, a Notice of Hearing had to be published in the Village's official newspaper.
- Resolution had to be submitted to Electors no more than 60 days after the final wording of the resolution.

## The Closer

- Review outstanding cases and close as many as possible. Do the Criminal Dispensation Reports and close files.
- File all closed records of the Village Court with the Village Clerk, the custodian of all closed files (pursuant to Uniform Justice Court Act §2019-a). Advise the Village Clerk of the procedure for the release of material and for handling sealed cases.

## The Mover

- Transfer pending cases and matters received on those cases to the Town Court.
- Move physical files that are open or pending from the Village Court to the Town Court.
- Move open data files from Village Court to Town Court. It is good practice to make a list of all open files and communicate with the supplier of Courtroom programs to determine the cost of maintaining the former database for archival purposes on a needs-only basis.



### **The Communicator**

- Publish notices of dissolution and consolidation.
- Prepare letters to the District Attorney, Public Defender, Conflict Defender, Probation, County Court, NYS Police, County Sheriff's Department, Village Police, NYS Department of Motor Vehicles, NYS Department of Criminal Justice Services, NYS Comptroller's Office, Office of the Justice Court Support and County Magistrate's Association notifying them that Village Court business should be directed to the Town Court effective April 1<sup>st</sup>.

### **The Communicator**

- Mail notices to defendants and attorneys to appear in Town Court rather than Village Court.
- Notify defendants and Village personnel that any fines or surcharges outstanding and not yet collected by April 1<sup>st</sup> will become the property of the Town (pursuant to Uniform Justice Court Act §2021).
- Prepare written notices to be physically handed to defendants on Court dates notifying them that the next Court appearance (after March 31<sup>st</sup>) will be in the Town Court and/or that fines paid after March 31<sup>st</sup> are payable to the Town.

### **The Accountant**

- Close all bank accounts for Village Court and transfer any remaining balances in bail accounts to the Town Court (pursuant to the Justice Court Fund Handbook).
- A final financial report should be filed with the State Comptroller, including any unidentified monies (pursuant to the Justice Court Handbook).
- The credit card machine and all state-owned computer equipment including printers, fax machines, personal computers, copiers, etc., as well as digital recordings must be returned to the Third District Office for inventory and/or possible re-issuance to the Town Court. Any property obtained with JCAP funds prior to the dissolution date remains with the Village.

### **The Housekeeper**

- Forward mail for the Village Court to the Town Court effective April 1<sup>st</sup>.
- Place a pre-recorded message on the Village Court telephone number directing calls from Village Court to Town Court effective April 1<sup>st</sup>.
- Post a sign directing defendants who appear at Village Court after April 1<sup>st</sup> to Town Court, listing dates and times of Court proceedings.

## REQUIEM FOR A VILLAGE COURT

Born January 1, 1900, died April 1, 2011, the Liberty Justice Court led a full and just life. It shall be missed.

What happened?

In January 2011, the Village of Liberty Board voted 3 – 2 to dissolve the Village Court as a cost-saving measure. The possibility of paying less tax was more appealing to the Village electors than the reality of tax increases.

There are 2,000 registered voters in the Village of Liberty. In order to place the issue on the ballot as a permissive referendum, a petition containing 400 signatures of registered voters had to be submitted and filed with the Village Clerk. The resolution had to be submitted to the electors more than 60 days after the final determination of the wording of the resolution.

The local law or resolution abolishing the Village Court takes effect only upon the expiration of the judge's current term. (Village Law § 3-301)

Once the office of Village Justice no longer exists, the Town Justice Court, in which the Village is located, will have jurisdiction of all matters arising in the Village. After dissolution of the Village Court, the Village would not be entitled to vehicle and traffic fines and criminal fines. The Village, however, would still be entitled to violations of Village ordinances. IE: Dog control violations, parking ordinances.

Within 30 days of filing the petition, there must be published a Notice of Hearing in the official newspaper of the Village.

Regarding the circulation of the petition, a Village judge may prepare and circulate a petition seeking a referendum on the resolution. (Opinion 10-63, April 22, 2010) Normally a judge can't engage in political matters. However, when the matters pertaining to the dispensing of justice within the Village, this is an exception. A sample petition can be found in Uniform Justice Court Act § 106-a.

In the event the Village voters choose to dissolve the Village Court on April 1<sup>st</sup>, what is the Village judge supposed to do?

1. The Village needs to review outstanding cases and close as many cases as possible. Do the Criminal Disposition Reports and close files. The Village Clerk is the custodian of all closed files. It is good practice for the outgoing judge to make a list of all open files and communicate with the supplier of Courtroom programs to determine the cost of maintaining the former database for archival purposes on a need only basis.
2. The Village Court will need to prepare letters to the District Attorney, Public Defender, Conflict Defender, Probation, Sullivan County Court, NYS Police, Sullivan

County Sheriff's Department, Village Police, NYS Department of Motor Vehicles, NYS Department of Criminal Justice Services, NYS Comptroller's Office, Office of the Justice Court Support, County Magistrate's Association which letter shall include that Village Court business should be directed to the Town Court effective April 1<sup>st</sup>.

3. Mail for the Village Court effective April 1<sup>st</sup> should be forwarded to the Town Court.
4. There should be a pre-recorded message on the Village Court telephone number directing calls from Village Court to Town Court effective April 1<sup>st</sup>.
5. Notices should be prepared to defendants and their attorneys to appear in Town Court rather than Village Court.
6. Movement of data from Village Court to Town Court for open files.
7. All bank accounts for Village Court should be closed out and any remaining balances in bail accounts shall be transferred to the Town Court. (Pursuant to the Justice Court Fund Handbook)
8. All closed records of the Village Court should be filed with the Village Clerk. (Pursuant to Uniform Justice Court Act §2019-a) The Village Clerk should be notified for the procedure of the release of material and for handling sealed cases.
9. The transfer of pending cases and matters received on those cases should be made to the Town Court.
10. A final report should be filed with the State Comptroller, including any unidentified money. (Pursuant to the Justice Court Handbook)
11. The credit card machine, all state-owned computer equipment including printers, fax machines, personal computers, copiers, etc. as well as the digital record shall be returned to the Third District Office for inventory and/or possible re-issuance to the Town Court. Any property obtained with JCAP funds prior to the dissolution date remains with the Village.
12. Public notices of dissolution and consolidation must be published.
13. An informational notice should be prepared to be handed to defendants notifying them on Court dates that the next Court appearance (after March 31<sup>st</sup>) will be in the Town Court or that fines paid after March 31<sup>st</sup> are to be made payable to the Town.
14. Defendants and Village personnel should be notified that any fines or surcharges outstanding and not yet collected by April 1<sup>st</sup> become the property of the Town. (Pursuant to the Uniform Justice Court Act § 2021)

15. Physical files that are open or pending should be moved from the Village Court to the Town Court.
16. A sign should be posted directing the defendants that inadvertently appear at Village Court after April 1<sup>st</sup> to Town Court, listing dates and times of Court proceedings.



# **Justice Court Manual**

**This document is current as of January 31, 2015.**

# Town and Village Justice Courts

## IV. Inter-Municipal Cooperation

The foregoing pages demonstrate that Justice Courts are important and complex institutions. They touch the lives of millions of New Yorkers, sometimes irrevocably. They not only dispense criminal and civil justice, but also collect fines, fees, and surcharges that may be disbursed for all levels of government. Their operations bring together not only justices and Justice Court staff but also prosecutors, defenders, police agencies, the State's judicial and financial oversight, and a host of other stakeholders in what are truly these "hubs" of justice. A Justice Court's effective operations require not only appropriations from its sponsoring locality but also an array of administrative policies and programs that include personnel sometimes subject to civil service rules, adequate facilities and court security, data management and electronic security, proper insurance, and appropriate internal controls. Add that a Justice Court lies at the overlap between local government and the State Judiciary, with core constitutional rights and interests in the balance, and hopefully every justice, non-judicial staff member, and member of a town or village governing board will quickly appreciate the importance and sensitivity of Justice Court operations.

Balanced against all of these important rights, interests, and responsibilities is the practical reality that Justice Courts are funded primarily by their sponsoring localities, many of which may have limited funds and capital resources to invest in all facets of local governments. Town and village governing boards sometimes must make difficult choices in how to use these limited funds, and the operation of a Justice Court – while important – is but one among the many priorities competing for these limited funds. Relevant to this understanding is that some Justice Courts have relatively small dockets justifying relatively infrequent regular court hours. Some facilities are barebones at best. Some justices and court staff earn very low salaries for their work. Although grant funds are available, a locality supporting a Justice Court may be hard-pressed to invest limited local funds in a Justice Court, and yet the local justice system has operational needs that are the local government's responsibility to provide.

Against this backdrop, an increasing number of towns and villages are reviewing their Justice Court operations and finding that voluntary cooperation and collaboration among them may help make the most of limited Justice Court resources, improve the efficiency of the local justice system, and free up money that can be re-invested to improve Justice Court operations. For all branches and levels of government, exploring how to deliver services in the most cost-effective manner is an ongoing necessity. For local governments subject to the property tax cap and rising costs, consolidations and shared-service agreements are becoming increasingly common for many aspects of local operations. For Justice Courts, which serve as a "hub" for so many participants in the local justice process and at the intersection of multiple branches and levels of government, this exploration is potentially even more important, but sometimes more difficult given the constitutional nature of the Justice Court's operations and the number of inter-related operations at multiple levels of government that come together in a local courtroom.

To assist towns, villages, justices, and non-judicial staff in reviewing these ideas and the voluntary steps localities can take, this section offers a primer on potential options and best practices to consider. As described below, individual towns can reduce the number of justices or collaborate with other municipalities to either share Justice Court facilities or entirely merge their separate Justice Courts into a single court that presides for multiple localities. Individual villages likewise may desire to create a justice court, collaborate with other municipalities to provide justice services, co-host multiple courts in a single facility, or abolish their Justice Courts and transfer cases to the appropriate Town Courts.

# Town and Village Justice Courts

*Given the sensitive nature of Justice Court operations, any assessment of whether and how to undertake these voluntary modifications should occur with maximum transparency and communication among and between the governing board and justice(s) of each town and village involved.*

## **A. Inter-Municipal Cooperation Pursuant to General Municipal Law Article 5-G**

General Municipal Law Article 5-G gives municipalities extensive authority to enter into, amend, cancel and terminate agreements for performing their respective functions, powers, and duties on a cooperative or contractual basis.<sup>173</sup> In simple terms, Article 5-G provides that anything that a municipality can do by itself, it can do with another municipality.

There are many reasons for cooperating with other municipalities to fulfill municipal services, including economies of scale, convenience, utilizing unequal distribution of resources and surplus facilities, and eliminating duplicate services. The municipalities that may participate in inter-municipal agreements (IMAs) include counties,<sup>174</sup> cities, towns, villages, boards of cooperative educational services, fire districts, and school districts.<sup>175</sup> There is no limit on the number of municipalities that may participate in any one inter-municipal agreement.

### **1. Getting Started**

Some activities are obvious candidates for inter-municipal cooperation. However, many municipal functions are less obvious candidates or may entail extremely complicated IMAs. To flesh out what functions, powers, and duties are appropriate for inter-municipal cooperation, General Municipal Law Article 12-C authorizes municipalities to form joint survey committees to study and plan cooperative measures to improve the administration of local government and the services that they provide. Survey committees may be formed with combination of two or more of the following: counties,<sup>176</sup> cities, towns, villages or school districts. It must be noted that IMAs may be negotiated without forming intergovernmental relations councils.

### **2. The Form of the IMA**

While there is no requirement that IMAs be in writing, it is strongly recommended that every IMA, no matter how minor in detail, be put in writing. Municipalities that currently have informal IMAs should formalize those by putting them in writing. There are two main types of IMAs: service agreements and joint agreements. A

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<sup>173</sup> See GML § 199-o.

<sup>174</sup> Counties outside New York City.

<sup>175</sup> It must be noted that there are many other provisions of New York State law that address issues of inter-municipal cooperation, including GML Article 14-G which authorizes local governments to cooperate with governmental units of other states on a basis of mutual advantage, GML § 209-t, which authorizes joint fire alarm systems, GML § 121-a, which authorizes joint village and town police departments, GML Article 5-B, which authorizes common water supplies, and GML § 72-j, which authorizes joint town and village parking garages.

<sup>176</sup> Counties outside New York City.

## Town and Village Justice Courts

service agreement is essentially a contract in which one municipality agrees to provide a service to another municipality at a stated price. A joint agreement exists when the municipalities agree to perform a function together. Joint agreements usually provide for significant participation by each of the municipalities. Which type of agreement is used depends upon the nature of the function that is going to be performed. As a general rule, however, multi-faceted projects may not lend themselves to joint agreements due to the complexity of administering and performing the agreement.

In many ways, service agreements resemble regular contracts which municipalities enter into every day. When drafting service agreements, municipalities need to consider:

- The nature of the agreement (identifying the governments involved and describing the type of service(s) to be performed);
- The scope of service (setting forth performance standards and limitations on the service);
- Service charges (establishing the amount, times, and manner of payments);
- Each party's duty to defend and indemnify;
- The term of the IMA;
- The method of amending the IMA; and
- The circumstances under which the IMA may be terminated.

Joint agreements take many forms, including mutual aid agreements (i.e. for fire departments agreeing to assist each other when necessary) or joint projects that serve all the parties to the IMA, such as water and sewer systems. Issues to consider when entering into joint agreements are:

- The nature and composition of the joint agreement's governing body, if any;
- Which municipalities are to provide personnel;
- Financial considerations (including the method for equitably apportioning costs and revenues); and
- Property considerations (i.e. is property to be acquired and held jointly or by only one municipality).

One particular issue to address in the IMA is the process for supervising and disciplining employees. This issue should be addressed thoroughly to avoid confusion and conflicts.

### 3. Approval of the Agreement

Every IMA must be approved by a majority vote of the governing body of each municipality that is a party to the agreement. In addition, if the municipality's authority to perform any function is subject to a public hearing, a mandatory or permissive referendum, the consent of other governmental agencies, or other requirements applicable to making contracts, then its ability to participate in any IMA to perform the same function is similarly conditioned.<sup>177</sup>

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<sup>177</sup> See GML § 119-o.

## Town and Village Justice Courts

### **B. Factors to Consider When Reviewing Whether and How to Engage in Inter-Municipal Cooperation**

This Manual's general guidance for how sponsoring localities should budget for Justice Courts also applies to whether and how they should voluntarily alter the structure of the local justice system. Whether one of these options is right for a particular locality or group of localities may depend on many factors including:

- The size and variability of municipal dockets;
- The character of its cases;
- The number of existing justices and their terms of office;
- The experience of justices and non-judicial staff;
- Whether there are dedicated Justice Court facilities, and whether their quality is sufficient for safe and effective judicial operations;
- The municipal fiscal and governmental environment;
- If multiple localities propose to co-locate their courts in a single facility or merge their courts, the track record of these municipalities in working together to share services; and
- The existing costs of the local Justice Court system for not only each sponsoring locality but also other Justice Court stakeholders (e.g. prosecutors, defenders, police agencies) who must cover multiple courts or, on the other hand, might be called to travel further if courts or court facilities are changed.

A decision to share, consolidate, or relocate a Justice Court, or create or dissolve a Village Justice Court, is a policy decision for the municipality. As local governments attempt to maintain services in challenging fiscal environments, while keeping budgets within New York's statutory tax cap, the increasing trend is toward controlling costs by collaborating across municipal boundaries to provide local government services. State law allows localities to bring this same collaborative approach to providing justice services.

However, as noted, Justice Courts are not routine agencies or offices of local government: they are part of a separate branch of government with constitutional and statutory responsibilities whose judicial decisions cannot turn on financial considerations. Just as a locality's costs and revenues cannot be allowed to shape decisions about individual cases or core issues of Justice Court administration that the Constitution independently vests in the Justice Court and its justices, so too should decisions about whether and how municipalities voluntarily modify their Justice Court systems turn on the needs of the justice system. Just as localities cannot unduly interfere with the administration of the Justice Courts they sponsor or treat them as revenue generating enterprises for local governments whose "efficient" operation means bringing in revenue at a predetermined amount, so too should municipal decisions affecting the structure of the Justice Courts turn on more than dollars and cents.

Busier Justice Courts have greater caseloads and, in turn, assess more fines and fees than smaller courts. Conversely, the operational costs of courts with a smaller caseload in less populous towns or villages may present a significant expense for the annual budget of the municipality. In such circumstances, both towns and villages have some options to reduce the expenses of a Justice Court.

Although towns, by law, cannot dissolve the court, towns are not without options to reduce court operation costs. As discussed below, there are a number of ways in which a town can share court facilities and services with a neighboring town or towns. Cooperation in this manner may help reduce the operational expenses of the

## Town and Village Justice Courts

court. In addition, it may allow smaller courts to take better advantage of technologies, equipment, staff, and facilities that improve the quality of service that the courts offer the community. As with any cooperative endeavor, there may be disadvantages as well, such as a loss of control over court facilities and the convenience of holding court within the town, among others.

Villages also have the option of sharing court facilities. In addition, villages, unlike towns, have the option of creating or dissolving their Justice Court. When a Village Court dissolves, court matters are transferred to the Town Court. Although Village Court dissolution may save the village a significant annual expense, it also has disadvantages. For instance, the village would experience the loss of convenience of a local court, the loss of control over court facilities, as well as a significant reduction in fines and fees formerly collected by the Village Court. Alternatively, a village may desire to establish a village court for the reverse reasons.

For both towns and villages, the local governing board will have to weigh the respective advantages and disadvantages before any of these options are to be considered. It is advised that the governing board of a town or village contemplating changes to their justice court consult with their sitting justices, as well as with other stakeholders who will be affected by the changes, when evaluating these factors.

### C. Justice Courts and Tax Cap “Transfers of Function”

New York’s “tax cap” statute<sup>178</sup> establishes a tax levy limit that affects towns and villages. Under this law, town or village property tax levies generally cannot increase annually more than two percent or above the rate of inflation, whichever is lower, with certain exclusions. The locality’s governing board, by 60 percent of total voting power, may adopt a local law to override the tax cap in a particular year.

While the tax cap makes it even more important for localities to ensure the cost-effectiveness of municipal services, eliminating or restructuring the local justice system does not necessarily mean a dollar-for-dollar savings against the tax cap. Under the tax cap statute, when the responsibility and associated costs of a local government function are transferred from one local government to another, the State Comptroller must determine the affected localities’ costs and savings attributable to the transfer for the first fiscal year following the transfer. The affected local governments are required to adjust their tax levy limits based on those costs and savings.

Thus, changes in Justice Court structures may impact the tax levy limit of the town or village. For example, if a village dissolves its Justice Court,<sup>179</sup> the responsibility and cost of providing justice services would transfer to the town(s) in which the village is located, thereby requiring the State Comptroller’s Office to determine the costs and savings for the village and the town(s). In this example, the village would likely see a net savings based on the transfer and therefore would have a correspondingly reduced tax levy limit. The town(s), on the other hand, likely would experience increased costs as a result of the transfer, which would lead to a higher tax levy limit.

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<sup>178</sup> See generally GML § 3-c.

<sup>179</sup> See Village Law § 3-301 (2) (a) (authorizing dissolution of Village Justice Court by resolution or local law, subject to permissive referendum).

## Town and Village Justice Courts

Any municipality or group of municipalities contemplating a change to the local Justice Court structure should contact OSC to determine the potential effect on local tax levy limits. As a general matter, dissolution of a Village Justice Court will result in a lower tax cap for the village and a higher tax cap for the town(s) that inherit the village's docket. By contrast, other potential options, such as sharing facilities in which multiple courts preside, or merging courts in which cooperating municipalities each continue to have financial responsibilities for supporting the shared court, are unlikely to trigger tax-cap implications because the responsibility and cost do not shift from one local government to another. Because the tax cap statute requires the State Comptroller to perform this analysis, municipalities considering adjustments to their Justice Courts should contact the State Comptroller's office before planning or implementation of a Justice Court change.

### D. Prohibition Against Binding Future/Successor Boards

Decisions regarding the structuring of village and town justice courts, including inter-municipal agreements affecting justice court operations can always be reversed at a later date. This legal principle, that a governing board acting in its governmental or legislative capacity may not bind its future or successor boards, has long been recognized at common law.<sup>180</sup>

Thus, if a village decides to establish a justice court by creating the position of village justice, it may later dissolve the justice court by abolishing the position of village justice. Likewise, if a village decides to dissolve its justice court by abolishing the position of village justice, it may later reconstitute its justice court by establishing the position of village justice. Similarly, if local governments decide to share justice court facilities, that decision may later be reversed.

### E. Potential Options

There are multiple options available to municipalities looking to share services related to their Justice Courts or establish a justice court. Some of these options are available only to towns, and some only to villages. These include:

#### Home Rule Legislation Required:

- ***Share a single justice.*** Towns may preserve their separate Justice Courts but elect a single justice to preside over multiple Justice Courts;
- ***Share both court facilities and a single justice.*** Towns may preserve their separate Justice Courts but share a single justice and a single facility.
- ***Develop an alternative model. Municipalities can propose legislation authorizing another variation that better suits local needs.***

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<sup>180</sup> See *People ex rel. Devery v. Coler*, 173 N.Y. 103, 110 (1903).

# Town and Village Justice Courts

## No Home Rule Legislation Required:

- ***Share court facilities.*** Municipalities may preserve their separate Justice Courts but share a single court facility in which each Justice Court would convene;
- ***Merge multiple courts but keep multiple justices.*** Towns may consolidate multiple Justice Courts into a single multi-municipality Justice Court, with justices separately elected from each town;
- ***Create a Village Court.*** Villages without a Justice Court may establish a Village Court and thereby also create the office of village justice.
- ***Establish an additional village justice.*** Villages may have one or two Village Justices for their Justice Court. Village Justices with one justice shall also have an Acting Village Justice.<sup>181</sup> Villages with one justice can create a second Village Justice position.
- ***Abolish the Village Court outright.*** Villages may dissolve their Justice Court outright and transfer cases to the town or towns in which the village is situated.

Each of these voluntary options will be discussed in turn. As will be described in the next several sections, each option has potential advantages and potential disadvantages that must be weighed carefully: no change to a Justice Court should be undertaken lightly or without due consideration to the impacts on the municipalities and the administration of justice both in the affected municipalities and the region. Each option also has specific constitutional and/or statutory procedures associated with its consideration that must be followed carefully. In most instances, voter approval either may be required or must be obtained. For all of these reasons, planners should undertake careful study with sufficient time to comply with applicable rules and procedures.

## **1. Share Court Facilities (UJCA § 106 / GML Art 5-G)**

The Constitution authorizes two or more municipalities to join together in providing any municipal facility, service, activity, or undertaking that each has the power to provide separately.<sup>182</sup> The Legislature, in turn, implemented this constitutional authority by inviting localities to enter into so-called “5-G agreements,” named for General Municipal Law article 5-G that governs them.<sup>183</sup> Under article 5-G, municipal corporations may enter into, amend, cancel, and terminate agreements for the performance – among themselves or one for the other – of their respective functions, powers, or duties on a cooperative basis, or for the provision of a joint service. A “joint service” contemplates joint provision of any municipal facility, service, activity, project, or

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<sup>181</sup> See Village Law § 3-301 (2)(a).

<sup>182</sup> See NY Const, art VIII, § 1.

<sup>183</sup> See generally GML §§ 119-m – 119-ooo. (5-year maximum term except where there is joint indebtedness.)

## Town and Village Justice Courts

undertaking; the joint performance or exercise of any function or power; and the extension of appropriate territorial jurisdiction necessary to give it effect.<sup>184</sup>

Pursuant to this authority, two or more localities may enter into a 5-G agreement to share court facilities, including a courtroom, office space, and supplies. Under this agreement, two or more separate Justice Courts may convene in a single facility: when each Justice Court convenes, it would serve as the Justice Court only for the town or village sponsoring it, but would physically sit in the shared facility. The shared facility should be physically located in one of the municipalities that is a party to the 5-G agreement. This arrangement may mean that a justice from one municipality holds court outside the geographical jurisdiction for which the justice was selected, but statute expressly invites this result so long as the cooperating municipalities are contiguous and agree to share the facility.<sup>185</sup>

Municipalities considering a shared-facility agreement should remember that it would not change the “identity” of the Justice Courts. Each Justice Court would maintain its separate identity, justices and staff, which would separately administer the judicial business of each Justice Court as if each court continued to meet in separate facilities. Each Justice Court, for instance, would be required to keep separate books, records, dockets, and bank accounts, and would have jurisdiction only over cases arising within the municipality. Thus, for instance, a Justice Court for Town A, which under a 5-G agreement physically sits in a shared facility located in Town B, would have jurisdiction to hear cases arising from Town A and hear those cases when physically sitting in Town B, but would not have jurisdiction to hear cases arising from Town B itself. Likewise, the Justice Court for Town B would not have jurisdiction to hear cases arising from Town A. Because each Justice Court would continue to hear its own cases, a shared-facility agreement would not change the flow of revenue arising from the Justice Courts’ operations. The fines and fees received in each Justice Court would continue to be disbursed among each court’s respective municipality, the county, and the State as if there were no shared-facility agreement at all.

A shared-facility agreement may create opportunities for savings arising from shared facility and overhead costs, as well as potential opportunities to share non-judicial staff. A shared facility, however, can raise questions about the provision of court security and liability insurance that need to be taken into consideration.

The process to approve a shared-facility agreement affecting the Justice Courts is the same as any other inter-municipal agreement under article 5-G, requiring approval of each governing board. In this instance, while a shared-facility agreement should involve the affected justices, the localities are not required to obtain advance consent by the justices to an inter-municipal agreement limited to sharing facilities. Justices must hold court in the facility provided by the Justice Court’s sponsoring municipality,<sup>186</sup> which is allowed to contract for the provision of that service. As to sharing Justice Court staff, however, because justices generally are responsible for the work product of a Justice Court’s non-judicial personnel, justices must give consent to the staff assigned to them.

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<sup>184</sup> See GML § 119-n.

<sup>185</sup> See UJCA § 106 (1).

<sup>186</sup> See 22 NYCRR 214.2 (a).

## Town and Village Justice Courts

### 2. Elect a Single Judge for Multiple Justice Courts (UJCA § 106-b)

The Legislature authorizes multiple towns to elect a single justice to preside in the Justice Courts of two or more adjacent towns in the same county.<sup>187</sup> This option is available only for towns. Like a shared-facility agreement, a single-justice plan preserves the identity of each Justice Court and its separate administration and jurisdiction, allowing multiple towns to select only one justice to “ride circuit” among the Justice Courts.

The process of electing a single justice begins with each town enacting a joint resolution agreeing to undertake a study of the idea. The joint resolution (or certified copy thereof) must be filed with the town clerk of each of the participating towns. Once the joint resolution has been filed in at least two adjacent towns that adopted the resolution, the study may begin. There is no required time frame to complete the study.

Within 30 days after finishing the study, each town must cause a notice to be published in its official paper (or a paper with general circulation in the town, if no official paper) notifying the public that the study has been concluded and setting forth the time, date, and place of a public hearing to be had on the study. Each town must conduct a public hearing on the study not less than 20 or more than 30 days after publication of the notice of public hearing. Within 60 days after the last public hearing, the town boards of each town must decide whether they will participate in the joint plan to elect a single Town Justice. If two or more adjacent towns do not approve the plan, then the process is terminated.

If two or more adjacent towns approve the plan, the town boards so approving then adopt another resolution calling for: (1) the election of a single justice at large to preside over the courts; (2) the abolition of the existing office(s) of Town Justice in the participating towns; and (3) the election of a single Town Justice every fourth year thereafter. Once the joint resolution approving the plan is adopted, the resolution must be forwarded to the State Legislature as a “home rule message.” It is then up to the Legislature to enact legislation implementing the plan. This last step is a purely discretionary act by the Legislature: it cannot be compelled to implement the towns’ proposed plan.

If it passes into law, however, the plan will guide the selection of a single justice. The existing office of Town Justice in each participating town would be abolished, and a single justice would be elected at large to preside in the Justice Courts of all participating towns. The shared justice would have jurisdiction in each participating town, and would be required to keep separate books, dockets, and records for each Justice Court, as well as a separate bank account for each.

A single-justice plan, like a shared-facility plan, preserves the “identity” of each Justice Court. For instance, Town A and Town B can agree to share a justice. If the towns and the Legislature agree, then the justice would preside in the Justice Court of Town A and separately preside in the Justice Court of Town B. There would be no merger of the Justice Courts and no change to the revenue allocable to each town. Litigants of cases arising in Town A would need to appear in the Justice Court of Town A, and litigants of cases arising in Town B would need to appear in the Justice Court of Town B.

See Harrisburg-Pinckney-Montague consolidation notes in the attached Appendix C.

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<sup>187</sup> See UJCA § 106-b.

## Town and Village Justice Courts

### 3. Share Facilities and a Single Justice for Multiple Justice Courts

If multiple contiguous towns adopt a single-justice plan approved by the Legislature, those towns can combine that approach with an inter-municipal agreement under article 5-G that would allow the towns to jointly offer a single Justice Court facility. Instead of riding circuit among multiple Justice Court facilities in multiple towns, the single justice would preside in a single facility. As part of this agreement, the towns could share non-judicial staff and other costs associated with the provision of their respective Justice Courts.

While this approach may appear to be a true merger of the Justice Courts of each cooperating town, it is not. It preserves each town's separate Justice Court as an independent entity. For instance, Town A and Town B may agree, with assent of the Legislature, to select a single justice to serve both towns, and then establish an article 5-G agreement to share a facility located in Town B. The single justice, wherever he or she resides, would hold court in Town B for both towns, and litigants in cases arising in either town would appear in Town B. However, the justice would need to hold court sessions separately for Town A and Town B, and litigants appearing in cases arising in Town A would need to attend the session (or part of the session) dedicated to those Town A cases. The single justice also would need to maintain separate books and financial records for each town's cases, and revenue would flow as if there were two separate courts sitting in two different towns. Thus, this approach is *almost* true merger of the Justice Courts, but still maintains the skeletal identity of each Justice Court.

### 4. Merge Courts and Select Justices from Each Town (UJCA § 106-a)

Two or more towns forming a contiguous geographic unit within the same county may together establish and support a single consolidated Justice Court, comprised of justices selected from each participating town but fewer justices than existed before the consolidation. This single Justice Court represents a true merger of the Justice Courts of the cooperating towns. As with several other structural options, this consolidation option is available only to towns.

The process of establishing a consolidated Justice Court is initiated either by the town boards of each town, or by petition of residents in each town. If initiated by petition, a single petition must be addressed to each separate town board and signed by at least 20% percent of the registered voters within such towns. The form and content of the petition is set forth in the law.<sup>188</sup> Once the petition has the requisite number of signatures from each town, the original petition is filed in the office of the clerks of any town stated on the petition, with a certified copy of the petition to be filed in each of the other towns.

If the consolidation process is initiated by town board resolution, one town may adopt a resolution calling for the consolidation, and corresponding reduction, of justice positions of their Town Justice Court with the Justice Court of any other town or towns forming a contiguous geographic unit. Once a town board adopts this resolution, it must file the original in the town clerk's office, and file certified copies of the resolution with the clerks of the other towns.

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<sup>188</sup> See UJCA § 106-a.

## Town and Village Justice Courts

Within 30 days of filing the original and copies of the resolution or petition, the clerk with whom the original was filed must publish a notice in the official paper of each town (or a paper having general circulation with the town) stating that the petition or resolution has been filed and setting a specified time 20-40 days from the publication of the notice with a date and place for a joint hearing on the resolution or petition. Each town board specified in the resolution or petition participates in this joint hearing to receive testimony, evidence, and information on the establishment of a single Justice Court to serve each of the potentially cooperating towns.

Within 60 days after the joint hearing, the town boards must determine whether to approve the proposed consolidated Justice Court. If one town specified in the petition fails to approve the proposal, the process terminates for all participating towns: if other towns wish to pursue a consolidated Justice Court without the town that disapproved the proposal, those other towns must start the process again.

If all towns approve the proposed consolidated Justice Court, the town boards must prepare a joint resolution providing that one judicial office in each town shall be abolished, specifying the position to be abolished, and providing that the remaining justice shall have jurisdiction to hear cases arising out of each town. The resolution must also provide for the election of at least one Town Justice every two years, and provide for continued staggering of the terms. If no agreement can be reached with respect to which judicial position from each town should be abolished, the decision will be made by lot unless doing so would violate the provision requiring staggered terms.

Once the joint resolution is approved by each of the participating town boards, the proposal must be submitted to the electors of the respective towns. The proposal must be approved by a majority of the voters voting thereon in each such town, or else it is defeated. If voters approve in all but one town, the proposal still is defeated: the towns in which the proposition passed would need to start the process again if they wish to pursue consolidation.

Each town justice exercising jurisdiction in accordance with this section shall keep a separate set of records and dockets for each town in which he or she exercises jurisdiction and such justice shall also maintain a separate bank account for each town for the deposit of monies received when exercising jurisdiction in each town.<sup>189</sup>

### **5. Create a Village Justice Court (Village Law § 3-301(2)(a))**

Villages that do not presently have a Village Justice can establish a Justice Court and create the office of Village Justice. The Board of Trustees may establish a Village Justice Court by resolution or local law, subject to a permissive referendum.<sup>190</sup> In the local law or referendum, the Village will also be creating the office of Village Justice. A Village may have one or two village justices. Village Justices with one justice shall also have an Acting Village Justice.<sup>191</sup> The term of office of each Village Justice is four years. If a Village desires

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<sup>189</sup> See UJCA § 106-a (13).

<sup>190</sup> See Village Law § 3-301 (2)(a).

<sup>191</sup> See Village Law § 3-301 (2)(a).

## Town and Village Justice Courts

to have two justices for its new court, the second justice would initially be elected for a term shorter than four years, such that village justices are elected every two years.<sup>192</sup>

### **6. Adding an Additional Village Justice (Village Law § 3-302 (3))**

Villages that have one justice may create a second village justice office. The Board of Trustees may establish a second village justice office by resolution or local law. The second justice would initially have a term shorter than four years to meet the Village Law requirement that elections for village justice be held every two years.<sup>193</sup> Villages desiring to add an additional justice beyond the two authorized by Village Law will need to seek authorizing legislation.

### **7. Abolish the Village Justice Court (Village Law § 3-301 (2)(a))**

Unlike towns, villages are not required to have a Justice Court. If a village decides not to continue its Justice Court, the village may dissolve it by resolution or local law, subject to permissive referendum.<sup>194</sup> Pursuant to Village Law, however, the dissolution would take effect only upon the expiration of the justices' terms of office.<sup>195</sup> For example, if a Village Justice was elected to office in March 2012 to serve a four-year term starting April 1, 2012, and the village board of trustees votes to dissolve the Village Court in 2014, the justice and the Justice Court must continue to exist until the justice's term expires on March 31, 2016: the dissolution could not take effect until April 1, 2016. Thus, a village that may wish to dissolve its Justice Court should plan substantially in advance to ensure that the process does not intrude on Village Justices' terms of office.

If a village dissolves its Justice Court, the active cases of the Justice Court would be transferred to the town or towns in which the village is situated. Its closed case files would remain village property, unless the village makes another arrangement with the town(s). Absent this arrangement, the village clerk would remain the custodian of the closed case files, and the village would need to continue storing, granting access to, and maintaining those records according to the Unified Court System's Records Management policies and procedures. The village is responsible for these records. However, village personnel have no authority to issue Certificates of Disposition. Therefore, from a best practices standpoint, if a village receives a request for a Certificate of Disposition, such request should be brought to the attention of the town court personnel now responsible for the adjudicating of village court cases. Such town court personnel are authorized to issue Certificates of Disposition. Additionally, village personnel should provide access to the abolished village court records for review by the town court personnel when the need arises.

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<sup>192</sup> See Village Law § 3-302 (3).

<sup>193</sup> See Village Law § 3-302 (3).

<sup>194</sup> See Village Law § 3-301 (2)(a).

<sup>195</sup> See *id.*

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Where a town receives the cases of an abolished Village Justice Court, those cases come into the Town Justice Court like any other case. The town cannot treat them differently and cannot “charge” the village or the litigants for costs incurred.

Dissolving a Justice Court may be a useful approach for villages with small caseloads and/or poor facilities. Village planners should be aware, however, that dissolving the Justice Court will deprive the village of much Justice Court revenue, local control of Justice Court operations, and the convenience of proximity.

### **8. Handling of Records of a Dissolved Village Justice Court**

When a village dissolves its justice court, cases that are active at the time of the effective date of the court’s dissolution are transferred to the justice court of the town in which the village is located. Note, however, that it is the opinion of the Office of Court Administration that the records of closed cases of a dissolved village justice court remain in the custody and care of the village. See Appendix D.

In villages, the village clerk serves as the records management officer and under New York law is responsible for initiating, coordinating, and promoting the systematic management of the village’s records in conjunction with other local officers.

Note, however, that judicial records, including the records of closed village justice court cases, are not handled in the same manner as regular village records. As a general rule, the handling and management of local government records is governed by The Local Government Records Law, NYS Arts and Cultural Affairs Law Article 57-A, and the Freedom of Information Law, Public Officers Law Article 6.

Judicial records, however, are not subject to either Article 57-A of the Arts and Cultural Affairs Law or Article 6 of the Public Officers Law. Rather, the disclosure, retention, and destruction of judicial records, including closed village justice court records, is governed by the Judiciary Law and rules promulgated by New York’s Judiciary.

Village clerks may only release closed village justice court records to the judge or court clerk of the justice court of the town in which the village is located. If a village clerk who is in possession of records of a dissolved village justice court receives a request for access to or copies of closed village court records, best practices dictate that the village clerk may not disclose the court records but instead, refer the individual making the request to the town court in which the village is located. Thereafter, it is recommended that the town court clerk submit such a request for the judicial records in writing to the village clerk(s).

Village clerks may only destroy closed village justice court records when authorized to do so according to Record Retention Rules promulgated by the Unified Court System’s Office of Records Management.<sup>196</sup>

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<sup>196</sup> <http://www.nycourts.gov/admin/recordsmanagement/index.shtml>

# Town and Village Justice Courts

## 9. Propose an Alternative Approach

Towns and/or villages can propose special legislation that might better meet local needs. The Constitution gives the Legislature broad power to regulate the Justice Courts,<sup>197</sup> which invites the Legislature to consider and approve most proposed modifications to Justice Court structures, operations and judicial selection. These proposals might include:

- **Enhanced cooperation between villages.** Current law does not expressly authorize multiple villages to share a single Justice Court. Villages may share a court facility under certain circumstances without the Legislature's specific approval. Moreover, because smaller villages may authorize the selection of a justice who is not a resident of the village,<sup>198</sup> multiple villages can agree to select a single justice. Together these authorities invite multiple villages to co-locate their separate Justice Courts in one facility and with one justice. These villages then can establish an article 5-G agreement to cover other aspects of Justice Court operations. They cannot, however, *merge* their separate Justice Courts into a single consolidated Justice Court to serve multiple villages. This final step would require special legislation, which villages are free to propose if it would serve their needs.
- **Enhanced cooperation between towns and villages.** Current law does not expressly authorize a town and a village, or multiple towns and multiple villages, to share a single Justice Court. To be sure, towns and villages together may undertake many of the same kinds of piecemeal arrangements as villages can undertake alone. For instance, towns and villages may share a court facility and routinely do. Where a village is located within a town, a justice living in the village is eligible to serve as both Town Justice and Village Justice, and can be separately selected to both positions. Towns and villages also can enter into article 5-G agreements to share other aspects of Justice Court operations. They cannot, however, *merge* their separate Justice Courts into a single consolidated Justice Court to serve a mix of towns and villages. This final step would require special legislation, which towns and villages are free to propose if it would serve their needs. If a consolidated court would require the dissolution of any Town Justice Court, however, the dissolution must be approved by the voters of that town.

## 10. Best Practices for Exploring Inter-Municipal Cooperation

The following best practices can assist towns and villages in considering their potential options and working across municipal boundaries to provide justice services in the most cost-effective manner consistent with the administration of justice:

- Identify Opportunities;
- Conduct a Feasibility Analysis;
- Negotiate the Agreement;
- Build and Maintain Support; and
- Anticipate and Plan for Roadblocks.

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<sup>197</sup> See NY Const, art VI, § 17 (d).

<sup>198</sup> See Village Law § 3-300 (2)(b).

## 11. Identify Opportunities

Performing a “needs assessment” is a practical first step in determining those functions or service areas that can benefit from restructuring based on cooperation. Finding a partner for a cooperation arrangement can be accomplished by contacting neighboring local governments that already provide the needed service or that do not provide the service but wish to do so. Options should be studied thoroughly and officials should focus on realistic programs that show promise from both a policy and financial perspective. Even those officials or communities that demonstrate hesitation toward the pursuit of cooperative arrangements can find success in small projects that do not involve much financial risk and are likely to succeed. As mentioned before, small cooperation efforts can help build trust between participant local governments, and may even lead to further cooperation in the future.

After finding potential partners, the next step is to jointly study whether the cooperative arrangement is feasible.

## 12. Conduct a Feasibility Analysis

The feasibility study should be viewed as an opportunity for officials to determine whether a proposal “makes sense” economically, operationally, and administratively. After determining a possible service to provide on a cooperative basis and finding a potential partner (or partners), a feasibility analysis should be conducted. While it is important to give much thought and consideration to implementing a cooperative service agreement, the analysis need not overwhelm planners.

A clear goal should be established for the cooperative service provision project. In doing this, the service to be provided should be well described, with the aspects of the service that will remain the individual responsibilities of the participants defined and any particular requirements, which must be addressed by the joint service, clearly stated. Expectations such as cost savings or improved level of service should be clearly detailed. The criteria that will be used to measure the quality or the effectiveness of the cooperative service should be determined as well. In addition:

- ***In the case of an existing service, a detailed description as to how the service is now being provided by each participant should be clearly documented.*** Details should include the departments, divisions and units involved and how the local government is organized to perform the function. The discussion should identify who is responsible for the various aspects of the service; identify any equipment, vehicles or special material required; and identify the facilities to be used to provide the service.
- ***The level of service presently being provided by each participant should also be documented, in quantifiable measures.*** This process will help determine whether the current level of service is adequate for present needs and forecast the level of service to be required over the next two to five years. The documentation should identify what the total cost would be for each participant, what is needed to meet minimum service levels, and what would be the projected service cost over the next two to five years.
- ***Total costs, as well as participant costs, should be calculated.*** An annual cost calculation based on planned service levels for each participant will need to be developed.

## Town and Village Justice Courts

- **Determine if the proposed cooperative provision of service meets the established goals.** Officials will have to determine whether or not the cooperative provision of the service fulfills the objective of reducing costs, improving levels of service, and/or providing service that would otherwise be unavailable to participants.

For villages considering dissolution of their Justice Courts, the financial considerations may be calculable directly. Villages may wish to follow the analysis offered at the back of this Manual, entitled “Analysis of the Financial Impact of Dissolving a Village Court”.

- **At this stage, planners should be in close touch with Justice Court stakeholders, who will have been operational understandings of the costs and benefits of potential Justice Court modifications, as well as the needs of the local justice system and potentially hidden costs or operational complexities that various proposals might entail.** These stakeholders – including local justices and clerks, prosecutors, indigent legal defense providers, OCA, the local Supervising Judge, and OSC – should be contacted and kept closely informed of developments. Ideally local stakeholders will have a direct role in advising the local governments in their feasibility analysis.

### 13. Negotiate the Agreement: Important Questions to Answer

Once it has been determined that the cooperative venture will achieve the desired result for the participant governments, a written service agreement should be negotiated and developed. During this process, several important issues to consider include:

- **Budgeting for a consolidated Justice Court.** If towns and/or villages would share a consolidated Justice Court, how would its sponsoring localities budget for the court? Would localities equally share in costs, or allocate costs based on some other criterion (e.g. populations, caseloads, etc.)? Would each locality need to sign off on the Justice Court budget? What if there is a dispute? If a town and village cooperate in providing for the Justice Court and are on different fiscal years, how will the localities manage their different fiscal years for a shared court?
- **Setting judicial compensation.** How will localities sharing a Justice Court provide for judicial salaries?
- **Employment and compensation of non-judicial employees.** Where multiple localities share a Justice Court, how will they share responsibility for setting the employment policies and compensation of non-judicial staff? If one locality’s staff is unionized and another is not, how will those issues be worked out? If a non-judicial employee serves multiple municipalities’ justices or courts, must each municipality approve the appointment or termination of that employee?
- **Care, custody, storage and control of court records, equipment, and facilities.** If multiple localities share a Justice Court facility, which locality will care for the records, facility, and equipment? Will they share responsibility for providing court security, or will officers for one municipality provide security services for another’s court? If there are multiple computer systems, will they be maintained or merged? If there are multiple software contracts for Justice Court case management systems, will those separate contracts be maintained or do they need to be re-negotiated?

## Town and Village Justice Courts

- ***Liability and insurance for shared facilities and staff.*** If multiple localities share a Justice Court facility, how will they provide insurance for the facility? Will the municipality hosting a shared court facility pay for all insurance, or will all localities join in payment? Will there be an indemnification agreement among the municipalities? If one municipality provides court security services, will insurance associated with that service also be provided by that municipality subject to an indemnification agreement?

An inter-municipal agreement that implements any form of sharing Justice Courts, facilities or services should address as many of these issues as possible. Advance identification of potential operational issues can head off problems before they occur. If these issues can be identified and resolved smoothly, it bodes well for the potential success of the initiative. If these issues cannot be resolved smoothly, then localities may wish to rethink their plans.

The inter-municipal agreement should be carefully reviewed and approved by legal counsel of each participating government prior to governing board consideration. Where these matters bear on the day-to-day operation of a shared Justice Court, the local justices also should participate in discussions. For operational reasons, technical assistance should be obtained as needed – whether from the New York Conference of Mayors, New York Association of Towns, the Office of Justice Court Support, and/or the Supervising Judge.

### **14. Build and Maintain Support**

All relevant stakeholders should be meaningfully involved in studying, developing, and implementing a shared Justice Court. These stakeholders may include not only justices, prosecutors, and defenders but also police agencies, community groups, municipal staff, and union representatives. If state legislation would be required, ensuring the participation of local members of the Senate and Assembly may be important. It is especially important to identify and involve groups or individuals who may believe – rightly or wrongly – that they have something to lose in any potential modifications of the local Justice Court system: their views are important, and taking them into account can avert preventable operational problems later.

Good communication is an essential element of the process. Keeping the public informed can prevent speculation and assumptions as to what is actually going to transpire as a result of the cooperative effort. Utilizing media and press outlets can help to stimulate support.

### **15. Anticipate and Plan for Potential “Roadblocks”**

Addressing concerns that can compromise widespread acceptance and ultimate success of an initiative to share a Justice Court, facility, or justice may prove challenging. On the other hand, not addressing them can derail the initiative or create substantial complexities during implementation.

OSC has a long history of providing local government officials with the guidance and tools necessary to maintain fiscal health, improve service delivery, and enhance efficiency. OSC can provide guidance and/or assistance to citizens and local governments interested in Justice Court consolidation.

**Town and Village Justice Courts**

# Town and Village Justice Courts

## Analysis of the Financial Impact of Dissolving a Village Court

Village of \_\_\_\_\_

Summary of Estimated Fiscal Impact	Pre	Post	Change
Local Share of Court Receipts (avg last two fiscal years)			
Budgeted Court Expenditures			
Net Operating Gain (Loss)			

Estimate of Impact on Local Revenue if Village Court is Dissolved			
Fiscal Year Ended	Description	Village	Town
20XX	<b>Total Village Court Receipts Reported</b>		
	<b>Total Local Share of Court Receipts</b>		
	<b>Estimated Revenue for Village w/o Court (post consolidation):</b>		
	AA Village Speeding (1)		
	AB, FO V&T - Title VII violation		
	AH Penal Law		
	AC GML §99-L - Admin Fees		
	EN, EP Encon Surcharges		
	FA,CQ,CZ,AI,CC Miscellaneous (3)		
	AD Parking (remains Village revenue)		
	BY, BZ Village Ordinance - Dog (remains Village revenue)		
	BJ Village Ordinances - General (remains Village revenue)		
	Total - Estimated Local Revenue		

## Town and Village Justice Courts

Fiscal Year Ended	Description	Village	Town
	<b>Net Estimated Revenue Increase (Decrease)</b>		
20XX	<b>Total Village Court Receipts Reported</b>		
	<b>Total Local Share of Court Receipts</b>		
	<b>Estimated Revenue for Village w/o Court (post consolidation):</b>		
	AA Village Speeding (1)		
	AB, FO V&T - Title VII Violation		
	AH Penal Law		
	AC GML §99-L - Admin Fees		
	EN, EP Encon Surcharges		
	FA,CQ,CZ,AI,CC Miscellaneous (3)		
	AD Parking (remains Village revenue)		
	BY, BZ Village Ordinance - Dog (remains Village revenue)		
	BJ Village Ordinances - General (remains Village revenue)		
	Total - Estimated Local Revenue		
	<b>Net Estimated Revenue Increase (Decrease)</b>		
<b>Two Year Average - Net Estimated Revenue Increase (Decrease)</b>			

(1) Village speeding revenue is subject to an Annual fine limit (\$5 per capita), fines collected in excess of the limit become State property.

(2) U.S. Census Bureau, 2010 Census, 2005 Population Estimates, Census 2000

(3) The Miscellaneous category includes felony arraignment fees and license revocations fees.

# Town and Village Justice Courts

## Estimate of Cost Savings if Village Court is Dissolved

Court Expenditures		Actual - Last Completed Fiscal Year	Budgeted - Current Fiscal Year	Estimated - Post Dissolution	Estimated Potential Cost Savings
<b>Justice(s)</b>					
	Salary	\$	\$	\$	\$
	Social Security	\$	\$	\$	\$
	Health Benefits	\$	\$	\$	\$
	Pension Contribution	\$	\$	\$	\$
	Workers Comp Ins	\$	\$	\$	\$
<b>Acting Justice</b>					
	Salary	\$	\$	\$	\$
	Social Security	\$	\$	\$	\$
	Workers Comp Ins	\$	\$	\$	\$
<b>Court Clerk(s)</b>					
	Salary	\$	\$	\$	\$
	Social Security	\$	\$	\$	\$
	Health Benefits	\$	\$	\$	\$
	Pension Contribution	\$	\$	\$	\$
	Workers Comp Ins	\$	\$	\$	\$
<b>Court Facilities</b>					
	Utilities (phone/internet)	\$	\$	\$	\$
	Insurance	\$	\$	\$	\$

## Town and Village Justice Courts

	Maintenance	\$	\$	\$	\$
	Security	\$	\$	\$	\$
<b>Other</b>					
	Local Prosecution	\$	\$	\$	\$
	Equipment (i.e., copier, fax)	\$	\$	\$	\$
	Equipment Maintenance	\$	\$	\$	\$
	Software/Maintenance	\$	\$	\$	\$
	Training & Development	\$	\$	\$	\$
	Stenographer	\$	\$	\$	\$
	Supplies & Postage	\$	\$	\$	\$
	Books	\$	\$	\$	\$
	<b>TOTALS</b>	\$	\$	\$	\$

Other Consolidation Metrics	Village	Town	
	Pre-Dissolution	Pre	Post
Cost Per Case			
Average Elapse Time from Arrest to Disposition			
% of Uncollected Revenue			
Avg Case Count Per Justice			

## Town and Village Justice Courts

### Estimate of Impact on Local Revenue if Village Court(s) are Dissolved

Calendar Year	Description	Village of	Town of
20XX	<b>Total Courts Receipts Reported:</b>		
	<b>Local Share of Court Receipts:</b>		
	<b>Estimated Revenue Stream for Village w/o Court:</b>		
	Village Speeding (1)		
	V&T - Title VII Violation		
	Penal Law		
	GML §99-L - Admin Fees		
	Encon Surcharges		
	Miscellaneous (3)		
	Parking (remains Village revenue)		
	Village Ordinance - Dog (remains Village revenue)		
	Village Ordinances - General (remains Village revenue)		
	Total - Estimated Local Revenue	\$	\$
	<b>Net Estimated Revenue Increase (Decrease)</b>	\$	\$
Calendar Year	Description	Village of	Town of
20XX	<b>Total Courts Receipts Reported:</b>		
	<b>Local Share of Court Receipts:</b>		

## Town and Village Justice Courts

	<b>Estimated Revenue Stream for Village w/o Court:</b>		
	Village Speeding (1)		
	V&T - Title VII Violation		
	Penal Law		
	GML §99-L - Admin Fees		
	Encon Surcharges		
	Miscellaneous (3)		
	Parking (remains Village revenue)		
	Village Ordinance - Dog (remains Village revenue)		
	Village Ordinances - General (remains Village revenue)		
	Total - Estimated Local Revenue	\$	\$
	<b>Net Estimated Revenue Increase (Decrease)</b>	\$	\$

# **Appendix C**

## **Harrisburg-Pinckney-Montague**

### **Shared Justice Court**

(11/16/10)

#### **1. Justice Court Characteristics:**

- a. Municipal Demographics
- b. Current Justice Court case structure, volume, fiscal metrics, etc.

#### **2. Project Impetus and Description:**

- a. History of 3 court structure
- b. Current Justice sharing arrangement
- c. 2010 Justice Court Act Amendments

#### **3. Proposal(s) and Proposed “Plan”:**

- a. Shared Justice Court Structure and Administration
  - i. Shared Facility
    1. Current Facilities
    2. OCA/ADA Compliance
  - ii. Justice Court Jurisdiction
    1. Summary of GML Article 5-G agreement
  - iii. Justice Court Administration
    1. Records and Dockets
    2. Equipment
  - iv. Justice Court Finances and Auditing
    1. Separate Accounts
    2. Separate fees and revenues
    3. Auditing
  - v. Justice Election
- b. Discontinuance and Dismantling of the Agreement

#### **4. Legal Foundation and Legal Process Checklist:**

- a. Joint town board initiated resolution authorizing the preparation of a “Plan”
- b. Shared Justice Court Plan
- c. Public Hearing on proposed “Plan” (30 days of Plan completion)
- d. Joint Resolution abolishing two town justices and retaining one shared justice and establishing terms (within 60 days of public hearing)
- e. GML Article 5-G Inter-Municipal Agreement
- f. Home Rule Message on the Joint Resolution and Article 5-G agreement and Special Act of the Legislature authorizing the arrangement.

## Outstanding Questions/Concerns

While following UJCA section 106-B we encountered several questions and concerns as to following the procedure and going forward once the Plan was approved and implemented. The following highlights those questions/concerns.

- 1. Maintaining 3 sets of proprietary court software systems.** In order to sustain the revenue structure for each of the participating municipalities it was necessary to keep three sets of proprietary software and associated licenses for each municipality. While the software provider did set key strokes so that a single computer could be used there are three sets of software, licenses and maintenance fees for each municipality.
- 2. Appointing a new justice.** Only two months into the shared justice court the elected justice passed away and the towns were faced with having to appoint a new justice. 106-B is silent as to appointments and elected procedures so we went with the idea that each participating town board appointed the same justice. In this case the appointee was an attorney so training requirements were largely avoided and the process was relatively smooth.
- 3. Altering the number of justices.** 106-B is silent as to the number of justices serving a shared court. In this circumstance there is one justice as authorized by each town. What if case load demand warrants a second justice? How would the shared court get two justices? Would there need to be an amendment to the Plan” and another Home Rule Message and legislative act to authorize it?
- 4. Discontinuance and dismantling of the agreement.** Should circumstances change and one or more towns decide they want to revert back to their own justice court how would this be achieved? Would it require an amendment to the “Plan” and another Home Rule Message and legislative act?

Throughout this process we often thought that accomplishing a shared court under GML Article 5-G would be much easier. In effect it is within the spirit of 5-G in that anything anyone town can do it can share with another town. We see countless examples of this in shared governance, services and equipment. Article 5-G agreements are also limited in duration (maximum 5 years) and would authorize both the local governing bodies and the electorate periodic review of the arrangement. It is simple to craft, amend and undue an Article 5-G agreement. One consideration in approaching this from an Article 5-G agreement would be subject he agreement to a permissive referendum. Thus if anyone of the municipalities electorate had problems with the agreement they could force the issue to a referendum.

# Appendix D

## Counsel's Memo – Custody of Records



STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004  
TEL: (212) 428-2150  
FAX: (212) 428-2155

A. GAIL PRUDENTI  
Chief Administrative Judge

JOHN W. MCCONNELL  
Counsel

November 7, 2014

Hon. Michael V. Coccoma  
Deputy Chief Administrative Judge  
Unified Court System  
4 Empire State Plaza, Suite 2001  
Albany, New York 12223-1450

RECEIVED  
NOV 17 2014  
CHIEF ADMINISTRATIVE JUDGE  
A. GAIL PRUDENTI

Re: Disposition of Court Records After Dissolution of a Village Court

Dear Justice Coccoma:

As you know, the Justice Court Task Force has requested the views of this Office as to the proper disposition of court records upon the dissolution of a village court by a village board of trustees pursuant to Village Law § 3-301(2)(a). Our view is that the dissolved court's records must be deposited with the village clerk, remain the property of the village, and must remain accessible to the public and subject to rules of care, custody and disposition promulgated by the Chief Administrative Judge and the Administrative Board of the Courts.

\*\*\*

As a general matter, the Uniform Justice Court Act grants court administrators broad regulatory power over the records of proceedings before Justice Courts. UJCA section 107 provides, in pertinent part, that:

[e]ach [town or village] justice shall keep or cause to be kept legible and suitable books, papers, records and dockets of all civil actions and proceedings and all criminal actions and proceedings. The rules may prescribe their form, care, custody and disposition.

See also UJCA §§ 2101(o) (defining "rules" as "the rules adopted pursuant to § 2103 of this act"), 2103 (providing that the "administrative board [of the courts] may adopt, amend and rescind rules for the courts governed by this act, not inconsistent with this act or with the CPLR"), 2019 (addressing criminal court records); Judiciary Law § 213(2)(b) (granting the Administrative Board the powers of advice and consent with respect to the adoption of rules regulating practice and procedure in the courts by the Chief Administrative Judge as authorized by law); 22 NYCRR [Rules of the Chief Judge] § 80.1(b)(13) (delegating to the Chief

Administrative Judge the power to "supervise the maintenance and destruction of court records"); 22 NYCRR [Uniform Rules of Trial Court] §214.11 (establishing recordkeeping requirements for town and village Justice Courts).

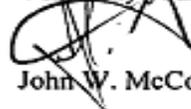
Notwithstanding this broad regulatory power of court administrators over town and village court records, such records remain municipal property. On the criminal side, this is clear beyond cavil: UJCA section 2019-a, governing the disposition of criminal court records upon conclusion of a term of office of a local justice, provides in pertinent part that:

[t]he records and dockets of the court except as otherwise provided by law shall be at reasonable times open for inspection to the public and shall be and remain the property of the village or town of the residence of such justice, and at the expiration of the term of office of such justice shall be forthwith filed by him in the office of the clerk of such village or town.

While no analogous provision governs the ownership of civil court records, we are aware of no principled basis to distinguish them from their criminal court counterparts. Consequently, it is our view that the duties of ownership of all court records - including the duty to maintain such records and to make them available for public inspection - remain with the village, except as otherwise provided by the Constitution or the Legislature,<sup>1</sup> and subject to the regulatory authority of court administrators.

I hope this discussion is helpful. If you have further questions on this issue, please contact Counsel's Office at 212-428-2150.

Very truly yours,



John W. McConnell

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<sup>1</sup>For instance, where a village court dissolves in favor of a district court, the village court's records are transferred to such district court. See UJCA §§ 107, 2019-a; see also UDCA §2021. Furthermore, where a village court is dissolved as part of a village consolidation or dissolution pursuant to General Municipal Law Article 17-A, court records "shall be deposited with a justice court to be designated by the administrative judge of the judicial district within which the dissolving justice court is located;" the repository court "shall have authority to execute and complete all unfinished business." General Municipal Law §§ 765(6); 788(3).