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**STATE OF DELAWARE
JUSTICE OF THE PEACE
COURT :**

**BRIEFING REPORT
on
CIVIL COURT OPERATIONS ;**

**Final Report
October, 2001**

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I. BACKGROUND

Officials from the Administrative Office (AO) of the Delaware Justice of the Peace Court system (JPC) contracted the National Center for State Courts (NCSC):

- To review the operation of the civil courts
- To review the operation and function of constables
- To review security at civil courts
- To assess the current methods used for assigning civil court staff

As part of the review, the NCSC agreed to conduct site visits and to perform a brief operational review of each of the civil courts in the JPC. This report describes NCSC's findings and offers recommendations to improve the operation of those courts.¹

In a separate report the NCSC will assess the current methods used for assigning civil court staff and recommend a formula based on case weights that will assist the JPC determine the need for civil courts staff.

II. HISTORY

A. Preparation for Site Visits

Prior to the initial on-site visit, the project director talked with the Court Administrator of the JPC to determine which civil court sites the NCSC project director would review. After this determination, the project director conducted an analysis of court reports, public education materials, and statistical information in order to gain a better understanding of their day-to-day operation. The project director also worked closely with project liaison Ms. Lynn Arnold, Management Analyst, to coordinate on-site visits and to gather current information on workflow and office operations. Her coordination of the on-site visits and information she provided during the project was greatly appreciated.

¹ This report addresses only a small portion of the work to be performed by the NCSC for the AO on operations review and staffing standards analysis. Additional reports will be submitted on the other aspects of NCSC's analysis.

B. Site Visits

The project director conducted his initial on-site visit during November 2000. The following courts were visited: Courts 12 and 13 in Wilmington, 16 in Dover, 17 in Georgetown and 19 in Seaford. Since it is being reconstructed, Court 9 was not visited. However, a representative from the court was interviewed. During these visits, the project director held brief meetings with judges, court managers, and civil court staff to better understand current operations, management philosophies, and customer service programs of the Court. These interviews focused primarily on eight issues:

- A. General Administration
- B. Civil Case Processing
- C. Forms
- D. Training
- E. Automation
- F. Court Clerks
- G. Constables and Security Officers
- H. Judges

III. REVIEW OF COURT OPERATIONS

In order to comprehensively review the operations of the civil courts and to accurately determine subsequent recommendations, discussions with judges, court managers, and court staff focused on the eight areas listed above. Each area is briefly discussed along with specific recommendations for change. Prior to all individual interviews, respondents were guaranteed confidentiality. Therefore, in this report individuals interviewed are not quoted verbatim, nor are they given attribution on comments or suggestions they made during the study.

A. General Administration

1. Policy and Procedures

As a result of on-site interviews and observations at the civil courts, it was determined not all court staff are completely familiar with the many directives, policies, procedures, or local rules of the JPC. Although this information is regularly e-mailed to court managers and court staff and a concerted effort has been made by the Chief Judge and the Court Administrator to *get*

the word out, many court clerks interviewed either did not recall or believe they had easy access to this important information.

Recommendation: At weekly staff meetings civil (and criminal) court managers should review all directives, policies, and procedures that have been received from the Chief Magistrate the prior week. Court managers should continue to update their policy manuals weekly with a hard copy of this information and make them readily available to court staff.

2. Personnel Concerns

Court managers are faced with several personnel management issues that effect the efficient operation of the civil courts. First, at times civil court clerks work overtime without compensation. Presently, hours of work in the civil court are 8:00 AM to 4:00 PM. In order to complete a complicated transaction or to provide good customer service to late arrivals at the public counter, one or more staff will stay past 4:00 PM. Second, during the study, there had not been a determination by the state's human services department whether JPC court staff would receive the same classification and pay as their counterparts working in other state funded courts. Although court staff have been briefed by the AO and court managers, this topic still concerned most court staff interviewed. Third, taking over *radio duty* to monitor and to provide safety to constables working in the field has added an additional duty to the already heavy workload of civil court clerks. This new duty is sometimes assigned to the wrong person, is not rotated, interrupts work, and often becomes a topic of negative discussion in the office. Fourth, court manager's supervisory styles and some operating procedures differ. Court staff is aware of these differences. At times they believe they are not being treated the same as other employees in other courts and wonder why they do things differently.

Recommendation: The Court Administrator's Office should conduct focus groups at each civil court to address and resolve the four personnel issues. To insure operational continuity in the civil courts, participants should agree on actions plans for improvement that can be shared between civil courts and reviewed and reinforced at the annual clerk's conference.

3. Fiscal Management

In the civil courts, the person who accepts payments at the front counter is usually the same person who totals those receipts and then makes the daily deposit at the bank the next day. Presently, in some courts, deposits are held for a day or more before the bank deposit is made.

Further, the new automated civil case processing system does not have a financial module that balances at the end of the day (and month) or can calculate the amount of money received and determine the exact amount of money that should be distributed to public agencies.

Recommendation: In order to follow accepted rules of fiscal procedure for handling money, one person should accept payments at the front counter in a civil (and criminal) court, and a different person should count the money, and make the bank deposit the same day.

Recommendation: The AO, through its IT department, should augment the fiscal management package on its new automated case processing system to include balancing and distribution of funds modules.

4. Contract Services Budgeting

Court managers are not in control of contract services budgets. For example, when court staff take vacations, due to accumulated workload, staff shortages and lack of cross training, they are overwhelmed when they return to work and feel somehow “punished” for taking the time off. This situation undermines good morale, leads to mistakes, and creates job stress. When court managers want to hire temporary help to reduce backlog or to complete a special project in their court, they request contract services money from the Office of Court Administration. Depending on the time of the fiscal year, their request is usually approved by the Court Administrator’s office on a case-by-case basis. As a result, court managers do not share in the fiscal responsibility that accompanies their request. This results in competition for available money and affects the spirit of cooperation between courts.

Recommendation: On a trial basis, the Court Administrator should consider allocating a limited amount of contract services monies to each civil (and criminal) court manager to manage.

5. Public Education

Although the JPC system has a good public education program which offers video tapes, how-to-do-it manuals, and speakers² to the communities they serve, customers of the civil courts still need more education regarding responsibilities and consequences of errant civil actions, e.g. the importance of paying rent and utility bills on time and locating assistance when necessary. Conducting this type of public service/education campaign would help to proactively educate the

² The AO sponsors an active speaker’s bureau.

public and to reduce the number of new civil filings. To increase public service, civil courts, especially in the Kent and Sussex counties, need more participation by members of the bar to conduct rural legal service clinics on civil case processing. This increased effort would not only educate the public regarding civil process, but it would assist court staff in improving service to un-represented litigants.

Recommendation: The Court Administrator should consider establishing a Public Education Committee to expand on the efforts the AO has already made to educate the public. This committee should make recommendations to improve public education on criminal and civil process and expand on the activities of the existing speaker's bureau.

B. Civil Case Processing

1. Firm Continuance Policy

According to the National Council of State Trial Judges' Court Delay Reduction Committee, judges that are successful in managing their calendars, controlling the pace of litigation, and disposing of cases in a timely manner adhere to strict continuance policies in their courtrooms. Although all continuances cannot be eliminated, they can be controlled, reduced, and limited to the most serious reasons. Continuances also affect the clerk's office, since each time a continuance is given, a court clerk's work doubles simply by handling papers and sending out new notices to parties.

Presently, the court's new automated civil case processing system does not track or publish continuances. Simply stated, the civil case processing should track and provide this information to court managers and to judges. Although the Chief Magistrate has issued a policy directive on continuances, it is not always followed.

Recommendation: Under the direction of the Chief Magistrate, the Strategic Planning Committee of the JPC needs to strengthen its existing policy on continuances to reduce the number of continuances given in the civil court. The new policy should further limit the number of continuances granted and require that reasons for continuances be in writing, recorded in the case file, and reflected in each case on the court's case management information system.

2. Open Case Report

The AO, through its Information Technology (IT) Department, provides monthly an open case report to civil court managers. It also produces a report that identifies cases that are more

than 30 days old. Once these 30 days old cases are identified, court managers have recently been encouraged to alert the judge. Depending on the organizational culture that exists in each civil court, these two reports may or may not be fully shared with court staff and discussed with judges.

It is imperative that all open case reports be shared and discussed with judges and court staff on a monthly basis to regularly monitor and measure disposition times and the size and age of its pending caseload. The open case report should also be used as a management tool to determine and assess the rates that trials and hearings are being continued and rescheduled. To improve the quality of the open case report, it should include listings of all open cases before a judge in chronological order, case numbers, parties names, attorneys name, dates filed, dates first heard, numbers of continuances granted, date last heard, and last actions. With all of this information the judge, court manager and staff can work together as a team to bring civil cases before the court to timely disposition.

Recommendation: To provide a more effective case management tool for the civil (and criminal) courts, the Court Administrator should establish a committee to review and redesign the civil court's open case report. Once this is accomplished, judges and courtroom staff should be trained as a team on how to more effectively to use the information contained in open case reports to more effectively manage their civil calendars.³

3. Case Management Techniques

Some judges in the JPC have taken steps to take control of the pace of civil litigation in their court through early involvement in all cases assigned to them. For example, many JPC judges encourage settlement of the case by parties at the first or second appearance, while others set timelines for events in cases and, in an effort to exert control over their cases, others hold case management conferences as early as possible from the date of first appearance.

By taking these steps, judges can directly control the case by having parties agree to a case management scheduling order and can govern other matters. Judges using these case management techniques usually hold only one case management conference before trial, have a strict continuance policy, and set trial dates that are certain. As a result, they move their civil

³ During the course of the NCSC study, this recommendation was accomplished.

cases through the court efficiently and effectively and indirectly reduce the amount of workload for court clerks.

Recommendation: The Chief Magistrate and Strategic Planning Committee should increase the amount of caseload and calendar management training offered to judges and court managers.

C. Forms

The AO Forms Committee has recently reviewed and updated the many forms that are used to process civil (and criminal) actions. However, there are still a few civil court forms that are not customer friendly and are difficult to follow or understand. Presently, the civil courts do not provide a standard show cause form or a standard response form for un-represented defendants' to use in their answers to a civil action. As a result, defendants' answers to civil actions from plaintiffs are not returned to the court in any standard manner or format. This situation slows down the pace of litigation and makes it difficult for the clerks to file papers in a case and for the judge to interpret responses to a civil action.

Recommendation: The Court Administrator should encourage the Civil Case Processing Committee to meet more frequently to review, create, sunset, and update civil forms. The membership of the committee should be expanded to include customers of the JPC.

D. Training

At least once a year, despite its limited budget, the AO provides training for judges and court managers. Although additional management training has been offered to some court managers and legal education courses have been conducted for judges, they still want more training in areas that will improve their job performance.

As a result of the interviews during the on-site visits, judges expressed a need to have more training in caseload and calendar management training, court managers asked for more training in supervision, court clerks wanted additional training in stress and time management, customer service, legal advice, and policy and procedures review, while constables and security officers asked for more training in the use of firearms, transportation of defendants, and dealing with anger. Based on the amount of money they receive for employee training, the JPC is to be commended for the number and the quality of courses they have offered to their employees over the years. However, it is certain that more training is needed and wanted by court staff. Therefore, the AO should explore ways to

offer more training on a limited budget and without interrupting the day-to-day operations of the JPC.

Recommendation: The AO should offer more optional and mandatory training courses on subjects that will directly improve employee's job performance. In order to do this on a limited budget, some JPC employees, who are good presenters and knowledgeable in a particular subject area, should be utilized as subject matter trainers.

E. Automation

Last year the AO implemented a new automated civil case processing system in the JPC. Since that time the system has been regularly reviewed, changed and improved. At the time of the study, several improvements to the system had already been made while others suggestions for improvement were still in progress.

1. Civil Case Management System

Changes in software and planned service interruptions to the automated civil case processing system are not always communicated to court staff. For example, one of the complaints heard during the study was that advance warning was not always given to court staff when the AO or Judicial Information Center (JIC) planned to bring the system down for repairs or upgrades. Further, court staff, as end users, believed that were not always consulted regarding what civil case processing system improvements were made and needed nor did they understand why changes were made.

Electronic filing has been around since 1991 in the United States, when the Superior Court in Wilmington used such a system to keep track of asbestos-related cases. In some other limited jurisdiction courts in the country, they either allow terminal access for their biggest filers or accept prepared filings on disk. A great deal of time could be saved if landlords and corporations that file multiple cases could electronically file their cases in the court *off-site* or submit their filings on computer disk for review and downloading into the system.

Also, the new civil case management system should (1) provide a different method of printing receipts (2) allow court clerks to calendar input and easily extract judges' calendar events more than one day at a time, (3) automatically download civil warrant information into the state's DELGIS criminal warrant system, (4) allow court clerks, as civil warrants are issued, to cross check defendant's and plaintiff's names for any outstanding criminal warrants and (5) allow constables to track the number of summons served and outstanding.

Even though the civil case management system calendars cases and provides basic case information on line, it does not proactively help with the day-to-day management of cases. For example, the system generates notices on defendant's judgments and/or default judgments, but it does not generate a copy for the plaintiff. Presently, preparing copies of judgments for plaintiffs is done manually by copying their name, address, etc. This takes time, slows down the noticing process, and is a source of frustration for most court clerks. Many clerks believe a simple solution to this problem would be to redesign the form and allow room for addresses for the plaintiff and defendant. Along the same line, levy letters are being typed rather than being generated by the system. Changes in the civil case processing system can eliminate these tedious tasks.

Recommendation: The Court Administrator should consider expanding the membership of the AO Civil Case Processing Committee to include more end users. Suggestions from this Committee on how to create a better system of monitoring and feedback should be shared with the Judicial Information Center (JIC). Progress and decisions made by the committee should be published regularly in the JPC Newsletter.

F. Court Managers and Court Clerks

Court managers and court clerks in the civil courts are still in a state of transition from working in a primarily *manual court* to working in what is now an *automated court*. For many reasons this transition has been difficult for some staff, while others have enjoyed the transition but have been frustrated by knowing that there is more that the new case processing system should be doing to reduce their workload.

In most of the JPC civil courts, court managers, by necessity, function in a dual role of supervisor and line staff. Some have adjusted to this better than others, especially with the advent of the new civil case processing system. Court managers need training to improve their supervisory and problem solving skills. Although not a major concern, this need was expressed by supervisors and court clerks alike.

Court clerks working in some of the civil courts seem to be under a great deal of stress. Many are caught up in the day-to-day operations of the office and simply do not have the time to improve their problem solving or computer skills. Although court clerks are hard working, some court clerks seem worn out and need to learn new methods to do their job "easier, better, smarter, and faster." As well, most court clerks believe the civil court system is in need of additional staff to do the work, i.e. new full-time employees (FTE).

Recommendation: AO management analysts, court managers, and court staff should meet more regularly to create a system to improve the dissemination of information in the court. These meetings should also be held to discuss and to solve operational problems. A meeting format of “who does what, by when” should be used to make task assignments and to measure progress from one meeting to the next.

G. Constables and Security Officers

1. Constables

In the JPC, constables are primarily used to serve civil process and to a lesser extent some perform other duties requested by judges and court managers. In New Castle County constables are centralized in an office at Court 11. In Kent and Sussex counties, constables work out of the civil courts. Most constables were looking forward to receiving the new procedures manual⁴ from the AO to better guide them in the performance of their duties. While on the job, most constables carry a standard issue 357-caliber pistol or personally purchase and carry a 9 mm automatic weapon. As peace officers in the state, constables are required to attend a state sponsored program of firearms and deadly force training at least three times a year. All newly hired constables also attend a 40-hour orientation course at the police academy. Other training programs constables may attend are approved by the Chief of Constables or are selected and attended by a constable at their own expense.

Occasionally, constables serve as security officers in the civil courts. This is done after a determination that there is a legitimate security need. Moreover, constables sometimes become involved in a capias actions and may bring in a defendant wanted on a criminal warrant to court, to a police station, or to jail.

Many constables work from 8:00 AM to 4:00 PM; while some work split/evening shifts. As stated above, the constables' primary duty is to serve process papers on defendants involved in civil actions. This service can range from eviction notices to notices to appear in court. In order to properly effect service, some constables attempt to serve process during the day, i.e. at a defendant's home at 11:00 am. However, if no one is at home and depending on the type of service, a constable may return again the next day and at around the same time. Thus, this second (and sometimes third effort) may be to no avail. Due to the established hours of work and the need to work evenings in teams of two for safety, most constables usually don't serve process at night or on weekends. In an

⁴ At this writing the manual is being finalized by officials at the AO.

effort to resolve this problem, more constables should work split shifts and on weekends in order to increase contact with and service to customers.

During the regular work week, besides executing service of process, constables have the responsibility to evict citizens from rental property. They also advertise, coordinate, and conduct “sheriff sales” of confiscated property; which are usually under attended and, due to the lack standard pricing (blue book) for items, are often under priced. Although there is no policy to address dealing with the homeless, some constables, as an act of kindness (especially in winter), have been known to transport these individuals from an eviction site to a local shelter.

Another problem constables face is the lack of a coordinated training program offered by the AO to fit their specific job needs. This is true for both new hires and for tenured employees. Also, in the constable’s ranks, there are generational and philosophical differences. On one hand, a number of constables would like to have more “police authority,” while others view their job as just service processors. Thus, there is not a clear sense of mission, goals, and objectives for them to follow in the performance of their duties.

In the judgment of the NCSC project director, the system of constables used in JPC courts is not working effectively or efficiently. For example, it was determined during the on-site visits that some constables seemed unsure of their exact role in the courts. Moreover, they were not always sure whether they report to the Chief of Constables, JPC management analysts, judges, or court managers in the performance and evaluation of their duties.

If the court wants to continue to process civil service in a cost effective and efficient manner, they should expand service by mail. For example, many state courts are simply using the U.S. Postal Service to mail out the majority of their civil (and criminal) service of process. By mailing out service of process, these courts, like the JPC, have saved taxpayers many thousands of dollars each year.

The regular use of constables as security guards at courthouses is a questionable practice since constables are not hired or trained as security officers. Functioning in this dual role may present legal problems if there is a security incident at a courthouse. Using constables as security officers not only clouds an already confusing picture but it does not allow the AO to accurately estimate staff need when additional security personnel or new constables are requested from the legislature.

Recommendation: If the JPC continues to use constables to serve civil process, the Court Administrator should appoint a committee to review their role and job duties and to solve operational problems. Further, this committee should seriously consider the possibility of combining the classifications of security officer and constable into one position title and classification.

Recommendation: If the JPC continues to use constables to serve civil process, the Court Administrator should decentralize how constables are assigned, equitably reassign them at civil courts in the three counties, and place them under the supervision of the court manager.

Recommendation: If the JPC decides not to use constables in the future, a cost benefit analysis study should be conducted to determine if process servers from the Sheriff's offices or from a private firm should be contracted or only the U.S. Postal Service should be used to serve all civil process.

2. Security Officers

Security officers in the JPC are either employed by the AO or they are contracted. At the time of this writing approximately 50% of courthouses in the JPC had security officers assigned to them. A security officer's primary duty is to screen individuals who enter civil courthouses, to control crowds, and to protect the internal and external customers of the JPC from violence. Unfortunately, the procedures and methods used by security personnel in the civil (and criminal⁵) courts do little of the above. In the civil courts the NCSC project director visited, security checks of customers and employees at the courthouses did not occur or at best were sporadic.

It is a national held belief⁶ that courthouse security is an all or nothing proposition. This is especially important since violence in America also occurs in the workplace, both by fellow workers and outside intruders. If the JPC is to have an effective security program, access to the courthouse must be restricted, all outside entry doors except the main entrance must be locked, and all persons coming in and out of the courthouse, including all employees, must pass through a magnetometer and be checked for contraband. If these protocols are not established and not uniformly used in all JPC courthouses, security at civil (and criminal) courthouses will be reduced to random checks and crowd control during busy times.

Recommendation: In order to improve its security program, the JPC must change procedures and have security guards present at the entrances to the civil (and criminal) courthouses at all times. All persons entering the courthouse, including

⁵ The NCSC had similar observations in its review of the operation of criminal courts in 1998.

⁶ *Court Security Guide*, publication of the National Association for Court Management, 1995.

employees and judges, must always be subject to search procedures without exception.

Recommendation: If security at the civil (and criminal) courts does not measurably improve, the Chief Magistrate and the Strategic Planning Committee, after conducting a cost benefit analysis, should consider requesting funding through the formal court process to purchase security services from a private provider for all civil (and criminal) courthouses in the JPC.

H. Judges

Some judges in the JPC, because of changes in the law or due to other factors have some difficulty keeping up with changes in criminal and civil law. In order to resolve this issue, most judges expressed a desire (1) to have more training on new laws enacted by the legislature and (2) to increase their contact with experienced, law trained mentor judges working in the JPC

Recommendation: The Chief Magistrate should informally survey judges to determine in which areas of civil (and criminal) law judges may need additional training. Once the survey is complete and areas of need prioritized, appropriate training courses on these law should be offered.

Based on their life experiences and personal preferences, some judges believe they are better suited to hear only criminal or only civil cases. Hearing a mix of case types does not always allow a judge to specialize in civil or criminal law or utilize their skills to the best advantage of the JPC.

Recommendation: The Chief Magistrate and the Strategic Planning Committee should consider instituting a civil division and a criminal division on a pilot basis in New Castle County, where judges can specialize in either case type. Selection criteria, duration of service and operating procedures should be developed with maximum amount of participation from those judges affected by this recommended change.

In civil actions filed in the JPC, parties are not consistently encouraged by judges to participate in alternative dispute resolution (ADR). Also, judges do not usually use settlement conferences nor do they require parties to a civil action to attend mandatory mediation sessions. Historically, ADR in the courts has been used to reduce costs, reduce backlogs and to expedite case dispositions. The greatest benefit from settlement conferences and mediation sessions seems to be in the area of user satisfaction. Both parties to the action and/or their attorneys

usually find civil case mediation and settlement a fair and satisfactory way of ending disputes. Of course, not all civil cases before the court should use ADR as a means to disposition. However, in order to identify which case should attempt settlement or mediation, an early intervention or screening process needs to be put in place. Once this is accomplished, cases that are appropriate for ADR can be differentiated and referred to a settlement judge and/or to mandatory mediation.

Recommendation: The Chief Magistrate and the Strategic Planning Committee should continue to encourage the use of settlement by judges in the JPC. Based on the usefulness of settlement conferences in the JPC, a mandatory mediation using professional mediators should be established as a pilot program in New Castle County.

IV. CONCLUSION

The NCSC project director's review of the civil courts indicated that they are operating fairly well. Judges and court staff seem dedicated to their work and expressly want to do a good job for customers coming to their courts. Despite a reduction in new filings, workload still seemed heavy in some courts. However, it was observed that most cases were being filed, heard, and disposed of in a timely manner.

To effectively track cases, to increase the timely disposition of cases, and to better serve to the public, many judges and court employees want to have input on any additional improvements that are made in the new automated civil case processing system. Since these employees have many ideas on what they want from the new system, a proactive program must be put in place to create and encourage better communication with the Judicial Information Center (JIC) on their suggestions.

Computer concerns and other operational problems in the civil courts should be resolved as much as possible by AO analysts and court managers holding more problem solving meetings. In this way, concerns and problems can be discussed and solved in an open forum and a spirit of teamwork can be developed in the process. Judges and court staff want more training in such areas as understanding civil law, providing legal advice to the public, as well as practicing time and stress management. Accomplishing this will be challenging for the AO, since they only receive a small amount of training funds in their annual budget allocation from the state.

The JPC needs to re-evaluate its position and future direction on the use of constables and security officers. Many questions must be answered regarding how to best effect the process of service, increase sales of goods at public auctions, and ensure public safety at courthouses. Once these questions are answered, the Chief Magistrate and the Strategic Planning Committee can determine whether the service of constables and security officers needs to be consolidated or contracted to private providers.

Compared to other such limited jurisdiction courts in the country, the Justice of the Peace Courts system is doing a remarkable job. The Chief Magistrate, Court Administrator, AO staff, judges, court managers, and court staff have usually confronted and solved problems in a positive manner, they have upgraded their civil and criminal processing systems, they have objectively measured their workload and asked the legislature for new staff, and they have risked having the National Center provide an “outsiders” look at how they can continue to improve. With these many strengths there is little doubt that the employees of the JPC with their motto of “Where Justice Begins” will continue to provide quality justice to the citizens of Delaware for many years to come.

**“Teamwork is the fuel that allows common people
attain uncommon results”**

- Timothy James