

INNOVATION FROM CRISIS: THE NEW JERSEY MUNICIPAL COURT EXPERIENCE

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The current fiscal crisis might prompt local courts to consider some sort of shared-services arrangement to consolidate operations and cut costs. The New Jersey experience offers some helpful tips and cautions.

The state of New Jersey's fiscal crisis has reached every level of government. Many New Jersey municipalities, faced with a significant reduction in state aid and a precipitous increase in operating expenses, have been forced to explore creative options that impact the bottom line, including that of shared services. This trend toward shared services has included New Jersey's municipal courts, which are local courts of limited

"A crisis is a terrible thing to waste"

- Paul Romer, Economist

jurisdiction. This article focuses on that trend, treating this topic from a state, county, and local perspective.

The concept of shared services is not new. It has been studied extensively since the 1960s (Schermerhorn, 1979). The theory behind shared services is simple: increased efficiency and cost savings can be realized through economies of scale (New Jersey Department of Community Affairs, 2006). It can also provide an effective way of containing costs and reducing service redundancies.

All 50 states have passed legislation allowing for shared-service arrangements by their local entities. The state of Washington, for example, recently passed a law that provides for municipal court contracting, which states in pertinent part: "A city may meet the requirements of RCW 39.34.180 by entering into an interlocal agreement with the county in which the city is located or with one or more cities." This language is consistent with that contained in the statutes of many other states.

In New Jersey, sharing services between local units of government is on the rise, with municipalities actively looking for ways to cut costs. This includes sharing everything from street sweepers and ambulance services to fire and police services. To provide for this, municipal leaders use courtesy or handshake agreements that allow for the sharing of facilities, equipment, or supplies, as well as formalized agreements that are sometimes required by state statute and that require the passage of local ordinances or resolutions. New Jersey has been at the forefront of the shared-services trend, especially as it relates to local or municipal courts; a sizable 21.7 percent of the state's 526 municipal courts are part of a formal shared arrangement.

The New Jersey Experience

In New Jersey, the Uniform Shared Services and Consolidation Act (N.J.S.A. 40:65-1 et seq.) provides the statutory authority for municipalities to enter into an agreement to share services. A separate statute (N.J.S.A. 2B:12-1) provides the specific authority for municipal courts to be part of a formal shared agreement. This latter statute requires each municipality either to establish an individual court or to enter into an agreement with other municipalities to establish a shared or joint municipal court.

Joint and Shared Courts

A shared court in New Jersey is one in which two or more courts actually share resources, including staff, office space, technology, supplies, and even judges. In a shared-court arrangement, each court maintains its own identity. The caseloads, financial transactions, bank accounts, and other matters of court business are not commingled, but remain separate; they simply share resources.

A joint court, by comparison, involves two or more courts combining to form one larger court. Their cases, and all court business such as finances and administrative practices, are combined. They not only share resources, but become one entity, regardless of the number of participating municipalities.

Another important distinction between joint and shared courts involves the judicial appointment process. In a joint court judges are appointed by the governor, with the advice and consent of the state senate (New Jersey Constitution, Article IV, Section VI, Paragraph 1), while in a shared court judges are appointed by the local governing bodies.

Shared Courts

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Joint Courts

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There are advantages and disadvantages to establishing each type of court. In municipalities wishing to retain the ability to select their own judge, a shared court

is obviously preferable, given the role of the governor in appointing the judge in a joint court. Conversely, joint courts are considered easier to operate, since cases and finances are commingled. Joint court staff need not worry about maintaining separate filing systems or financial accounts, depositing monies into the wrong bank account, or entering a disposition under the wrong court code. These are everyday issues confronted by staff working in shared courts. For these reasons, the establishment of a joint court is generally preferable when merging large numbers of municipal courts, since the greater the number of courts involved, the more complicated the day-to-day administration.

Finally, although joint courts are generally easier to operate than shared courts, they have one significant disadvantage: they are more difficult to break apart once merged. In shared courts that disband, each court simply moves its operations to a new location. This is made easier by the individual operations being separate and distinct. Joint courts have the added burdens of determining who retains jurisdiction over which cases and how collected monies should be distributed. Who, for example, should have jurisdiction over a matter originally disposed of by the joint court, but reopened by motion a year after the separation? Who reimburses the defendant if he or she is later found not guilty and monies must be refunded? Complicating these issues is the fact that most court computer systems are simply inadequate to provide the level of flexibility and sophistication needed to process these changes, especially when large numbers of cases are involved.

Other Types of Shared Services

It is important to draw a distinction between what is meant in New Jersey by shared municipal courts and courts that simply share services. As discussed above, a shared municipal court is one in which two or more municipalities have formally merged by passing ordinances or resolutions, pursuant to state statute (N.J.S.A. 2B:12-1). In these arrangements, all court operations are generally centralized in one facility.

There are, however, less formal types of shared-service arrangements in our courts that do not require a formal resolution or ordinance. Although these arrangements are not the focus of this article, they still bear mentioning. Many courts, for example, routinely share equipment, including videoconferencing, sound-recording, and assistive-listening devices. Some municipalities even share security-related

equipment, including magnetometers and scanning wands. It is not uncommon for courts to share physical space, such as a courtroom or storage space. Although no specific data are kept on the number of such shared arrangements in New Jersey, they are fairly common, with some agreements lasting for a short duration and others lasting years.

Looking at the Numbers

There are 566 municipalities in New Jersey, organized into 21 counties. As of April 2009, 123 were part of a joint or shared court. This means that in the municipal courts, more than one in every five municipalities, or 21.7 percent, are currently part of a formal arrangement of a merged court.

Sixty-four municipalities have established a joint court, while 59 municipalities have established a shared court. In total, 18 of New Jersey’s 21 counties have one or more merged courts, either joint or shared. Of particular interest is that, with few exceptions, all of the joint and shared courts are low-volume courts, with the individual courts involved in the mergers generally having annual caseloads of a few thousand or fewer.

Looking at the Numbers in New Jersey*			
Number of Municipalities	566		
Municipalities that were part of a Shared or Joint Court	123	21.7%	
Shared Courts	59	48.0%	
Joint Courts	64	52.0%	
	123		
Number of Counties	21		
Counties with one or more Shared or Joint Courts	18	85.7%	

* As of April 2009

Recent New Jersey Trends in the Expansion of Shared Services

Joint and shared municipal courts have been common in New Jersey for decades. In fact, a fair number of New Jersey’s merged courts have been in existence since the 1960s. In these towns, it is simply the accepted way to operate the court.

According to experts at the New Jersey Administrative Office of the Courts, many of the state’s joint and shared courts were established within the past 10 to 15 years, with a fair number being established within the past 5. In fact, in the short time between January and March of this year, six merged courts were created, comprising 15 different municipalities. During that same time, two merged courts comprising four municipalities were disbanded.

Burlington County, located in the southern half of the state, provides an excellent example of the recent growth of shared court services. Consisting primarily of farmland and small communities, Burlington County is considered by many to be a county ripe for shared services. Currently, 11 of its 40 municipal courts are combined into five shared-services arrangements. While one of the shared courts, Bass River/Washington, has been in existence for more than a decade, the oldest of the four remaining shared courts was established in 2005. Additionally, merger talks between other municipalities are ongoing. In fact, local leaders from one centrally located municipality recently sent letters to local leaders in all contiguous municipalities advising that they were interested in a shared-services agreement.

Burlington County is not alone. These same discussions are occurring throughout the state. Local leaders, for example, in Gloucester, another southern county, are even exploring the possibility of creating a regional municipal court. This “super” municipal court would provide court services for most of the municipalities in the county. Discussions between local leaders from the interested municipalities are ongoing.

Finally, several other things are happening on the state level that may affect shared-court services. Each county, for example, has a shared-services coordinator, who is responsible for identifying local entities that may benefit from shared services. In one county, this coordinator recently effectuated the merger of five municipal courts. Additionally, a report recently published by the state’s Local Unit Alignment, Reorganization and Consolidation Commission (LUARC), whose name aptly describes its role, noted the appeal of merging municipal courts. The New Jersey State Bar Association’s Judicial Administration Committee has also supported the fusion of local courts where appropriate.

The Effectiveness of Shared Services

When it comes to shared services, the all-important question is: Does it work? A growing number of municipalities in New Jersey are hiring outside firms to conduct feasibility studies to help answer this question. In fact, grants to conduct these studies are available in New Jersey through the “SHARE” (Sharing Available Resources Efficiently) Program, which is administered by the state’s Department of Community Affairs.

In New Jersey and elsewhere, the jury seems to be out on the effectiveness of shared court services. While many local leaders claim significant savings, others state that savings are far less than anticipated, if even realized at all. Some even claim they are losing money. A newspaper article appearing in the April 8, 2009 edition of the *Star Ledger* highlights the financial problems of several municipalities that are part of the state’s largest joint court, the North Hunterdon Municipal Court. Several local leaders of this eight-municipality joint court claim their municipality is losing money, since they are paying significantly more to operate the merged court than is being received in revenues.

The reality is that, similar to any business venture, the savings realized by a court merger are tied to many factors, with the most important being the financial stipulations contained in the merger agreement. Based on the agreement and related factors, some municipalities will realize significant savings while others will not.

Cost-Benefit Analysis

The best way to determine whether a proposed merger makes sense is to conduct a cost-benefit analysis. The relevant issues to consider when merging two courts, whether joint or shared, are lengthy and situation specific. In addition to the financial implications, there are many other issues that warrant consideration, including some that raise sensitive political or local control issues (see “Considerations for Merged Courts” checklist).

The Role of the Judiciary

The independent authority of a municipality to establish a single, joint, or shared court is clearly established, but there exists a larger framework in which a municipal

court operates. Before concluding, it is important to clarify the judiciary’s role in this process. While New Jersey statute makes it clear that the decision to establish a joint or shared court rests with the local municipality, the state constitution and applicable court rules make it clear that the oversight responsibility for the efficient

Considerations for Merged Courts

- Will the newly merged court be a joint or shared municipal court?
- In which municipality will the merged court be located?
- Will the new facility be able to handle the increased volume, staffing, and filing needs? If not, what facility renovations will be needed?
- What impact will the increased court volume/traffic have on other offices in the building?
- What impact will the merger have on the public in terms of convenience?
- How will the merger impact the police department?
- How many staff members at what titles will be needed to properly staff the merged court? Will anyone be demoted or fired? If so, staff from which court(s)?
- Who will run the court? That is, who will be the judge and court administrator?
- Are caseloads for each municipality expected to increase or decrease in future years? What impact will this have on the facility and future staffing?
- Is the merger agreement static or will it change based on future operational needs?
- How often will court sessions be needed?
- Will the judge, court administrator, or other staff be given additional compensation to handle the additional responsibilities?
- Who pays for future facility upgrades or the purchase of new equipment? Who has control over these decisions?
- Who is responsible for providing court security?
- Who assumes liability risks?
- How much does it cost a municipality to operate its present court? How does that compare to the anticipated cost of being part of the merged court?
- How can the agreement be terminated? What are the town’s options if it is?

administration of the court rests with the judiciary, specifically, the assignment judge or chief judge, who is an appointee of the chief justice assigned to oversee all judicial processing in the vicinage, or judicial district. In this partnership between the local court and the state judiciary, a partnership that is not always amicable, the municipality is responsible for the staffing, budget, and physical-plant needs of the court, while the assignment judge is responsible for the judicial and administrative handling of all cases.

As a result of this dual responsibility, municipal leaders and assignment judges must work together to ensure that each court has the resources and expertise it needs to properly serve the public. This becomes even more important when a municipality considers establishing a joint or shared court. Too often, decisions are made without sufficient input from the judiciary. This can lead to decisions based more on economics than on the administration of justice. It is essential that when contemplating the establishment of a joint or shared court, municipal leaders involve the assignment judge in the discussions as early as practicable.

Conclusion

No one knows what the future will bring. It is clear, however, that in New Jersey and elsewhere, more and more municipalities are contemplating shared-services arrangements due to the weakened economy. Whether this will lead to an increase in the number of shared and joint courts remains to be seen.

For some, shared services represent an opportunity to do more with less. But as highlighted in this article, it is not always the panacea it appears to be. Mergers benefit some municipalities, but not all. Municipal leaders should carefully analyze the impact the consolidation will have on the entire community, rather than just focusing on the bottom line. Crafting a deal that is economically feasible and also serves the public is possible. The potential for cost savings and improved service is real. Decision makers must approach the shared-services choice with care, cognizant of the risks and aware of the substantial benefits that can be gained from doing it right.

RESOURCES

New Jersey Department of Community Affairs (2006). *SHARE: Sharing Resources Effectively*. Trenton: New Jersey Department of Community Affairs.

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