

State of the Judiciary
Chief Justice Stuart J. Rabner, New Jersey Supreme Court
Address to the New Jersey State Bar Association
May 17, 2019, at Borgata, Atlantic City, New Jersey

Good morning, everyone. Thank you, Evelyn, for those gracious words and for that very, very kind honor. Thank you also for inviting Chief Judge Linares and me to participate in this convention again. We are delighted to be here.

Congratulations on being installed as president last evening. We look forward to working with you, the executive board, and the members of the bar on a number of important issues this coming year.

I also want to thank John Keefe, who has been a forceful advocate for lawyers throughout the State and a friend and supporter of the Judiciary. John, thank you for all that you have done and set in motion.

This morning, I'd like to focus on a single topic that is vital to the administration of justice: the operation of municipal courts throughout the State, and a number of developments and reforms that are underway. Make no mistake—the municipal courts are the face of justice to the public. They handle 6 million cases a year including disorderly persons offenses, motor vehicle violations, and an array of local ordinance violations, among other matters.

What that means is that the only interaction most people have with the court system is not in federal court, and not in the Superior Court or the Supreme Court. It's when individuals appear before a municipal court judge in any of the more than 500 municipal courts in New Jersey.

Countless people form an opinion about the justice system from those interactions, and they have every right to expect the same standards of independence, excellence, integrity, and fairness that the court system must deliver at all levels.

The good news is that New Jersey's municipal court system is one of the finest in the nation. It is comprised of talented judges and court administrators, guided by gifted presiding judges of the municipal courts, assignment judges, and the Director of the Administrative Office of the Courts, Judge Glenn Grant.

Notwithstanding built-in pressures that the structure of the system creates, our municipal courts have made important strides in recent years. At the same time, there is room for further improvement. Let's talk a little bit about all of those areas this morning.

Our municipal court system reflects a unique partnership between municipalities and the State Judiciary. The Judiciary provides extensive training for local judges and administrators, yet municipalities fund the courts, appoint judges and staff, and receive revenue from the fines and fees that judges impose.

That creates a level of tension between the core principle that a system of justice must decide cases on the merits alone, consistent with the rule of law-and the perception that municipal courts in New Jersey and elsewhere are used to generate revenue for municipalities. That perception has been fueled by practices that have been the subject of discussion throughout our nation, not simply in Ferguson, Missouri but to some extent in our hometowns as well.

To address those and related concerns, two years ago, the Supreme Court formed the Committee on Municipal Court Operations, Fines and Fees, with an eye toward reform. It was most ably chaired by Assignment Judge Julio Mendez and co-chaired by Assignment Judge Lisa Thornton. The Committee included representatives from the Attorney General's office, the Public Defender's office, members of the private bar, judges, and others.

Last July, the Committee issued a report with four dozen recommendations - some of which the Judiciary could address on its own; others required legislative action. To follow up on the impressive foundation the Committee put in place, we established a Working Group on Municipal Courts in 2018. Judge Grant chairs it, along with the leadership of Assignment Judges Mendez, Thornton, and Minkowitz. The group's 38 members include representatives of all three branches of government. We expect that they will issue a report in the next few weeks.

One overarching concern, of course, is to separate a town's need for general operating revenue from the operation of the municipal court. Otherwise, the system can inappropriately place pressure on police officers to write tickets and on judges to impose fines and fees. Law enforcement officers take an oath to execute laws fairly. And the courts must always serve as a fair and neutral forum to resolve disputes. There is no place for either organization to be a party to raise funds for local government.

Regrettably, that has not always been the case. Let's look at the use of sanctions for contempt of court as an example. These are discretionary assessments. Unlike fines for traffic offenses and other violations, where moneys collected are divided at the State, county, and local levels, 100 percent of contempt fines are collected by the local municipality.

Let's look at the numbers. In 2015, contempt fines were assessed in more than 125,000 cases. That meant that in case after case, defendants charged with "offense A" had matters resolved with a contempt of court assessment as part of the mix. The total amount assessed in 2015 was \$8.4 million.

Fast forward to 2018. Contempt fines were assessed in just under 55,000 cases, a fraction of the number from three years before. And the total amount assessed was reduced by more than 60 percent to \$3.1 million.

How did that happen? By shining a light on the problem and following up. The AOC gathered data on the imposition of contempt assessments by county and by town. The AOC also trained municipal court judges on the legal limits of the use of contempt of court as a sanction. Assignment judges throughout the State entered orders to make sure that proper procedures were followed under the court rules before a contempt sanction could be imposed. I sent a letter to all judges on the topic as well.

The results to date show that local courts responded by significantly curtailing the excessive use of contempt sanctions-as we hoped would happen.

The excessive amount of fines and fees imposed in some cases poses another problem. The Committee report details, for example, how the penalty for a speeding ticket for driving 65 miles per hour in a 55-mile-per-hour zone increases from \$95, if paid online, to \$389, if challenged in court, because of the imposition of eight different surcharges. The report explains how the penalty for possession of a small amount of marijuana can balloon from a \$100 fine to \$1008 because of various fees and surcharges. In other cases, as well, mandatory surcharges, often for extremely worthy causes, extend beyond the fine for the violation charged.

In response, the Supreme Court last September changed the municipal court rules and put a hard cap on the maximum penalty that municipal court judges can assess for failure to appear in court: \$25 for a parking offense, \$50 for other offenses, and \$100 for yet others. The Court also imposed a \$50 maximum limit as a sanction for failure to pay.

But most surcharges, as we know, are driven by statute. That requires legislative attention and action, which is why it is so appropriate that representatives of the legislative and executive branches are part of the Working Group looking at this issue.

The problem of course is that these series of fines and surcharges often fall on people who can't pay all the money owed up front-who in some cases can only pay a fraction, if that. That can create a seemingly never-ending cycle of debt and involvement with the court system that overwhelms defendants of modest means and has a disproportionate effect on the poor.

There are procedural protections for defendants who fail to pay a fine. In 1983, the United States Supreme Court in *Bearden v. Georgia* held that defendants are entitled to a hearing to determine their ability to pay. Those who cannot pay despite good faith efforts cannot be sent to jail. That can only happen if a defendant willfully refuses to pay a fine or make sufficient efforts to acquire resources.

With that in mind, the model municipal court opening statement was revised in August 2017. Judges now advise defendants that if they cannot pay fines and costs in full, they may be eligible to pay in installments or be offered sentencing alternatives. Even if a person defaults on a payment plan, there are a number of available options if the individual responds to the court, including modification of the plan, reduction or revocation of the penalty, and community service.

Serious consequences also flow from the use of bench warrants and license suspensions for defendants who fail to appear in court or pay a financial obligation. The Committee report addressed the excessive use of bench warrants and their impact on indigent defendants, and the Judiciary has taken a number of steps in that area.

The AOC expanded training for municipal court judges to consider limits on the use of those tools. Assignment judges issued two orders-to limit the use of bench warrants for failure to

appear to more serious matters, and to require a hearing within 48 hours of arrest, or the defendant's immediate release.

The results again are notable. In 2015, municipal court judges issued nearly 600,000 bench warrants. In 2018, that number was reduced by one-third to 395,000. Judges of course still have the authority to issue warrants when necessary, when it serves the interest of justice. What that means is that a defendant who misses an appearance or two for a minor traffic offense should not be treated the same as someone with a history of failures to appear who has been charged with a more serious matter. All in all, the results to date reflect a positive trend in our system of justice.

The same attention needs to be paid to license suspensions because of far-reaching consequences in this area as well. A study from more than a decade ago revealed that 40 percent of defendants lose their jobs as a result of a license suspension and are unable to find replacement jobs. That makes it harder still to pay fines and fees that are owed. That also tells us we need to exercise the authority that exists with care and explore alternative approaches.

Among other steps, we need to try to encourage greater compliance in advance by using technology to remind defendants of their court obligations-like sending automated text or email messages about an upcoming court appearance, which the AOC is working on now. After the fact, we need to give greater thought to docketing financial obligations as civil judgments to be enforced through the civil framework and not the use of arrest warrants. That issue is also under review by the Working Group.

We also need to recognize there is no incentive in the current system to remove dated warrants from the rolls. Today, if someone is pulled over for a minor traffic violation, and the individual has an outstanding warrant from 10 to 15 years ago for a parking violation, that person will likely be arrested. That will happen even if the underlying case can no longer be proven based on the passage of time, and even though we know that, with resources stretched thin, law enforcement officers understandably don't seek to enforce warrants of this type after they are issued.

In response to the problem, the Supreme Court asked three assignment judges, Judges Ciccone, Bookbinder and Caposela, to look into the problem and conduct a series of hearings throughout the State-on notice to municipalities and prosecutors-as to why dated warrants in minor matters should not be dismissed. After the hearings and a recommendation from the panel, the Court entered an order earlier this year dismissing 787,000 open warrants for minor matters like parking violations, minor motor vehicle offenses, and local ordinance violations that were at least 15 years old. One case dated back more than 40 years. The order did not cover more serious offenses like indictable or disorderly persons charges, or motor vehicle offenses like DUIs or reckless driving.

In addition, the Court asked the Municipal Court Practice Committee to develop a regularized process for recalling and dismissing these types of warrants so that minor matters don't hang over people's lives for decades.

Shortly after, I received an email from a former leading law enforcement official who has also been involved in reentry efforts for many years. He wrote that the Court's order was "a positive,

significant, and lifechanging event for so many." It is also consistent with the notion of fairness that underlies a system of justice.

The Committee recommended structural changes as well that are currently being examined by the Working Group and will require legislative action. Let's briefly talk about two proposals.

The first relates to the appointment process. Adding to the pressure that municipal court judges face is the fact that they are appointed for a three-year term. They may be reappointed but are not eligible for tenure. To enhance judicial independence, the Committee offered a number of thoughtful proposals-like extending the term from three to five years, and examining the appointment and reappointment process to ensure it is tied to ability and performance and not in any way influenced by a concern to generate revenue. One suggestion is to establish an evaluation process similar to the one used for Superior Court judges.

The second proposal is directed to an issue with a long history: the consolidation of municipal courts. New Jersey has a proud history of home rule. Of our 565 municipalities, some towns share services and have a joint municipal court. A large majority have standalone municipal courts. Altogether, there are 515 municipal courts, with judges, administrators, and other court staff.

One-fifth of those courts-105 municipal courts-had fewer than 1000 filings for the entire 2017 court year. Almost 45 percent of municipal courts had fewer than 3000 filings for the same period.

There are more efficient ways to operate a municipal court system that will deliver justice and achieve cost savings. The Judiciary is prepared to work with towns that voluntarily wish to enter into shared or regional courts. We have a number of successful models to point to. We are also prepared to provide data to the Legislature to inform any possible statutory changes-like the total annual filings per court, the number of court sessions, and geographic concerns that affect court access. We believe those kinds of objective factors will not only inform the discussion but also improve efficiency and further enhance judicial independence.

Let's return to an important point worth underscoring: New Jersey's municipal court system is strong. It is guided by strong leaders and able judges whose mission is to administer justice. Working together, we can make the system even stronger. That will require continued input and cooperation among judges, the bar, and the executive and legislative branches. It is a worthwhile endeavor because the steps under consideration not only affect the quality of service but also public confidence in our system of law and justice. That's why we look forward to continuing to participate in this conversation about municipal court reform with all relevant parties in the year ahead and beyond that.

Before closing, I'd like to add a few words about a leader of our court system who retired last night-an esteemed colleague and friend, Chief Judge Jose Linares. I remember appearing before Judge Linares as a practicing attorney and admired the way he interacted with lawyers and ran his courtroom. It's no surprise that he has acted in the same way as Chief Judge, always with a spirit of professionalism, respect, and excellence.

I wish him well on the next chapter in his impressive career and offer congratulations on behalf of the entire State Judiciary. Congratulations as well to Chief Judge Wolfson, whom we very much look forward to working with.

As always, thank you to the State Bar for hosting this annual convention. We appreciate the ongoing dialogue between the bench and bar, which always makes for a stronger system of justice in our State, and we welcome that continued back and forth.

I hope you enjoy the rest of the convention. Thank you all very much.