

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

PENNSYLVANIA STATE ASSOCIATION OF :  
COUNTY COMMISSIONERS, COUNTY OF :  
ALLEGHENY, COUNTY OF BUCKS, COUNTY :  
OF CUMBERLAND, COUNTY OF DAUPHIN, :  
COUNTY OF ERIE, COUNTY OF FOREST, :  
COUNTY OF FULTON, COUNTY OF MONROE, :  
COUNTY OF SNYDER, COUNTY OF TIOGA, :

Petitioners

v.

COMMONWEALTH OF PENNSYLVANIA; :  
COMMONWEALTH OF PENNSYLVANIA, :  
GENERAL ASSEMBLY; MARK S. SCHWEIKER :  
IN HIS OFFICIAL CAPACITY AS PRESIDENT :  
PRO-TEMPORE OF THE PENNSYLVANIA :  
SENATE AND MATTHEW J. RYAN IN HIS :  
OFFICIAL CAPACITY AS SPEAKER OF THE :  
PENNSYLVANIA HOUSE OF :  
REPRESENTATIVES, :

Respondents

No. 112 Western District  
Miscellaneous Docket 1992

DECIDED: JULY 26, 1996

*INTERIM REPORT OF THE MASTER*

FRANK J. MONTEMURO, JR., MASTER



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## ACKNOWLEDGEMENTS

It has been my pleasure and honor to participate at first hand in a project of such immense importance to the citizens of Pennsylvania. The transition to state funding of the unified judicial system is a truly mammoth task, and I am grateful to the Justices of the Pennsylvania Supreme Court for having given me the opportunity to contribute to this enterprise, and for reposing their trust in my ability to perform as Master. I wish especially to thank Mr. Justice Ralph Cappy, liaison for the Court, for his unstinting efforts to assist me in fulfilling my responsibilities, and for the deep understanding he has shown of the difficulties involved.

Special mention must also be made of the courtesy and assistance I have received from the Hon. Thomas Ridge, Governor of Pennsylvania; Hon. Robert C. Jubelirer, President of the Senate; Hon. F. Joseph Loeper, Senate Majority Leader; Hon. Matthew J. Ryan, Speaker of the House; Hon. Robert J. Mellow, Senate Democrat Leader; and Hon. H. William DeWeese, House Democrat Leader, whose good will and cooperation have been of vital assistance throughout this project.

I would also like to thank the members of the working group on the transition to state funding: representing the Majority Caucus in the Senate, Hon. David J. Brightbill and Hon. Jeffrey E. Piccola; representing the Minority Caucus in the Senate, Hon. Michael A. O'Pake and Hon. Allen G. Kukovich; representing the Majority Caucus in the House of Representatives, Hon. J. Scot Chadwick; representing the Minority Caucus in the House of Representatives, Hon. Joseph A. Corpora, III; representing the Governor, Paul Tufano, Esq., General Counsel, Thomas Paese, Secretary of Administration, Robert Bittenbender, Secretary for Budget, and Charles Zogby,

Policy Director. Their innovative ideas, excellent advice and practical suggestions have made my work much easier.

I am deeply indebted to Mr. Robert W. Tobin, of the National Center for State Courts, whose experience in these matters is second to none, for sharing his wisdom on the complexities of a transition to state funding, and to Pennsylvanians for Modern Courts, and their Board Chairman, former President Judge of the Superior Court Edmund B. Spaeth, Jr., for their thoughtful assistance.

It is with grateful appreciation that I offer my thanks to members of the New Jersey Office of Courts for their generous contribution of time and advice: Robert D. Lipscher, former Administrator of New Jersey Courts, and Theodore J. Fetter, Deputy Administrator, and staff who willingly and graciously explained their system.

I would also like to take this opportunity to express my gratitude to all those who offered help and information, but especially the County Commissioners and the President Judges of the Courts of Common Pleas, whose first hand knowledge and experience of the system was especially valuable. My particular thanks go to the President of the Pennsylvania Conference of State Trial Judges, the Hon. Judge James Knoll Gardner, President Judge of Lehigh County, and to the members of the Executive Committee.

Finally, I wish to acknowledge the indispensable contributions of the dedicated staff of the Administrative Office of Pennsylvania Courts: Nancy M. Sobolevitch, Court Administrator of Pennsylvania; Thomas B. Darr, Deputy Court Administrator; Deborah B. McDivitt, Manager of Financial Systems; David A. Frankforter, Manager of Human Resources; Stephen F. Angle, Payroll Manager; Joseph W. Chernesky, Administrative Services Manager; Donald J. Harris,

Director of Policy, Research and Statistics; C. Sue Willoughby, Director of Statewide Automation; John H. Davenport, Director of Information Technology; of counsel to the Master, Walter W. Cohen, Esq.; and of my chief law clerk, Ellen Berk Killen, Esq. Without their consummate professionalism, dedication and integrity this report could not have been written.

## PREFACE

This report is intended to provide to the Supreme Court of Pennsylvania recommendations in furtherance of the Order of July 26, 1996, mandating the transition to state funding of the unified judicial system. The Order, which directs implementation of the Supreme Court's decision in Pennsylvania State Association of County Commissioners, et al. v. Commonwealth of Pennsylvania et al., 681 A.2d 699 (Pa. 1996),<sup>1</sup> is the culmination of historical process commenced in 1967 with the adoption of the Judiciary Article of the State Constitution creating the unified judicial system.

The notion that local courts should be supported out of the state general fund is not a new one, and the history of the movement toward that *modus operandi* in the United States has already been traced elsewhere, most notably by the Pomeroy and Beck Reports, commissioned to examine issues of judicial reform in Pennsylvania, and by the work of Robert W. Tobin of the National Center for State Courts.<sup>2</sup> The link between the effects of the Judiciary Article of the Pennsylvania Constitution and the instant Order was supplied when in 1987 Allegheny County filed a mandamus

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<sup>1</sup> Hereinafter Allegheny II.

<sup>2</sup> Tobin, Robert, National Center for State Courts, "Status of State Financing of Courts" at 1-10 (1996); Pennsylvania's Unified Judicial System -- An Analysis With Recommendations, Chairman, former Justice of the Pennsylvania Supreme Court Thomas W. Pomeroy, Jr. (1982) (hereinafter referred to as the Pomeroy Report); Report of the Governor's Judicial Reform Commission, Chairperson, Superior Court Judge Phyllis W. Beck (1988) (hereinafter referred to as the Beck Report).

action seeking to have declared unconstitutional the legislation defining its responsibility to support the county court system.<sup>3</sup> After deciding that the counties had no obligation to provide such support, the Supreme Court delayed ordering the transition to state funding so that the Legislature might formulate a plan and enact legislation to accommodate the change. A legislative appropriation of \$1 million set aside for a study to examine the options was apparently never used for the intended purpose. The order underlying this report results from a mandamus action filed in 1992 by the Pennsylvania Association of County Commissioners and ten counties seeking to enforce the order in Allegheny I.

The fundamental principle which anchors the Allegheny decisions is the Constitutional right of equal access to equal justice for all Pennsylvanians, Pa. Const. Art. 1, §11, exercised within the framework of an integrated judicial system. It has been clearly recognized that where there is financial fragmentation and disparity among the counties, the right is seriously compromised, and the system unified in name only.<sup>4</sup> That fragmentation is readily apparent in the Judiciary as it now stands: there are 67 counties comprising 60 judicial districts in Pennsylvania, suffering from numerous disparities in staffing, compensation, caseloads and programs. The President Judges of these districts are dependent upon the beneficence of 67 boards of commissioners for hiring, salary determinations, program support and physical and technological improvements. Each of these boards has a different vision of what constitutes the role of the Judiciary, and indeed what elements comprise the Judiciary; some of these visions are

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<sup>3</sup> County of Allegheny v. Commonwealth of Pennsylvania, 517 Pa. 65, 534 A.2d 760 (1987)(hereinafter Allegheny I).

<sup>4</sup> Beck Report at 14.

in diametric opposition to a judicial system which is a true and equal participant in a tripartite system of government.

In Allegheny I, Mr. Justice Flaherty, now Chief Justice, writing for the majority, identified the purpose which should act as the unifying element of the judicial system, that is, provision of "evenhanded, unbiased and competent administration of justice,"<sup>5</sup> to which should be added the tacit corollary that those issues brought before the court must be speedily resolved. The Court also noted that the continual friction and dissention generated where court funding lies in the hands of local authorities adversely affects, at the very least, public perception of the judicial system's impartiality and independence.<sup>6</sup>

It is, in fact, public perception, or rather misperception of the judicial system, its components and its functions which, in part, fuels the contention over state funding. First, the anachronistic view that "courts [are] a place where people in black robes ma[k]e bad decisions,"<sup>7</sup> is not entirely facetious, in some measure because the expanding role of the courts in providing, e.g., social services, is not well entrenched in public awareness.<sup>8</sup> "Justice" is an abstraction,<sup>9</sup> and the danger, as Justice Pomeroy points out in a slightly different context, is lest the court system be seen as merely another competing need, like a hospital or a park, not "a separate branch of

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<sup>5</sup> Id. at 75, 534 A.2d 764.

<sup>6</sup> Id.

<sup>7</sup> Kester, Paul H., "The Infrastructure of the Courts, Past, Present and Future" (1996).

<sup>8</sup> Tobin, National Center for State Courts, *Funding the State Courts: Issues and Approaches* at 25 (1996).

<sup>9</sup> Beck Report at 11.

government, co-equal with the executive and legislative branches...The distinction is not one of degree, but of kind."<sup>10</sup> The difference is, in fact, between what can be called "therapeutic jurisprudence" versus the "dispassionate magistrate" model;<sup>11</sup> the latter image prevails, with variations, in the public imagination despite the emerging dominance of the former. Moreover, the expense of funding an abstraction provides another sticking point, as the counties must rely almost exclusively on the proceeds of local real estate taxes, and in some areas a shrinking base for such taxes, to fund the judicial effort.

The effect of these elements, the theoretical and the practical, varies from county to county; however, it can in a general way be said that the necessity for control, and the image of the courts as just another agency demanding funds for (apparently) unpopular purposes seems to vary, unsurprisingly, in direct proportion to the size of the available resources.

Because of these divergences in view and the expectations which accompany them, it must be made crystal clear in formulating a transition plan that state funding of the unified judicial system is not merely an economy measure. Nor is it a panacea for local problems of taxation or balance of power, although both will be affected by the contemplated changes. There is a recognized danger to courts which have experienced chronic under-funding and other assaults on fiscal autonomy. As the Chairman of the American Bar Association's Ad Hoc Committee on Funding the Justice System, Francis J. Larkin, Esq., noted, "It is a sobering reality that the independence and autonomy of an organic court system can be as weakened from within by the

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<sup>10</sup> Commonwealth ex rel Carroll v. Tate, 442 Pa. 45, 67, 274 A.2d 193, 203 (1971) (Pomeroy, J., concurring).

<sup>11</sup> Tobin, *Idem*.

diminution, deletion or deflection of adequate funding, as it can from more direct and conspicuous attacks from without. "<sup>12</sup>

While a system of state funding will most certainly bring in its wake, if only because of more stringent state reporting requirements, more rigorous standards of efficiency and accountability which have hitherto to some extent and for whatever reason been absent,<sup>13</sup> nevertheless certain increased expenditures are built into state financing without reference to efficiency: compensation for prior deferred county spending; upgrades of personnel, services and technology to meet statewide standards; any necessary improvement of salaries and fringe benefits; equalization of regional disparities in programs and services.<sup>14</sup> Moreover, authority will shift gradually away from local government as a control mechanism for judicial spending. To the extent feasible, managerial supervision should be preserved in the President Judges and their court administrators in order to maintain existing levels of efficiency, innovation and familiarity with local conditions which benefit the system. Inevitably, however, some administrative functions will be centralized, and a corresponding amount of local autonomy sacrificed. Indeed, absent the establishment of an administrative infrastructure at the state level very early in the transition, any

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<sup>12</sup> Memorandum Introduction to *Funding the Justice System* (West 1996), at 2.

<sup>13</sup> Any deficiency in this regard can be attributed to the very diversity in systems of accounting, etc., which statewide finding is intended to address, as well as to a lack of administrative infrastructure sufficient to enforce more rigorous standards than those currently in existence. Absent uniform reporting requirements, the counties as payors have each defined their own individual information system needs, hence that aspect of the diversity problem.

<sup>14</sup> Tobin, *Funding the State Courts* at 36 n.25.

attempt to enhance the system of delivering justice on a state wide basis would be further impeded. Once in place, this central managerial core will be able to define its local executive organization, capable of providing the necessary services, and trained in the accounting and auditing procedures, human resource and computer systems necessary for compliance with state standards.

These observations are based on a series of seven regional meetings held between September 13 and October 2, 1996,<sup>15</sup> as part of the information gathering process designed to expedite production of this report. During these meetings, at separate sessions for President Judges and their court administrators and County Commissioners and their designees, the notion of the transition to state funding was discussed, and reactions solicited. While there was no consensus among or between groups, several themes emerged. Representatives of the Judiciary were, by and large, concerned about lines of authority, particularly in hiring and firing, as well as the method by which funds would be allocated and any related appeal procedure; the County Commissioners were mainly interested in tax relief as quickly as possible. Clearly perception of state funding as an improvement or otherwise is dependent largely on individual bias, whether experientially or philosophically based.

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<sup>15</sup> Sept. 13, 1996: Bedford, Fulton, Franklin, Adams, York, Cumberland, Dauphin, Schuylkill, Lebanon, Lancaster Counties; Sept. 18, 1996: Warren, McKean, Venango, Forest, Elk, Cameron, Clarion, Jefferson, Armstrong, Erie, Crawford, Mercer Counties; Sept. 19, 1996: Greene, Fayette, Somerset, Washington, Westmoreland, Allegheny, Beaver, Lawrence, Butler, Indiana Counties; Sept. 25, 1996: Susquehanna, Sullivan, Wyoming, Wayne, Pike, Monroe, Lackawanna, Luzerne, Carbon Counties; Sept. 26., 1996: Philadelphia, Delaware, Chester, Berks, Bucks, Montgomery, Northampton, Lehigh Counties; Oct. 1, 1996: Potter, Tioga, Bradford, Lycoming, Columbia, Montour, Northumberland, Union, Snyder Counties; Oct. 2, 1996: Clearfield, Blair, Centre, Huntingdon, Mifflin, Juniata, Berry, Cambria, Clinton Counties. In each instance, attendance approached 100%.

Since these meetings were held, a preference of both President Judges and local officials has emerged for a system of reimbursement which requires very little state intervention, and permits almost unlimited freedom of action for the recipients. A recognition that unification necessarily involves the devolution of at least a modicum of power onto a centralized bureaucracy has brought with it some hesitation over the prospect of state funding even where enthusiasm still obtains. Nevertheless, the Master does not recommend the adoption of a reimbursement plan, as it merely changes bankers and fails to provide the degree of standardization which will eliminate regional disparities while preserving regional creativity; a plan to establish a judicial system unified more than nominally under the goal-oriented definition established by the Court must do both.

To obtain information germane to both differences and similarities, survey instruments, the purpose of which was explained at the regional meetings, were distributed and the data, for the most part limited to personnel and salaries, compiled. To amass fiscal data for costs and revenues associated with any entity which could conceivably be included in a unified judicial system, a contract was entered into with David M. Griffith Associates, Ltd., a consulting firm already under contract to 45 of the Commonwealth's 67 counties. For assistance in formulating the use to be made of the data, the Master contracted with Robert W. Tobin, of the National Center for State Courts, one of the few recognized experts on state funding of judicial systems.

In another series of meetings, the Master also solicited reactions to the idea of absorption into a unified judicial system from all those agencies which might conceivably be seen as relevant to a definition of the system. These same agencies were asked to supply written responses to the question of whether, in their view, the current method of funding impeded the constitutionally

mandated provision of equal justice to all Pennsylvanians. The attitudes demonstrated in the meetings were somewhat surprising in that, frequently, elective officials were not entirely averse to a system by which their positions would become appointive. As to the written documents, recitals of particular anecdotes were outweighed by the constant refrain that limitations placed on agencies by County Commissioners, both in terms of pay and numbers of personnel, forced reduction in services or training or both. It became clear that this problem is particularly critical in agencies concerned with juveniles, and with indigent defense.<sup>16</sup>

Despite the necessity for the independence of the courts in terms of providing services, the Judiciary operates as only one component of a tripartite system of government. The Master has recognized from the outset that no effective transition to state funding could possibly be achieved without an integrated effort involving the legislative and executive branches. To facilitate this involvement, with the cooperation of both the Majority and Minority Caucuses in the Senate and the House, a working group was convened of representatives from both the Legislature and the executive branch to join the Judiciary in addressing the myriad questions which have arisen in connection with preparation of this report. Subgroups assigned to refine issues and explore technical solutions have both contributed to identification of problems and generation of answers. This involvement is expected to continue as the transition to state funding progresses, and the Master anticipates that our sister branches of government will remain active participants in efforts to assist in the evolution of a state funded unified judicial system.

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<sup>16</sup> See Appendix 1.

At the same time, however, the burden rests on all participants in this process to recognize that the Court has issued an Order which it intends to see implemented. The Order contemplates steady progress toward the express goal of state funding. It does not contemplate discussion of frivolous issues such as whether Common Pleas Court judges should be considered part of the unified judicial system, or of issues which extend beyond the scope of inquiry concerning the transition to state funding. This Master's Report should serve to move all three branches of government forward toward productive, cooperative and effective efforts in pursuit of the common objective.

Inherent in any proposed judicial system are considerations which might, for want of a better term, be called structural and mechanical issues. The first refers to the composition of the system, and the method of achieving that composition, e.g., enumeration of what is to be included in the system, and over what period of time and in what order these components will be introduced. Mechanical matters refer to systems within the system, i.e., the managerial/administrative constructs which provide the practical means of achieving unification otherwise present only philosophically. The current divergences in practice between and among counties cover every aspect of court administration and operation, and are deeply entrenched. Thus the initial focus of the transition must be on those structural and mechanical methods/principles which will most effectively achieve unification, and at the same time maintain the primacy of the courts' constitutional objectives.

Although all of the concerns expressed by court personnel and Commissioners have been taken into account at some level in preparing this report, the Master has determined that two overriding objectives must be met: that any changes wrought by the plan must, in a concrete way,

enhance the ability of the Judiciary to fulfill its designated role in the democratic government of the Commonwealth; and that such changes must avoid, to the greatest extent possible, economic or other hardship to the dedicated personnel of courts throughout the state. Absent the fulfillment of these necessary preconditions, a unified judicial system cannot truly accomplish its appointed task of providing justice to all of the people of the Commonwealth in all of their diversity.

## RECOMMENDATIONS

Accordingly, the Master recommends the following:

**Phased transition.** The Master recommends that the transition to state funding be accomplished in four phases, during each of which specified court employees would be absorbed into the state payroll system. Such an approach would permit the existing systems which must assimilate new additions to do so with the least amount of difficulty. More critically, the phased method is also to a large extent dictated by the differing configurations of functions and agencies in the current system, resulting in absence of detailed cost and revenue information which must be accumulated to assure a smooth transition,<sup>17</sup> and in the large number of issues requiring resolution which it is anticipated will inevitably arise concerning every aspect and during each phase of the change.

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<sup>17</sup> See Appendix 2.

## **PHASE I.**

**A. Institution of an administrative substructure.** As was noted above, there can be no transition without administrative personnel to develop, disseminate and implement the policies necessary to facilitate competent management. Indeed, as the Beck Report observes, "adjudication and administration are no longer separable."<sup>18</sup> In this statement lies the key to the contemplated management structure. Insofar as possible, local administration will remain in the hands of the President Judges. Trial court administrators, chosen by the President Judges pursuant to statewide standards and regulations, and responsible to them on matters of court operation, will, at the same time, provide the conduit through which system-wide policy decisions promulgated by the Supreme Court, and reporting requirements imposed by the state will reach the local level for implementation. The district, deputy, assistant or associate court administrators, approximately 150 people, incorporated into the state system during this phase, would receive training in state standards and accountability techniques for all of the management functions currently undertaken by county administrations. Translating policy into practical measures applicable to the unified judicial system will be the responsibility of the Administrative Office of Pennsylvania Courts. The only caveat necessary here is that given the imposition of duties hitherto performed by the counties, increased staffing at all levels will be necessary in future.

### **1. MECHANICAL SYSTEMS.**

During Phase I, all of the managerial tasks to be undertaken by the Judiciary will be defined, including but not limited to personnel management, purchasing, budgeting, revenue

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<sup>18</sup> Beck Report at 11.

activity, internal controls and auditing procedures. In relation to these, the Master recommends the following:

a. ACCOUNTING -- Uniform accounting policies and procedures will be required to meet the needs of the expanded unified judicial system. Existing standardized policies and procedures such as an accounting manual, uniform chart of accounts, and miscellaneous operating directives will need to be reviewed and revised accordingly. New policies and procedures will be developed as needed.

b. BUDGETING -- Budgets will be reviewed and administered through two sections of the Administrative Office of Pennsylvania Courts: a proposed Judicial Programs Department, professional staff versed in principles of court management, and the Financial Systems Unit, which will examine for subsequent approval budgets prepared by the President Judge of each county. Budgets should be crafted in such a manner as to allow the most flexibility for governance, yet provide required accountability. The fundamental goal, however, will be to provide the constitutional right of equal access to equal justice for all Pennsylvanians.

The allocation of funds to the counties has been the cause, understandably, of considerable consternation, as there are two competing schools of thought as to how an allocation system should work. The first operates on the theory that efficient performance should be rewarded; the other prescribes increased funding where function is deficient in some way, and might be improved by the application of additional funds. Each of these has obvious drawbacks.

Given the expertise of President Judges accustomed to providing expense information to the counties which previously funded them, and their first-hand knowledge of their own needs, the Master therefore proposes that, at least initially, budgets should remain within limits currently

imposed, and that instead of preconceived formulae for distribution, budgets should be analyzed individually to determine if patterns emerge on which a general theory of allocation could be based. For proposed new initiatives or the expansion of current programs, documentation would accompany each proposed budget which would be individually evaluated for feasibility if sufficient funding is available. Appeals from adverse budgetary decisions would be referred to the Judicial Commission, see *infra* at 24, whose recommendations would be reviewed by the Supreme Court for final determination.

c. AUDITING -- The current auditing mechanism used by the Judiciary is the same as that used by the Legislature; however, the Master recommends that with the advent of state wide funding to the unified judicial system, the annual audit of the Judiciary, statutorily required and performed at the state level, be supplemented by the creation of an Internal Audit Division within the Administrative Office of Pennsylvania Courts. The function of this division would be to evaluate on a routine basis the expenditures and performance of the various court offices/departments against established policies, procedures, and standards. Adding the work of in-house auditing staff to that of the independent auditor currently used, or a successor firm, will provide the desired and necessary accountability over the Judiciary's fiscal operations.

d. PERSONNEL -- This component of the unified judicial system may be the most complex, encompassing as it does a large number of people and a diverse range of programs and functions. During the first phase of the transition to state funding, existing personnel policies and procedures now applicable only to appellate court personnel must be evaluated, amended, and expanded, as necessary, to accommodate the increased diversity and complexity of the larger, and more geographically dispersed, workforce that will make up the unified judicial system.

Mechanisms and methodologies must then be developed to facilitate the transition of judicial employees into this new personnel management structure in such a manner as to ensure that, to the greatest extent possible, no employee of the unified judicial system is adversely affected by the restructuring.

i. Personnel Policies and Procedures: Uniform personnel policies and procedures will be necessary to ensure the consistent application of sound personnel management practices on a statewide basis. It is the Master's view that personnel policies and procedures adopted for use by the unified judicial system must ensure the consistent, fair, and equitable treatment of all court personnel while also allowing (and, in fact, facilitating) the innovative actions that are necessary to ensure the future effectiveness and efficiency of court operations at every level of the system well into the 21st century. In those cases where existing mechanisms are determined to be inadequate to accommodate the more complex issues inherent in the state funding environment, new and/or revised policies and procedures must be developed as necessary to ensure the continuity of effective personnel management throughout the system. This new personnel management system should incorporate uniform policies and procedures, with particular emphasis placed on the standardization of job classifications, pay plans, personnel transaction procedures, staff complement plans, and fringe benefit programs.

ii. Job Classification and Pay: Standardized job descriptions and job classification plans must be established to define employment positions properly within the unified judicial system, so as to facilitate the necessary standardization of pay throughout. The system should operate with a standard statewide pay plan applicable to all its personnel, and structured so as to

accommodate consideration of differences in experience, education and responsibility, similar to those plans operative in the executive branch.

iii. Staffing Requirements: Methodologies must be established to determine appropriate personnel complement plans for each court entity to ensure appropriate staffing levels throughout the unified judicial system. These mechanisms should emphasize the standardization of staff complements, with allowances to accommodate the special needs, programs, and local practices of different court entities. To ensure the continuity of local process and fairness to affected court employees, variations in designated staff complements should initially be allowed, with staffing restrictions imposed gradually as vacancies are created through normal attrition to accomplish eventual complement equity. To assist in accomplishing these goals, (re)creation of a Judicial Programs Department within the Administrative Office of Pennsylvania Courts is essential. That department, employing a staff expert in the court management field, is necessary to work closely with an expanded Human Resources Department to develop appropriate standards.

iv. Personnel Transactions: Authority for most personnel transactions (e.g., hiring, terminations, etc.) should remain within each Judicial District; however, all personnel actions should be governed by policies and procedures, i.e., merit selection requirements, which are standard and uniform throughout the unified judicial system. While control of personnel transactions should remain at the local level, all payroll and personnel transactions should be processed by a centralized administration to incorporate the advantages allowed by economies of scale, and to ensure the proper management oversight of such transactions. In addition, all personnel records and record keeping functions should be centralized to facilitate proper personnel management practices.

v. Retirement Benefits: Statutorily defined pension benefits, and their concomitant funding, will be determined by the General Assembly, which should be urged to enact legislation protecting the retirement benefits of those individuals who might otherwise be adversely affected by the transition to state funding, and ensuring the financial integrity of the State Employees Retirement System. In consideration of the complexity and uniqueness of pension benefits applicable to any given employee, it will be extremely important for legislation to be enacted granting affected individuals the flexibility to exercise a variety of optional arrangements as may be necessary to protect their retirement rights and benefits in the context of their respective circumstances. Presuming such action, it is anticipated that all unified judicial system employees would ultimately transfer to membership in the State Employees' Retirement System as allowed and/or provided for by statute.

An immediate need for consideration of the problems necessitating legislative action arises with assimilation of the trial court administrators group, who as county employees are members of their respective county retirement systems; membership in the State Employees Retirement system is statutorily mandated for all state employees. Options include permitting county retirement credits to be transferred to the state system or to be cashed in, alternatives offered when in 1985 various county judicial employees were transferred to the state payroll. Allowing vested employees to remain part of their current plans, even on an interim basis, provides another option.

vi. Other Fringe Benefits: The wide diversity of fringe benefit programs at the local level makes it impossible to fashion a uniform fringe benefit package that will, in every case, duplicate existing benefits. The Master therefore recommends that all employees entering the state

funded unified judicial system be transferred to the fringe benefits structure currently available to appellate court staff. While the Master acknowledges that such a solution is not ideal, there is no reasonable methodology that would allow all unified judicial system personnel to maintain participation in their local fringe benefit programs. The fringe benefits offered to appellate court staff present a fair and comprehensive package that can reasonably serve as the basis for the programs initially available in the context of state funding.

vii. Labor Relations: The impact of labor unions and other labor relations issues will in large part be driven by external factors not under the control of the unified judicial system. Many court and court-related personnel are currently represented by unions and/or professional associations which operate on their behalf. Transition to the state funding environment may require the restructuring of existing bargaining units as permitted (or required) by existing statute, local elections, court rulings, and/or directives from the Pennsylvania Labor Relations Board. The Master recommends that appropriate actions be taken, as necessary, to accommodate all reasonable efforts to organize eligible personnel of the unified judicial system in the manner, and to the extent provided by state and federal law.<sup>19</sup>

Personnel Summary: Critical to the success and effectiveness of state funding of the unified judicial system will be the personnel management practices adopted for use within that system. If the goals of this significant undertaking are to be met, care must be taken to maximize the efforts of those charged with the responsibility of making the system work. While the unified judicial system personnel management structure should offer sufficient flexibility to allow a

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See Commonwealth ex. Rel. Nicholas v. PLRB, 545 Pa. 288, 681 A.2d 157 (1996), now before the Commonwealth Court of Pennsylvania on remand.

reasonable measure of management discretion at the local level, it is the judgment of the Master that the establishment of universal standards and uniform personnel policies and procedures specific to the Judiciary, as described above, is a necessary prerequisite to ensure the fair, effective, and efficient management of the human resources component of the unified judicial system in a state funding environment.

e. INFORMATION TECHNOLOGY -- Crucial to the effective and efficient operation of a unified judiciary will be the use of the most current technology for the recording, processing and dissemination of information. The goal of this effort will be to standardize both hardware and software to provide for the electronic exchange of information among and between all levels of the judicial system, other agencies and the public. This will require a review of existing systems due to the great variation in the level of computerization and the diverse types of computer systems in use by the counties. This task will focus on three areas of support: administrative, judicial and office automation. The Master recommends that as part of Phase I, all necessary changes and enhancements be made to the Administrative Services Automation Project (ASAP) currently under development by the Administrative Office of Pennsylvania Courts to accommodate the additional data processing requirements of a unified judicial system. f.

PROCUREMENT -- In an effort to manage procurement budgets for the unified judicial system, the Master recommends that policies and procedures be developed; however, those policies and procedures should not inhibit the procurement of routine supply and services for daily operation of the system. Price standards should be set for items routinely purchased by the courts, and local vendors able to supply these items within the prescribed cost ranges should continue doing so. In counties where joint purchasing arrangements between the county and the courts produce

economies of scale, such systems should continue to operate, so long as price and quality standards are met.

The Commonwealth Department of General Services could also be considered for various types of procurement for commercial goods, as the Department of General Services has in place a wide inventory of contracts.

g. EQUIPMENT/INVENTORY -- Fixed assets, such as office furniture, office machines and any other peripheral equipment used by the offices of the unified judicial system, will become property of the unified judicial system. To this end fixed asset ledgers will need to be provided to the Administrative Office of Pennsylvania Courts. In an effort to reduce the cumbersome management of a manual fixed assets ledger, and to ensure maximum accountability, early implementation of automated technology to track fixed asset inventories is strongly recommended.

**B. Unification of court rules/procedures** -- The proliferation of local rules introducing variant procedures mirrors the diversity and fragmentation to be found elsewhere in the judicial system. Such variances frustrate the multi-jurisdictional practice of law which should be facilitated by a unified system, driving up litigation costs and increasing delays. In addition, local rules are laden with procedural pitfalls. These "traps for the unwary", which may prevent a party's claim from being heard on the merits, inevitably erode public trust and confidence in the judicial branch. Local rules are also an impediment to the statewide automation of the trial courts since they define many ministerial operations such as record-keeping, scheduling and noticing. It is simply not reasonable, if indeed it were possible, to automate multiple methods of processing cases.

Although structural considerations may prevent the elimination of all local rules, the Master recommends that during review and replacement of the existing body of local rules, a process currently underway, no new local rules should be promulgated absent approval of the appropriate statewide procedural rules committee.

**C. Creation of a Judicial Commission.** Integral to this phase should be the creation of a permanent Judicial Commission, an advisory body composed of 13 members, 8 to be appointed by the Supreme Court of Pennsylvania, with the 5 remaining appointments to be divided by agreement between the Governor and the Legislature; the Chairperson would be chosen by the Supreme Court from among its appointees. The commission would be charged with the responsibility, inter alia, of formulating policy concerning any matter affecting the unified judicial system for review by the Supreme Court whose majority decisions will be final. Terms of service would be for five years.

**D. Timing.** The Supreme Court in Allegheny II prescribed the enactment of a funding schema for the unified judicial system by Jan. 1, 1998. However, the Master's study of the requirements for transition to a state funded Judiciary has made clear the absolute necessity that adequate time be allotted for further identification, analysis and resolution of the many complex issues involved. At the same time, the Master is cognizant of the need for *target dates* to begin implementation of the state funding initiative. Such targets provide direction to those developing the information necessary for consideration of issues, serve as useful goals to measure progress, and facilitate integration of those goals into pre-existing structural time frames, e.g., development, consideration and passage of state and county budgets, etc.

With these considerations in mind, the Master recommends that Phase I, which involves all those steps necessary to begin creating an administrative substructure, including the placement of trial court administrators and their deputies on the state payroll, be implemented effective July 1, 1998. That date coincides with the beginning of the Commonwealth's 1998-99 Fiscal Year, and affords all three branches of government the opportunity for examination and resolution of questions pertaining to this limited initial change. Concurrently, the impact on county budgets will be sufficiently slight as to affect only minimally spending plans already adopted at that date.

Substantive issues, other than resources, germane to absorption of this circumscribed group of employees into the unified judicial system will need to be settled expeditiously during the period preceding the Fiscal Year 1998-99 state spending plan. In some instances, the problems posed will require the collective attention of all three branches of government, others will necessitate action by the Judiciary to be addressed by its sister branches, while still others will require action by the judicial branch alone. Among issues to be considered by the Judiciary but requiring action by the legislative and executive branches is determination of the Fiscal Year 1998-99 costs for salaries of individuals within the court administrator group, and of adding those individuals and their dependents to existing judicial branch benefit plans. Prior to the July 1, 1998 implementation date, the judicial branch itself must fully develop policies governing integration of the court administrator group into the unified judicial system. At some point soon thereafter, the Judiciary must also begin to assess how to integrate the court administrator group on a longer term basis into the judicial personnel pay plan effectively, and most important, equitably.

As noted, fashioning approaches to issues arising from the inclusion of the court administrator group into the unified judicial system prior to July 1, 1998 will require a variety of

policy decisions, among them questions relating to pension and benefit plans. Conceivably those decisions, made of necessity by July 1, 1998, will provide a guide for subsequent policy choices encountered during later phases of the transition to state funding. However, given the limited time available in which to make decisions effecting the transfer of the court administrator group, it is quite possible that subsequent transition phases, which will involve employees in a far broader range of positions, responsibilities and pay scales, may require different transition models.

## PHASE II.

The Master recommends incorporation of the following into the unified judicial system during Phase II:

**Common Pleas court judges (all divisions) and their personal staffs;**  
**District justices and their staffs;**  
**Pittsburgh Magistrates Court, Philadelphia Municipal Court and Traffic Court**  
**Judges and their staffs;<sup>20</sup>**  
**Court Reporters;**  
**Data Processing personnel;**  
**Masters, hearing officers, arbitrators, and parajudicial officials;**  
**Administrative support staff.**

The rationale for inclusion of these groups (other than the Common Pleas Court judges and staffs whose inclusion is self evident), is based on the proximity of their relationship to the adjudicative function, and/or their jurisdiction. These are both philosophically and practically the central core around which the justice system rotates. The inclusion of the court reporters and data personnel,<sup>21</sup> however, requires some further comment.

Although conceptually both of these functions might well have been placed elsewhere, with ancillary or administrative services respectively, the Master has determined that they were more closely connected to the internal operation of the adjudicative system than their normal constituencies. Court reporters, for example, are present at nearly all court proceedings in every division; data personnel, while not record keepers per se, assure the existence of records necessary

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<sup>20</sup> Judicial salaries are currently paid through state funds.

<sup>21</sup> This does not refer to county data personnel. Rather these are employees attached to the court's own electronic data and management systems discussed above.

for adjudication both at the local and state levels. Thus their inclusion in this phase of the transition is dictated by their integral involvement with daily court proceedings of every type.

**A. Timing** -- It is anticipated that given its far larger scope and the nature of the issues presented, Phase II implementation will pose challenges of vastly greater complexity than those encountered during Phase I. Thus the Master finds of critical importance the allotment of sufficient time within which to address these increasingly intricate transitional issues, from the standpoints of sound policy determination and the pragmatic consideration of existing structural state and local time constraints.

Consistent both with this concern and with the notion that target dates are helpful in advancing project development, the Master recommends that July 1, 2000 be set as the stated goal for implementation of Phase II. Work is ongoing to assess the nature of the tasks preliminary to both Phase I and Phase II implementation, and to chart their execution on a chronological basis. As that work progresses, and consultation with the representatives of the pertinent state and local government entities occurs, a more definitive sense will emerge of whether that target date is reasonable and/or feasible.

Beyond the July 1, 2000 target date for the implementation of Phase II, the Master makes no further specific recommendations as to timing other than to note that setting additional target dates for subsequent phases of the transition would be more appropriate at a future time.

**B. Information Technology** -- The Master recommends the following occur before completion of Phase II: that an automated system for judicial programs be developed and ready for implementation, and that standards and a plan for implementing those standards be developed for the use of all appropriate information technology resources.

### **PHASE III.**

The Master recommends incorporation of the following into the unified judicial system during Phase III:

**Domestic Relations;**  
**Adult and Juvenile Probation and Parole;**  
**Investigative and Diagnostic Services;**  
**Law Libraries;**  
**Miscellaneous Services.**

These services are identifiable as adjuncts to the adjudicative function both because of those tasks which contribute directly to the decision-making process, either prior to trial, or afterwards, e.g., probation offices which prepare pre-sentence reports, social workers who conduct home visits in custody cases, and because they fall under the direct supervision of the president judge. However, because they also perform tasks less closely definable as adjudicative, they have been assigned a phase distinct to themselves.

The Master recommends that with respect to the professional services classification, probation and parole offices, social workers, etc., at some point prior to introducing these components into the unified judicial system, studies be performed, possibly by the national professional organizations which represent these services, to assist in the establishment of statewide job standards, pay scales, case loads and other issues affecting their performance. It has been observed<sup>22</sup> that probation sentences, properly monitored, can effect great cost reductions, in

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<sup>22</sup> Henry T. Reath, Esq., Summary of "Criminal Justice/Corrections Reform," *Pennsylvania Justice Fellowship* (1997).

both monetary and human terms; some programs have already been instituted with this objective in mind.

Ours is a judicial system based on stare decisis. Libraries are the repositories for decisions and other authorities which affect, in each case, where justice is determined to lie. As such, libraries constitute an integral part of the adjudicative process.

Miscellaneous Services refers to those which, although necessarily under the supervision of the President Judges, have been in the past attached to court administration units, e.g., collection offices. However, these services are not, strictly speaking, classifiable as administrative, and have thus been grouped together. Given the diversity both of structure and function presently existing in the counties, the Master believes that there will be discovered numerous examples of services properly placed in the miscellaneous category.

For the interim period prior to their introduction into the state funded unified judicial system, it is recommended that all ancillary services currently under the supervision of the President Judges of their respective counties, continue, to the extent feasible, in that status.

#### **PHASE IV.**

The Master recommends that the following be incorporated into the unified judicial system during Phase IV:

**Clerks of Court;**  
**Prothonotaries;**  
**Clerks of the Orphans Court;**  
**Registers of Wills.**

These offices perform, inter alia, the critical function of recordkeeping for the court, and are, on that ground, proposed as components of the unified judicial system. There are, however, two caveats with regard to this phase. The first concerns the means by which these offices, as creatures of the Constitution (Pa. Const. Art. 9, §4), may be subsumed into the system. There are two options: one permits the elected officers to maintain the authority to hire and fire their own personnel, pursuant to standards set for the unified judicial system as a whole, and to manage any non court-related function, although these, like the issuance of passports and marriage licenses, are limited, and do not justify the expenditure needed to maintain present offices. Under this option, day to day operation of these offices, and the performance of court-related duties will be overseen by the court administrator for the judicial district involved. This is an administratively cumbersome system, but may be necessary absent the second option which requires that a constitutional amendment legislation be passed, or other legislative action taken transmuting the elective offices into appointive ones. Under this alternative schema, a clerk of the courts for all judicial divisions would be appointed by the President Judge of the district. The clerk would appoint deputies as needed, again pursuant to the appropriate personnel standards, and

the entire operation would fall under the administrative aegis of the President Judge and the district administrator, although the clerk would direct day to day operations.

Despite the major changes needed to implement this latter configuration, the Master recommends its adoption, as it, or an approximation, already obtains in home rule counties, and should be extended throughout the Commonwealth.<sup>23</sup>

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<sup>23</sup> An informal survey conducted by the Register of Wills and Orphans Court Association reveals that there is some support, albeit tentative, for the change from elective to appointive status among the current officeholders. There is, too, a uniform desire for more information about possible consequences of the change to state funding.

## MISCELLANY

### \* Jury Commissioners.

The Master recommends that the statutory office of jury commissioner be abolished as an useless expense on the system.

### \* Sheriffs.

The Master recommends that the county governments continue to provide security services through their local sheriffs' offices. Given the close association of sheriffs with the executive function, the Master believes that their inclusion in the judicial system would be improper.

### \* Facilities.

The Master recommends that all functions pertaining to facility<sup>24</sup> provision, financing, maintenance and improvement remain the responsibility of the county government.

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<sup>24</sup> The term "court facilities" refers to physical space required for courtrooms, chambers and appurtenances, jury assembly and deliberation rooms, administrative offices, law library holdings and document storage.

## CONCLUSION

The considerations driving the transition to state funding of Pennsylvania's unified judicial system are clear: a constitutional mandate and the desire of counties for fiscal relief. However, change does not occur in a vacuum. Even these impulses alone might not have occasioned the massive reformation implicated by a transition to state funding were it not for changes in our culture which dictate increased contact between the average citizen and the courts: increases in litigiousness and a resulting recourse to the courts for solutions to new problems occasioned by advances in technology and science, by the changing nature of the family, increases in the crime rate, and by changes in the function of the court itself, as its involvement in the community becomes more complex and multi-faceted. The changes wrought by a transition as far reaching as this must of necessity be profound; they will also be positive, affecting the Judiciary's relationship with the citizens of the Commonwealth whom it serves, as well as with the two sister branches of government with which it serves.

The Master believes that ultimately, the changes recommended here will serve to bolster public trust in the Judiciary, whose members are officials chosen by the electorate to be invested with the responsibility of evaluating the means and fulfilling the need for equal justice, equally accessible to all citizens.

## APPENDIX 1

### INDIGENT DEFENSE

The Master does not advocate inclusion of either the Public Defender or appointed counsel, however retained, in the unified judicial system given the potential for conflicts of interest, or at least their appearance, inherent in such an association. However, the Master strongly recommends that the Supreme Court exercise its supervisory powers to the greatest extent possible in regard to the following: 1) uniform eligibility standards across the Commonwealth; 2) establishment of a minimum for the fund set aside to be used by the unified judicial system in financing indigent defense; 3) and assurance that the salaries of public defenders are commensurate with those paid district attorneys.

These recommendations have emerged out of a growing concern that because of its political unpopularity, indigent defense may, indeed already has, become the scapegoat for local tax inequities. The Master has been informed of situations where cases, e.g., involuntary termination of parental rights, have been postponed from one fiscal year to the next because of a shortfall in the budget for appointed counsel. It has also been brought to the Master's attention that a criminal defendant eligible for public defense in one county, may be ineligible in the county adjacent because of the disparity in financial eligibility requirements. Nor do practice standards exist for any type of indigent representation. These are not circumstances consistent with the provision of equal access to justice for all citizens.

The situation is exacerbated where juvenile delinquency or dependency is involved, e.g., it has come to the Master's attention, that in one large and populous county of eastern

Pennsylvania, only two half-time defenders are available for such cases. A recent study performed by the American Bar Association assessing the access to counsel and the quality of representation provided to juveniles in delinquency proceedings<sup>25</sup> concluded that despite the efforts of some dedicated and enthusiastic lawyers, effective representation was the exception rather than the rule, that "many young people in juvenile court are significantly compromised, and ... many children are literally left defenseless."<sup>26</sup>

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<sup>25</sup> A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings, Report of the American Bar Assoc. Juvenile Justice Ctr., Juvenile Law Ctr., and Youth Law Ctr. (1995).

<sup>26</sup> Id. at 7.

## APPENDIX 2

### COLLECTION OF REVENUE AND COST INFORMATION

Some explanation is required on the difficulty of gathering accurate cost and revenue information, and the resulting absence of such information from this Report. As has already been noted above, the lack of uniformity among counties as to general operations applies equally to the collection, recording, and reporting of cost and revenue data, which, in large part, is the result of the lack of a state mandated uniform chart of accounts. Additionally, functions performed by the court departments are not consistent across the counties, there is a lack of standardization in classification of expenditures, many counties do not identify fringe benefit costs at the department (court offices) level, and not all counties prepare a formal cost allocation plan for identifying administrative and support (indirect) costs to the department levels. Except for Philadelphia, which, like the Commonwealth, operates on a July 1 to June 30 fiscal year, counties report fiscal data on a calendar basis.<sup>27</sup>

Revenues present a problem equally difficult and no more susceptible of easy resolution. These moneys are often split between state, county and local government according to statutes which, in certain instances, permit broad variations. Of the moneys collected, some are only "passthroughs" such as child support and restitution, while others may be earmarked for county-based programs rather than deposited into the county general fund. Additionally, some fees and

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David M. Griffith & Associates, LTD, "Report on the Costs Associated with Court Related Offices Currently Operating Within Pennsylvania County Governments," (Harrisburg: David M. Griffith & Associates, LTD, 1997), 9-11.

costs schedules are established by local rules and administrative orders and these schedules, which vary considerably across the state, appear subject to amendment on an ad hoc basis. Finally, the offices charged with collecting and accounting for these revenues do not always regard themselves as adjuncts of the courts, although many of the collections are made under court order. For the litigants, the result is a non-uniform set of fees and costs which raises significant questions of equity and fair play. The uniformity problem is exacerbated by the patchwork of revenue collection and accounting systems that are inadequate for determining precisely the amount and specific source of court-generated moneys received by the counties. One qualification is in order: with the automation of the 577 District Justice offices including central and night courts throughout the Commonwealth, exact information on revenues flowing to the counties from the District Justice courts is now available. No comparable system, and thus no comparable information can currently be retrieved from the Common Pleas Courts and their supporting county offices and agencies.

RECOMMENDED BY:

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Frank J. Montemuro, Jr., Master

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Date