



# Staff Memorandum

**HOUSE OF DELEGATES  
Agenda Item #5**

Attached is a letter from the New York State Magistrates Association with respect to the report and recommendations of the Criminal Justice Section.

# NEW YORK STATE MAGISTRATES ASSOCIATION

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Immediate Past President  
HON. SHERRY R. DAVENPORT  
Town Justice, Summerhill

April 14, 2018

Dear Members of the House of Delegates:

The New York State Magistrates Association, the organization representing our State's Town and Village Justices, respectfully submits to you, for your consideration, our position on the report and recommendations of the NYSBA Criminal Justice Section regarding counsel at first appearance, training, education and centralization.

We support recommendations 1, 2, 3, 4, 5, 6 and 8. We note, parenthetically, that in recommendation 6, diversity training for judges and clerks, such training is now part of the annual required education for our Town and Village Justices. Additionally, as to recommendation 8, records of attendance at training are already currently maintained by the Office of Court Administration for all of the judges.

**We oppose recommendation 7** (audit of written and recorded work - p. 183) as having a chilling effect on judicial independence. We are already subject to such scrutiny by the Administrative Judges and the Commission on Judicial Conduct, where necessary. Why are the Town and Village Justices being singled out? Will the work of the courts of record also be subject to such scrutiny? Is it the position of the New York State Bar that judges in the courts of records never make mistakes?

**We oppose recommendation number 9** (p. 184) where the Section recommends a "mark of Cain" placed on the forehead of any judge who has ever received even a warning letter from the Commission on Judicial Conduct. The recommendation requires the Commission to distribute that disciplinary record each and every time the judge runs for re-election. First of all, the Commission already maintains a searchable database of past disciplinary records at:

<http://www.scjc.state.ny.us/Determinations/judgeNameSearch.html>

Secondly, it should be up to the opponent of a judge in an election to decide whether to bring this to the attention of the public, not a state department. Finally, a judge may have committed a minor infraction in

the past and have corrected his or her actions so as to avoid that mistake in the future. Is it the position of the Criminal Justice Section that such a minor mistake is never to be forgiven? Does the Section also suggest that we treat defendants convicted of minor violations in the same way?

**We oppose recommendation number 10** (p. 185), the establishment of misdemeanor courts with attorney judges only. Neither the constitution nor any law that we are aware of differentiates between lawyer and non-lawyer judges at the justice court level. The establishment of these *de facto* district courts would be very expensive for the taxpayers, with the construction and furnishing of new courtrooms and offices, not to mention the estimated \$1,000,000.00 per bench, per year, it would cost to staff each of these courts. New York State is losing more residents each year than move here<sup>1</sup>, and no doubt high taxes are a big part of this. We cannot afford a new expensive bureaucracy when we have a justice court system that has successfully handled these cases for centuries, at minimal cost.

We also take this opportunity to point out some of the glaring factual errors and unsupported allegations in the report, that quite frankly, in my opinion, demonstrates an unsubstantiated bias:

p. 6 - the unsupported allegations that some judges think some defendants are faking not knowing English, and that some judges never schedule preliminary hearings in felonies;

p. 8 - the unsupported allegations that some judges are unaware of the right to counsel, or refuse to appoint counsel based on an eleven (11) year old report;

p. 108 - the unsupported allegation that there is an overwhelming perception that some judges oppose centralize arraignments. To the contrary, in at least one of the existing Centralized Arraignment Parts currently operating, I have personal knowledge that it is the state-paid judges who have voiced objection, not the Town and Village Justices;

p. 127 - the unsupported allegations and, quite frankly, the wholesale defamation against the entire municipal judiciary, with no factual basis quoted or footnoted, that judges make decisions based upon racism, sexism, or otherwise sentenced defendants illegally;

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<sup>1</sup>

<https://www.democratandchronicle.com/story/news/politics/albany/2017/12/21/leave-ny-another-190-000-le-ft-other-states/974130001/>

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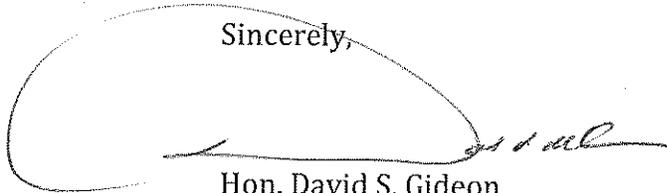
p. 168 *et seq.* - the establishment and maintaining of district courts statewide will be a tremendous expense that New York can ill afford, and will bring the loss of expertise of local conditions, and the loss of 24/7/365 availability for arraignments.

This list is merely illustrative and is by no means comprehensive.

I would respectfully request that the House postpone consideration of this report, and that our two organizations pool their resources to have a joint committee to consider these issues with an eye toward adopting a report that is consistent with the actual existing practices occurring in our justice courts.

Your consideration of our position is deeply appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "D. S. Gideon", is written over a large, hand-drawn oval scribble.

Hon. David S. Gideon  
President  
New York State Magistrates Association