

The Delaware Magistrates Association

December 8, 2016

Mr. Michael Ratchford, Chair.
Mr. Terry Murphy
Ms. Linda McCloskey
Mr. Donald Puglisi
Mr. Harold E. Stafford
Ms. Meaghan Brennan, *ex-Officio*

Honorable Commissioners:

Greetings to you all. As you convene to study and report your opinion as to remuneration for the Governor, Legislature, Cabinet, Judiciary, and the like, we ask that you consider this submission during the course of your deliberations. This submission is offered on behalf the Magistrates of the Justice of the Peace Court by The Delaware Magistrates Association, a fraternal organization in existence since 1993 whose purpose is to foster, promote and advance the study and application of the laws pertaining to, administered by, and affecting Justice of the Peace Court Judges; all with an eye towards ever refining the performance of our duties while in office.

This past year has marked a very important milestone for our membership. During it, we have celebrated the 50th Anniversary of Governor Terry's acts to reform the Delaware Judiciary, particularly his actions to revamp the Magistrate Court System. To quote former long-time News Journal reporter Celia Cohen, "Terry pushed through judicial reform by revamping the state's magistrate courts, notorious for their petty graft and cronyism. Also called justice of the peace courts, they were run by politically connected magistrates who did not have to be lawyers and who dispensed citizen justice in small criminal and civil cases."¹ The office of justice of the peace was first installed in what would become the State of Delaware in 1676, when the Duke of York's laws and courts of Britain were established in the Delaware Colony. The Royal Governor, Edmund Andros, was directed to install Justices of the Peace to consider civil matters of less than £20 Pounds' value. Magistrates of the era were drawn from the colony's aristocracy; these gentlemen of means were the very same that advised the Royal Governor, served in the general assembly, and led the colony's militia. By way of example, Caesar Rodney served Kent County as a Justice of the Peace during this era. Upon Delaware's declaration of Statehood in 1776, the office of Justice of the Peace was enshrined in Article 12 of the State's first Constitution; it remains enshrined in Article IV of the current State Constitution.

¹ Celia Cohen, Only in Delaware – Politics and Politicians in the First State. pp. 137.

From the mid-1800's onwards, Magistrates, who served as part-time jurists while engaging in their regular business activities, were paid based upon the number of cases over which they presided. More specifically, in consideration of criminal matters, they were paid only when a conviction was rendered. This system of pay – which led to competition for work between the various Magistrates and lent itself to corruption – continued until 1966; indeed, the need to professionalize and incorporate the Justice of the Peace Courts into the regular court system as full-time salaried professionals was the prime factor in Governor Terry's determinations. Governor Terry expressed both his belief that the Citizens of Delaware deserved better and more consistent access to justice as well as his desire that a position be created that would allow earnest professionals to serve the Citizens of our State. Terry's reforms eliminated the fee system, substituting a fixed salary – then \$8,000 per year – for Magistrates. Magistrates were forbidden from accepting any other emoluments other than those received in exchange for the discharge of their duties. Ethical cannons were engaged. In addition, the Justice of the Peace Courts were placed under the jurisdiction of the Chief Justice and assisted by an administrator who was to be a lawyer. Magistrates were to be trained and their books audited.² At that same time Superior Court Judges were paid \$20,000 per year; Judges of the Court of Common Pleas \$17,500. In terms of percentage, Magistrates were compensated at nearly 46% of a Court of Common Pleas Judge and 40% of a Superior Court Judge.

In the intervening 50 years, the level of education and professionalism Governor Terry espoused has grown exponentially. The role of Court Administrator, which previously had been filled by a designee of the Chief Justice and who engaged in that position in addition to their many other duties, was replaced in 1980 upon the creation of the position of Chief Magistrate – a full-time administrative position. This position has recently been elevated from a position statutorily required to one Constitutionally mandated. Preferred educational levels of applicants have increased; The Basic Legal Education Program, first instituted in 1993 and which all new Magistrates must undergo, comprises 160 hours of classroom time, accompanied by a like number of practicum hours in which new Magistrates observe actual court proceedings. An even more rigorous educational program designed to teach civil law and procedure is likewise engaged by new Magistrates prior to the end of their first term of office. Continuing education (at least 30 hours' of various topics, including ethics, which must be accrued biannually) is mandated (indeed, all of the aforementioned education requirements are mandated by statute and Court Rule) as a condition of continued service. In-point-of fact, when considering the educational levels of Magistrates currently in service, this group collectively is the most educated to ever

² *Ibid.*, pp. 138

have served in such a capacity. Nearly all have a four year college degree or better; more than 1 in 6 have law or other highly advanced degrees (including 2 doctoral degrees.)

But just as the standards have been raised, so have the rigors. The Justice of the Peace Court's caseload is greater than ever before, particularly since 2012 legislation which mandated exclusive jurisdiction of much of the traffic code to the Justices of the Peace. While in 1966 three magistrates stood by during the midnight hours, now six do. As has always been the case, the Justice of the Peace Court is and will remain open – nights, holidays, and weekends and without regard for weather or other calamity. I would advise the Commission that since July 1, 1966 at least three magistrates have been on duty within this State for every hour of every day since, without interruption.

As the members of the Commission are well aware, the Compensation Commission was established in 1984 in part to de-politicize the process of consideration of compensation for elected and appointed officials. Since its inception, the Commission's report has usually been accepted and sometimes rejected. Even when rejected, the Legislature has in many cases later enacted into law portions of those particular recommendations. Such was the case in 1993, when after rejection of the report, the Legislature enacted into law the Commission's recommendation regarding the Judiciary (an increase of 4% to all judicial salaries). Indeed, the Commission has demonstrated a predilection to either adjust the salary of the highest judicial offices to a level they deem appropriate and then adjust by the same percentage the salaries of lower judicial offices (as was the case in 2005) or to simply recommend an across the board percentage adjustment. In 1997, a 3.5 % across-the-board increase was recommended. Similar actions were taken in 2001 (7%), and 2013 (3% each in FY 2015 and FY 2016). In all such instances, the Commission has in its report ably and well explained its rationale in taking such an approach. Unfortunately, this approach has had a somewhat desultory effect to the remuneration of Justices of the Peace. While clearly Magistrates received an increase in remuneration, across-the-board increases reduce compensation when viewed as a percentage of our appellate court's salaries. By way of example, the current salary of a first-term Justice of the Peace³ -- \$74,488 -- is currently only 42% of that of a Court of Common Pleas Judge (\$177,066). Compared with the current salary of a Superior Court Judge (currently \$183,444) a first-term Justice of the Peace remains at 40%. Since 1966, the overall stature, level of professionalism, and level of education of our Court has grown by leaps and bounds -- but remuneration relative to that of the higher courts -- in particular the Court of Common Pleas --has been consistently eroded.

³ In 1997 legislation creating a tiered system of remuneration for Magistrates was enacted. A base salary was set; upon reappointment to a second term, that Magistrate's salary was increased by 3%. Likewise, if reappointed to a third or subsequent term, a final 3% increase is attained. This legislation recognized that as Magistrates gain in experience over time, so do they gain in capability. Since there was only one level of salary in 1966, I use the first-term salary of a Justice of the Peace in this paragraph for the purpose of explanation.

Therefore, we ask the Commission to consider the following proposal: In terms of remuneration, to restore the Justices of the Peace in terms of relative percentage to the salaries of other courts as was first established in 1966. In making this proposal, please understand that the Magistrates do recognize the problem such a proposal may hazard. To accomplish this goal simply at **current salaries**, a first-term Justice of the Peace's salary would have to be increased nearly 10% to equate to 46% of that of a Court of Common Pleas Judge. Of course, based upon the assumption that the Commission will recommend an increase in remuneration for Judges of the Court of Common Pleas, the percentage necessary for a Magistrate's salary to "catch up" would be substantially higher than 10%. We recognize that such a large increase, given current fiscal realities, may be untenable. However, we hope the Commission will recognize the validity of the concept, and act accordingly – whether calling for the necessary increases over the course of several years, or even if necessary over several successive Compensation Commissions.

In his message to the first regular session of the 123rd General Assembly in which Governor Terry urged the consideration of the legislation which culminated in the very reformation we now celebrate, Governor Terry said "My friends, your constituents may never enter the Supreme Court room, a Court of Chancery, a court room of the Superior Court, The Court of Common Pleas, but the chances are they will enter a courtroom of a Justice of the Peace. It may be the only Court that the average citizen has contact with during his entire lifetime. It may be the only impression a visitor to the State of Delaware obtains of the entire State." His assertion – that for the most part, the only Court interaction Delawareans are likely to have is with a Justice of the Peace – has not changed. We consider ourselves the face of Delaware's judiciary for the simple fact that we realize we are the only jurist they will likely ever see. Understanding that fact, we strive to fulfill their view and expectation of what a jurist should be. To that end, we ask that you consider remuneration for the position as an enticement to continue to attract able appointees who will give service to this State. Thank you in advance for your consideration of our proposal. If I can be of further assistance to you in this or any other regard, please do not hesitate to contact me at my home of PO Box 826, Claymont, DE 19703 or via telephone (302) 824-0186.

My Regards,

A handwritten signature in cursive script, appearing to read "James R. Hanby, Sr.", written in dark ink.

The Hon. James R. Hanby, Sr.
President, Delaware Magistrates Association.