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NYSACDL Testimony from Greg D. Lubow, Esq. New York State Senate & New York State Assembly Joint Committee on Judiciary Public Hearing – November 21, 2019

To the New York State Senate Standing Committee and the New York State Assembly
Standing Committee on Judiciary Joint Hearing

Re: Court Consolidation

Dear Chairmen Senator Hoylman and Assemblyman Dinowitz and Members of the
Judiciary Committees:

I am Greg D. Lubow, Esq. an attorney who practices in Tannersville, New York. I am
appearing as a member and on behalf of the New York State Association of Criminal
Defense Lawyers (NYSACDL), the only statewide private criminal defense bar
association.

I am appearing before you today to ask that you include the replacement of the existing
so-called "Justice Court System" into either District Courts or the new proposed
Municipal Court System. I note that the changes to the Municipal Court System being
proposed would fully take effect by 2027 some eight years from now.

The 2019 Legislative session produced historic criminal justice reform legislation
including bail reform, discovery reform, and speedy trial reform. These monumental
game changing reforms, especially in bail and discovery will be rendered meaningless if
the judiciary responsible for implementing these reforms is patently and inherently ill-
equipped and unqualified to do so. That is the situation involving lay Judges presiding
over nearly two-thirds (2/3) of Town and Village Courts.

While many if not most Town and Village Court lay Judges are well intentioned, civic
minded community members, the simple fact remains that without a legal education they
are constitutionally unable to provide the due process required by the United State
Constitution, the New York State Constitution, and the laws of the State of New York.

As then Associate Judge Judith Kaye stated in *People v. Charles F.* (60 NY 2d 474, at
480) "... "a lay person, regardless of his educational qualifications or experience, is not a
constitutionally acceptable substitute for a member of the Bar." (*People v Felder*, 47
NY2d 287, 293 [right to law-trained counsel]). Because of the technical knowledge
required to insure that defendants facing imprisonment are afforded a full measure of the
rights provided to them, use of non-law-trained Judges is a procedure that "involves such

a probability that prejudice will result that it is deemed inherently lacking in due process." (See *Estes v Texas*, 381 U.S. 532, 542-543.)

Your failure to replace this more than three-hundred-year-old anachronism will condemn tens of thousands of defendants and other litigants to unfair and unequal justice disguised as law for at least the next ten (10) years. The existing system lacks economy of scale, provides unnecessary duplication of services in nearby communities and perhaps worst of all results in unequal and uneven justice for those who appear in different courts. Replacing the thirty (30) or so Town and Village Judges in small Counties with two (2) or three (3) District Court or Municipal Court lawyer trained Judges will result in equal justice for all and due process under law.

I was retained last week by a man charged with Driving While Intoxicated and refusing to submit to a chemical test. He was brought for arraignment in front of a Village Judge who suspended his New York State Driver's License promptly. This arraignment occurred at approximately 3:00 AM. Despite laws and OCA directives and training, there still is no central arraignment part in Greene County. Nor was there a defense lawyer present at the arraignment. Greene County simply has not gotten around to it. The Village Judge, a lay person, reflexively set bail in the amount of \$1,500 cash or \$3,000 bond. The Judge was unaware that come January 1, 2020 bail in this situation will no longer be available. More importantly, there was no accident, no aggravating factors, the accused was gainfully employed for a number of years in a stable job, had deep roots in the community and did not present a flight risk, yet bail was set. This is just one example of an ineffective judiciary.

How will this Judge deal with the bail reform come January 1, 2020? How will this Judge supervise discovery requirements come January 1, 2020? How will this and other town and village judges make decisions when DA's, law enforcement and legislators on the State and County level are working hard to de-legitimize and undermine these reforms?

If the Judge hearing the bail arguments and trying to oversee discovery does not have the legal training to understand the nature and purpose of these new laws then all of the legal arguments a defense lawyer could make will fall on deaf and uneducated ears. The criminal justice reforms recently enacted will be toothless.

The overall Court restructuring being proposed on the Superior Court and Municipal Court level is the perfect opportunity to get it right, once and for all. After all, it is the Justice Courts where most people outside of our cities get their first contact with the justice system – the Courts Closest to the People, as OCA likes to say. These must be the courts that reflect our constitutional values, not some relic from the 1700's.

NYSACDL urges you to include the incorporation of Justice Courts into the new Municipal Court system and demand that only lawyers be Municipal Court Judges.