



STATE OF NEW YORK
UNIFIED COURT SYSTEM
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A. GAIL PRUDENTI
Chief Administrative Judge

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MEMORANDUM

May 18, 2015

To: All Interested Persons

From: John W. McConnell

Re: Proposed adoption of 22 NYCRR Parts 51 and 153, relating to removal of actions from one local criminal court to another local criminal court established as a problem-solving court within the same county.

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The Advisory Committee on Local Courts has proposed the adoption of new Part 51 of the Rules of the Chief Judge and new Part 153 of the Rules of the Chief Administrator, clarifying that a local criminal court may transfer a case to another local criminal court within the same county designated as a problem-solving court by the Chief Administrator, including but not limited to a drug court, mental health court, veterans court, adolescent diversion part, domestic violence misdemeanor part, community court or human trafficking court (Exh. A). According to the Committee, many local criminal courts do not offer the kinds of specialized services that problem-solving courts routinely provide. Such local criminal courts should be able to transfer certain cases to other local criminal courts in the same county that possess appropriate resources and services. This proposal is consistent with the requirements of Criminal Procedure Law § 170.15(4) in that transfers between local courts may only take place upon motion of the defendant and with the consent of the District Attorney.

Persons wishing to comment on this proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than July 17, 2015.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

II. NEW MEASURES

1. **Removal of Action from One Local Criminal Court to Another Local Criminal Court Established as a Problem-solving Court Within the Same County.**
(22 NYCRR Parts 51 and 153)

This measure recognizes that the continued growth and efficacy of problem-solving courts in New York and around the country have improved the administration of justice. Problem-solving courts take different forms and provide different services depending on the underlying issues they are designed to address. In general, problem-solving courts employ intensive judicial monitoring, court-ordered treatment where appropriate, coordination with outside service providers, removal of barriers between courts, and increased communication and coordination with stakeholders. Certain problem-solving courts such as drug and mental health courts focus on treatment and rehabilitation, while others, including domestic violence courts, employ vigorous judicial monitoring and mandated programs and probation to ensure compliance and accountability.

Many local criminal courts find that it is neither economical nor practical to provide the kinds of intensive services and monitoring that problem-solving courts routinely provide. Accordingly, it makes sense for a local criminal court, with the parties' consent, to transfer appropriate cases to local problem-solving courts within the county that possesses the appropriate resources and services to adjudicate specific types of cases.

This measure would establish a new Part 51 of the Rules of the Chief Judge and new Part 153 of the Rules of the Chief Administrator, clarifying that a local criminal court may transfer a case to another local criminal court within the same county designated as a problem-solving court by the Chief Administrator, including but not limited to a drug court, mental health court, veterans court, adolescent diversion part, domestic violence misdemeanor part, community court or human trafficking court. This measure sets forth detailed procedures designed to effectuate the transfer process, including a requirement that the transfer take place upon the motion of the

defendant and with the consent of the district attorney. This measure would apply only in counties outside New York City.

In sum, this proposal authorizing the transfer of cases from one local criminal court to another local criminal court designated a problem-solving court by the Chief Administrator of the Courts would improve the administration of justice by setting forth clear transfer procedures and enabling more defendants charged with non-felony offenses to take advantage of the specialized support services and resources available in local problem-solving courts.

Proposal

PART 51. Transfer of actions or proceedings from a local criminal court to another local criminal court established as a problem solving court within the same county.

(a) The Chief Administrator of the Courts, upon consultation with the Administrative Board of the Courts, shall promulgate rules to facilitate the transfer of actions or proceedings from a local criminal court to another local criminal court within the same county designated as a problem-solving court by the Chief Administrator, including but not limited to a drug court, mental health court, veterans court, community court, adolescent diversion part, domestic violence part, human trafficking court, sex offense court, and such other courts or court parts as may be designated problem-solving courts by the Chief Administrator.

Part 153. Transfer of actions or proceedings from a local criminal court to another local criminal court established as a problem solving court within the same county.

§ 153.1. Definitions

“Problem-solving court” shall refer to a drug court, mental health court, veterans court, community court, adolescent diversion part, domestic violence court, human trafficking court, sex offense court, and such other courts or court parts as may be designated problem-solving courts by the Chief Administrator of the Courts.

§ 153.2. Transfer of Actions or Proceedings to Local Problem-Solving Courts

(a) A local criminal court in a county in which a problem-solving court has been established may, upon motion of the defendant and with the consent of the district attorney, cause copies of papers and other documents filed in such local criminal court in connection with a criminal action or proceeding therein to be sent to the local problem-solving court:

(i) upon or after arraignment of defendant on a local criminal court accusatory instrument by which such action or proceeding was commenced; or

(ii) upon or after commencement of a proceeding brought against defendant for the violation of a condition of a sentence of probation or a sentence of conditional discharge.

(b) Not later than five days following receipt of the papers and other documents, the justice or judge presiding in the local problem-solving court, in consultation with the justice or judge in the court of origin, shall determine whether or not a transfer of the action or proceeding to the problem-solving court would promote the administration of justice. If the justice or judge presiding in the problem-solving court and the justice or judge presiding in the court of origin determine that it would, the justice or judge presiding in the court of origin may order such transfer, in which event the action or proceeding shall be transferred to the problem-solving court, all originating papers shall then be sent from the court of origin to the problem-solving court, and all further proceedings shall be conducted therein. If the presiding justice or judge in the problem-solving court or the justice or judge presiding in the court of origin determines that a transfer of the action or proceeding would not promote the administration of justice, the action or proceeding will not be transferred and all further proceedings in such action or proceeding shall be conducted in accordance with law.

S 170.15 Removal of action from one local criminal court to another.

Under circumstances prescribed in this section, a criminal action based upon an information, a simplified information, a prosecutor's information or a misdemeanor complaint may be removed from one local criminal court to another:

1. When a defendant arrested by a police officer for an offense other than a felony, allegedly committed in a city or town, has, owing to special circumstances and pursuant to law, not been brought before the particular local criminal court which by reason of the situs of such offense has trial jurisdiction thereof, but, instead, before a local criminal court which does not have trial jurisdiction thereof, and therein stands charged with such offense by information, simplified information or misdemeanor complaint, such local criminal court must arraign him upon such accusatory instrument. If the defendant desires to enter a plea of guilty thereto immediately following such arraignment, such local criminal court must permit him to do so and must thereafter conduct the action to judgment. Otherwise, it must remit the action, together with all pertinent papers and documents, to the local criminal court which has trial jurisdiction of the action, and the latter court must then conduct such action to judgment or other final disposition.

2. When a defendant arrested by a police officer for an offense other than a felony has been brought before a superior court judge sitting as a local criminal court for arraignment upon an information, simplified information or misdemeanor complaint charging such offense, such judge must, as a local criminal court, arraign the defendant upon such accusatory instrument. Such judge must then remit the action, together with all pertinent papers and documents, to a local criminal court having trial jurisdiction thereof. The latter court must then conduct such action to judgment or other final disposition.

3. At any time within the period provided by section 255.20, where a defendant is arraigned upon an information, a simplified information, a prosecutor's information or a misdemeanor complaint pending in a city court, town court or a village court having trial jurisdiction thereof, a judge of the county court of the county in which such city court, town court or village court is located may, upon motion of the defendant or the people, order that the action be transferred for disposition from the court in which the matter is pending to another designated local criminal court of the county, upon the ground that disposition thereof within a reasonable time in the court from which removal is sought is unlikely owing to:

(a) Death, disability or other incapacity or disqualification of all of the judges of such court; or

(b) Inability of such court to form a jury in a case, in which the defendant is entitled to and has requested a jury trial.

4. Notwithstanding any provision of this section to the contrary, in any county outside a city having a population of one million or more, upon or after arraignment of a defendant on an information, a simplified information, a prosecutor's information or a misdemeanor complaint pending in a local criminal court, such court may, upon motion of the defendant and with the consent of the district attorney, order that the action be removed from the court in which the matter is pending to another local criminal court in the same county which has been designated a drug court by the chief administrator of the courts, and such drug court may then conduct such action to judgement or other final disposition; provided, however, that an order of removal issued

under this subdivision shall not take effect until five days after the date the order is issued unless, prior to such effective date, the drug court notifies the court that issued the order that:

(a) it will not accept the action, in which event the order shall not take effect, or

(b) it will accept the action on a date prior to such effective date, in which event the order shall take effect upon such prior date.

Upon providing notification pursuant to paragraph (a) or (b) of this subdivision, the drug court shall promptly give notice to the defendant, his or her counsel and the district attorney.