JUDGES' CHAMBERS
City Court of Rochester
HALL OF JUSTICE
ROCHESTER, NEW YORK 14614
(585) 371-3410

ELLEN M. YACKNIN
JUDGE

July 17, 2015

John W. McConnell, Esq., Counsel
Office of Court Administration
25 Beaver St., 11th Floor
New York, NY 10004
by email: rulecomments@nycourts.gov

Re: Comments on Proposed 22 NYCRR Parts 51 and 153

Dear Mr. McConnell:

Please accept these comments regarding the Advisory Committee on Local Courts' proposed new Part 51 of the Rules of the Chief Judge and new Part 153 of the Rules of the Chief Administrator.

As the presiding judge of Rochester City Court's Human Trafficking Intervention Court, I understand that the proposed inter-court transfer rules are well-intentioned. Nonetheless, I oppose their implementation by rule-making rather than by statutory amendment. The adoption of such a change to the statutory limits on the transfer of cases between local criminal courts by rule-making violates well established principles of law and statutory construction.

The New York State Constitution gives the New York State Legislature the sole and exclusive authority to establish the jurisdiction of city, town, and village courts outside the City of New York. Specifically, under NY Constitution Art. 6, §17(a):

> Courts for towns, villages and cities outside the city of New York are continued and *shall have the jurisdiction prescribed by the legislature* but not in any respect greater than the jurisdiction of the district court as provided in section sixteen of this article. (Emphasis added.)

The New York State Constitution also gives the New York State Legislature the sole authority to provide for the transfer of cases from district, city, town, or village courts to other district, city, town, and village courts within the same or an adjoining county. Specifically, under NY Constitution Art 6, §19(i):

> *As may be provided by law*, the district court or a town, village or city court outside the city of New York may transfer any action or proceeding . . . to any court, other than the county court or the surrogate's court or the family court or the supreme court, having jurisdiction of the subject matter in the same or an adjoining county provided that such other court has jurisdiction over the classes of persons names as parties. (Emphasis added.)

In People v. Correa, 15 NY3d 213 (2010), the Court of Appeals addressed the question of whether the Chief Judge was legally permitted to issue administrative rules providing for the transfer of certain misdemeanor criminal cases from local criminal courts to supreme courts for trial. The Court observed that NY Const. Art. 6, §19(a), permits the supreme court to transfer to itself any action pending in another court within the same judicial department to promote the administration of justice. The Court also acknowledged that this constitutional provision permits such transfers only "[a]s may be provided by law." People v. Correa, 15 NY3d at 223. According to the Correa Court, the broad language found in NY Judiciary Law §211(a) provides the statutory predicate that "permits the Chief Judge to transfer cases between [supreme] courts to further the efficient administration of justice." People v. Correa, 15 NY3d at 224.

Importantly, however, the Correa Court also observed not only that "[NY Judiciary Law §211(a) "contains no language preventing the transfer of misdemeanor cases to Supreme Court," People v. Correa, 15 NY3d at 224, but that "the Legislature has not adopted statutes that purport to oust Supreme Court of the jurisdiction to try unindicted misdemeanor cases." People v. Correa, 15 NY3d at 229. Because of the statutory predicate in NY Judiciary Law §211(a) and the absence of any statutory language to the contrary, the Court of Appeals concluded that the Chief Judge's administrative transfer rules were permissible.

Unlike the types of inter-court transfers at issue in Correa, the transfer of certain cases from one local criminal court to another local criminal court, which is the subject of the proposed rules, has been addressed explicitly by the New York State Legislature. Specifically, the New York State Legislature has expressly limited the transfer of cases from "one local criminal court to another" to those specific situations delineated in NY CPL §170.15. Manifestly, no provision of CPL §170.15 permits the transfer of cases from "one local criminal court to another" under any of the specific circumstances set forth in CPL §§170.15(1), (2), (3), or (4).

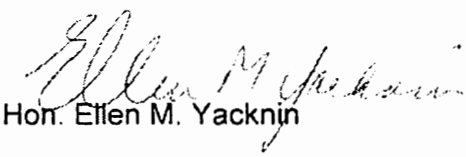
To the contrary, under long established statutory and judicial principles of statutory construction, the proposed administrative transfer rules conflict with the statutory transfer rules in CPL §170.15. Under McKinney's Consolidated Laws of NY, Book 1, Statutes §74, "the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended." As the Court of Appeals has repeatedly emphasized, "[T]he failure of the Legislature to include a

substantive, significant prescription in a statute is a strong indication that its exclusion was intended." Pajak v. Pajak, 56 NY2d 394, 397 (1982). See Manouel v. Board of Assessors, 25 NY3d 46, 49-50 (2015); Commonwealth of Northern Mariana Islands v. Canadian Imperial Bank of Commerce, 21 NY3d 55, 60-61 (2013); People v. Finnegan, 85 NY2d 53, 58 (1995). The application of these statutes and principles to CPL §170.15 make it abundantly clear not only that there is no legislative authority for the proposed rules, but also that the proposed rules conflict with the plain and unambiguous limited inter-court transfer provisions of CPL 170.15.

The May 18, 2015 Memorandum in support of the proposed rules notes that "it makes sense" for such inter-court transfers to be made under the circumstances specified in the proposed rules. That the proposed rules "make sense" justifies the Legislative amendment of CPL §170.15 to permit such transfers. It is reasonable to assume that if the Legislature agrees that such transfers make sense, such an amendment would be easily adopted. That such inter-court transfers "make sense," however, does not justify their implementation by regulation rather than by statutory amendment. See, e.g., Weiss v. City of New York, 95 NY2d 1, 4-5 (2000).

Thank you for your consideration of these comments.

Very truly yours,



Hon. Ellen M. Yacknin

CITY COURT OF JAMESTOWN

Municipal Building
200 East Third Street
Jamestown, NY 14701
Telephone: (716) 483-7561
Fax: (716) 483-7519

John L. LaMancuso
Supervising Judge
Frederick A. Larson
Judge

Lisa M. Meacham
Chief Clerk
Robert D. Nieto, Esq.
Associate Court Attorney

July 14, 2015

John W. McConnnell, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 11th Floor
New York, NY 10004

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

Dear Mr. McConnell:

While I wholeheartedly endorse and support the proposed adoption of 22 NYCRR Parts 51 and 153, my feeling is that the proposed rules fail to address and/or facilitate the not-too-uncommon situation of a proposed transfer of cases from one problem-solving court to another problem-solving within the same county, as well as a few other common jurisdictional imbroglios.

By way of illustration, Chautauqua County has two problem-solving courts, Jamestown City Court and Dunkirk City Court. Each court has its own drug court as well as mental health court; and each court accepts veterans.

Defendant IC was convicted in Jamestown City Court of criminal mischief in the fourth degree, a class A misdemeanor, as well as driving while intoxicated, an unclassified misdemeanor, and was sentenced to a three-year term of probation in both matters on October 15, 2013. On January 30, 2015, he was declared delinquent in both matters. He made a treatment court application to Jamestown Treatment Court and was found eligible. However, based upon his residence in the City of Dunkirk, a transfer to Dunkirk City Court was proposed. The question is the mechanics of accomplishing the transfer of jurisdiction from one local criminal court which has been designated a drug court to another such court in the same county. Note that IC has not entered either treatment court at this time, a process which usually involves an appearance for purposes of a plea or, in this case, admission to the VOP, together with execution of a drug court contract.

Although CPL § 170.15(4) provides that "upon motion of the defendant and with the consent of the district attorney," a local criminal court may "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," whether or not a case may transferred from one city court that has been designated a drug court to another city court that has been designated a drug court is unclear. Furthermore, the problem is compounded by the fact that an administrative order signed by Judge Traficanti in 2004 specifically enumerates the town and village courts within Chautauqua County which are within each city court's 'hub area' for CPL § 170.15(4) purposes. Neither CPL § 170.15 nor the two administrative orders say anything about inter-problem-solving court transfers. Neither the statute nor the orders specifically prohibit such transfers, but, by the same token, neither the statute nor the orders specifically authorize such transfers.

The apparent inflexibility of the hub orders poses another problem. Suppose a defendant is an active participant in the Jamestown Treatment Court and picks up a new misdemeanor in a town court that happens to fall within Dunkirk's so-called hub area. How does a town court that is specifically listed in Dunkirk's administrative order transfer jurisdiction of its file to Jamestown City Court to accommodate a defendant who is already a participant in the Jamestown Treatment Court? Does the hub order supersede the statute which imposes no jurisdictional boundaries on hub transfers?

Another area of concern is the so-called judicial monitoring or supervision of cases where a defendant lives in County A, but has an open case in County B that may be appropriate for treatment court. The "in the same county" limitation in CPL § 170.15(4) prevents a case from being transferred from a local criminal court in County B to a designated treatment court in County A.

A comprehensive solution to the problem of intra and inter-county transfers is desperately needed, and the proposed rules could be an ideal time to provide a regulatory, if not statutory, solution to the thorny jurisdictional issues treatment courts frequently encounter.

Thank you for your time and attention, and if I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Hon. John L. LaMancuso
City Court Judge/Acting Chautauqua County Court Judge