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Page: D1

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Packed dockets hinder justice

Watchdog group says Schenectady County needs 2nd county judge

By Anne Miller

Staff Writer

SCHENECTADY – Hector Pena Martinez deserved a break, if anyone did, his correction officers said. A model prisoner, his hands trembled as he waited and waited. Eventually, he broke into tears.

Pena Martinez, dressed neatly in jeans, an ironed white shirt and handcuffs, had grown nervous. As usual, the judge was late.

The Schenectady County courthouse is overwhelmed. The caseload is so heavy that a statewide watchdog group has singled out the county as desperately in need of another full-time county judge.

But most counties that long ago received new judges won't give them up, and new positions are created only by the state Legislature, which means politics and money have as much to do with new postings as rising populations or crime statistics.

The result: Some courts see ever-increasing scheduling delays, compounding waits and costs for defendants, attorneys and taxpayers.

One long-time local court watcher suggested that so many visiting judges also could result in inconsistencies among findings in similar cases out of the same courthouse, which could potentially result in more successful appeals.

"If you have a lot of visiting judges, there's not always a lot of consistency," said Helga Schroeter, who retired in 2002 after 14 years with the watchdog organization Fund for Modern Courts. She still keeps an eye on the Schenectady courthouse for the League of Women Voters.

"If you conceivably have a different outcome in a very similar case, it would open it a little more" to being overturned, she said.

The state's 284 county judges earn a minimum of \$119,800 yearly. Traveling costs for all 12 judicial districts topped \$1.84 million the last fiscal year. The 4th Judicial District, which includes Schenectady, accounted for 19 percent of that alone – \$341,854, or double the salary of Schenectady County's only full-time county judge – Judge Karen Drago.

That said, all judges are eligible to travel – say, to fill in for sick or vacationing colleagues – but the court system doesn't keep track of those travels. However, administrators agree that rural judges cover the most ground.

The judge that eventually showed up for Pena Martinez's preliminary hearing was traveling Fulton County Judge Richard A. Giardino. But don't blame him for the delay. In nine years, he has presided over courtrooms in 15 counties. Many times, his days are just like the court's – packed schedules, rapid-fire deliveries – running hard yet running behind.

Giardino's home court in Fulton County is not as busy as Schenectady. So Giardino regularly picks up extra cases in the Electric City. Both counties are part of the sprawling 4th district, which includes Schenectady, Fulton and counties up to the Canadian border.

The district's western judges are regularly conscripted into urban service, typically spending a half-day hearing cases in Johnstown, driving 40 minutes to Schenectady, and carrying a half-day's calendar there.

But there is a downside. Those who "have gavel, will travel," as a caricature in Giardino's chambers reads, are less familiar with the communities in which they sometimes preside.

The hearings and motions of a single case can pass through several judicial hands, meaning the process can be slowed as judges review the facts.

Occasionally, "they give us a judge that doesn't really know what they're doing or don't have much criminal experience," said Schenectady County District Attorney Robert Carney.

All the driving and rotating also costs taxpayers money in mileage and hotel stays.

"We have the most travel, the largest distances," said Judge Vito Caruso, the 4th district's administrative judge. "Forty minutes for some of my judges is like a coffee break.

"If there was any way that we could put more judges in heavily trafficked areas, it would make my job easier – or even eliminate it," Caruso said.

"In Schenectady, we have lobbied since before I've been on the bench, and I've been on the bench for 11 years," he said. "And I'd guess it would be 11 years before that."

While Schenectady County remains among those most desperate for another judge, Rensselaer County snagged an additional county judge in the last round of new judicial postings. The county has some need, but it's also home to the state Senate majority leader.

"That's insane – but that's politics," said professor Vincent Bonventre, of Albany Law School. "The politicians and parties are pretty jealous of their judgeships. The politicians and parties in other counties don't want to part with their judges. You end up having to move them around."

In the late 1970s, the concept of moving judges to help in busy courts was hatched under Court of Appeals Chief Judge Lawrence H. Cooke, who

desperately needed judges in New York City. The rural judges revolted, unwilling to forsake their quiet homes for a week in the Bronx courts.

Today, judges stick closer to their home counties, although some farther-flung judges opt to move about or fill in when others take vacations or have conflicts of interest.

In 1996, Giardino spent his first three months on the bench downstate. He had been the Fulton County district attorney and had overseen almost every case scheduled in Johnstown at that point.

Usually, though, he's lending a hand to overwhelmed counties. He likened his job to the Wild West judges of yore.

"Back in the 1800s, we'd have the circuit court judges. You go back to the old Westerns, you'd wait once a month for the circuit court judges," he said. "If I have the time and energy, I'm happy to help out."

The last day of August was typical for Giardino. At the Johnstown courthouse by 8:15 a.m., the judge reviewed cases and paperwork until 9 a.m., when he began drug court. The defendants were addicts who chose treatment under a judge's watchful eye instead of jail.

From his stately carved bench in the state's oldest courtroom, Giardino ran through more than a dozen hearings in an hour. One man received permission to attend the county fair. Another wanted to reclaim his rifle for hunting season. Ask again closer to opening day, the judge advised.

By 11 a.m., he had whipped off his robes, hopped in his truck and sped through Amsterdam in a vain attempt to keep another calendar at the Schenectady County Court. He ran about a half hour late. A parole violator admitted to drinking and fondling someone underage, and a man serving 15 years to life had a preliminary hearing on a potential resentencing.

Attorney Mark Sacco handles some of the weightiest cases in Schenectady County. He, too, longs for more continuity.

Over the course of a case, "you've been educating the judge about your client. It's difficult to do that in 10 minutes, or however long you have."

He lauded the county's efforts to create specialized courts, like drug court, but said that consumes more of judges' precious time.

"There's just too much going on. They are doing the right things," he said. "Judge Drago can't work 24 hours a day."

The results can be frustrating. "When you are in a private practice, you can't sit around for three hours waiting for a piece of paper," he said.

Schenectady tops the Fund for Modern Courts' list of counties most in need of permanent judges. The fund is an independent, nonprofit organization that monitors the state court system.

According to the Fund's 2002 report for Schenectady County, "Such legislation would be beneficial not only to Schenectady, but the neighboring counties whose judges must regularly hear cases in Schenectady County."

The report found 523 cases filed in county court in 2001, which has remained consistent since. A single county judge usually hears about 250 cases, several officials said.

Ken Jockers, the fund's executive director, said it's a money problem.

"The (New York State) Unified Court System has been incredibly judicious – er, conservative – in its budgets," he said. "It is clear across the state that we don't have enough judges."

State Sen. Hugh Farley, the majority whip, a Niskayuna Republican whose district includes Amsterdam and Schenectady, dismissed any notion that politics makes new judges.

"It doesn't come down to politics. It comes down to money," Farley said. "It's a budgeting thing. It's expensive."

He sees the need for another Schenectady judge but says it's the court system that needs to press harder.

"We're going to put a full court press on getting a new judge," Farley said, although judicial watchers doubt that will help Schenectady any time in the next few years.

Rarely does the Legislature create new judgeships two years running.

"To create a bunch of judgeships and come back again and create a bunch of other judgeships – that's not likely," Bonventre said.

So, for now, keeping up with cases remains the Giardino hustle.

Factbox:

ON THE ROAD

Based in Johnstown, Fulton County, Judge Richard A. Giardino has traveled to preside in counties:

Nassau (Mineola) Westchester (White Plains) Ulster (Kingston)
Rensselaer (Troy) Albany (Albany) Schenectady (Schenectady) Saratoga
(Saratoga Springs) Warren (Lake George) Washington (Fort Edward) Essex
(Elizabethtown) Franklin (Monroe) Montgomery (Fonda) Clinton
(Plattsburgh) Hamilton (Lake Pleasant)

CASE NUMBERS

Number of county judges: 284

Number of counties: 62

Minimum pay: \$119,800 M

Maximum pay (Long Island): \$136,700