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Justices Consider Absorbing Clerks Into Statewide Judiciary

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The state Supreme Court is examining the implementation of a new phase in unifying Pennsylvania's court system: incorporating civil court prothonotaries, criminal clerks of court, clerks of the Orphans' Court and registers of wills into the state judiciary.

Chief Justice Ronald D. Castille said the court has commissioned a study by consultant Econsult, a Philadelphia-based economic research outfit, to examine the expansion of the unified judicial system by changing the operations of court clerks from operations run by independently elected officials, or county-level appointees, in charge of county employees to operations under the authority of the centralized state judiciary.

Merging clerk functions into the unified judicial system "just became logical" after court administrators became state employees about a decade ago, Castille said.

Econsult has completed its preliminary report, Castille said. Depending upon how deep the expansion ultimately goes, the cost could add \$20 million to \$1 billion to the state judiciary's budget, Castille said.

The least extensive and expensive expansion could involve only converting the heads of clerk's offices into state employees, he said. And the most extensive and expensive expansion could involve making the employees of clerks' offices in all 67 counties state employees, he said.

If Pennsylvania had a truly "unified system like Jersey, it would probably add another billion dollars to our budget," Castille said.

The carrot for the General Assembly to consider this plan would be that half of the fines and fees collected by court clerks, which now go to county coffers instead of state coffers, could all go to the state, Castille said.

Castille predicted some opposition to unifying clerks operations because "local elected people would lose control of the courthouse and, politically, that means jobs," Castille said.

Castille said the court is still forming its conclusions about how deeply the incorporation of clerks' offices into the state government should go. The chief justice said he does not see the plan being presented to the executive and legislative branches until the court presents its budget for fiscal year 2011-12 this fall.

Econsult is examining how to implement phase four of a report prepared in 1996 by Frank J. Montemuro Jr., a retired Supreme Court justice assigned by the Supreme Court to propose methods of carrying out the goal of unifying the judicial system by paying for local courts out of the state general fund, Castille said. Montemuro was assigned by the Supreme Court to serve as a special master to make recommendations to the court on how to implement the court's 1996 decision in *Pennsylvania State Association of County Commissioners v. Commonwealth of Pennsylvania*.

Montemuro's report said there would be two ways to turn the offices keeping records for the courts and collecting remittances for the courts into components of the unified judicial system.

Under one option, which would not require a constitutional amendment, the clerks' offices would be subsumed into the state system, but the elected officers would maintain the authority to hire and fire their own staff. Under this option, the officers would be governed by standards set for the state court system as a whole and be overseen by the state-employed court administrator of the county system.

Under a second option, which would require a constitutional amendment, clerks of courts would be appointed by each president judge of each judicial district, the clerks of courts would appoint deputies as needed, and the entire operations would be under the

"administrative aegis of the president judge and the district administrator," Montemuro wrote.

Montemuro recommended the second change over the first change because home-rule counties already run their court clerks' offices in a similar manner.

Carbon County Clerk of Court William C. McGinley, president of the Pennsylvania State Association of Prothonotaries and Clerks of Courts, could not be reached for comment.

Doug Hill, director of the County Commissioners Association of Pennsylvania, a coalition of county commissioners, said the association is supportive of making court clerks' offices and their employees part of and paid for by the state government.

Hill said the most expansive change should be implemented, so that all employees come under a centralized state administration. Even in home rule counties that have abolished some, if not all, of their elected clerks, those offices are still funded by the counties, Hill said.

Because counties have different fiscal capabilities to fund their county-based judicial functions, "you have an inherent inequality," Hill said.

Centralizing decisions about staffing to match a county's actual case load could make Pennsylvania courts more efficient and cost-effective because "we think there are many counties where the staffing is higher than it needs to be," Hill said.

In a separate action, the association has asked the Supreme Court to strengthen the 1987 plurality decision holding that the state constitution requires the entire judicial branch to be funded directly by the General Assembly, rather than by the counties where local courts are located. The Supreme Court heard oral arguments on the petition in December, but has not yet ruled in the latest round of the effort to require state funding, rather than county-by-county funding, for judicial functions across the state.

An attorney for Pennsylvania's General Assembly argued in December that state lawmakers in fact have been providing funding for the state's county court systems by

ensuring the counties have a method to fund their courts through their tax-and-spend authority.

The association also asked the court to enforce the court's writ of mandamus ordering the General Assembly to fund the judiciary and issued in *Pennsylvania State Association of County Commissioners v. Commonwealth of Pennsylvania*, out of which Montemuro's report grew. Montemuro's report was never formally adopted by the state Supreme Court as an order.

But since the report was filed with the justices, the state judiciary has absorbed about 200 jobs, mainly court administrators and deputy administrators, and undertook statewide projects, such as unifying computer systems.

Lynn Marks and Shira Goodman of Pennsylvanians for Modern Courts said they are pleased that the Supreme Court is exploring further unifying the state judicial system through the inclusion of court clerks in state government.

"You want people to go into different county courts and ... know how the county courts work," Goodman said. "You want people to go to the [Administrative Office of Pennsylvania Courts] AOPC Web site and get information that is going to apply everywhere you are. You want to have a court system that is unified so people get equal justice throughout the commonwealth and it doesn't depend upon the whims of the county."

The court recently took a step to bring the independently elected Philadelphia clerk for criminal cases under court control.

Castille issued an order March 3 that, effective 9 a.m. March 4, "all duties and functions of the office of the Clerk of Quarter Sessions of Philadelphia shall be absorbed and assumed by the First Judicial District of Pennsylvania."

Castille said the office came under the court's jurisdiction because the Supreme Court has supervisory authority over all court functions and because the office had filed a petition in 2009 asking the court to exercise its Kings' Bench jurisdiction to block a unilateral order by Philadelphia Common Pleas President Judge Pamela Pryor Dembe for

some of the transfer of some of the Quarter Sessions' bank accounts to the First Judicial District.

While the clerk's office is now being run by the FJD, the future of the clerk's office as an independently elected row office remains unclear. Any change in its status would require the passing of an ordinance by the Philadelphia City Council. •