THE SUPREME COURT OF PENNSYLVANIA
1818 MARKET STREET
37TH FLOOR
PHILADELPHIA, PA 19103

RONALD D. CASTILLE
CHIEF JUSTICE

(215) 560-5663
FAX: (215) 560-5807

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Hon. Ron Marsico
Chair, House Committee
on the Judiciary
218 Ryan Office Building
PO Box 202105
Harrisburg, PA 17120-2105

Hon. Thomas R. Caltagirone
Democratic Chair, House Committee
on the Judiciary
106 Irvis Office Building
PO Box 202127
Harrisburg, PA 17120-2127

Dear Representatives Marsico and Caltagirone:

As you know, the Supreme Court empaneled a workgroup, co-chaired by Dauphin County President Judge Todd A. Hoover and Washington County President Judge Debbie O'Dell-Seneca, to develop recommendations on how to improve the constable system in Pennsylvania. That workgroup included judges of the common pleas and magisterial district courts, court administrators, a member of a county finance department and two constables.

As a result of recommendations by the workgroup, the Court has adopted new Rules of Judicial Administration Nos. 1907.1 and 1907.2, and directed the creation of statewide policies, procedures and standards of conduct governing all constables while performing work for the courts ("UJS Constable Policies, Procedures and Standards of Conduct"). *Copies of the Rules and UJS Constable Policies are attached for your information.*

The workgroup also identified areas where legislative action may be warranted to improve the constable system in the Commonwealth. Those recommendations follow.

Payment and Finance

A majority of the workgroup members concluded that uniformity in the definitions of critical terms and phrases in the Constable Fee Bill, 44 Pa.C.S. §7161, will be required to achieve statewide uniformity with constable payments. Examples of terms and phrases that should be defined include: "custody," "effectuation of payment," and "execution of warrant." In addition, deciding on payments for the simultaneous service of multiple warrants on the same defendant should be considered, as the present practice causes excess/unneeded expenditure.

Because the definition of terms and practices will have a direct impact on how much constables are compensated, and for what services they receive compensation, and because how terms are defined may impact how much constables are compensated in different counties, a majority of the workgroup recommended that this issue be referred to the Legislative Branch.

Political Activity

Constables may perform jobs apart from the services they perform for the judiciary, e.g., preserving the peace at polling places, 44 Pa.C.S. §7152, and enforcing forest laws, 44 Pa.C.S.A. §7155. However, while performing functions for the court, it has been determined that constables must refrain from political activity during those services. While this prohibition is narrowly drawn, it pertains to the broader issue of statutorily authorizing constables to engage in politics. 44 Pa. C.S.A. §7131. The Court views constables as providing independently contracted services and not as employees of the unified court system. Accordingly, it is recommended that the Legislature review Section 7131 and determine if any amendments would be appropriate.

Criminal Convictions

HB 2731 of 2010 contained a provision that would prohibit the Pennsylvania Commission on Crime and Delinquency ("PCCD") certification of a constable who had a criminal record "for an offense graded as a felony or a misdemeanor of the first degree" (HB 2731, P. 5). In the revised draft of the bill, distributed in January 2011, the reference to misdemeanor convictions of the first degree was removed. Several of the workgroup members stated that knowledge of felony or misdemeanor convictions could be relevant to a president judge and magisterial district judges in deciding whether a constable's services should be used by the

court. This could be highly relevant in the appointment process, as well as in deciding whether to assign a constable judicial services. Members found it troubling that an individual could be certified as a constable and could be assigned judicial duties even though that individual had a prior misdemeanor conviction for offenses such as: simple assault (18 Pa.C.S. §2701); terroristic threats (18 Pa.C.S. §2706); terrorism (18 Pa.C.S. §2717); luring a child into a vehicle (18 Pa.C.S. §2910), and indecent assault (18 Pa.C.S. §3126), among others.

Title 18 Section 9125(b) provides that "[f]elony and misdemeanor convictions may be considered *by the employer* only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied." Title 53 Section 752.3(1) provides that a law enforcement officer shall not be employed or continue to be employed upon conviction of a felony or "serious misdemeanor" ("defined in Section 752.2 as a criminal offense for which more than one year in prison can be imposed as a punishment").

Of course neither of these statutory provisions is directly applicable to constables, as they are independent contractors of the courts. *In re Act 147 of 1990*, 528 Pa. 460, 598 A.2d 985 (1991). Nevertheless, the workgroup members suggested that the Legislature review the statutory provisions identified above and consider imposing a restriction upon certification for constables performing judicial duties similar to that contained within Title 53. The workgroup members also suggested that conviction of a felony, or enumerated misdemeanors, could provide a basis for removal from office, or at a minimum, the termination of eligibility to perform judicial duties.

It was also suggested that criminal background checks be made a part of PCCD certification. Currently, PCCD performs an annual criminal record check only of those constables who have completed firearms certification/recertification training. It is estimated that 30% of constables are not certified for firearms and, therefore, do not undergo a PCCD criminal record check.

Megan's Law and Child Abuse Record Checks

The workgroup recommended that a constable should be prohibited from performing judicial duties if he or she has been required to register under the Pennsylvania Registration of Sexual Offenders Act ("Megan's Law"), 42 Pa. C.S.A. §9799.10 *et seq.*, or has been named in an indicated or found report of child abuse, pursuant to the Child Protective Services Law, 23 Pa. C.S.A. §6301 *et seq.*

In light of the statutory provisions in Title 18 and Title 53 and the recommendations above, AOPC staff suggest that the delineation of criminal offenses that would render a constable ineligible to perform judicial duties should be made by the Legislature, and the absence of convictions for those offenses, as well as the absence of registration pursuant to Megan's Law, should be confirmed by PCCD through the certification process.

In addition, the Child Protective Services Law identifies those individuals who must show proof that they are not the subject of a found report of child abuse before obtaining employment in enumerated fields. 23 Pa.C.S. §§6344 – 6344.2. Generally speaking, the individuals who must show no history of child abuse include those wishing to work as a child care service provider or in another occupation "with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training." Id. at §6344.2(a). At Initially, neither a constable nor a police officer is included in this list. In addition, it is not clear that a constable's work would include "a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training."

In light of this, AOPC staff suggest that as a matter of public policy, the Legislature may wish to determine if the existence of an indicated or found report of child abuse should disqualify an individual from serving as a constable, and if verification that an individual is not listed as the perpetrator of child abuse is desired, it should be included as an element of PCCD certification to perform judicial duties.

Constable Education and Training Account (CETA) Fund

Members of the workgroup were concerned about the fiscal health of the CETA Fund. This fund was established to support constable certification, education and training through the Pennsylvania Commission on Crime and Delinquency, Constable Education and Training Board. It was suggested that the CETA Fund will be depleted by 2015.

In recent months, the president judges of several judicial districts have issued local orders centralizing warrant processing through police and sheriff departments rather than providing warrants to constables. Therefore, although the number of warrants issued in courts statewide may have increased, the collection of the CETA fee, at least in these counties, has not.

Given that the CETA surcharge is established by statute, the health of the CETA Fund does not appear to be an issue within the purview of the Court, but rather one to be considered by the Legislature and CETA Board staff. It was recommended that the assessment of CETA fees and/or funding of constable certification, education and training be reconsidered by the Legislature.

Bonds

Title 44 Section 7114(c) requires constables in a township to submit a bond. It is recommended that the Legislature consider requiring all constables – regardless of the political subdivision they serve - to provide a bond in order to protect those who may sustain injury from a constable's neglect of duty.

Uniforms

The workgroup members suggested that a constable must be easily identifiable for purposes of protection and respect. However, given that constables are independent contractors, it was believed it would be inappropriate for the judiciary to determine a specific uniform or patch to be worn by all constables. Consequently, the workgroup members proposed that the UJS Constable Policies generally require a constable to carry identification and wear a [uniform] that clearly identifies him or her as a constable while performing judicial duties. The members also suggested the Legislature consider whether constables should be required to wear a particular type of uniform at all times (i.e., a particular color or style), or the creation of a statewide badge/patch.

Incompatible Practices

The Election Code contains several provisions prohibiting incompatible offices/practices of elected officials. The workgroup members suggested this provision should apply to constables and that the Legislature enumerate these incompatible offices in Chapter 71 of Title 44. For example, is engaging in the collection agency business or possessing a private detective's license an incompatible practice? (*See In the Matter of William Stanley,* 204 Pa.Super. 29, 201 A.2d 287 (1964), and *Cmwlth. v. Schwartz,* 210 Pa.Super. 360, 233 A.2d 904 (1967)).

It is my hope that these suggestions will be useful to you as you consider ways to statutorily improve the constable system in Pennsylvania. If you have any questions about the UJS Constable Policies or the work and recommendations of the workgroup, AOPC will be happy to meet with you and discuss issues.

Very truly yours,

Ronald D. Castille

RONALD D. CASTILLE
CHIEF JUSTICE OF PENNSYLVANIA