

# **Pennsylvania Intergovernmental Cooperation Authority**



## **Court Unification and State-Wide Funding: Future Five-Year Financial Plan Implications for the City of Philadelphia**

**White Paper**  
(No. 4)

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**PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTHORITY**

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## **Court Unification and State-Wide Funding: Future Five-Year Financial Plan Implications for the City of Philadelphia**

The purpose of this white paper (No. 4) is to assess the general direction and likelihood of state-wide court unification as it relates to the City of Philadelphia (City) and similarly, to assess the soundness and/or appropriateness of actions being taken by the City regarding funding of the First Judicial District of Pennsylvania (FJDP) as a result of both actual and anticipated effects of court unification.<sup>1</sup> PICA Staff also wishes to draw attention to the City's continuing need to control court related expenditures. Simultaneously, it is the purpose of this white paper to identify current or projected conditions or actions by the City which may require substantive revisions when FY2003 is added to the Plan.

### *A Brief History of the FJDP and it's Financial Management*

The FJDP is made up of three judiciaries that together comprise the Philadelphia Court System. The three judiciaries are: the Court of Common Pleas, currently a 90-judge court of general jurisdiction with three divisions- Trial, Family and Orphan; Municipal Court, a 22-judge court of limited Jurisdiction--scheduled to increase to 25 judges as of January 1, 1998; and the Traffic Court, a six judge court of limited jurisdiction that deals primarily with the City's moving traffic violations which as of January 1, 1998 is scheduled to increase to seven judges.

The FJDP is not a City department; it is a separate institution entirely under the direction and control of the Pennsylvania Supreme Court. The City lacks direct authority under the Philadelphia Home Rule Charter to control expenses or set budgetary levels within the judiciary system.<sup>2</sup> Despite the lack of direct expenditure control authority, Philadelphia--like all Pennsylvania's counties--is responsible for funding the bulk of it's court (FJDP's) costs locally, as part of the City's budget.

Predictably, as a result of being presented with a substantial unfunded mandate by the State, and compounded by a lack of authority over the courts' operations, there has historically been disagreement over what amount the Philadelphia Courts require for annual operating funds and what the City should pay. This disagreement, exacerbated by the City's fiscal crisis, reached an impasse when the City rejected the FY91 budget request of the courts. Ultimately, the State Supreme Court intervened and created the FJDP. As a result, beginning in FY92, the FJDP began to operate under an (adjusted) zero-growth (and zero-reduction) budget agreement between the City and the Supreme Court, which agreement has worked reasonably well in comparison to past practices and is due to expire on January 1, 1998.

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<sup>1</sup> It should be noted that the purpose of this White Paper is not to defend, or test the constitutionality of the Pennsylvania Supreme Court's decision to appoint a master to study court unification; the validity of that master's findings and instruction; or to pinpoint the potential legislative response to the Master's report. Neither is it the purpose to predict the precise net financial impact (dollar amounts) of any such occurrences on fiscal conditions in Pennsylvania (the State), or Philadelphia (the City).

<sup>2</sup> *City of Philadelphia Five-Year Financial Plan, Fiscal Year 1996-Fiscal Year 2000*, p. 161

## *State Funding Issues*

In its 1987 ruling in County of Allegheny v. Commonwealth of Pennsylvania, 517 Pa. 65, 534 A.2d 760 (1987) (hereinafter Allegheny I), the Pennsylvania Supreme Court voided county funding for local courts “as offending the constitutional mandate for a unified [judicial] system.”<sup>3</sup> Until the 1996 successor case to Allegheny I, Pennsylvania State Association of County Commissioners, et al. v. Commonwealth of Pennsylvania et al., 545 Pa. 324; 681 A.2d 699 (Pa. 1996) (herein after Allegheny II), The Pa. Supreme Court had not sought to enforce its 1987 decision.

Following the 1987 decision in Allegheny I, the Pennsylvania Legislature did not attempt to execute the State Supreme Court’s ruling--with the minor exception of appropriating \$1 million for the purpose of studying the issue. However, those funds were not expended and subsequently lapsed back into the State’s General Fund.

As a result of Allegheny II, in July of 1996, a Court Master was appointed to recommend a plan to implement the unification of Pennsylvania’s various courts. What the Justices did in Allegheny II was essentially to grant the petition for a “writ of mandamus”, a decree which set a deadline for the General Assembly to implement the unified funding scheme by January 1, 1998.

### *City’s Five-Year Financial Plan Actions - The Administration’s Decision to Redirect Funding*

The Rendell administration has taken the position that “the General Assembly [should] accept its constitutional responsibility to fund Pennsylvania’s courts adequately. Consistent with the Supreme Court’s directive in Allegheny II, t[he] Five-Year Financial Plan maintains full funding for the FJDP (First Judicial District of Pennsylvania) in the City’s proposed operating budget for the first half of FY98 only--July 1, 1997 through December 31, 1997--and then cease[s] any further appropriations to the FJDP.”<sup>4</sup>

Funds to cover the second half of FY98 were not entirely deleted from the plan, but rather, as is discussed later in this paper, were placed into two reserve accounts.

The Administration has also gone on record with its priorities, in the event that any new funds become available as a result of a transition of funding responsibility to the State. Those priorities include: “...to accelerate the City’s multi-year tax reduction program; to support the Philadelphia School District, which faces a projected deficit of ...more than \$100 million in FY98...; and to support the City’s Economic Stimulus Program...”.<sup>5</sup>

## **MONTEMURO’S PLAN**

Senior Justice Frank J. Montemuro was appointed by Order of the State Supreme Court to recommend a plan to unify Pennsylvania’s various courts in July of 1996. During the course of

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<sup>3</sup>Pennsylvanians for Modern Courts, “Memorandum on Statewide Funding of Local Courts”, July 1997, p 1.

<sup>4</sup> *City of Philadelphia Five-Year Financial Plan, Fiscal Year 1998-Fiscal Year 2002*, p. 207

<sup>5</sup>*Ibid.*, p. 221

his research Justice Montemuro requested, and was granted by the Supreme Court, two ninety-day extensions for the delivery of his report.

On July 31, 1997, Justice Montemuro issued his report which outlined a four-phase plan—the first two phases of which would take place during the period from July 1, 1998 to July 1, 2000 (See **Appendix A** of this report). Phase I calls for the State to take over the cost of funding of approximately 150 administrative court personnel statewide. According to the Administrative Office of Pennsylvania Courts (AOPC), “of those 150 positions, the FJDP will account for twelve (12).”<sup>6</sup> Based on the figures provided by the AOPC, the estimated cost of funding those twelve court employees totals \$2.4 million for both FY99 and FY2000.

### *The General Assembly’s Response*

The General Assembly’s response to the State Supreme Court’s efforts toward unification can best be described as ranging from disinterest to opposition. Other than a non-binding referendum bill-- which was introduced in March of 1997 and is intended to ask Pennsylvanians if they support State funding of courts as opposed to individual counties carrying that burden-- there is as yet no legislation known to be pending, to either implement the Court Master’s plan, or to otherwise unify the courts in a manner consistent with the latest Supreme Court ruling.

Many state leaders--legislators, as well as the governor--have indicated that, while they may have done as much as participate in consultation with Justice Montemuro’s research for his plan, they have stopped short of taking any action including supporting, or even passing judgment on the plan.<sup>7</sup>

Meanwhile, majority leaders in the Pennsylvania House and Senate have filed a petition for review of the Court’s order. The Pennsylvania Supreme Court has not yet acted on this petition or on the request by three senators that the Court affirm its decision.

### *The City’s Response*

There can be no estimate, short of wishful thinking, to determine if, when and how much money is ultimately coming from the State. Skepticism should be the order of the day. It is likely that the Supreme Court will extend the deadline for court unification [currently January 1, 1998] to July 1, 1998 in accordance with the Master’s Report. It is unlikely that legislation, if there is any, will be enacted before the new deadline. It is also unrealistic to expect that any legislation would go further (in terms of funding), or faster than the Master’s Report recommends.

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<sup>6</sup> These figures were obtained from Tom Darr, Deputy Court Administrator for the State of Pennsylvania, the AOPC is currently preparing a budget request that will take into account Phase I of Justice Montemuro’s Plan

<sup>7</sup> Michael A. Riccardi, “Montemuro Report: Court Unification to Be Implemented in Four Steps,” *Legal Intelligencer*, August 1, 1997, p. 1

With the Court's rulings in Allegheny I & II as a foundation, the Rendell administration has attempted to project an immediate funding impact relative to court unification on the City's budget. The most recent Five-Year Financial Plan, in addition to removing FJDP funds from FY98 (one half the annual amount) and in subsequent years, attempted to assert and establish just what costs should be assumed by the State.

The City has pleaded for funding relief from the State that would include:

*"...funding all direct court employees and for personnel in court-related offices-- Register of Wills, Clerk of Quarter Sessions, and Sheriff...at least to the extent that their work is primarily related to the core functions of the court system. In addition, for both court and court-related operations, the Commonwealth should fund the cost of accommodations and services that [the City] provide[s]... [F]or example, the court appointed counsel fees, arbitration fees, and juror expenses; the cost of space and facilities; the cost of materials, supplies, and equipment; and the cost of such administration and support services as telephone service, utilities, and vehicle maintenance."*<sup>8</sup>

Unfortunately, the City's assertions and assumptions appear overly ambitious in respect to current expectations of the scope of funding relief that might be provided. In fact, the Master's Interim Report specifically calls for the counties to continue to fund the sheriff's office, indigent defense and "all functions pertaining to facility provision, financing, maintenance and improvement." Compared to the Montemuro Plan (as described in **Appendix A** of this report), the City's Budget and Five-Year Financial Plan also very optimistically projected prompt timing of the eventual State funding scheme. This resulted in major funding disparities now existing with respect to FY99 and beyond (as illustrated in **Chart 2**).

## **IMPACT OF THE MONTEMURO PLAN ON THE ADMINISTRATION'S ACTIONS**

### *Impact on the Funds Contained in Reserve Accounts*

The Montemuro plan calls for a start date for Phase I of July 1, 1998 (the beginning of FY99). The City's FY98 budget contains the remaining half of FJDP funds in two reserve accounts: "Contribution to School District/Tax Cuts" and "City Representative the Department of Commerce - Economic Stimulus". The City Administration and PICA had agreed that the use of those monies for any purpose other than to fund the FJDP through FY98 would be contingent upon the receipt of funds from the State targeted for the purpose of funding the FJDP.

The reallocation of these appropriations for use in the FJDP will be necessary in the event of the State not acting according to the court order, and such reallocation will rely on a vote by City Council (transfer ordinance). PICA Staff is concerned as to the ever present risk of the

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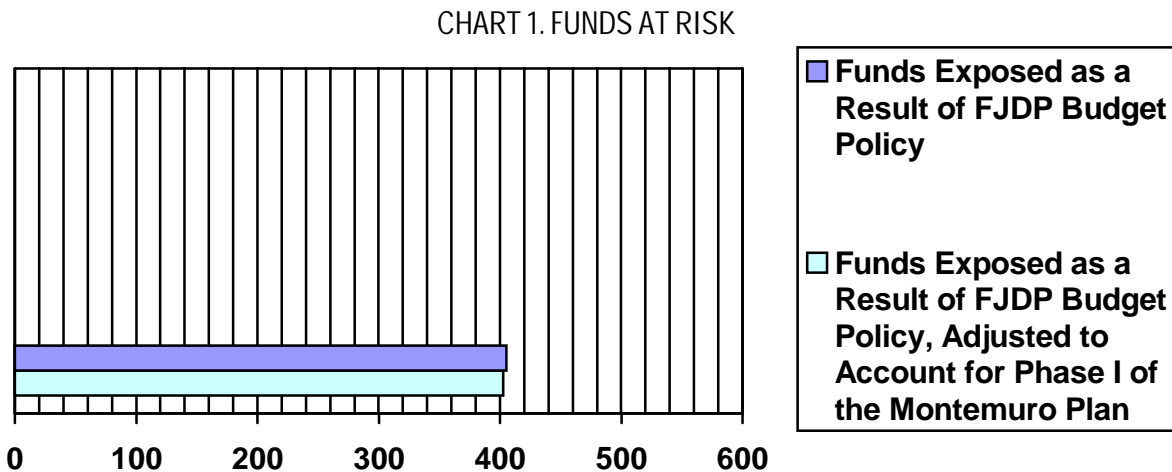
<sup>8</sup> *City of Philadelphia Five-Year Financial Plan, Fiscal Year 1998-Fiscal Year 2002*, p. 208

reserved funds being targeted by City Council for potential allocation elsewhere and thus possibly jeopardizing a balanced budget in FY98.<sup>9</sup>

*Impact on the Five-Year Financial Plan and the Budget*

If the City, without other amelioration, were to continue to budget for the FJDP in the manner it projected in the latest Five-Year Financial Plan--including the assumption that the State will fund 100% of current and projected growth in the cost of operating FJDP--and no definitive legislative action to deliver these funds comes to fruition, there is the potential risk of a cumulative budget shortfall of \$405.3 million over the life of the current Five-Year Plan (see **Chart 1**).

Further, if a plan to enact Phase I of Justice Montemuro’s recommendations were to become law, the projected total shortfall is reduced by a relatively minuscule \$2.4 million (between FY99 and FY2000) and will therefore result in an adjusted cumulative budget shortfall of \$402.9 million. (See **Chart 1**)



*Source: Five-Year Plan Fiscal Year 1998-Fiscal Year 2002 and the July 31, 1997 Interim Report of the Master*

*The Lack of a Revised Court Budgeting Methodology Would Raise the Probability of a Plan Variance*

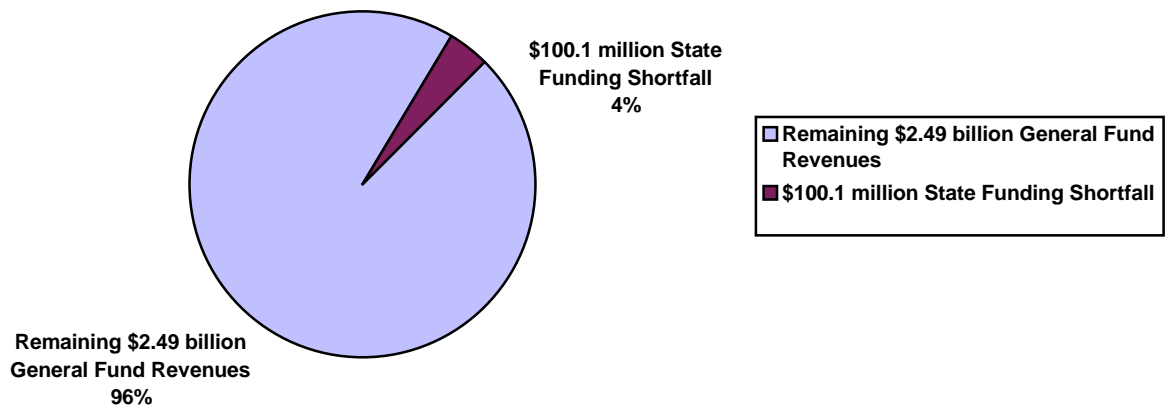
According to the Intergovernmental Cooperation Agreement between the City and PICA, one condition which constitutes a variance is a “net adverse change in the fund balance of a covered fund of more than one percent of the revenues budgeted for an entire fiscal year.

<sup>9</sup> On November 20<sup>th</sup>, 1997, City Council introduced and sent to the Appropriations Committee Bill No. 970741. This transfer ordinance will take money equally from two accounts—“Director of Finance – Contributions to School District/Tax Cuts,” and “City Representative the Department of Commerce – Economic Stimulus” However, the amount targeted for transfer to the FJDP will only provide enough funds to cover one month’s costs of personal services and purchase of services and materials, supplies and equipment—totaling \$8,763,767. Action relative to costs beyond January 1998 remains unresolved.

‘Covered funds’ are any principal operating funds of the City which are members of the City’s consolidated cash account, including the General Fund.”

The funds appropriated for the FJDP currently are accounted for as obligations of the General Fund. The Administration’s current plan would not change that, with the possible distinction of presuming that those funds would come from “Other Government Revenues” as opposed to elsewhere within the General Fund. Based on the Montemuro Plan and the actions of the AOPC--which has requested funds from the General Assembly to fund twelve Philadelphia court administrators for approximately \$1.2 million annually--the City’s “Other Government Revenues” would experience a shortfall projected to be approximately \$100.1 million in FY99. This shortfall would represent a 4% “adverse change” in the estimated FY99 General Fund revenues which will be approximately \$2.5 billion (See **Chart 2**).

CHART 2. BUDGET SHORTFALL AS A PERCENTAGE OF GENERAL FUND REVENUES



Source: Five-Year Plan Fiscal Year 1997-Fiscal Year 2001

## CONCLUSIONS AND RECOMMENDATIONS:

An assumption of full state funding of the FJDP in the City’s next Five-Year Plan would be contrary to the requirements of the Pennsylvania Intergovernmental Cooperation Authority (PICA) Act. Section 209 (c) (1) of the PICA Act states:

*“All projections of revenues and expenditures in a financial plan shall be based on reasonable and appropriate assumptions and methods of estimation...”*

The Act also states in Section 209 (c) (2) that:

*“...Estimates of revenues to be received from the State government shall be based on historical patterns, currently available levels or on levels proposed in a budget by the Governor.”*

The actions taken by the Administration to determine its funding responsibility for the FJDP for FY98 and the duration of the current Five-Year Financial Plan were, at best, highly optimistic. These actions have:

- exposed half of FY98's personnel funding for the FJDP to risk of a lack of appropriation;
- placed the City's FY99 planned budget on course for a possible 4% General Fund revenue variance;
- failed to acknowledge a potential budget shortfall for the duration of the Five-Year Financial Plan of over \$400 million.

After considering the new information contained in the plan set forth in the Interim Report of the Master and its projected impact on funding for the FJDP--regarding the scope and timing of a transfer of funding responsibility from individual counties to the State--and recognizing that the Administrative Office of Pennsylvania Courts is currently preparing a budget which will only fund twelve FJDP positions in FY99 and FY2000, PICA Staff suggests the following action:

The forthcoming Five-Year Fiscal Plan for Fiscal Year 1999 - Fiscal Year 2003 should conform to the requirements of the PICA Act. This new Plan should contain a revised projection of the previous plan and restore funds to the FJDP for FY99--at least sufficient to cover the previously projected amount (\$101.3 million), minus the cost of 12 court administrator positions (\$1.2)--until legislation specifically allocating those funds is proposed by the State.

Taking such action will assist the City to avoid the otherwise projected \$100.1 million revenue shortfall in FY99 and accordingly avoid the potential for a plan variance which would require further corrective action and possibly jeopardize the City's improving financial reputation.

The Administration is on the record regarding its commitment to utilize any state funding relief by translating it into accelerated tax relief, education funding and economic development. The City must continue to improve its competitive stature as a place to live, work and do business. Failure to fulfill the aforementioned commitment would be tantamount to abandoning the principles that have contributed to the fiscal recovery of the City to date. In its actions to stem economic decline in the City, the Administration's adherence to sound fiscal principles is crucial.

PICA staff urges that the Administration continue to exercise extreme caution in avoiding actions that potentially and unnecessarily result in over-extending the City in a fiscal sense. Caution is particularly dictated by the tremendous uncertainty associated with attempting to predict the ultimate scope and financial impact that any lengthy process of court unification could have on the City.

## Appendix A.

### Timeline and Identifiable Financial Impact of Implementing the Montemuro Plan<sup>10</sup>

**Phase I:** To be implemented by 7/1/98

The only costs scheduled to shift from the counties to the State are those associated with funding 150 court administration personnel statewide. According to the Administrative Office of the Pennsylvania Courts (AOPC), those personnel include twelve administrators in the FJDP. Their annual salaries are estimated at \$978,666 for FY99. Adjusting that figure to include projected estimated fringe benefits will raise the total to approximately \$1.2 million per year. Therefore, the total amount of funding expected to shift from the City to the State during Phase I is approximately \$2.4 million.

**Phase II:** To be implemented by July 1, 2000

The Plan does not clearly indicate the amount of costs shifting from the City to the State. The report lists specific categories of personnel costs that would be included in the State Court funding scheme. Justice Montemuro identifies the following positions for funding by the State:  
Court of Common Pleas Judges; Court of Common Pleas Judges Personal Staff;  
Philadelphia Municipal Court Judges; Philadelphia Traffic Court Judges; Municipal Court Staff; Court Reporters; Data Processing Personnel; Masters; Hearing Officers; Arbitrators; Parajudicial Officials; Administrative Support Staff

While it is difficult to determine the precise financial impact of this phase, this would represent a more dramatic shift in State funding than that occasioned by implementation of Phase I.

**Phase III:** Timeline: No specific date of completion.

The following are recommended by the Master to be incorporated into the unified judicial system during this Phase:

Domestic Relations; Adult Juvenile Probation and Parole; Investigative and Diagnostic Services; Law Libraries; Miscellaneous Services

The absence of specific dates makes a reliable estimate of the impact of this funding shift difficult.

**Phase IV:** Timeline: No specific date of completion.

The following are recommended by the Master to be incorporated into the unified judicial system during Phase IV:

Clerks of Courts; Prothonotaries; Clerks of the Orphans Court; Register of Wills

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<sup>10</sup> Source Justice Frank J. Montemuro, Interim Report of the Master, July 31, 1997.

The Prothonary's office and the Clerks of Orphans Court are presently included the FJDP budget. However, the Register of Wills and the Clerk of Courts funding is provided separately from that of the FJDP although both are funded through the City's General Fund. The estimated transfer to state control for these two portions of Phase IV, based on FY98 figures, would be approximately:

Register of Wills	\$2.6 million
Clerk of Courts	<u>\$3.8 million</u>
Total	<u>\$6.4 million</u>

Serious limitations to Montemuro's report from a financial planning viewpoint include a lack of specific dates for completion for phases II and III, and the fact that Justice "Montemuro declined to place a price tag on a unified judicial system, although in public speeches he has estimated that it could run to as much as \$818 million."<sup>11</sup>

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<sup>11</sup> Michael A. Riccardi, "Montemuro Report: Court Unification to Be Implemented in Four Steps," Legal Intelligencer, August 1, 1997, p. 1.