

THE ROLE OF QUASI-JUDICIAL OFFICERS IN TODAY'S CHANGING COURTS

BY MARY C. MCFARLAND

INTRODUCTION

Our classical picture of state courts today is intrinsically judge oriented — lone judges presiding from the bench, ruling on contested matters, and issuing orders to carry out their decisions. This image is accurate to a great extent in that there are more than 30,000 of these conventional, fully authorized judges in today's state trial courts.¹ However, that perspective is limited as well, because there are at least 9,000 additional judicial officers who perform and carry out vital civil and criminal court business everyday.² Judges do much of their work off the bench, and these extra-judicial officers ease the burden of ever-increasing demands on today's judges and make judicial work on and off the bench possible. Yet, despite their contribution to the work of the courts, basic information about these quasi-judicial officers is fragmented and not well-documented. This deficiency of knowledge is problematic for administrators and courts as they try to move forward with the changing needs of the judiciary.

No common name fits all of these quasi-judges. Instead, a variety of titles exist, including magistrate, master, alderman, mayor, commissioner, justice of the peace, surrogate, referee, and so forth. This variation in title arises because quasi-judges are primarily local governmental officials, and, as a result, the roles and duties of quasi-judges with the same title can vary from community to community within the same state. Consequently, no compilation of data on quasi-judges is available for policy makers, judges, and court administrators to use in order to assess the expansion, maintenance, or reduction of quasi-judicial positions.

Many elementary questions are unanswered. How are quasi-judges selected? What is the rate of compensation? What cases and proceedings do they handle? Additionally, much debate exists over the legitimacy of the power and authority these positions have and what level of qualifications they should possess. Because of the variant nature of these positions within communities and states, it is difficult to gather comprehensive information about these positions. What is their presence in the courts?

The National Center for State Courts previously established some basic facts about these positions. Drawing from the *State Court Case-load Statistics, 2002*, NCSC located the placement of these positions within the structures of the courts. The goal was to determine the exact titles of these positions, how many exist, how they are compensated, how they are selected and for how long, and what is their authority and jurisdiction. Subsequently, NCSC conducted a survey of individual states found to have quasi-judicial officers in their structure. (See http://www.ncsconline.org/WC/FAQs/KIS_QuaJudFAQ.pdf.) Here is a general comparative summary of the basic characteristics of quasi-judicial officers.

BASIC FACTS

Which courts and states use these judicial officers? Quasi-judges are dispersed throughout limited and general jurisdiction courts, although they are primarily located in limited jurisdiction. Seventy-four percent of the positions surveyed are in limited jurisdiction courts and 17 percent are in general jurisdiction. Many positions are specific to divorce, juvenile, water, probate, and traffic courts, but others may hear general cases, including small claims and misdemeanors. For example, New York and New Jersey have surrogates limited to probate and estate court, while Texas has justices of the peace whose responsibilities are general and who hear mostly cases of a small nature. Table 1 offers state-by-state details on the types of positions present and in which court each exists.

How many quasi-judges are there? Of the 9,000-plus positions that exist, almost half are justices of the peace, and one in four is a magistrate. Associate judges, commissioners, and mayors follow in frequency. It is important to note that most states are not limited to one type of these positions, but 14 states, the District of Columbia, and Puerto Rico have none at all. Many relatively small sized states have a significant number of positions, although there is a definite relationship between the number of quasi-judicial officers and population. For example, Louisiana has 390 justices of the peace and 250 commissioners, while California has only 377 commissioners, despite the wide difference in the population. There appears to be no relationship between a unified court structure and a lower or higher number of positions. There are 11 unified court structures, and six out of those 11 have quasi-judges, and three out of the six that have quasi-judges have two types of positions. Table 2 offers state-by-state numbers of quasi-judge positions that exist.

What compensation do quasi-judges receive? Generally, salaries for quasi-judges are lower than for full judges, but because these positions are controlled at a local level, salaries and compensation methods for these figures vary greatly. Some positions, such as special masters, serve at the pleasure of the courts, and each case carries varying compensation. Of the 67 positions surveyed, with multiple positions in several states, 22 reported information on salaries. The average salary was \$103,970, and salaries ranged from \$25,699 to \$127,000. Half of these positions were paid \$90,000 or more, while an additional six were paid between \$60,000 and \$90,000.

A survey of judicial salaries by NCSC in winter 2002 showed that in general trial courts, the average full judge was compensated \$107,969, with a range from \$82,000 to \$137,400.³ It is clear there is much more stability in the compensation of full judges, although the average salaries appear to be quite close. However, 25 of the posi-

tions within the 67 surveyed reported that salaries varied by locality or caseload and could not be estimated. This lack of hard data makes it difficult to make any real conclusions about compensation differences between judges and quasi-judicial officers.

If \$103,970 was to remain the accepted average salary for quasi-judges, it would suggest that many localities hold these positions in much the same regard as full judges. Many have argued for these positions as a way to cut costs by delegating smaller judicial duties to quasi-judges who demand less compensation. Based on the information collected by NCSC, this is true in about half of the states reporting. Still, the data is inconclusive and not comprehensive. See Table 3 for detailed state-by-state compensation data.

How are quasi-judges chosen and for what length of service?

Generally, a governing body at the state or local level appoints these positions. This body also determines the maximum number of positions within the state as well as their tenure. Most positions are for two or four years. Mayors are one of the exceptions, because many take on judicial roles, including presiding over municipal ordinance violations, and serve as long as their term as a local executive.

Many states have the same basic qualifications for judicial officers, including residency and degree requirements, but vary on whether or not legal training is required. This is a much-contested facet of quasi-judges, particularly in areas where the quasi-judges perform many of the same judicial functions as full judges.

From the survey sent to court administrators, 21 percent of quasi-judges are required to be legally trained, and in most cases, these positions were under general jurisdiction. However, 71 percent are not required to have legal training and are primarily found in limited jurisdiction courts. See Table 4 for state-by-state details on legal education requirements.

What are the differences in jurisdiction and authority among quasi-judicial officers? Although the majority of quasi-judges hear both civil and criminal cases, with limits on the amount in dispute and maximum sentencing, there is still specialization. Referees oversee water courts, associate judges hear preliminary felony hearings, and special masters counsel couples seeking to be married. Every position in every state and locality has different duties and tasks, specifically granted to them by the constitution or governing body. Some duties are explicit, most are ambiguous. Referees in Colorado may be confined to the water court, while justices of the peace in New York can hold small claims court, hear preliminary felony hearings, and issue writs and warrants.

POLICY AND LEGAL DEBATES

Now that the basic characteristics of these positions have been discussed, there are several other overlapping subjects of debate. The controversy of allowing lay judges, with little or no legal training, to sit on the bench and preside with partial judicial authority is at the center of the conflict. The discussion of lay judges on the bench concerns whether or not judicial authority can be delegated to anyone, legally trained or not, who is not a fully authorized judge. Specifically, this idea relates to quasi-judges issuing final decisions. Often, quasi-judges only offer recommendations to judges rather than decisions of their own. Additionally, when a quasi-judge passes a decision, his or

her decisions are often subject to review and ratification by a regular judge.

Little scholarly work has been produced regarding the issues surrounding quasi-judges, and hardly any effort has been made to resolve them. Just as the actual duties and functions of the positions lack clarity and cohesion, so do the unresolved legal issues. There is no indication that the necessary discussion to bring about change to resolve these conflicts is taking place.

The primary unresolved concern about quasi-judges is that many are not legally trained. Twenty years ago, nonlawyers occupied a third of judicial positions within the United States. The debate centered then, and does now, on whether a lack of legal knowledge and judicial training adversely affects lay judges' capacities to exercise objective judicial authority. As stated earlier, 70 percent of the positions surveyed by NCSC did not require legal training.

Are citizens getting second-rate justice when quasi-judges hear their cases? In a commentary in the *Justice System Journal* from 1981, Marie Provine explores the effect that the large presence of nonlawyers in the judicial community has on members of the bar, the bench, and the community.⁴ Provine suggests that nonlawyer judges are not a threat to lawyers or legally trained judges, despite the fact that quasi-judges perform many of the same judicial functions. Most cases handled by quasi-judges, while important, are small in nature. They are daily demands on the court such as traffic tickets, ordinance violations, divorces, marriages, and warrant requests. Provine argues that lay judges are destined to stay with these small cases.

In a book written five years later, *Judging Credentials: Nonlawyer Judges and the Politics of Professionalism*, Provine again addresses concerns about nonlawyers.⁵ She describes the use of lay judges as widespread in an effort to overcome financial challenges, geographical isolation, and a shortage of lawyers. The most convincing defense for the use of lay judges is that they provide "inexpensive, accessible adjudication for minor civil and criminal cases."⁶

Provine also draws on the absence of a uniform title for these positions: "The variety of titles reflects the independence with which states arrange their judicial system, but it masks the underlying similarity among lay courts."⁷ The primary reason for variance is that these positions' duties and structure are mandated locally. At the same time, in most courts, they have generally the same function: to ease the burden upon full judges and expedite justice in a timely, cost-efficient manner.

Despite the argument for using lay judges to save time and money, Provine candidly remarks that this argument will always fail because "non-attorneys should not be authorized to act as judges when attorney judges are a viable option."⁸ Thus, lay judges who are without legal training often become mediators and dispute resolution specialists. They are much more accepted in this role, because they have no legal authority to bind the parties like a judge does.⁹

Limited jurisdiction courts are almost always specialized centers of justice and, in most cases, centers of mediation and dispute resolution. For example, special masters in family courts help settle divorce conflicts before the case is finalized before a judge.

Despite the trend toward mediation, many quasi-judges still have the authority to hear a case, make a decision, and pass down

a sentence. Lawyers and judges alike have asserted that citizens are suffering from second-rate justice with nonlawyer judges. Nonlawyer judges are often accused of encouraging guilty pleas and avoiding trials, especially jury trials, to avoid legal complexities they are unfamiliar with. Lawyers claim that prosecutors are often forced to offer generous plea bargains to ensure a conviction. In this argument, the lack of legal and ethical training leads to unprofessional behavior in the courts.

Carol Elewski and Colin Fierman also believe justice is compromised under lay judges.¹⁰ Referring to the town justice system in New York State, Elewski and Fierman argue that although lay input has been traditionally valued within the justice system, justices of the peace in New York, who receive no legal training and are hardly limited by oversight, are handing down flawed verdicts. They claim these town justices show a distinct bias toward figures of authority. Fierman and Elewski argue that justice is compromised when too much authority is placed in untrained, unauthorized hands. Additionally, errors are not likely to be caught or corrected. The lack of a far-reaching grasp of law and its procedures leaves citizens without the justice they sought.

Many judges oppose the idea of quasi-judges, not for a lack of legal training, but because they believe that the delegation of judicial functions, such as issuing decisions, is unconstitutional. They believe the wide authority and jurisdiction of these positions is unwarranted and that their authority is too much like a full judge. Can the power to hand down a final decision be delegated to anyone less than a fully authorized judge?

In 1995, the Utah Supreme Court said no.¹¹ It argued that commissioners could not exercise ultimate judicial power in criminal misdemeanor cases because that power was a "core judicial function" and was specifically invested in the courts and implicitly in full judges of the court. Courts could no longer use commissioners to perform core functions such as imposing sentences, passing judgments, and accepting pleas. The comparison offered by the court was that just as a legislator cannot give away his power to vote to another person, so a judge cannot grant his power to decree decisions to anyone else. Suddenly, the power of commissioners was diminished, and their decisions under scrutiny.

This judgment of the Utah Supreme Court promotes and supports the policy of many states and localities that restricts the power of quasi-judges to making recommendations to full judges. More and more, states are seeing quasi-judges and judicial officers as handing down "second-class justice." The elimination of the authority to issue final decisions is a direct result.

Without addressing the real issue of where exactly these positions belong within the structure of the courts, states and localities are merely glancing over quasi-judges and their activities. It would be difficult to eliminate quasi-judges completely because of the sheer volume and diversity of functions they perform and because of significant budget problems that constrict the court from creating more judgeships. Nonetheless, it is becoming equally difficult to maintain them without addressing the issues reviewed here. A serious discussion about what authority these positions should have needs to occur.

POSSIBLE SOLUTIONS:

Starting a Discussion

The solution to each of these problems is debate; there needs to be a discussion regarding the issues surrounding these positions. Workable solutions can then be created. Robert Tobin has suggested that the most plausible solution to the problems created by quasi-judges is to use merit selection for all positions. Such a process, governed by discussion, debate, and analysis, would result in the best candidate for a position.¹² Requiring legal training and emphasizing experience during selection is the best means to eliminate the disparity between all types of judicial officers. Demanding pay parity and judicial discipline through universal and comprehensive performance standards can also help remedy the situation.

The presence of quasi-judges and their qualifications, salaries, jurisdiction, and responsibility are not uniform, and only grow in ambiguity. There is a distinct lack of clarity regarding where quasi-judges should exist in an increasingly unified court environment. This article has tried to present the characteristics, features, and pressing issues of a significant portion of the officers who make up our justice system. Perhaps bringing the existence and function of these positions to light will help initiate a serious and academic discussion.

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NOTES

1. *State Court Caseload Statistics, 2002*. Court Statistics Project, (Williamsburg, VA: National Center for State Courts, 2003).
2. Roger Hanson. "Quasi Judicial Officers and Judicial Adjuncts." National Center for State Courts. http://www.ncsconline.org/WCDS/Topics/topic1.asp?search_value=Quasi-Judicial&20Officers%20and%20Judicial%20Adjuncts (May 2003).
3. *Survey of Judicial Salaries*. 27, No 1. (Winter 2002).
4. Marie Provine. "Persistent Anomaly: The Lay Judge in the American System." *Justice System Journal*. 6 No. 1. (1981): 28-43.
5. Marie Provine. *Judging Credentials: Nonlawyer Judges and the Politics of Professionalism*. (Chicago: University of Chicago Press, 1986).
6. *Judging Credentials*, Provine, 25
7. *Id*, 24
8. *Id*, 50
9. *Id*, 51
10. Carol Elewski and Colin Fierman. "Do Nonlawyer Justices Dispen- sence Justice?" *New York State Bar Journal*. 69, No. 1 (1997): 20-22.
11. *Salt Lake City v. Ohms.*, 881 P.2d 844 (Utah 1994).
12. Robert Tobin. *Creating the Judicial Branch: The Unfinished Reform*. (Williamsburg: National Center for State Courts, 1999).

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JURISDICTION OF QUASI-JUDGES

TABLE 1

STATE	POSITION	JURISDICTION	POSITION	JURISDICTION	POSITION	JURISDICTION
Alaska	Master	General	Magistrate	Limited		
Arizona	JOP	Limited	Master	General		
Arkansas	JOP	Limited				
California	Commsnr	General	Referee	General		
Colorado	Magistrate	General	Referee	General		
Delaware	JOP	Limited	Alderman	Limited	Chancellor	Limited
Georgia	Assc. Judg	Limited	Magistrate	Limited		
Idaho	Magistrate	General				
Illinois	Assc. Judg	General				
Iowa	Assc. Judg	General	Magistrate	n/a		
Kansas	Magistrate	General				
Kentucky	Commsnr	Both L & G				
Louisiana	Commsnr	General	Mayor	Limited	JOP	Limited
Mississippi	JOP	Limited	Chancellor	Limited		
Missouri	Commsnr	General	Assc. Judg	General		
Montana	JOP	Limited				
Nevada	JOP	Limited				
N. Hamsph.	Master	General				
N. Jersey	Surrogate	General				
New York	JOP	Limited	Surrogate	Limited		
N. Carolina	Magistrate	Limited				
Ohio	Mayor	Limited				
Oklahoma	Assc. Judg	Limited				
Oregon	JOP	Limited	Magistrate	General		
Pennsylvania	JOP	Limited				
Rhode Island	Magistrate	Both L & G				
S. Carolina	Master	General	Magistrate	Limited		
S. Dakota	Magistrate	General				
Texas	JOP	Limited				
Utah	Commsnr	Both L & G				
Vermont	Magistrate	Limited				
Wyoming	JOP	Limited				
W. Virginia	Magistrate	n/a				

TOTAL NUMBER OF JUDICIAL OFFICERS BY STATE

TABLE 2

STATE	ALDERMAN	ASSOC. JDG	CHANCELLOR	COMMISSIONER	JOP	MAGISTRATE	MASTER	MAYOR	REFEREE	SURROGATE
Alaska							60	9		
Arizona						84				
Arkansas						55				
California				377					31	
Colorado						32			7	
Delaware	8		5		59					
Georgia		33				505				
Idaho						83				
Illinois		367								
Iowa		67*				135				
Kansas						74				
Kentucky				127						
Louisiana				11	390			250		
Mississippi			45		191					
Missouri		179		32						
Montana					70					
Nevada					69					
N. Hampshire							11			
N. Jersey										21
New York					2300					62
N. Carolina						706				
Ohio		77						428		
Oklahoma										
Oregon					30					
Pennsylvania					550	6				
Rhode Island						13**				
S. Carolina						300	21			
S. Dakota						149				
Texas					836					
Utah				8						
Vermont						5				
Wyoming					8					
W. Virginia						157				
TOTALS	8	723	50	547	4642	2225	41	678	38	83
								TOTAL		9035

COMPENSATION OF QUASI-JUDGES: STATE BY STATE

TABLE 3

STATE	POSITION	SALARY	POSITION	SALARY	POSITION	SALARY
Alaska	Master	\$68,000	Magistrate	Varies		
Arizona	JOP	\$30-85,000	Master	Varies		
Arkansas	JOP	Varies				
California	Commsnr	\$113,000	Referee	\$113,000		
Colorado	Magistrate	\$72,768	Referee	Varies		
Delaware	JOP	\$60,000	Alderman	Set Locally	Chancellor	Varies
Georgia	Assc. Judg	Varies	Magistrate	\$59,500		
Idaho	Magistrate	\$91,000				
Illinois	Assc. Judg	\$127,000				
Iowa	Assc. Judg	\$96,000	Magistrate	\$29,000		
Kansas	Magistrate	\$47,000				
Kentucky	Commsnr	Varies				
Louisiana	Commsnr	Set Locally	Mayor	Set Locally	JOP	Set Locally
Mississippi	JOP	Varies	Chancellor	Varies		
Missouri	Commsnr	\$96,000	Assc. Judg	\$91,000		
Montana	JOP	Set Locally				
Nevada	JOP	Varies				
N. Hamsph.	Master	\$95, 678				
N. Jersey	Surrogate	\$91,650				
New York	JOP	Set Locally	Surrogate	\$120,000		
N. Carolina	Magistrate	\$26,889				
Ohio	Mayor	Set Locally				
Oklahoma	Assc. Judg	Varies				
Oregon	JOP	Set Locally	Magistrate	\$69,180		
Pennsylvania	JOP	\$59,000				
Rhode Island	Magistrate	Varies				
S. Carolina	Master	Set Locally	Magistrate	Set Locally		
S. Dakota	Magistrate	Varies				
Texas	JOP	Set Locally				
Utah	Commsnr	\$92,955				
Vermont	Magistrate	\$78,000				
Wyoming	JOP	Varies				
W. Virginia	Magistrate	Varies				

LEGAL EDUCATION REQUIREMENTS: STATE BY STATE

TABLE 4

STATE	POSITION	LAWYERS?	POSITION	LAWYERS?	POSITION	LAWYERS?
Alaska	Master	yes	Magistrate	no		
Arizona	JOP	no	Master	no		
Arkansas	JOP	no				
California	Commsnr	yes	Referee	yes		
Colorado	Magistrate	yes	Referee	n/a		
Delaware	JOP	n/a	Alderman	no	Chancellor	n/a
Georgia	Assc. Judg	n/a	Magistrate	yes		
Idaho	Magistrate	yes				
Illinois	Assc. Judg	yes				
Iowa	Assc. Judg	yes	Magistrate	yes		
Kansas	Magistrate	yes				
Kentucky	Commsnr	yes				
Louisiana	Commsnr	n/a	Mayor	no	JOP	no
Mississippi	JOP	no	Chancellor	no		
Missouri	Commsnr	n/a	Assc. Judg	n/a	JOP	
Montana	JOP	no				
Nevada	JOP	no				
N. Hamsph.	Master	yes				
N. Jersey	Surrogate	no				
New York	JOP	no	Surrogate	yes		
N. Carolina	Magistrate	no				
Ohio	Mayor	no				
Oklahoma	Assc. Judg	n/a				
Oregon	JOP	no	Magistrate	yes		
Pennsylvania	JOP	no				
Rhode Island	Magistrate	yes				
S. Carolina	Master	yes	Magistrate	no		
S. Dakota	Magistrate	n/a				
Texas	JOP	no				
Utah	Commsnr	yes				
Vermont	Magistrate	n/a				
Wyoming	JOP	n/a				
W. Virginia	Magistrate	n/a				