

PART-TIME MAGISTRATE JUDGE'S CORNER

A series about the “part-timers”

DID YOU KNOW THAT WE WERE ALL ONCE PART-TIME? Since 1793 “Commissioners” served the federal judiciary and were originally paid on a fee for service basis.¹ Circuit courts were authorized to appoint as many commissioners as necessary. In 1878 the Department of Justice estimated that nearly 2,000 commissioners served the federal courts. Most commissioners were lawyers who carried out their judicial responsibilities while pursuing their own practice.²

Paying part-time judges from the fees and costs they collected was once common in the United States. In Pennsylvania a “Justice of the Peace” was paid based on the fines and costs collected from defendants found guilty, but received no compensation for a not guilty verdict! This pre-colonial practice continued until the 1968 state constitutional amendments took effect in 1970. The Yonkers City Justice Court was the last court in New York to base a judge’s salary on the fines collected. The legislature ended that practice in 1978.

Commissioners were replaced by magistrates in 1968. The Federal Magistrates Act of 1968 (82 Stat. 1107) created the title “Magistrate” and expanded the magistrates’ authority over that of the commissioners. The Judicial Improvements Act of 1990 (104 Stat. 5089) changed the office title from “magistrate” to our current title “magistrate judge.”

The number and type of magistrate judgeships is now set by the Judicial Conference of the United States. Magistrate Judges are either: full-time; part-time; or, combined. A combined magistrate judge position is one where the person is both the judge and the clerk of court. While most magistrate judges today (93%) are full-time judicial officers that was not the case early on. In 1970 only 13% of “magistrates” were full-time. Ten years later full-timers made up just 46% of the magistrates. Full-timers were 90% of the magistrate judges by 2002. Today part-timer’s make up less than 7% of the total number of magistrate judges and there are only 3 “combined” positions left. The following chart illustrates this dramatic trend.³

¹ See for example, *U.S. v. Allred*, 155 U.S. 591 (1895).

² An interesting history of the commissioner system is available for those who are interested on the FJC website: http://www.fjc.gov/history/home.nsf/page/admin_03_02.html. However, the 1963 Annual Report of the Judicial Conference noted that of the 720 commissioners then in office, nearly 30% were not lawyers. A lot has changed in 50 years!

³ Chart prepared from statistics found in the Annual Reports of the Director of the Administrative Office of the United States Courts.

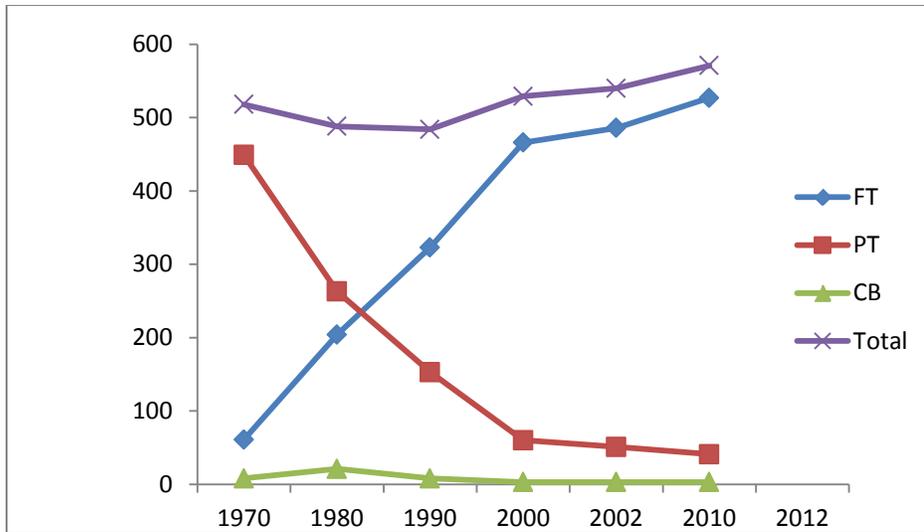


Chart showing historical growth of full-time and decline of part-time positions.

While not yet extinct, “part-time” magistrate judges have been called an endangered species. Despite the dramatic shift in our population from part-time to full-time over the past twenty years there will always be a need for “part-timers” in the remote locations. More on this “endangered species” in the next issue of the FMJA Bulletin.⁴

⁴ Written by William ‘Skip’ Arbuckle, USMJ, M.D. Pa., Williamsport. Future articles will answer burning questions like: What do they actually do?; What do they do when they are not judging?; How much time is part-time?; and, How is their authority limited (are they real judges)?