

Submitted Testimony

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**REPORT IN SUPPORT OF THE
JUDICIARY'S 2016-2017 BUDGET REQUEST**

The New York City Bar Association¹ urges the Legislature to accept the Judiciary's 2016-2017 Budget Request in its entirety.

The Budget Request seeks a 2.4% increase of \$48.25 million in the "All Funds Budget." This amount is necessary to fund mandatory salary increases for represented nonjudicial employees, annualization of the cost of five Family Court judgeships created effective January 1, 2016, and increases in nonemployee contractual obligations. The increase is also required to address staff shortages in the courts and to fund civil legal services for the most vulnerable New Yorkers.

The increase in the Judiciary Budget Request is necessary to maintain staffing levels required for the courts to function efficiently and effectively. For years, the Judiciary faced significant non-discretionary cost escalation without corresponding funding increases. In Fiscal Year 2009-2010, the General Fund State Operating portion of the Judiciary Budget was \$1.786 billion. Six years later, that amount is \$1.85 billion, an increase of only \$64 million. This constitutes an increase of about 0.6% on an annual basis, which is far below the rate of inflation. The courts are still recovering from \$170 million in cuts imposed on the Judiciary in 2011. There are now 2,000 fewer court personnel than there were in 2009. Though greater efficiency has ameliorated the impact of staff reductions to some extent, the harsh effect of the cuts still burden the entire court system.

The Judiciary Budget Request includes an increase of \$15 million for civil legal services to help ensure equal access to justice for low income New Yorkers facing housing, consumer debt and other legal problems pertaining to the essentials of life. Adequately funded legal services helps domestic violence victims, senior citizens, and the formerly incarcerated seeking reentry into society as well as other vulnerable individuals and families. For every dollar invested in civil legal services, the State of New York receives more than ten dollars in economic benefits as a result of reduced social services and other public expenditures, as well as an inflow of federal benefits.²

¹ This report was authored by the New York City Bar's Council on Judicial Administration. The Council is chaired by Steven M. Kayman. The report was prepared by the Council's Judiciary Budget Subcommittee, Janet Ray Kalson (Chair).

² Testimony of Neil Steinkampt, Managing Director, Stout Risius Ross, at the Chief Judge's Hearing on Civil Legal Services, Appellate Division, First Dep't, Sept. 29, 2015.

Since the \$170 million cut in the Judiciary Budget in 2011, staff shortages have seriously disrupted the smooth functioning of the courts. There are delays in opening courtrooms and in literally getting through the courthouse doors due to inadequate numbers of court officers. Even on rainy and extremely cold days, litigants endure unduly long waits outside of courthouses before they can be screened. Shortages of personnel lead to endless lines in clerks' offices, lengthy delays in filing essential court documents, and extensive backlogs in entering judgments and other legal filings essential for smooth court functioning. Shortages of interpreters delay proceedings on a daily basis.

In Supreme Court, the elimination of court clerks has caused extensive difficulties. In Brooklyn, the motion support office, which was previously staffed by 18 clerks, is now staffed by 3. Stacks of papers wait to be entered or processed, including judgments. Many judges do not have fulltime clerks, and the courts are often staffed by clerks "de jour" who are unfamiliar with procedures in the parts to which they are assigned. In Manhattan, there is a six week delay in entering judgments. In many counties, it takes several months to get a divorce judgment signed after the papers have been submitted. In Queens Supreme Court, litigants cannot obtain orders and other critical case documents because there are not enough clerks to file and scan the papers. In one case, a settlement was "so ordered" on December 2, 2015, and as of January 22, 2016, the defendant's counsel was unable to obtain a copy of the order. As the defendant is 96 years old, time is obviously of the essence.

In the Supreme and Family Courts, cutbacks in judicial resources have had profound effects on litigants and attorneys. Trials for routine cases in Supreme Court often take twice as long as they did previously because the lack of resources, staff and in some cases, early closing times, makes it impossible for judges to devote concentrated periods of time to one matter. In juvenile delinquency cases in Family Court, while improvements have been made in spite of cutbacks, there are frequent and lengthy adjournments, caused, in part, by the 4:30 p.m. court closure time. In some counties, in sex crime/special victim cases, which frequently have young victims, the victims are forced to take the stand on two or more dates to complete their testimony -- leading to difficult and traumatizing rehashing of their prior testimony and experiences.

Prolonged trials also cause delays in providing rehabilitative services for juvenile delinquents/troubled youths. Cases are not given large enough blocks of time and are not tried day-to-day. The often lengthy adjournments lead to hardship, discontent and frustration as well as the loss of witnesses with critical evidence who are unwilling or unable to return to court. Where borough offices are located within Family Court buildings, the court's early closing time also hinders the ability of the Presentment Agency to interview victims and witnesses.

The wait for an initial court date for interstate child support cases in some counties can be 12-15 weeks. Lengthy adjournments -- in some counties of up to 18 or 20 weeks -- delay the issuance of final orders of support, a situation detrimental both to the custodial parents and children who are not receiving child support, and to the noncustodial parents, who often feel overwhelmed by arrears in support that accrue because of the final orders' retroactive effect. The 4:30 p.m. closing time for Family Court often prevents child support cases from being completed on the same day, reduces time slots for hearings, and unduly limits the amount of time

a judge may give to hear a case. Adjournments are frequently granted on voluntary returns on warrants, allowing some respondents to abscond from court and necessitating the issuance of multiple warrants on the same dockets.

The appellate courts experience similar problems. Appeals in the Second Department are backlogged, with cases held up for a year or more awaiting oral argument.

In New York City, Criminal Court is short ten judges. Because of the shortage of judges and court staff, there are lengthy trial delays in criminal cases. The delay in getting a case to trial is most acute in misdemeanor cases in Criminal Court, although felony cases in New York City Supreme Court are also experiencing trial delays. This situation is damaging to both defendants who are jailed, who face longer periods of incarceration, and those who are not, but live with the uncertainty of multiple postponements. Criminal defendants awaiting trial are often fired or suspended from their jobs, and risk losing their homes if they live in public housing -- damage that may be hard to reverse, even if the defendants are ultimately acquitted or exonerated.

Six judges in New York City Criminal Court had no court attorneys for the first half of 2015, and though four court attorneys were eventually hired, two judges remained without court attorneys for an entire year. New York City Criminal Court is 200 court officers below its staffing guidelines and about 100 court officers short of what is needed for the court to adequately staff its parts. As a result, many parts are unable to open or must close prematurely. The New York City Criminal Courts need an additional 15 senior court clerks and three associate court clerks to be fully staffed. Parts that should have two or three clerks assigned regularly open with one. The staff shortage results in increased overtime and inadequate help in the courtroom.

The shortage of court reporters in New York City Criminal Court in 2015 was so severe that the court was forced to use digital electronic recording devices in some parts. Currently, the New York City Criminal Court has 10 reporters fewer than the required number.

There have been so few interpreters that the New York City Criminal Court has been forced to rely on per diem interpreters, which increases costs, decreases the quality of translation services, and leads to extensive delays in proceedings, hearings, and trials. Defendants literally languish in jail due to a shortage of court interpreters. Recently the Staten Island trial of an 84 year old Urdu-speaking defendant was delayed for two days because there was no Urdu interpreter. While the defendant was ultimately released, he was unnecessarily jailed for two days. In another case on Staten Island, the defendant's proceeding was delayed for two days because there was no Sinhalese interpreter. In Queens, an interpreter crisis was recently averted only because the judge drafted his mother-in-law to provide French translation services. In the Bronx, a Legal Aid Lawyer was unable to speak to his client for many days because there was no Fulani interpreter. In Queens, a Legal Aid supervisor reports that many criminal hearings and trials were postponed from October/November 2015 to January/February/ March 2016 (and in some cases April 2016) in hope that parts would be open and staffed. Many defendants in these proceedings are languishing in jail in the interim because they are unable to post bail.

Data entry staffing levels are at an all-time low in New York City Criminal Court which has resulted in delays in case initiation in summons parts and in entering information into

databases. These shortages prevent crucial information -- such as orders of protection -- from getting to the Department of Criminal Justice, the police department, district attorneys' offices and defender organizations.

At Housing Court, there are frequently long lines outside the courthouses in the morning, even in inclement weather. Delays for interpreter services are the norm. A shortage of clerks leads to lengthy delays in filing papers, particularly in Brooklyn, where it is not uncommon for attorneys to wait in line for over an hour. Unrepresented tenants wait for hours in Brooklyn, the Bronx and Queens in the clerks' offices to file answers, HPs (Housing Part cases) or orders to show cause. Clerks do not have the time to thoroughly explain answers or other forms. Parts can have 90 or more cases on their calendars, making it extraordinarily difficult for judges to take the time necessary to address the concerns of *pro se* litigants and get through the day's calendar. Judges in Resolution Parts should have a minimum of two court attorneys but often only have one or are forced to share a court attorney with another judge. The help centers are understaffed, and people wait hours for assistance. The clerks' offices close at 4:30 p.m. except for emergency applications, causing hardships for both attorneys and unrepresented respondents, who may take time off from work in the afternoon to file answers or other papers, only to be turned away.

In Bronx Housing Court, litigants are told that they cannot adjourn their cases because the dockets are too full. Court staff cannot find files. A sign was posted in the clerk's office stating that due to short staffing, files not found on the shelf may not have been filed away; the sign states that people can check back at a later date to see if a file was re-shelved. *Pro se* litigants and attorneys endure long lines at the clerk's office. Orders to show cause are often put before judges without the files, depriving the judges of crucial information to assess the requests for relief.

In New York City Civil Court, judicial and staff shortages are problematic as well. Currently, No Fault cases are being assigned trial dates in February 2017. Litigants must wait a year to get a pretrial conference. The shortages of judges and staff are especially harmful to consumer debtors. More than a third of the cases in Civil Court are filed by debt buyers who purchase debt for pennies on the dollar and then sue without necessary supporting documents. There is widespread sewer service in consumer debt proceedings and 40% of the cases result in default judgments. Consumers often find out about judgments when their wages are garnished or bank accounts seized. Unfortunately, due to staff shortages, the courts are ill equipped to deal with consumers' attempts to vacate these default judgments. Old files containing the affidavits of service required to contest sewer service are off site and take months to retrieve which prevents litigants from proving defective service defenses. In newer cases, many defendants cannot successfully assert improper service defenses within the 60 day deadline imposed by the CPLR because the affidavits of service have not been placed in the court file. *Pro se* defendants and attorneys representing consumer debtors are often pressured to settle without presenting their legal claims to a judge.

In Manhattan, there are presently no trials scheduled in the Commercial Landlord Tenant Part due to a lack of judges. This creates an unfair and commercially untenable situation. The clerks are currently seven months behind in issuing judgments. There are extensive delays in

docketing and filing; for low priority cases, docketing and filing can take over a year. Clerks' assignments are literally double what they used to be. While previously there was an appeals clerk and a judgment clerk, the appeals clerk is now also the judgment clerk. Boxes of transcripts and other documents are not filed due to staff shortages. The calendar clerk is also the floating part clerk. The supervisor used to supervise six staff and now supervises 21. The small claims office may need to be merged into the general clerk's office due to staff shortages, and when a clerk is out sick, staff must be taken from other departments to maintain essential services. New York County Civil Court has recently lost two more clerks, who we understand are not being replaced. Recently, an attorney with the New York City Bar Association waited for months to get a default judgment entered, and when he went back to the clerk's office to correct a problem with the caption, no clerk was available to help. Disabled litigants encounter delays in being served because ADA trained clerks are sent to other courts without trained replacements.

As this far from complete listing of the problems resulting from funding shortages demonstrates, the Judiciary Budget Request should be approved in full.³ The funds requested are required for the courts to adequately perform their constitutional and statutory obligations. Funding for adequate staffing and services is necessary for the timely and fair administration of justice.

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³ The Judiciary Budget Request does not include funds for the judicial pay increase recommended on December 24, 2015 by the Commission on Legislative, Judicial and Executive Compensation. These funds will be requested in a supplemental appropriation, because the Judiciary submitted its Budget Request to the Governor on December 1, 2015, as required by the New York State Constitution. Salaries that appropriately compensate the courts' judges are essential to attract and retain a highly qualified and experienced state judiciary. This need is especially pressing in New York, where judges handle a multitude of complex cases involving business and financial institutions as well as an ever lengthening docket of Family Court, Housing Court, consumer debt, guardianship and other cases affecting the daily lives of our state's residents.