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JOINT LEGISLATIVE HEARING ON THE 2020-21 JUDICIARY BUDGET

**REMARKS OF CHIEF ADMINISTRATIVE JUDGE LAWRENCE K. MARKS
FEBRUARY 12, 2020**

Good morning Chairpersons Krueger, Weinstein, Hoylman, and Dinowitz, and good morning to all the other committee members here today. I am Lawrence Marks, Chief Administrative Judge of the Unified Court System. On behalf of Chief Judge Janet DiFiore, I'm pleased to be here this morning to discuss the Judiciary's budget request for the 2020-2021 State Fiscal Year.

As was true for our request for the current Fiscal Year, this request is modest and straightforward. It calls for an increase in Judiciary spending of \$45.9 million, or two percent over the spending level in our current operating budget. This is in keeping with the Governor's benchmark. The increase will permit the Judiciary to ensure adequate court staffing, especially in court clerk, court officer, interpreter, and other courtroom and back-office positions. The personal service component includes funding for all judicial and filled nonjudicial positions; the annualized costs of four new judgeships created last year; and anticipated court officer academy classes. Its nonpersonal service component includes funding for attorney for the child representation costs; cost-of-living adjustments for Children's Centers and CASA programs; new contractual obligations associated with court appearance notifications in criminal cases; operational costs arising from our new presumptive alternative dispute resolution initiative; and the costs for expansion of centralized arraignment parts outside New York City.

Our budget request also seeks \$25 million in capital appropriations, to address infrastructure technology, security equipment, and records management needs. This reflects level spending over the current Fiscal Year.

Support for Chief Judge DiFiore's Excellence Initiative continues to be a principal driver of the annual Judiciary Budget request. Begun in 2016, the Excellence Initiative is an ongoing, self-critical, data-driven analysis of the efficiency of our courts. Involving the efforts of all participants in the justice system – Administrative Judges, trial judges, court staff, the bar – the Excellence Initiative tackles case backlogs and delays by taking the necessary steps, such as redeployment of personnel or modification of case management processes, to ensure that the courts deliver timely and efficient justice. To date, it has been broadly successful in reducing calendar congestion and moving older cases to resolution in every jurisdiction of the state and in every level of court.

The Excellence Initiative cannot be successful without sufficient resources. In the State-funded courts, we need adequate human capital: judges to preside over the cases that are filed, and enough court clerks, court security, and other personnel to support the work of the judges. We also need modern technology to facilitate their efforts.

As always, our budget is built to meet these fundamental needs. But it also calls for the funding necessary to continue (and, where necessary, to expand) our long commitment to many important programs through which the Judiciary serves the community.

Foremost among these are our Civil Legal Services grants. Through this program, we seek to increase access to justice by helping ensure that lower income New Yorkers have legal representation in civil cases. For 2020-21, we are asking to continue the present level of State support for this program. This includes \$85 million, to be distributed through contracts with over 80 nonprofit civil legal services organizations across the State that help thousands of New Yorkers with critically important legal matters, such as housing-related disputes, family disputes, access to health care and education, and efforts to secure subsistence income.

In addition to the \$85 million distributed through the Civil Legal Services grants program, we are again seeking \$15 million to be passed on to the IOLA Fund, which also is dedicated to supporting civil legal services organizations for the economically disadvantaged.

Another important program to which we have committed ourselves, one that is particularly important to the success of the Excellence Initiative, is presumptive alternative dispute resolution. This program provides some form of court-sponsored ADR, in particular mediation, at the earliest possible stage of civil cases. Presumptive early ADR, when successful, can reduce the high cost of civil litigation, improve the quality of case outcomes, and help ameliorate case backlogs and delays. Since the program's inception this past fall, litigants in nearly 40,000 cases have participated in some form of ADR, including cases in Supreme Court, the lower civil courts, Family Court, and Surrogate's Court.

Relatedly, our budget request also includes \$8.5 million, an increase of \$1.1 million over the current year, for the nonprofit community dispute resolution centers. These programs are a key component of our presumptive ADR efforts, providing mediation services in a wide range of cases in communities across the state.

Our budget request also includes \$47 million in funding for New York City criminal defense providers for the purpose of reducing individual attorney caseloads, a program begun a decade ago, when caseload standards were first adopted. The funding sought is at the same level as this year, but with a technical change: suballocation language to pass on this funding to the State Office of Indigent Legal Services, which also has adopted criminal caseload standards. This will ensure uniformity in those standards and provide a more efficient process for distribution of all sources of State funds.

The Budget also includes funding to meet the State's obligations under collective bargaining agreements with unions representing all of the Judiciary's approximately 14,000 represented employees. These agreements cover terms and conditions of employment through March 31, 2021.

A brief word about compensation for 18-B attorneys and attorneys for the child.

Although an increase in the hourly rates is long overdue -- as has been emphasized by the Chief Judge and many others -- 18-B costs remain the obligation of local governments. Attorney for the child costs, by contrast, are a State obligation, funded through the Judiciary Budget. Because attorney for the child rates have long been paired with 18-B rates, any increase in the former must await a State commitment to address an increase in the latter. As 16 years have now passed since the last rate increase, and as it grows increasingly difficult to attract lawyers to serve as 18-B counsel and as attorneys for the child, we strongly urge that attention now be paid to this issue.

[Not included in the Judiciary Budget is a request for funding to meet court system needs arising out of implementation of the raise-the-age ("RTA") statutes enacted a few years ago. Those needs are considerable: for 2020-21, they will amount to \$22.1 million. They include the cost of providing additional court staff; modifying courtrooms; expanding off-hour proceedings; training for judicial personnel designated to serve as accessible magistrates and for their support staff; greater use of attorneys for the child; development of new case management systems to accommodate and process RTA cases across multiple venues; and creation of hybrid youth parts, combining superior criminal court with a juvenile delinquency part. We are advised that funding to meet these needs will be available, as it is in the current Fiscal Year, through a suballocation from the Executive Branch.

The Judiciary Budget request also does not include funding for increases in judicial compensation. While the statutory quadrennial salary commission that met last fall made no recommendation for any increases in judicial salaries, we understand that the issue of judicial salary increases may be reconsidered later this year. Should that happen, and should an increase be authorized to take effect during 2020-21, the Judiciary will absorb the cost of that increase out of its available funding.]

I end my remarks with a call for your attention to what is today the most important priority for the Chief Judge and the Unified Court System: consolidation of New York's complex, outdated, and inefficient trial court structure.

In New York, we have 11 separate trial courts, far more than any other state in the nation. California has one; Illinois has one; Florida has two; New Jersey and Pennsylvania each has three. New York has 11.

The result is a bewildering system, certainly for lawyers and litigants, most certainly for self-represented litigants, but even for judges and court administrators. For over 50 years, we've labored under the constraints imposed by this system. For over 50 years, Governors, Chief Judges, and legislators have tried to change this system – to reduce the number of courts to make the system more comprehensible and more navigable for the bench, the bar, and the public. For over 50 years, these efforts have failed.

So why have we resurrected the call for reform?

As I have noted, the Excellence Initiative has been broadly successful in tackling case backlogs and delays. Notwithstanding those successes, we have found – to no surprise – that our trial court structure itself is an enormous obstacle to further progress. That our proliferation of

trial courts, each with its own culture, practices, and jurisdictional barriers, is a major contributor to case delay.

The primary reason for that is, with so many trial courts, moving resources quickly and efficiently to where they are needed – crucial to effective caseload management efforts and to minimizing case delays – is difficult and often impossible. This leads to backlogs of cases and excessive court appearances, with greater frustration and expense for litigants, including higher attorney fees, more lost days at work, greater child care costs, and the like. To all who look seriously at our courts, the conclusion is inescapable that, if we can remove the many obstacles to effective deployment of court system resources, far greater progress can be made in attacking case delays, and the Excellence Initiative can truly live up to its promise.

We are gratified that the Governor has included trial court consolidation in the State Budget, and that he has submitted an Article VII proposal to amend the Constitution accordingly. The Governor's proposal is substantially the same as the proposal announced by the Chief Judge last fall, and we will work with him and his staff to promote its adoption through first passage by the Legislature. We urge your support for this vital reform.

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To conclude, as I noted at the outset, the Judiciary's 2020-21 budget request is modest and straightforward. It seeks a two percent increase in the courts' operating budget, which will permit us to maintain staffing at levels needed to realize the goals of the Excellence Initiative. Along with our budget request, we call for legislative adoption of a constitutional amendment consolidating the state's trial court structure. Only in taking that step can we keep faith with the commitment we all have to provide the public with a justice system worthy of the name – one

that ensures the best use of limited tax dollars to deliver fair and timely resolution of all legal disputes.

Thank you for your attention this morning, and thank you for your support of the Judiciary. I am happy to answer any questions you may have.