

JOINT LEGISLATIVE HEARING ON THE 2022-23 JUDICIARY BUDGET

REMARKS OF CHIEF ADMINISTRATIVE JUDGE LAWRENCE K. MARKS

January 25, 2022

Good morning Chairpersons Krueger, Weinstein, Hoylman and Lavine, and good morning to all the other committee members participating today. I'm Lawrence Marks, Chief Administrative Judge of the New York State Unified Court System. I'm pleased to appear this morning to discuss the Judiciary's budget request for the 2022-23 State Fiscal Year.

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Our budget request will enable the courts to continue to fulfill their mission of providing justice to the people of New York. It calls for an appropriation of \$2.4 billion in State operating funds. Our budget also projects a \$58.2 million increase in State Operating spending, a 2.5% increase over our current cash plan.

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I. *Meeting the exigencies of the pandemic.* As was the case last year, this year's budget request must be viewed in the context of the ongoing COVID-19 pandemic. The pandemic has presented the Judiciary with multiple challenges. These have included the unprecedented task of keeping the courts operating consistent with rapidly changing public health needs. And, at least in the early stages of the pandemic, to do so with significantly less funding than would otherwise have been available during a normal year.

Throughout the course of the pandemic, the court system has adapted its operations to comply with the prevailing guidance provided by public health authorities. Very early on, while determined to keep the courts open for business, we limited our in-person operations to essential and emergency applications only. That was quickly followed by a program of virtual court

operations by exploiting the latest technology. This made it possible for judges and staff to safely adjudicate cases in all of our courts across the state.

As time passed, and as more was learned about COVID-19, we were able to resume in-person court appearances in critical matters such as grand jury proceedings, criminal arraignments, evidentiary hearings, and criminal and civil jury trials. In doing so, we followed a rigorous screening program of temperature checks, self-reporting of exposure and symptoms for court personnel and court users, extensive use of masks and other personal protective equipment in all public court spaces, social distancing, and cleaning protocols.

In addition, beginning in the late summer of 2021, we were one of the leaders in the state in introducing a mandatory testing program requiring all unvaccinated judges and nonjudicial staff to undergo weekly COVID testing; and, subsequently, in introducing a mandatory vaccination program requiring judges and staff to be vaccinated unless they qualified for a medical or religious exemption.

Looking forward, we are committed to resuming full court operations – including the full resumption of jury trials -- in the upcoming fiscal year. This budget will enable us to do so.

II. *Restoring full court operations.* In following through on this commitment in 2022-23, we will continue to make every effort to fill vacant nonjudicial positions in the courts. During the pandemic, the court system has seen hundreds of employees retire and leave for other reasons. At the same time, because of the state's fiscal crisis in 2020-21, the Judiciary, at the urging of the Executive, cut its planned spending through a range of austerity measures, which included a system-wide hiring freeze. These circumstances prevented the courts from filling vacancies, although fortunately this past year we were able to end the freeze and resume hiring. The budget we have submitted will enable us to continue to fill vacancies during the upcoming

fiscal year. While this will still leave us with vacancies to fill to return to pre-pandemic employment levels, the new hires will allow us effectively to resume full court operations. This in turn will enable us to continue our commitment to Chief Judge Janet DiFiore's Excellence Initiative, our comprehensive effort to achieve operational and decisional excellence throughout the Unified Court System.

Our budget submission will also permit us to meet other critical goals. These include (1) the funding of three new court officer academy classes to help ensure safety in courthouses statewide; and (2) an upgrading and expansion of the courts' technology capacity to facilitate virtual court appearances where appropriate, to expand case management systems, to enhance cybersecurity for the courts' computer network, and to increase our ability to provide the Legislature and the public with critical information regarding caseload activity.

III. *Civil Legal Services.* Another crucial goal addressed in our budget request is enhancement of the Judiciary's support for civil legal services. In our budget, we ask for an increase from \$85 million to \$95.7 million in funding for non-profit agencies that provide direct legal services and access to justice services to help low-income New Yorkers across the state secure the essentials of life. We also ask for an increase from \$15 million to \$16.9 million in funding for the Interest on Lawyer Account Fund, likewise to be distributed to non-profit agencies that provide legal services to the poor. These increases are necessary to help fulfill the state's longstanding commitment to civil legal services.

IV. *18-B compensation reform.* The Chief Judge has consistently advocated increasing the statutory rates of compensation for attorneys providing legal services as County Law Article 18-B panel attorneys and as attorneys for the child in Family Court. These lawyers, appointed by the courts to represent indigent criminal defendants and children and parents in Family Court,

have not received any increase in compensation since 2004. The State can ill afford to wait any longer to adjust their compensation to keep pace with inflation. Failure to do so has reduced the number of lawyers willing to take on these assignments, which are vital to the health of our criminal justice and Family Court systems. In the attorney for the child program alone, the number of panel attorneys has declined by nearly 30% -- just since 2018. This leads to delays in adjudication that can jeopardize the rights and welfare of litigants, especially those who are disadvantaged and vulnerable.

Responsibility for the costs of this representation varies – with local governments paying the costs of 18-B representation and the Judiciary paying the costs of attorney for the child representation. We have not requested additional funding in our proposed budget to cover compensation adjustment for the latter; at such time as the Legislature enacts such adjustment, we will make an appropriate request for the necessary funding.

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I would like briefly to mention three other key initiatives that we are actively pursuing.

(Presumptive ADR) The first is our commitment to expanding our statewide program of presumptive alternative dispute resolution. An integral part of Chief Judge DiFiore’s Excellence Initiative, presumptive ADR is an effort to expedite litigation and to reduce its financial and emotional costs by requiring that parties in civil disputes, with appropriate exceptions, be referred to mediation or some other form of dispute resolution at the earliest stage of the case. Among the most important of this year’s ADR initiatives will be the adoption of statewide court rules to govern this referral program, publication of standards of mediator conduct, anti-bias training for neutrals throughout the State along with intimate partner violence and screening training, and expanded use of technology.

(Jeh Johnson report) We are also continuing our full commitment to implementing the recommendations of the Johnson report. In 2020, the Chief Judge appointed Jeh Johnson – the prominent New York City attorney and former US Secretary of Homeland Security – to serve as Special Advisor on Equal Justice in the Courts. His charge was to conduct a broad review of the programs, practices, and policies of the court system for evidence of systematic and implicit racial bias. In the fall of 2020, he reported that, notwithstanding the hard work of Judiciary personnel, there is ample evidence that New York’s court system remains “under-resourced” and “over-burdened;” and that this has a disparate impact on people of color. In his report, Secretary Johnson presented numerous recommendations to broadly improve the court experience for people of color. We have fully embraced all of them. Our efforts have yielded numerous accomplishments, which are summarized in an annual report released last November by the Chief Judge. Many challenges remain, however. In the year ahead, we will redouble our efforts to keep faith with Secretary Johnson’s recommendations to promote a court system free of bias and discrimination.

(Court Consolidation) Finally, in 2022, we will renew our effort to simplify our trial court system through a constitutional amendment to merge our nine major trial courts into two courts: a Supreme Court and a Municipal Court. In making this effort, we will be joined by a coalition of over 100 groups representing all corners of the community – bench, bar, legal services providers, business, and good government.

Our task is challenging, but it is not insurmountable. The end we seek – a court system that can be more efficiently managed, that distributes its resources more evenly to ensure that every community has fair access to justice, and that is more easily accessible and understandable

to the public – is one we all should share. We look forward to working with you in the days ahead to make it happen.

VI. Conclusion. I close by emphasizing that, even while the COVID-19 pandemic stays with us, the courts remain committed to assuring the fair and prompt administration of justice. The budget we have submitted, if approved, will enable us to meet that commitment.

Thank you for your attention this morning. I'm more than happy to answer questions you may have.