

JOINT LEGISLATIVE HEARING ON THE 2021-22 JUDICIARY BUDGET

REMARKS OF CHIEF ADMINISTRATIVE JUDGE LAWRENCE K. MARKS

February 10, 2021

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 Unified Court System. I'm pleased to appear this morning to discuss the Judiciary's budget request for the 2022 State Fiscal Year.

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Our budget request is straightforward. For the upcoming Fiscal Year 2022, we are asking for the same level of appropriations as you gave us in the current fiscal year. Our spending plan has changed, however, from the one we presented to you before the start of Fiscal Year 2021. For Fiscal Year 2021, spending under the Judiciary budget has been reduced by \$291 million, a 10% reduction. And the Fiscal Year 2022 Judiciary State Operating spending plan assumes continuation of this reduced spending level of \$2.25 billion. I will say a word or two more about this shortly. But, first, I want to put our budget submission in its proper context by saying something about the Judiciary's experience over the past year. This experience could not have been anticipated in February 2020, when I last appeared before you to report on our budget.

Since that time, New York's Judiciary, along with the rest of the State, has faced multiple challenges as a result of the emergence of the COVID-19 pandemic. These challenges include the unprecedented task of keeping the courts operating in a way consistent with a rapidly evolving understanding of public health needs, as well as the responsibility of doing so with significantly less funding than would be available to the courts during a normal year.

I. *Confronting the pandemic.* Back in mid-March, as the extent of the pandemic first became apparent, and as the State began instituting aggressive measures to protect the community, the Judiciary took the first of several critical steps affecting court operations. While determined to keep the courts open for business, we limited our in-person operations to essential and emergency applications only. At the same time, we put into effect a program of virtual court operations to permit the widest possible delivery of justice services to litigants and lawyers. This made it possible, and continues to make it possible, for judges and staff safely to conference cases in all of our courts across the State – to the point where now more than 20,000 cases a week are conferenced to produce settlements, referrals to virtual alternative dispute resolution, and decisions on motions. Also, virtual court operations now make it possible for the conduct of hundreds of evidentiary hearings and bench trials each week.

As we took these steps to institute and expand a virtual court system, we also looked forward to the day when we could resume in-person proceedings. Closely adhering to all applicable public health protocols, we instituted extensive safety measures to protect the health of all who enter and work in the courthouses. This permitted us to resume some in-person proceedings during the past summer and fall months, with the result that grand juries were empaneled in all of the State’s counties and some civil and criminal jury trials were conducted.

With the resurgence of the virus since the holiday season, we have had to curtail most of these in-person proceedings. We are ready to resume them in the days ahead, however, once public health authorities make clear that it is safe for us to do so.

II. *Changes in the 2020-21 FY Budget.* Any picture of the Judiciary as I appear before you today would not be complete without acknowledgment of the fiscal constraints under which we have been operating this past year. The projected multi-year, multi-billion dollar budget

deficit faced by New York as a result of the pandemic has had a major impact upon the Judiciary. Last spring, the Governor, in his revised Financial Plan, urged the Judiciary to reduce its current fiscal year spending by 10%. Notably, that amount was then deducted from the Financial Plan. As a result, and as a responsible partner in State government, we went ahead and reduced our spending by that amount.

A spending reduction of this magnitude – a reduction that is significantly larger than the reduction we absorbed in 2011, when the State faced its last great budget crisis and the Judiciary lost \$170 million of its funding – is an enormously challenging task for the court system. Our annual budget is overwhelmingly made up of personnel costs. Nearly 90% of that budget goes to the salaries of judges and nonjudicial staff, along with health, pension, and other fringe benefit costs. It follows that any effort to substantially reduce our spending must entail reductions in such personnel costs.

In making these reductions, we had no easy choices. Like much of State government, the Judiciary has been living for years on no-growth or very limited growth budgets. Although in many respects we are faced with a need to provide more services than a decade ago, our annual budgetary allocation has only marginally been increased since then. This has left us with little budgetary flexibility when there is need, as now, to economize. Also complicating our effort has been the fact that coping with the pandemic and keeping the courts open as much as possible for virtual and in-person proceedings has necessitated substantial, unforeseen expenditures for technology equipment, enhanced court cleaning, PPEs, and courthouse retrofits. In addition, overtime costs have increased for our technology and public safety staff.

Early on, we took a necessary first step. We instituted a strict hiring freeze – and, so far this fiscal year, more than 730 positions that were lost to attrition remain vacant. While this has

cost no one his or her job, its impact upon court operations cannot be overstated. Our nonjudicial work force is the life-blood of the court system. As I speak to you today, with no end in sight for the hiring freeze, the Judiciary's nonjudicial staffing level stands below 15,000 employees across the State. This is more than 2,200 fewer employees than we had twelve years ago – a 13% reduction in our workforce. If the hiring freeze must remain in effect much longer, we can expect a diminished staffing level not seen by the courts in several decades. While institution of the Chief Judge's Excellence Initiative in recent years has helped the courts to become more efficient than ever before, our short staffing has made it increasingly difficult to conduct the Judiciary's business in an effective and timely manner. This can have particular consequences for operations in courts that primarily serve economically disadvantaged litigants, including Family Court and Housing Court.

Among the other hard choices we made this year was our decision not to certificate most of the Supreme Court Justices who, having reached age 70, were seeking to remain in judicial service. Obviously, it was a very difficult decision – and, toward the end of 2020, some of you asked that we reconsider it. Indeed, some of the justices affected by our decision have sued the Administrative Board to have it overturned in the courts. As difficult as the decision may have been for us, we really had no choice. By not certificating these justices, the Judiciary would save \$55 million over two calendar years. The grim alternative for us, in order to find such savings elsewhere in our budget, would be to lay off 325 or more nonjudicial employees. The resulting vacancies would be in addition to the 730-plus positions left open so far through the hiring freeze. But this was simply unacceptable, both operationally and morally. First, as we learned from our experience in 2011, when the need for fiscal austerity gave us no choice but to lay off nearly 400 nonjudicial employees, such a reduction can have a crippling effect upon court

operations. This is especially likely to be the case where our staffing levels already are so low. And, as I have noted, this effect will likely be felt most dearly in courts that primarily serve disadvantaged litigants who rely heavily on advice and direction from court staff to be able to navigate the court process. Second, because of the way the civil service rules apply to layoffs, requiring them now would fall most heavily upon younger court employees not yet eligible to collect their pensions; and strand them without income in what is a very difficult job market.

The remaining austerity steps we have taken include limitations on non-personal service spending, among which are a 10% reduction for all legal and professional services contracts, postponement of technology enhancements necessary to meet growing demands, a curb on all non-essential travel, deferral of payments for certain obligations, and suspension of compensation for judicial hearing officers.

III. *FY 2022 Judiciary Budget.* As we approach the start of the 2022 Fiscal Year, some have argued to us that there is a light on the horizon: that, before too long, the Federal government will provide financial assistance to New York and other states, assistance that will cut New York's large deficit and enable agencies of government, including the Judiciary, to ease up on their austerity measures. While we certainly hope their faith is borne out, we must plan to meet our needs as if no help is forthcoming.

For this reason, we have submitted a flat spending plan that maintains the reductions implemented in Fiscal Year 2021. Our budget seeks the same level of appropriations as you approved for us in the current fiscal year, however, so that, if the State's fiscal plight does improve in the days ahead, and the Judiciary is able to share in the benefits of that improvement, we will have the ability to meet all, or at least more, of our needs. But if that plight does not improve, we are prepared to do as we have done this year: continue operating within a budget

subject to the spending reductions under which we now labor. Our overarching goals will be to fulfill our constitutional mandate by keeping all courts open, and to avoid any need for layoffs among nonjudicial personnel. To meet this last goal, it will be necessary that the present hiring freeze remain in place. Likewise, reductions in various Judiciary programs must continue in effect. Just as has been the case this year, taking these steps will help us to avoid layoffs.

IV. *Johnson report.* Before concluding, I want to mention a key initiative that the Judiciary has undertaken this year, one that will be very much a part of our mission in the coming year. This is a system-wide re-examination of race in the courts.

In the summer of last year, Chief Judge DiFiore appointed Jeh Johnson, former US Secretary of Homeland Security, to serve as Special Adviser on Equal Justice in the Courts. In so doing, the Chief Judge wished to reaffirm the New York Judiciary's uncompromising commitment to racial justice across our community. Accordingly, Secretary Johnson's broad charge was to review court system organization, programs, hiring practices, policies, and other institutional practices for evidence of systemic and implicit racial bias. His recommendations, which were published last October, and which we have wholeheartedly embraced, provide a blueprint for a court system that fully reflects the diversity and inclusiveness of New York's many communities, ensures the fair administration of justice, and promotes the public trust. I want to assure the members of this panel that, even as we all work to cope with the pandemic and the fiscal crisis, the Judiciary has no higher priority than to give effect to these recommendations – a process that is now well underway.

V. *Conclusion.* I close by emphasizing that now, more than ever, as the State works to combat the worst fiscal deficit in its history even while fighting the worst public health threat in any of our lifetimes, the courts remain dedicated to staying open and to assuring the fair and

prompt administration of justice. The budget we have submitted will, if approved, enable us to continue our mission regardless of what's in store for us in the days ahead. If it turns out that the State's present fiscal crisis requires that we continue to operate within a reduced spending level, we can do so under this budget. If, instead, the State's fiscal condition improves, this budget will permit us to resume our normal operations.

Thank you for your attention this morning. At this time, I would be happy to answer any questions you may have.