



NEW YORK
CITY BAR

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**REPORT IN SUPPORT OF THE
JUDICIARY'S 2014-2015 BUDGET REQUEST**

The New York City Bar Association (“City Bar”)¹ strongly recommends that the Legislature adopt the Judiciary’s 2014-2015 Budget Request (the “Judiciary Budget”) in its entirety. After sustaining a \$170 million dollar budget cut in 2011, and zero growth budgets in 2012 and 2013, it is essential that the Legislature fund the Court’s modest 2.5% proposed increase in its 2014-2015 budget request. As stated by Chief Administrative Judge A. Gail Prudenti, “the courts are the emergency room for the people of the State of New York in the most difficult time of their lives. We need to keep the courthouses open for them.” Moreover, as explained by First Deputy Chief Administrative Judge Lawrence Marks, “there is a point beyond which the Judiciary cannot be pushed if we are to continue to meet our constitutional responsibilities. We have reached that point.”

The proposed 2.5% increase in the Judiciary Budget amounts to \$44.2 million dollars. This increase includes a \$42.9 million increase in nondiscretionary expenditures: \$17 million for the final phase of statutorily mandated criminal defense standards, \$17.5 million for required raises for non-judicial personnel, and \$8.4 million for the third phase of the previously mandated increase in judicial salaries.

Despite this small proposed budgetary increase, the Office of Court Administration (“OCA”) reports that it is able to maintain, restore and enhance essential court functions by continuing to streamline administration and reorganize and consolidate offices and programs, a process it began in 2011 when the courts sustained a \$170 million cut in funding. Thus, the Judiciary “Road to Recovery” Budget proposed by OCA would add \$15 million in funding for vitally-needed Civil Legal Services (which studies show save the State money), permit the Judiciary to fill some critical positions, and allow the courts to remain open until 5:00 PM instead of shutting down at 4:30 PM to avoid overtime expenditures. In addition, OCA has proposed adding 20 new Family Court judgeships throughout the State, a proposal which would need to be separately enacted and funded by the Legislature. The City Bar supports the inclusion of this supplemental appropriation and will support the necessary legislative changes.

Cutbacks in the Judiciary Budget over the last three years have had a devastating impact on the courts and the people they serve. The judicial workforce has been reduced by more than

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

1,900 positions, resulting in long lines and delays at clerks' offices and in all phases of litigation at all courts. In 2014, it is anticipated that 14% of court employees will be eligible for retirement, and that many of these highly experienced employees will choose this option given their increased workloads and dim prospects for promotions and salary increases. Significantly, 90% of the Court budget is devoted to payroll and salaries. Accordingly, if the 2.5% budget increase requested by the Judiciary is not enacted, OCA will be forced to continue its hiring freeze, accelerating and exacerbating existing delays in proceedings throughout the court system.

Simply put, the courts have reached their breaking point, and risk not being able to function without the 2.5% budget increase proposed by OCA. In Civil Court, Family Court and Criminal Court, long lines, including small children, snake around courthouse entrances in the morning, including during inclement weather. Because of reduced staff, *pro se* litigants wait months for Civil Court files to be retrieved from archives while their wages are garnished and their bank accounts frozen by creditors. The Civil Court buildings close at 3:45 PM sharp for all but those scheduled for eviction the following day, leaving tenants, consumer debtors and lawyers rushing to file papers in the lurch. Translators are in short supply, forcing non-English speaking litigants to wait for hours and/or return to court on another day when a translator is available. Trials stop abruptly at 4:30 PM, in the middle of witness testimony, increasing the length of trials and costs to litigants and the court system.

In addition, as a result of staffing limitations and given the sheer volume of activity in our courts, affidavits of service and other documents are not placed in court files on a timely basis. Boxes of papers languish in the clerks' offices, because there is little to no staff available for filing. These missing documents affect litigants' rights, i.e. if there is no affidavit of service in the file, it is difficult to controvert improper service with specificity. The volume of lost files has grown exponentially, because there are not enough clerks to file, and those who remain are rushing. In addition, there are long delays in transferring files from one location to another within the court due to staff shortages. Recently, personnel from an attorney's office had to wait in line at Brooklyn Housing Court for more than 3 hours on a routine matter.

The impact of the budget cuts on criminal cases has been staggering. Since the cuts were implemented, court officers are required to quit working at 4:30 PM sharp. In some counties, this early closing time increases the number of cases in which defendants are unable to testify before the grand jury, the prosecutor claims "good cause" for failing to meet mandatory deadlines, and the court accepts the "good cause" argument for failing to meet the deadline, leaving these defendants incarcerated for an extra day (or two if it is a Friday). For the substantial number who will be cleared by the grand jury, this is a serious loss of liberty.

Moreover, due to a shortage of court officers, criminal trials in which defendants are incarcerated are delayed. In the Bronx, where there are two judges for approximately 2,000 two-year-old misdemeanors, trials are delayed because there are no courtrooms available. In Queens, misdemeanor hearings are similarly delayed because of a shortage of court parts. Recently, a case in Manhattan was adjourned for trial 8 times, with both sides answering ready, because there were either no parts or no jurors available. Delays in competency examinations beyond the 30 day statutory timeframe have resulted in increased incarceration times for defendants or delays in defendants' transfers to civil status.

Over the past few years, delays in obtaining court files for Legal Aid's investigations have grown from a few days to two weeks. In addition, while some judges permit face-to-face visits in court between family members and incarcerated juveniles, the shortage of court officers has significantly limited such visits. Moreover, it can now take the court weeks to prepare certificates of disposition, even though such certificates normally can be readily prepared from information on the court computers. The certificates are needed for individuals in immigration custody so that their immigration cases can move forward. These delays impact on litigants' liberty and add to the costs of immigration detention, albeit in the Federal budgetary system.

Family Court is stretched to the breaking point, if not beyond. As a result of the hiring freeze in effect since January 2011, the non-judicial Family Court staff has been reduced by 147 employees statewide, 100 of whom are located in New York City. The number of Family Court Judicial Hearing Officers in New York City has been reduced from 16 to 7. Because courtrooms must close at 4:30 PM, there are times courts have been unavailable when the Administration for Children's Services ("ACS") has sought to remove a child from his or her parents. In some of these cases, ACS conducted removals under its emergency powers, and the following day, courts determined that removal was unnecessary. Such removals can cause trauma to children and parents that can never be rectified.

Families are routinely subjected to non-continuous trials, extreme delays in custody cases, protracted guardianship proceedings and rushed abuse and neglect hearings. Adjournments of cases are typically 8-10 weeks for new filings and 3 months or longer for pending cases. It is estimated that with an average caseload of 1,533 cases per year, a Family Court judge can only spend 52 minutes per case per year. Notably, New York ranks 50th out of 52 jurisdictions in the length of foster care. Over the past 30 years, as filings increased by 90%, the number of Family Court judgeships has increased by only 8.8%, with no new judgeships created in New York City since 1991.

The Civil Branch of Supreme Court has also been hit hard by budget cuts. The opening of courtrooms is often delayed in the morning due to a shortage of court officers and clerks. In New York County Supreme Court alone, there are approximately 79 vacant positions. There are 24 fewer court officers, 25 fewer court clerks, 16 fewer court reporters, 9 fewer court attorneys, and 5 fewer analysts. Overall, without including Chambers staff, the New York County Supreme Court Civil Branch has lost 18% of its total positions and the New York County Clerk's Office has lost 17% of its total staff. In the Civil Branch of Kings County Supreme Court, staff in the Motion Support Office has been reduced from 16 clerks to 4. As a result, when a case has been decided and reduced to judgment, it may take months for the parties to access an entered copy.

Surrogate's Court has also been harmed by staff shortages caused by budget cuts. In the New York County Surrogate's Court, there is only one court officer for two surrogates with no replacement when the officer is out; the Miscellaneous and Accounting Departments have been unable to hire additional clerks, delaying filings; guardian accountings are behind due to staff shortages; and there is a vacant court attorney position. Delays in Surrogate's Court have incalculable costs, as the cases often involve the loss of breadwinners and the appointment of guardians for the most vulnerable in our society.

The severe reduction in evening hours in Small Claims Court from four nights a week to one night a week in most boroughs makes Small Claims Court basically unavailable to claimants who cannot take off time during the day to appear. In Brooklyn or Manhattan, it may take up to several years to get a judgment. In Manhattan, there have been no Small Claims trials for more than 5 weeks.

In addition to these individual examples, the interplay between staffing cutbacks in different areas compounds the difficulties. For example, a delay in providing a court officer to a part where a court interpreter is waiting to assist in a case may result in the interpreter's departure to cover another part, requiring postponement of the matter.

Given the corrosive effects of the Judiciary Budget cutbacks over the past 3 years, the City Bar urges the Legislature to enact the proposed Judiciary Budget as is, without any reduction in funding. Any reduction in this budget will result in the *de facto* denial of justice to countless New Yorkers, including many *pro se* individuals seeking to maintain a roof over their heads, public assistance for the basic necessities of life, and access to frozen bank accounts and garnished wages. In fact, the City Bar believes that the Judiciary Budget requests too little. The proposed budget is fiscally prudent and helps address vital unmet legal needs of New York's most vulnerable individuals.

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