



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION BY THE
COUNCIL ON JUDICIAL ADMINISTRATION**

S.4878-A

Sen. Young

AN ACT to amend the New York City Civil Court Act, in relation to increasing the term of office of judges in the housing part of New York City Civil Court.

THIS BILL IS APPROVED

The Council on Judicial Administration of the New York City Bar Association supports S.4878-A, which would amend Civil Court Act § 110 to extend the reappointment term of Housing Court Judges from five to ten years after the initial five year appointment. We believe this change will promote judicial independence while providing sufficient review of judicial performance.

Housing Court Judges currently serve five-year terms. They are appointed by the Chief Administrative Judge after nomination by the Housing Court Advisory Council, a group appointed by the Chief Administrative Judge. Housing Court Judges are charged with handling an enormous docket of sensitive cases, often where what is at stake is the tenant's ability to maintain shelter. The proceedings are often very adversarial. Requiring these judges to seek office every five years, particularly in this setting, is a burden to the system and an impediment to their independence.

We acknowledge the value of Housing Court Judges having an initial term of five years. If there are serious concerns regarding a judge's performance, most of those concerns should be identified during the judge's initial term. However, once re-appointed, the importance of maintaining judicial independence supports providing the judge with a ten-year term. This term length is identical to the term of their colleagues in New York City's Civil, Criminal and Family Courts.

Under the current procedure of five-year renewals, Housing Court Judges spend much of their terms preparing for and seeking re-appointment. They must submit their qualifications to, and be approved by, the Housing Court Advisory Council, which consists of representatives of the landlord and tenant bar who appear regularly in Housing Court, among others. Housing Court judges report that the process consumes a fair amount of their time during the last year of their term. Attorneys who regularly appear before the court and advocacy organizations politically active on landlord-tenant issues are solicited for input as to each judge. Advisory Council members and other "influential" attorneys make their connections known to the judges when appearing in court. The Advisory Committee on Judicial Ethics of the State's Unified Court System has issued three separate opinions in recent years concerning recusal by a Housing Court Judge when Advisory Council members appear before that Judge in the year prior to the expiration of the judge's term.¹

¹ Opinion 03/93 (January 2004); Joint Opinion 03/93/04-32 (June 2004).

The combination of frequent (a) re-appointments and (b) having those involved in the re-appointment process appearing in the courts regularly places an inappropriate amount of pressure on these judges, jeopardizing the necessary public perception that these judges will exercise independent judgment. The judges risk pressure from unscrupulous practitioners seeking to exploit a judge's pending reappointment to obtain favorable rulings.² If the judges' independence is questioned, litigants would have less confidence that decisions are being made strictly on the merits. Independence is particularly crucial during the current economic downturn, as many Housing Court litigants face financial hardship -- either tenants facing imminent eviction or landlords facing rising costs without economic recourse. An independent Housing Court bench helps safeguard procedural and substantive due process rights in the context of these pressures.

In addition to the effect on judges, five-year renewal terms create unproductive pressure on the Advisory Council. There are now fifty Housing Court Judges, more than double the number when the Housing Court was established. The increased numbers have caused a tremendous increase in the workload of the Advisory Council, which not only reviews applicants for both appointment and reappointment to the Housing Court, but also monitors, and renders annual reports on, the condition of the Court. Because of the need to review on average ten applications for reappointment every year, the Council members, who serve as volunteers and without staff, have had difficulty monitoring the functioning of the Court and filing the annual reports. Each application for reappointment requires a review of written submissions, investigation by a subcommittee and a full Council review. In recent years, the pool of appropriate candidates for Housing Court Judge has diminished and deadlines for applications have had to be extended. This also has increased the work of the Advisory Council, whose members now must engage in extensive outreach in addition to reviewing applications.

We believe the quality of the Housing Court must be high, given the volume and importance of the Court's cases. Having ten-year renewal terms permits Housing Court judges to better focus on the matters before them, thus better assuring that fair and impartial courts continue to be available to protect individual rights.³ "Judicial independence is the vital mechanism that empowers judges to make decisions that may be unpopular but nonetheless correct. In exercising this independence, the judiciary vindicates the principle that no person or group, however powerful, is above the law."⁴ With the current reappointment pressures and low salaries, it is no wonder that the Advisory Council must engage in outreach to increase the pool of appropriate applicants for this bench.

We therefore urge that the Legislature enact S.4878-A.

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² Housing court judges seeking reappointment must list attorneys who have appeared before them on a regular basis.

³ American Bar Association Standing Committee on Judicial Independence, Message Platform on a Fair and Impartial Judiciary.

⁴ Judicial Accountability Must Safeguard, Not Threaten, Judicial Independence: An Introduction. By Sandra Day O'Connor, http://law.du.edu/documents/denver-university-law-review/v86_i1_oconnor.pdf.