



COUNCIL ON JUDICIAL ADMINISTRATION

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By Email

Hon. Janet DiFiore
Chief Judge of the State of New York
New York State Unified Court System
25 Beaver Street
New York, NY 10004

Hon. Lawrence K. Marks
Chief Administrative Judge
New York Unified Court System
25 Beaver Street
New York, NY 10004

Re: Opposition to the Elimination of Judicial Certification Program

Dear Chief Judge DiFiore and Chief Administrative Judge Marks:

On behalf of the Council on Judicial Administration of the New York City Bar Association, we urge that the essential program to certificate retired justices of the Supreme Court for continued service, pursuant to Judiciary Law § 115, not be defunded due to budget constraints resulting from the current pandemic. We understand that there are approximately 50 certificated justices whose continuing essential service would be eliminated should the disapproval of nearly all pending certifications and re-certifications, as announced in the Memorandum from Chief Administrative Judge Lawrence K. Marks, dated September 29, 2020, be carried out. While we understand that certain economic realities must be addressed and dealt with, we strongly believe that our most experienced members of the judiciary are now more valuable than ever. These difficult times require experienced judges to cut through the considerable backlog of cases built up from the pandemic. In short, we respectfully view this drastic action as a measure of last resort – eliminating our most valuable judicial resources at a time when they are needed the most.

In adapting to new budget realities imposed by the pandemic, care must be taken to maintain essential resources necessary to restore our courts to the level of operations that New Yorkers require in order to protect their legal rights. If cuts are necessary, New York City courts, the busiest in the world, must be spared. Justices who have been certificated and will be available to continue performing their judicial duties will be key to that effort. As proceedings have been delayed by the pandemic and budget constraints have already begun to appear, caseloads and backlogs are rising. Distress brought on by the pandemic will continue to have profound effects throughout the criminal and civil branches.

The increased demand for access to the courts, and the need for an adequate number of judges to handle the onslaught of old and new cases, will be of particular concern in New York City. For example, a raft of commercial and other real estate disputes will remain to be sorted out after the processing of such disputes resumes on a regular basis. A backlog of new criminal indictments, along with older cases not yet resolved, awaits the criminal term. Throughout the Supreme Court, in addition to dealing with proceedings stimulated by the pandemic, growing backlogs will need to be cleared if court operations are to return to normal.

Eliminating certification will also severely impact the functioning of the appellate courts that New Yorkers depend on especially heavily to oversee the fair, efficient and consistent disposition of litigated matters. Backlogs in the Second Department were already severe pre-pandemic, and the loss of four justices will cripple it further. The First Department can ill afford to lose two justices given the increasing backlog and appeals docket resulting from the pandemic.

Certificated justices will play a key role in helping the court system recover from the pandemic, and it would be counterproductive to limit their availability. With growing backlogs, there will be increased pressure, but decreasing capability, to achieve the efficient disposition of matters in an environment where the availability of trial opportunities will be severely constrained. Certificated justices are precisely the type of judicial officers with the accumulated experience necessary to assess cases and move them to a fair resolution under difficult circumstances. To lose such a key resource may well increase, rather than reduce, overall costs to the judiciary and the State through adverse impacts on the efficient disposition of cases. Pressures on existing judicial resources will also be compounded by the need to redistribute the dockets of retiring justices to others already dealing with increased caseloads and backlogs.

Any action with respect to the certification program should be a measure of last resort, especially in light of the efforts that have gone into vetting currently eligible justices for certification, and possible developments that may open a path for budgetary relief to state governments. Other adjustments that may provide budgetary savings, such as taking into account the availability of Medicare coverage for certificated justices, should also be considered.

Again, we understand that the economic realities of budget constraints must be acknowledged and that the judiciary is not exempt from having to make adjustments to expenditures. However, given the essential contribution that certificated justices can make in the court system's recovery from the pandemic, limiting or eliminating the availability of the courts' most valuable resource – experienced justices, many of whom have continued to work diligently throughout the pandemic – is not the place to start. We urge you to make every effort to continue to certificate justices even in the face of new budgetary realities, and to seek every alternative to terminating a program that has provided, and will continue to provide, an enormously valuable contribution to the needs of the public and the courts.

Respectfully,

Michael P. Regan

Michael P. Regan, Chair
Council on Judicial Administration