



NEW YORK
CITY BAR

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 Eliminating Judicial Hearing Officers

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 OCA to rethink its current position eliminating Judicial Hearing Officers (JHOs) and/or to adopt temporary protocols to ensure that litigants with outstanding matters that were assigned to JHOs pre-pandemic are not subject to continuing delays in resolving their matters.

Prior to the pandemic, JHOs were assigned by judges in a variety of matters, including legal fee disputes and commercial cases.¹ JHOs, who were mostly retired Supreme and Acting Supreme Court judges, were paid \$400 per day for their work – markedly less than the compensation for judges. Utilizing JHOs for hearings and bench trials, and in some cases, mediations, where the JHO was trained as a mediator, was an efficient way to move cases along and help alleviate court delays, which, after the initial budget cuts resulting from the 2008 financial crisis, were extensive.

The pandemic not only paused all court matters for several months, but the resulting financial fallout has led OCA to institute drastic budget cuts, one of which was to immediately cease paying the JHOs, with far-reaching negative ramifications. Indeed, one of the New York County Commercial Division justices recently lamented being unable to assign a JHO in a case involving complicated discovery issues due to the pandemic budget cuts.²

¹ JHOs were also assigned to criminal matters, but we are not addressing those cases as those assignments were limited, for the most part, to suppression hearings and can be more readily transferred back to judges for trial or resolution.

² See Jason Grant, “Citing Judicial Budget Cuts, Manhattan Justice Denies Request for Judicial Hearing Officer to Oversee Discovery,” New York Law Journal, Oct. 8, 2020,

While it is understandable that budget cuts must be made, and perhaps for the foreseeable future new matters cannot be assigned to JHOs, we are particularly concerned about the pre-pandemic pending JHO matters. By way of example, we have learned that one JHO has approximately 24 matters that are incomplete, about half of which are ready for a written decision or report to be rendered by the JHO, and half of which are in mid-hearing or mid-trial mode. Another JHO has approximately 30 cases in either mid-hearing/trial mode, or post-hearing/trial awaiting a decision or report. Yet another JHO has approximately 15 outstanding cases, most of which are awaiting a decision or report, but at least three of which are either in the middle of a trial or a mediation.

Although it may be possible, in some instances, for JHOs to complete their outstanding matters *pro bono*, it is not likely to occur in all instances. Therefore, open matters would have to be sent back to the judge of origin, further delaying litigation already delayed for months due to the pandemic, not to mention the inefficiency of having a judge who is not familiar with the issues that had been litigated before the JHO pick up the matter in the middle of a hearing or trial, or just prior to a report or decision. With further delays caused by the retirement of several judges, including two in the New York County Commercial Division, and anticipated further court staff layoffs, litigants whose cases were assigned to JHOs for judicial economy and expediency face an unjust result.

Accordingly, we urge OCA to find a way for JHOs with open matters (that is, either in mid-hearing, mediation or trial, or post-hearing or trial without a written report or decision) to complete them. One possibility is to lift the freeze on compensating JHOs solely for the purpose of completing those open matters. Another suggestion is to utilize some of the court rules which permit parties to share in the compensation of referees and apply them to JHOs. Rule 4321 permits the costs of a referee to be tacked on as a cost of litigation, but specifically excludes JHOs. However, Rule 4312 permits the court to designate a JHO as a referee. Judges who assigned JHOs to pending matters could designate the particular JHO as a “referee” in each such pending matter, and only for the purpose of that matter, on consent of the parties. Then, the “cost” of such referee (\$400 per day, for example, which was the pre-pandemic JHO compensation rate) could be divided equally between the parties as set forth in Rule 4321. Doing so would expedite completion of the outstanding matters, alleviate further court congestion and delays, and would greatly benefit the litigants.

Our concern is that without some action on the part of OCA to permit JHOs to complete pending matters, those matters will end up in legal purgatory, harming litigants whose access to justice will be further impeded by delays. In the long run, finding a way to fund the finalizing of these matters will be cost-efficient and advance the interests of justice.

Respectfully,

Michael P. Regan /s/

Michael P. Regan, Chair
Council on Judicial Administration

<https://www.law.com/newyorklawjournal/2020/10/08/citing-judicial-budget-cuts-manhattan-justice-denies-request-for-judicial-hearing-officer-to-oversee-discovery> (last visited Oct. 22, 2020).