



NEW YORK
CITY BAR

COUNCIL ON JUDICIAL ADMINISTRATION

WRITTEN TESTIMONY IN SUPPORT OF THE
JUDICIARY'S 2023-2024 BUDGET REQUEST

The New York City Bar Association urges the Legislature to accept the FY 2024 Budget Request (“Budget”) of the Unified Court System (“UCS”), and to supplement the Budget with additional funding to bring operations in certain courts and programs to acceptable levels, as discussed below.¹ The \$2.47 billion request is \$60.2 million (2.5%) above the current year cash estimate. It represents close to level funding for the judiciary in nominal terms as compared with the \$2.36 billion requested in the last pre-pandemic judiciary budget issued in late 2019 for the fiscal year commencing April 1, 2020.² In inflation-adjusted terms, the Budget reflects a reduction in funding as compared with the budget request issued in late 2019.

The task of restoring the court system after pandemic-related disruptions is far from over, and the needs are urgent. The Budget notes that aggressive recruiting is necessary to replenish non-judicial staffing levels depleted by pandemic-era attrition.³ UCS is short court officers, clerks, court reporters and interpreters. The loss of experienced clerks, essential to effectuating court orders and moving cases along, is especially noticeable to practitioners.

The Budget also provides for the hiring of the non-judicial staff necessary to support 75 new judgeships created since 2013, including 28 Supreme Court and six Family Court judgeships authorized in the past two years.⁴ However, these new judgeships will not help other over-stressed courts short of judges, such as the New York City Housing Court.⁵

¹ The FY 2024 Budget addresses spending for the fiscal year commencing April 1, 2023. *See* https://ww2.nycourts.gov/sites/default/files/document/files/2022-1/FY2024_FINAL_JudiciaryBudget.pdf. This testimony endeavors to use best data available for the various courts and issues discussed. This includes, in some instances, data outside of the FY 2024 Budget document itself.

² New York State Unified Court System Budget for Fiscal Year 2020-2021 submitted November 29, 2019, at page I, https://ww2.nycourts.gov/sites/default/files/document/files/2022-11/FY2024_FINAL_JudiciaryBudget.pdf (“FY 2021 Budget”).

³ Budget at i-ii.

⁴ Budget at ii-iii.

⁵ Addressed below.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

These additional judgeships will only partially ameliorate shortages of Supreme Court judgeships around the state, and especially in New York County, resulting from an outdated provision in the state constitution setting a population-based cap on authorized judgeships. That provision is addressed in a comprehensive report prepared by the Constitutional Cap Subcommittee of the Council on Judicial Administration expected to be issued soon. The report is likely to recommend replacing the population-based cap on the number of Supreme Court judgeships in any judicial district, *see* N.Y. Const. Art. VI, § 6, with a data-based periodic assessment of judicial needs.

As head counts recover, the court system is integrating lessons learned from recent experience with virtual court proceedings in lieu of in-person appearances.⁶ Even as in-person court proceedings return, virtual technology is being increasingly used to streamline processes that do not necessarily require parties or attorneys to travel to court, such as conferences, motion arguments, and mediations. As the experience of courts and practitioners with such technology increases, on-line appearances are likely to feature prominently in efforts to keep dockets moving. Although such technology may be less suitable for hearings and trials where testimony is to be presented subject to cross-examination, it is occasionally being used for such proceedings in appropriate circumstances.

The Budget reflects UCS's efforts to address and implement the recommendations of the October 2020 Special Adviser's Report on Equal Justice in the Unified Court System ("Special Adviser's Report"), noting several policy, training and community outreach initiatives.⁷ The Council's Working Group on Racial Equity in New York State Courts is closely following developments in this area and will be issuing a report with recommendations shortly, one of which is that the Office of Justice Initiatives requires additional funding in order to oversee and carry out the full implementation of Secretary Johnson's recommendations.

The Budget's request for \$98.6 million for funding civil legal services providers represents only a 3% increase over last year's funding.⁸ This increase in nominal funding represents a real reduction in inflation-adjusted terms.

The Budget reports on the continuing development of several ongoing UCS initiatives. These include equal access to justice initiatives to assist unrepresented, rural, technology challenged, physically or mentally impaired, low income, and other individuals who have difficulty accessing court services;⁹ the Presumptive Alternative Dispute Resolution Initiative promoting speedy and cost-efficient alternatives to court proceedings to resolve legal disputes;¹⁰ language access services, whose current initiatives include the provision of laptops to language

⁶ Budget at iii.

⁷ Budget at iii-iv. The Special Adviser's Report, prepared by Jeh C. Johnson, is available at <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

⁸ Budget at iv-v.

⁹ Budget at v-vi.

¹⁰ Budget at vii.

interpreters enabling them to seamlessly participate in virtual court proceedings;¹¹ and electronic filing systems.¹²

UCS continues to broaden the application of e-filing technology throughout the courts. The New York State Courts Electronic Filing system (“E-Filing”) has made the handling of court filings substantially more efficient and improved public access to filed documents. The costs associated with handling, transporting, storing and tracking physical documents are reduced. The system’s ease of use and versatility compares favorably with the federal PACER system. It now includes a system for managing the remote transmission of evidence and exhibits in connection with court proceedings. The expanded use of E-Filing throughout the court system should be supported and encouraged.

The Budget makes provision for a possible increase in legislated rates for court-appointed 18-B Criminal Defense, Attorney for Child, and Judiciary Law, section 35 attorneys representing indigent criminal defendants as well as children and parents in family court cases.¹³ These rates have been set at \$60 and \$75 per hour for nearly 20 years and are obviously inadequate. Hopefully, this situation will be remedied soon.

The bulk of the Judiciary budget goes to fund the Courts of Original Jurisdiction (“COJ”), including the Supreme and County Courts, Family Courts, Surrogate’s Courts, City and District Courts, and certain other courts and court functions. The requested COJ funding totals \$1.87 billion, which represents an increase of \$44.8 million (2.5%) above the current year adjusted appropriation.¹⁴ However, the request essentially matches (in nominal terms) the \$1.88 billion requested in the last pre-pandemic Judiciary budget submitted in November 2019.¹⁵ In inflation-adjusted terms, this reduction from pre-pandemic levels suggests that additional funding will be needed to complete the return of some courts to normal operations and eliminate the delays and backlogs resulting from the pandemic.

The Budget’s proposed 2.5% increase over last year’s spending estimate represents a spending decrease after adjusting for inflation. Nevertheless, the Budget states that this increase will be sufficient to restore workforce strength and court operations to pre-pandemic levels while funding new judgeships and associated support costs and ameliorating case backlogs exacerbated by the pandemic.¹⁶

¹¹ Budget at vii-viii.

¹² Budget at viii.

¹³ Budget at xi, 96–99, 107–112.

¹⁴ Budget at 4.

¹⁵ FY 2021 Budget at 5.

¹⁶ Budget at xii.

In our view, this is an ambitious claim. The Budget’s 2021 Statewide Workload by Court Type chart (“2021 Workload Chart”)¹⁷ shows the magnitude of the catch-up effort required. For example:

- New civil case filings in Supreme Court totaled 150,537 against 129,959 dispositions, for a disposition rate of 86%.
- According to the Statewide Landlord Tenant Eviction Dashboard on the USC Division of Technology & Court Research website¹⁸, in the wake of the eviction moratorium’s expiration in January 2022, statewide eviction filings rose dramatically to 188,903 from 69,325 in 2021, likely exacerbating backlogs. In 2021, new filings in New York City Housing Court (“Housing Court”) totaled 54,509.¹⁹
- Other New York City Civil Court dockets apparently experienced even more severe backlog growth during 2021. New civil action filings totaled 261,622 against only 129,959 dispositions, for a dismal 47% disposition rate. Smaller Small Claims and Commercial Claims dockets fared even worse, with 32% and 30% disposition rates, respectively.

Some courts fared better during 2021. The Appellate Divisions seem to have effectively managed their appeal dockets through the pandemic. In the Appellate Divisions, dispositions exceeded filings of appeal records by a healthy margin in all four departments.²⁰ In the Supreme and County Courts, criminal dispositions slightly exceeded new filings. In the New York City Criminal Courts, the disposition rate was 122% for arrest cases and 158% for summons cases, implying reduced backlogs. The disposition rate for City and District Court criminal cases outside of New York City was 110%.

However, growing backlogs in courts that most directly address the basic needs of the poorest New Yorkers cast doubt on whether the level-funding approach featured in the Budget will suffice to bring court operations back to acceptable standards. As discussed above, the Housing Court faced a doubling of filings to 109,861 in 2022.²¹ Yet the Budget proposes a \$32.3 million funding level, representing a sub-inflation \$900,000 (2.8%) increase over the current year adjusted appropriation. That proposed funding is less, even in nominal terms, than the \$34.5 million Housing Court funding request in the last pre-pandemic budget proposed in late 2019.²²

¹⁷ Budget at 16.

¹⁸ See <https://ww2.nycourts.gov/lt-evictions-33576>.

¹⁹ The 2021 Housing Court filing rates may have been impacted by the eviction moratorium in effect during that year.

²⁰ Budget at 95.

²¹ See Statewide Landlord Tenant Eviction Dashboard, <https://ww2.nycourts.gov/lt-evictions-33576>.

²² FY 2021 Budget at 37.

The Housing Court's current struggles are unlikely to be ameliorated without substantial additional resources. Court staff, attorneys and legal services providers are simply unable to keep up. As post-pandemic dispossession filings increase and old stayed cases are restored to the calendar, the flood of additional cases has meant that most lower-income tenants are now unable to obtain representation under New York City's Right to Counsel law, reversing gains that appeared after the recent enactment of that reform.²³ The new requirement that the Court conduct enhanced on-the-record examinations of settlement stipulations involving unrepresented tenants to ensure that they are fairly understood also means that such cases necessarily take longer to process.²⁴ Most recently, the closure of the Emergency Rental Assistance Program portal on January 20, 2023 ended the possibility of stays on proceedings while state financial assistance is evaluated. This is likely to add thousands of cases to the calendar, with less monetary assistance. Given the dire consequences and trauma of eviction affecting the mainly Black and Brown litigants in Housing Court, additional resources need to be devoted to improve the functioning of this essential court, to effectively carry out New York City's Right to Counsel law, and to address issues of fairness and equal treatment for all of this state's diverse residents as recommended by the Special Adviser's Report.²⁵

Dismal disposition rates and growing backlogs in New York City Civil Court are also unlikely to be resolved by a level-funding approach. The \$69.7 million Budget request for the NYC Civil Courts (excluding Housing Court) is about 7.3% above the \$64.9 million amount requested in last year's budget, essentially level funding in inflation-adjusted terms.²⁶

Growing delays in certain other courts have not necessarily shown up in the aggregate statistics included in the Budget. Although the 2021 Workload Chart indicates that the Supreme Courts were keeping up with uncontested matrimonial filings in 2021 (with 38,829 dispositions against 39,076 filings), practitioners have experienced increasing delays. In Manhattan, the time from filing of final uncontested divorce papers to obtaining a judgment of divorce has apparently grown from a few months to a year or more. In Brooklyn, the time to obtain an uncontested divorce judgment has increased to about 10 months.

Family Court presents another example of growing delays not yet showing up in the Budget's statistics. The 2021 Workload Chart reports that in 2021 statewide Family Court dispositions (389,292) exceeded filings (369,186). Yet the situation in certain Family Courts appears less sanguine. A practitioner reports that in Kings County, a first appearance in May 2023

²³ Representation of qualified tenants under the Right to Counsel in NYC Housing Court law has fallen from 63% in January 2022 to only 5.4% in October, 2022. See <https://nextcity.org/urbanist-news/nyc-right-to-counsel-for-people-facing-eviction-program-struggling-new-york>.

²⁴ See New York City Civil Court Act § 110(i) and Real Property Actions and Proceedings Law § 746, as amended eff. 3/22/22.

²⁵ Available at <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

²⁶ Budget at 32, FY 2023 Budget at 32, https://ww2.nycourts.gov/sites/default/files/document/files/2021-12/FY2023_FINAL-JUDICIARY_LINKED_0.pdf.) The current year cash estimate for the NYC Civil Courts is not broken out in the Budget.

was scheduled for a modification of child support petition filed in September 2022. This level of delay in NYC child support cases is not atypical.

The Budget generally seeks to maintain funding somewhat below current levels on an inflation-adjusted basis. The City Bar supports the Budget as an attempt to maintain court operations at acceptable levels, with the recognition that it still is likely to be insufficient to permit a speedy recovery from pandemic-era backlogs. We urge the Legislature to adopt it, recognizing that additional resources should be committed to the Judiciary to ensure that the court system can deliver the level of fair and speedy justice that the residents of New York expect.

Council on Judicial Administration
Fran Hoffinger, Chair²⁷

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²⁷ Mitchell Berns, Fran Hoffinger, Dilpreet Rai and Sara Wagner assisted in the preparation of this report.