



NEW YORK
CITY BAR

REPORT BY THE COUNCIL ON JUDICIAL ADMINISTRATION

**SUPPORT FOR THE
JUDICIARY'S 2022-2023 BUDGET REQUEST**

The New York City Bar Association urges the Legislature to accept the 2022-2023 Budget Request (“Budget”) of the Unified Court System (“UCS”), and to take expeditious action to supplement the Budget with additional funding.¹ While the \$2.39 billion request represents a modest \$58.2 million (2.5%) increase over the current year cash estimate, it also requests a spending level that no more than matches the \$2.36 billion requested in the last pre-pandemic judiciary budget issued in late 2019.²

The Budget represents a steady application of resources in the face of a greater task to restore the speedy and fair delivery of judicial services for all New Yorkers as the pandemic recedes. Merely treading water on judicial resources will not allow an elimination of case backlogs and a return to normalcy, and additional funds should be appropriated when available.

The size of the pandemic case backlog is suggested by the 2020 Statewide Workload by Court Type chart in the Budget (“2020 Workload Chart”).³ Most courts show substantially more filings than dispositions in 2020, indicating growing backlogs. Some of the busiest courts show severe backlog growth. For example, the New York City Housing Court (“Housing Court”) shows 87,152 filings in 2020 versus 37,181 dispositions, resulting in a concerning 43% disposition rate. The New York City Civil Court shows 216,951 filings versus 105,008 dispositions, resulting in an equally troubling 48% disposition rate.

The situation in Housing Court presents a vivid example of what will be required to return to normalcy. The ending of the statewide eviction moratorium on January 15, 2022 may unleash a potentially overwhelming backlog of long-festering housing disputes to be resolved. The pattern of statewide eviction filings, as reported on the USC Division of Technology & Court Research

¹ The Budget addresses spending for the fiscal year commencing April 1, 2022. *See* http://ww2.nycourts.gov/sites/default/files/document/files/2021-12/FY2023_FINAL-JUDICIARY_LINKED_0.pdf (“FY 2023 Budget”).

² New York State Unified Court System Budget for Fiscal Year 2020-2021 submitted November 29, 2019, at page I, http://ww2.nycourts.gov/sites/default/files/document/files/2019-12/2020-21_JudiciaryBudget_0.pdf (“FY 2021 Budget”) (all websites last visited Jan. 27, 2022).

³ FY 2023 Budget, at 16.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 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.

website,⁴ suggests the scope of the problem. Statewide eviction filings totaled 262,365 in 2019. During 2020, the first pandemic year, eviction filings dropped to 108,945, and then dropped again to 67,335 in 2021. Assuming that a sizeable portion of the drop-off represents housing disputes put on hold by the pandemic, the magnitude of the drop-off suggests that there may be tens of thousands of unresolved disputes auguring a substantial increase in eviction filings during 2022, over and above the typical flow of new filings.

Despite the apparent backlog problem, the Budget proposes to fund the Housing Court at a level below what was requested in the last pre-pandemic budget submitted in November 2019. The \$32.4 million Housing Court Budget request represents a 2.8% increase over the current year adjusted appropriation. However, it represents a 6.1% reduction from the \$34.5 million funding level requested in the FY 2021 Budget.⁵ Given the overwhelming backlog suggested by the 43% Housing Court disposition rate shown in the 2020 Workload Chart, the level of resources sufficient to handle the 2019 eviction caseload will not work for 2022. Increased resources will be required to achieve normal operations, clear massive backlogs, and deal with the expiration of the eviction moratorium, likely to flood the Housing Court with potential emergency cases.

Another example of reduced resources in the face of a growing backlog is the New York City Civil Court. Although the Civil Court's 2020 disposition rate of 48% suggests a growing case backlog, the Budget's \$64.9 million funding request for that court is \$700,000 less than requested in the last pre-pandemic budget.⁶

Other courts are also suffering from severe pandemic-induced backlogs that will require extra resources to clear. In 2020, statewide Family Court filings dropped 43.7% from the 579,000 level experienced in the 2018-2019 period to 326,000.⁷ This precipitous decline in filings suggests a pent-up backlog of issues to be brought to Family Court for resolution as the pandemic recedes and the courts fully re-open. Anecdotal evidence also suggests that the handling of divorce matters in Supreme Court is extremely backed up in New York City. We understand that, with respect to matters where final divorce papers are e-filed in New York County, the time to issue a judgment of divorce has grown from three or four months to a year or more. The divorce matter backlogs in Queens and Kings Counties are apparently equally severe.

Several resource provisions in the Budget are noteworthy and encouraging. It requests \$12.6 million additional funds (an increase of 12.6%) for Civil Legal Services to catch up for cost-of-living and inflation increases over the last six years.⁸ It requests funding for a net increase in the number of justices certificated to serve past their normal retirement age, and funding for 14 new Supreme Court justices. It requests continued funding for criminal defender organizations and needed capital improvements and technology upgrades. It also advocates for statutory changes

⁴ See <https://ww2.nycourts.gov/lt-evictions-33576>.

⁵ FY 2021 Budget, at 37; Budget, at 34.

⁶ FY 2021 Budget, at 35; Budget, at 32.

⁷ UCS 2018-2020 Annual Reports, Table 8.

⁸ FY 2023 Budget, at 135-36.

to support much-needed increased pay rates for 18-B lawyers (criminal and lawyers for children) and Judiciary Law § 35 attorneys.

The Budget addresses the need to continue to accommodate changes in court operations necessitated by the pandemic, while commencing the transition to normal court operations as circumstances permit. The court system's programs geared to maintaining safe and continuous in-person court operations after the early stages of the pandemic have met with success. Notably, over 90% of judicial and nonjudicial staff have submitted proof of vaccination and most others have submitted requests for religious or medical exemptions.

The pandemic has forced the courts to experiment with remote alternatives to in-person court proceedings. The success of some of these experiments will undoubtedly result in innovations outlasting the pandemic. Conducting status conferences, motion arguments and mediations by videoconference has generally worked well, creating substantial time savings for parties and counsel who are not required to travel to court. Staggered scheduling of appearances is replacing large "cattle calls," avoiding the waste of time attendant to calling all litigants and lawyers on multiple matters to appear in court at the same time.

The Budget suggests that several UCS initiatives interrupted by the exigencies of the pandemic will come back to the fore. Court simplification, involving the consolidation of several distinct courts into one unified Supreme Court, as well as the merger of the City and District Courts into a single Municipal Court, has been consistently promoted by the Chief Judge. The Budget notes that simplification of New York's byzantine court structure would allow for more efficient, effective and equitable re-alignment of personnel and resources to respond to emergencies such as the pandemic. Such proposals will likely be debated vigorously by the bench, the bar and other affected parties as they receive renewed attention.

The UCS continues to press forward with its Presumptive ADR Initiative to encourage early mediation and other alternative processes designed to resolve disputes promptly and fairly without extended court proceedings. To the extent such initiatives are sensibly applied at appropriate junctures to cases amenable to informal resolution, they will contribute to focusing scarce judicial resources more efficiently on cases requiring court intervention.

The UCS also continues to broaden the application of e-filing technology throughout the courts of the state. The expansion of this technology has provided great efficiencies in the handling, filing, and accessing of documents in court proceedings. The costs associated with handling, transporting, storing and tracking physical documents are reduced. The ability of parties, judges and the public to access and track documents filed in court is greatly enhanced. The availability of on-line documents can also be helpful in conducting remote proceedings to replace in-person proceedings in appropriate circumstances.

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 \$1.82 billion, which represents an increase of \$29.6 million (1.6%) above the current year adjusted

appropriation.⁹ However, the request is 3.2% below the \$1.88 billion requested in the last pre-pandemic Judiciary budget submitted in November 2019.¹⁰ This reduction from pre-pandemic levels suggests that additional funding will be needed to return to normal operations and eliminate the delays and backlogs resulting from the pandemic.

The Budget generally seeks to maintain current funding levels, with some nominal increases in certain areas. The Association supports this year's Budget as an attempt to maintain court operations at acceptable levels, with the recognition that it may be insufficient to permit a full, speedy recovery from pandemic-induced case backlogs. We urge the Legislature to adopt it, recognizing that additional resources should be committed to the Judiciary as soon as they are available.

Council on Judicial Administration¹¹
Michael P. Regan, Chair

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Contact

Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org

Maria Cilenti, Senior Policy Counsel | 212.382.6655 | mcilenti@nycbar.org

⁹ FY 2023 Budget, at 4.

¹⁰ FY 2021 Budget, at 5.

¹¹ Mitchell Berns and Fran Hoffinger, members of the Council on Judicial Administration, are the drafters of this report.