



NEW YORK  
CITY BAR

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February 2, 2022

**Via Email**

Hon. Janet DiFiore  
Chief Judge of the State of New York  
Court of Appeals

Hon. Hector D. LaSalle  
Presiding Justice  
Supreme Court of the State of New York  
Appellate Division, Second Department

Hon. Rolando T. Acosta  
Presiding Justice  
Supreme Court of the State of New York  
Appellate Division, First Department

Hon. Gerald L. Whalen  
Presiding Justice  
Supreme Court of the State of New York  
Appellate Division, Fourth Department

Hon. Elizabeth A. Garry  
Presiding Justice  
Supreme Court of the State of New York  
Appellate Division, Third Department

Hon. Carmen Beauchamp Ciparick  
Chair  
New York State Board of Law Examiners

Hon. Lawrence K. Marks  
Chief Administrative Judge  
New York State Unified Court System

**Re: Follow Up on Two Modification Proposals: Question 26 of the NY Bar Application and Part 523 of the Rules of the Court of Appeals**

Your Honors:

I hope this finds you well. As City Bar President since May 2020, I have watched in awe and with gratitude as the legal profession has risen to address the challenges facing our country and profession, including, a two-year pandemic; calls to address structural racism in our profession and in our systems of justice; and threats to the rule of law. At the same time, remote work has challenged us to communicate in a wholly different way. These difficult conversations are taking place not side-by-side at conference tables, but over email, texts and social media and by video

**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.*

conference and telephone calls. I know we're doing our best to adapt to a quickly changing – and uncertain – environment, and to heed the calls being made of us to address long-standing problems and injustices, but there is still so much more work to be done. In that vein, I write today to request that you consider implementing two proposals, both of which have the support of the New York City and New York State Bar Associations and are in direct response to this moment in time.

First, we request modification of Bar Application Question 26 – which seeks overbroad and unnecessary criminal background information - in order to comply with New York law, ameliorate the Question's disparate impact and deterrent effect on Black and Latinx applicants, and advance our collective goal of increasing diversity, equity and inclusion in the legal profession. Further information can be found in our June 1, 2021 letter and the State Bar's "Report and Recommendations of the Working Group on Question 26 of the New York Bar Application."<sup>1</sup>

Second, in response to the advent of remote law practices, we request that Rules of the Court of Appeals Part 523 be modified to add a provision that permits a lawyer licensed in a jurisdiction outside New York to practice remotely from a New York location, with parameters in place to ensure that the lawyer will not run afoul of unauthorized practice rules. Further information can be found here.<sup>2</sup>

Separately, we were thankful for Judge Marks for his testimony at the January 25 Public Protection Budget hearing. We applaud and support the Judiciary Budget's increase in civil legal services and IOLA funding, as well as the Court's commitment to full implementation of Secretary Johnson's recommendations in his 2020 Equal Justice report.<sup>3</sup> We were grateful for Judge Marks' statements regarding (i) the need to address statewide judicial diversity and its relevance to the court simplification effort; (ii) how critically necessary it is for tenants to have legal representation in housing court; (iii) the urgent need to raise compensation rates for 18-B lawyers and attorneys-for-children; (iv) the importance of having a robust Inspector General's Office to investigate allegations of racial bias in our courts; (v) the need for comprehensive anti-bias training for all

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<sup>1</sup> See New York City Bar Association Letter to Chief Judge DiFiore, et al., June 1, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/amending-question-26-of-the-new-york-bar-application>; New York State Bar Association, Report and Recommendations of the Working Group on Question 26 of the New York Bar Application, Jan. 2022, <https://nysba.org/app/uploads/2021/11/H6.-Working-Group-on-Question-26-NYS-Bar-Exam-Admission-App-APPROVED-HOD-1.22.2022.pdf>.

<sup>2</sup> New York City Bar Association Report by Professional Responsibility Committee, et al., Proposed Amendment to NY Court of Appeals Part 523 Rules of Temporary Practice of Law in New York, Reissued Nov. 5, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/proposed-amendment-to-new-york-court-of-appeals>; approved by the State Bar House of Delegates, Jan. 22, 2022, <https://nysba.org/app/uploads/2021/11/H7.-NYC-Bar-Part-523-of-the-Rules-of-the-Court-of-Appeals-staff-memo-and-cover-APPROVED-HOD-1.22.2022.pdf>.

<sup>3</sup> "Report in Support of the Judiciary's 2022-2023 Budget Request," New York City Bar Association, Jan. 27, 2022, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/2022-2023-judiciary-budget>.

court staff and judges; and (vi) the current lack of sufficient HP Parts in NYC Housing Court to enforce tenant's rights to urgently needed repairs.<sup>4</sup>

We welcome the continued use of Presumptive ADR in appropriate cases, and look forward to continuing our partnership in that effort. Likewise, we fully support and welcome the Court's plan to upgrade and expand its technology capacity to facilitate virtual court appearances where appropriate, to expand case management systems, to enhance cybersecurity, and to increase the court's ability to provide the Legislature and the public with critical information regarding caseload activity.

As the City Bar's members have expressed in their various letters to Court officials over the past two years, even as they have pushed and challenged all of us to do better, thank you for your leadership during these demanding times. Please do not hesitate to call on us if we can be of any assistance with the above two proposals, or with any other matters of importance to the bench and bar.

Respectfully,



Sheila S. Boston  
President

Cc: Eileen Millett, Counsel

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<sup>4</sup> "Recommendations to Improve the Housing Court's Enforcement of Housing Maintenance and Standards," New York City Bar Association, Dec. 6, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/enforcement-of-housing-maintenance-and-standards>.