

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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**Budget Negotiations, the Legislature and the Judiciary
in New York: A Hurried Process Is Not the Way**

Statement by New York City Bar Association President Susan J. Kohlmann

This budget season brings two late-stage proposals that would significantly affect the New York State Judiciary. The New York City Bar Association takes no position on the bills at this time and cautions that rushed consideration of these bills affecting our State Judiciary places expedience over good governance. We urge the Legislature and the Governor to pause their consideration and enactment of these important bills to allow for more robust public input, debate and resolution.

The first bill, which was introduced and passed by both houses last week ([S.6061/A.5983](#)) provides that if an Associate Judge of the Court of Appeals is appointed to be the Chief Judge, the Governor would have the option of nominating someone to the vacant Associate Judge position from the list of seven individuals recommended by the Commission on Judicial Nomination to fill the Chief Judge position. The bill has been opposed by the Fund for Modern Courts, Citizens United and the League of Women Voters. In sum, their memo provides three points of opposition: first, the bill likely is unconstitutional given the provisions of Article 6, Section 2 of the New York State Constitution, which require a separate process for each Court of Appeals vacancy; second, the position of Chief Judge and Associate Judge are very different, in that the former also oversees the court system; therefore, the criteria for vetting the qualifications of nominees differ and the Commission’s process for each position should not be combined; and third, the bill would result in improper politicization of a judicial nomination process that was constitutionally designed to avoid that end. [Full disclosure: As per usual protocol, the City Bar’s Judiciary Committee is in the process of evaluating the list of seven names most recently provided by the Commission on Judicial Nomination to fill the Chief Judge vacancy.]

The second proposal can be found in the Senate’s one-house budget bill, at Part DDD of [S.4005-B](#), which proposes a new subdivision 3 of Judiciary Law section 212. Broadly speaking, the provision would require the court to (1) collect data on judicial training programs, including participants and materials, and submit an annual report to the Governor, the Senate Temporary President and the Assembly Speaker; (2) prepare, submit (to the Governor, the Senate Temporary President and the Assembly Speaker), and publicize an annual report on performance of judges and justices (hereinafter “judges”), including rules, policies, procedures and standards

regarding the timely and just resolution of cases; and for each judge, *inter alia*, data on case dispositions, pending matters over six months and reversals on appeal; and (3) create and submit (to the Governor, the Senate Temporary President, the Assembly Speaker and the chairs of the Senate and Assembly Judiciary Committees) an annual report regarding the number of threats, assaults and attempted assaults against judicial and non-judicial officers and their families, and the number of judicial and non-judicial officers (current and former) under extraordinary security measures and the cost thereof; as well as a second confidential annual report containing threat information and measures taken with respect to judicial and non-judicial officers (current and former). The measures were reported in the *New York Law Journal* on March 20 and almost immediately opposed by the New York County Lawyers Association and the Unified Court System, which also signaled a willingness to engage in dialogue with the Legislature over the measures being proposed.

These two proposals and the responses thereto raise serious issues worthy of much more public discourse. Only through healthy and fully inclusive dialogue can we tackle complex issues to lasting effect concerning, *inter alia*, (i) the constitutional and statutory provisions governing the judicial nomination process for the Court of Appeals and whether improvements can be made; (ii) our duty to provide for judicial safety, security and independence; (iii) our court system's management of cases and the need to ensure equitable access to justice for *all* litigants in *all* courts; (iv) the public's right to know how laws are being interpreted and applied in our courts; and (v) the appropriate and, to the extent safety is not compromised, transparent allocation of public monies necessary to protect judges and judicial personnel. The public-at-large, the court's direct stakeholders and the legislative process itself would be best served by allowing the time and opportunity for these important conversations to occur. Consideration of these two proposals should be taken up after the completion of the budget process and the appointment of a new Chief Judge.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 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. www.nycbar.org