



NEW YORK STATE BAR ASSOCIATION
One Elk Street, Albany, New York 12207 • 518.463.3200 • www.nysba.org

Testimony
before a Joint Hearing
of
the Senate Judiciary Committee
and
the Assembly Judiciary Committee

Henry M. Greenberg, President

Delivered November 13, 2019

Testimony of
New York State Bar Association President Henry M. Greenberg
Court Reorganization Hearing
Wednesday, November 13, 2019

My name is Henry M. Greenberg. I am President of the New York State Bar Association (NYSBA).

We are the largest and oldest continuously operating state bar association in the nation.

Thank you for the opportunity to testify this morning.

I commend you for holding this hearing as the subject of court modernization and reorganization, warrants the careful study and attention you are giving it.

On behalf of our 72,000 members, I thank you for doing this important public service.

New York's court system has aptly been called "the most archaic and bizarrely convoluted" in the United States.

It is confusing for litigants and lawyers alike.

As you know, New York has 11 different trial courts. This is costly for taxpayers and makes case management difficult.

Each of the 11 trial courts — which is more than any other state — has its own filing system and administrative staff.

The New York State Bar Association wholeheartedly supports Chief Judge Janet DiFiore's plan to eliminate this complex maze of overlapping trial courts and replacing it with a simplified three-level structure, along with other needed reforms.

For decades, the State Bar, along with leaders of the judiciary, other bar associations, and good government groups, has pressed for the need to modernize New York's court system.

I personally have worked on this issue for years.

Sadly, both for those who work in the system and the people it serves, the calls of court reformers have largely fallen on deaf ears.

Now, however, Chief Judge DiFiore is breaking the logjam with a court modernization plan that will streamline and simplify the system.

It will also:

- Enable faster and more efficient resolution of cases and fewer court appearances, saving money for litigants.
- Allow OCA to make best use of limited resources.
- And, diversify the courts, especially outside of New York City.

With respect to diversity, currently in the third and fourth departments, which serve most of upstate, the Supreme Court bench is overwhelmingly white and male.

In the year 2019, that is not acceptable.

Former Chief Judge Judith Kaye observed that a diverse bench gives the public a belief that they are included in the justice system.

And, indeed, there is value in symbolic representation — seeing someone who looks like you on the bench.

New York's demographics are changing. If the judiciary doesn't change apace, we risk undermining the public's confidence in our justice system and respect for the rule of law.

By combining County, Family, Housing and Surrogate's Courts within Supreme Court, the Chief Judge's reform plan holds the potential of notably increasing the diversity of the Supreme Court bench outside New York City:

For example, assume the Chief Judge's plan went into effect today, the number of female Supreme Court judges would increase by 21%.

Ethnic diversity on the bench would increase by 25%.

In Albany County, under the proposed plan and following the last election, come January 1, we would have had, six new diverse Supreme Court Justices — three Family Court Judges (two women and one Hispanic male), two County Court Judges (an African-American male and a woman) and the Surrogate's Court Judge (a woman).

It bears emphasis that litigants will see the most benefit from the Chief Judge's plan, because cases will be resolved faster and require fewer court appearances.

That translates into a host of savings — on everything from child-care to time off from work to travel costs — all of which arise when one must be in court.

It is hard to put an exact dollar amount on these savings.

But it's clear the current court system takes a significant toll on everyday New Yorkers.

Consider, for example, a domestic abuse survivor who decides to leave her relationship.

Today, she might find herself in three different courts to secure justice:

- Family Court for custody and protection of her kids.

- Supreme Court to initiate divorce proceedings
- Criminal Court if she wants her abuser to be prosecuted on charges.

The burdens placed on real people by our current system are intolerable.

Countless confusing hearings and proceedings is not only expensive, it also causes anxiety, pain, and despair for vulnerable persons.

This no way for a humane, modern justice system to operate.

We are New Yorkers. We believe in compassion for all and caring for those who need our assistance.

The Empire State can no longer abide a structure of trial courts unworthy of its citizenry.

The current system is particularly problematic in the high-volume courts — Family Court, Criminal Court, and the Housing Court of Civil Court — which primarily serve low-income litigants of color and are often overcrowded and underfunded.

In her 2019 State of our Judiciary Address, Chief Judge DiFiore's noted how the State Bar's historic court reform position parallels her own proposals.

NYSBA supports consolidating trial courts into the Supreme Court.

- We believe the Chief Judge and OCA should be able to establish divisions within those courts, as necessary, and direct court resources where they are needed.
- We believe all judges impacted by court modernization should continue to be elected or appointed as they are under existing law.
- We believe that the population cap that limits the number of Supreme Court Justices per judicial district to one per 50,000 should be abolished.
- We also believe that OCA should have the ability to create a Fifth Judicial Department, which is currently barred by the state constitution.
 - In 2018, the Second Department in Brooklyn handled 8305 appeals, compared with the 5949 in the other three departments combined.
 - A Fifth Department would help relieve this caseload and remove yet another barrier to New Yorkers' access to justice.

The State Bar urges the Legislature and all court system stakeholders to support this bold and much needed reorganization plan.

We know that making these changes takes time.

As the process plays out, we will work to help educate the public on why this overhaul is needed.

That way, when it comes time for voters to weigh in on the necessary constitutional changes, the State will hopefully finally get the judiciary system it deserves.

Thank you.