



**WRITTEN TESTIMONY OF ROGER JUAN MALDONADO
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**SENATE STANDING COMMITTEE ON THE JUDICIARY
ASSEMBLY STANDING COMMITTEE ON THE JUDICIARY**

PUBLIC HEARING ON COURT CONSOLIDATION

**Thursday, November 21, 2019, 10:30 a.m.
Legislative Office Building, Hearing Room A**

Good morning and thank you for the opportunity to testify on behalf of the New York City Bar Association regarding Chief Judge DiFiore’s court restructuring proposal. I thank the Chief Judge for breathing new life into a decades-old effort and I applaud the Judiciary Committees for holding these hearings.

By way of brief background, I am currently a litigator in private practice at Smith, Gambrell & Russell, LLP in New York City, where I focus on copyright and contractual litigation. I am a Referee for the New York State Commission on Judicial Conduct; a member of the Commercial Division Advisory Council; and a board member of New York Community Trust and United Neighborhood Houses. I have served on the Mayor’s Advisory Committee on the Judiciary and the Governor’s Screening Committee for the Court of Claims, so I am familiar with interviewing and vetting judicial candidates. And, I believe of greatest importance here, I began my career as a legal services lawyer representing tenants in New York City Housing Court.

Let me begin by saying, individually and on behalf of the City Bar, that I fully support the Chief Judge’s proposal. The proposal keeps the focus where it should be: on the public. Not on the judges. Not on the lawyers. But on the people who use and rely on the courts to assert their rights and resolve disputes that can have significant personal and financial consequences.

How does the proposal accomplish these broad goals?

First - by leveling the playing field among the various trial courts and consolidating them into a two-tiered Supreme Court of general jurisdiction and Municipal Court of limited jurisdiction (town and village courts would not be affected), the proposal will make the various and siloed “high volume” or so-called “poor people’s courts” a thing of the past. Family Court will be elevated and placed on the same footing as Supreme Court; and Housing Court will be elevated and become part of a statewide Municipal Court, no longer a quasi-judicial/administrative body. The importance of this change and what it will mean for the fair and dignified treatment of all litigants cannot be overstated. My experience as a housing court attorney and, more recently, as a City Bar President in frequent communication with members of the public and City Bar staff and

members - including nonprofit, legal services and pro bono lawyers, private practitioners and academics - informs my strongly held view on this point. We can no longer tolerate a situation where, for example, low-income single parents and individuals, facing the loss of a home or custody of a child or crushing debt, are treated like second-class citizens subject to “hallway justice” because their disputes don’t involve significant sums of money.

Second - by permitting the allocation of judicial resources where they are most needed, reducing the overlapping and conflicting jurisdictions of the various trial courts, increasing the number of judges, building in a long rollout period, and keeping intact the current judicial selection processes used throughout the state, the proposal will keep its focus on improving the statewide administration of justice for the benefit of the public. In other words, it presents a viable path forward.

The long-term success of court restructuring should be judged by those persons who enter our courthouses every day and who fairly expect that justice will be meted out in a reasonable manner, and not by way of revolving courthouse doors. Although I am focused here on litigants of less economic means, persons of color, and those without counsel, particularly in New York City, it is beyond question that a more efficient and streamlined court system will better serve all litigants, including many of your constituents who may find themselves relying on a judge to help resolve some of life’s most serious problems.

On a more granular level, how does the proposal accomplish these goals?

- By streamlining jurisdiction so that litigants don’t need to interact with multiple courts;
- By eliminating the constitutional cap and increasing the potential number of judges statewide so that disputes can be resolved efficiently, finally, fairly and effectively, no matter the nature of the disputes or where they are being litigated;
- By reducing the number of administrative bodies so that the courts are easier to administer, including, with respect to allocation of resources; and
- By building in a five-year rollout to make sure we get it right.

Some examples you may already be familiar with: let a NYC Municipal Court judge resolve an individual’s housing and consumer matter in one courtroom. Let a Supreme Court justice resolve an individual’s divorce and related family matters in one case. Do away with the notion that claims against the State have to be heard in a separate court, even if they are related to other claims. My colleagues at various organizations and members of the statewide [Simplify the Courts Coalition](#) are providing compelling testimony on this point and I will not repeat it here. I will add, however, that based on my years in NYC Housing Court, I am all too familiar with the burdens imposed on litigants – days off work, child care, long travel to courthouses – by a system that is unreasonably difficult to understand and whose multi-layered and overlapping structure impedes the delivery of fair justice.

In terms of the amendment itself, I’d like to highlight a few provisions of the Chief Judge’s proposal as particularly important to these goals:

- Housing Court judges will be made judges of the Municipal Court, as opposed to quasi-administrative positions; Family Court will become part of Supreme Court; and subject matter “Divisions” will permit judges to develop/maintain certain expertise.
- The stopgap “temporary” measure of appointing Acting Supreme Court Justices – by pulling them from the high-volume courts - will end.
- Many more judges will be eligible for appointment to the Appellate Division.
- Judicial selection processes will remain the same so that the process by which a particular judge was selected pre-consolidation (appointment, contested primary or convention) will stay in place for that judge’s re-election as well as the selection of his/her successor. This is an important component of keeping the focus on how well the courts serve all litigants, as opposed to focusing on how judges are selected, which can easily distract us from the primary goal. (In keeping with this focused approach, although the City Bar has long advocated for more judges to be selected through an appointive process, I will spend no time on that issue here since the proposal adopts a merger-in-place approach.)
- The legislature can create new judgeships as needed and can re-draw department lines every ten years. The cap of one Justice per 50,000 residents in a district is eliminated so that a greater number of judgeships can be created and the need for Acting Supreme Court Justices will cease to exist.

Notwithstanding the City Bar’s longstanding support for court consolidation, there are areas that will no doubt call for further discussion among stakeholders as the amendment progresses. For instance, we may hear from lawyers with questions or concerns about how to synthesize the Family Court Act and the Domestic Relations Law. How will electronic systems be merged? And, we’ve already heard from some groups with concerns about judicial diversity. Including a five-year rollout period will help to work through some complicated issues. Ultimately, however, we are going to need to make the case – and I believe we can - that the benefits of court restructuring outweigh the logistical challenges and any potential costs to particular constituencies. It is my firm belief that the provisions I’ve highlighted here provide a solid foundation for the successful transition to a better, more functional court system. Moreover, once the new structure is in place, it will provide an opportunity to explore even further changes to assist low-income litigants, e.g., increasing access to legal representation in certain cases, such as consumer debt matters.

I’d like to say a bit more about judicial diversity, which I understand was discussed at the New York City hearing and which I further understand is a topic being discussed among several City Bar committees. For my part, at least initially, I have difficulty seeing how the proposal itself would have a significant impact on judicial diversity in New York City. As I read it, restructuring would have the dual purpose of elevating and making more permanent both Supreme and Municipal Court judgeships while maintaining the current selection process for each seat. That being said, this is an important conversation to keep having, whether the concerns are rooted in the current system or in relation to the restructured system as proposed - - or both. There is always room for improvement, recognizing that challenges will vary in different parts of the state.

However, as I stated earlier in my testimony, the focus of this proposal is on consolidating the courts for the benefit of litigants. The judicial selection process and its impact on diversity is an important concern and should be the subject of ongoing discussion and improvement, but I do

not believe diversity and restructuring are incompatible topics; indeed, I believe they should be addressed together, now and as part of the proposal's five-year rollout.

To that end, I'd like to close on one point of emphasis: to increase diverse representation in the profession and on the bench, we need to start our efforts sooner. That is, we need to broaden and strengthen the student pipeline to the legal profession, and lawyers and bar associations need to do more on this front. This is an especially important concept to raise today because if the proposal passes as written, then there will be new vacancies and Supreme Court judgeships opening up in the future. We should be thinking now about how to reinforce the diversity pipeline to those positions.

Last May, the City Bar released a report, ["Sealing the Leaks: Recommendations to Diversify and Strengthen the Pipeline to the Legal Profession."](#) In it, we conclude that in order to increase diversity in the legal profession, we need to start talking to students at a much earlier point about what it means to be a lawyer or to work in a law-related field, what are the various career paths, why it is a rewarding profession, and how it can be made more attainable. We are trying to do our part, through increased programming, written statements, community work, and volunteer and internship opportunities through our Office of Diversity and Inclusion. As City Bar President, I have been encouraging members to go out into communities and talk about what they do and encourage diverse students to consider a profession in law or a law-related field. Last February, we held a program "From Law School to Judicial Chambers: Cultivating A Diverse Clerkship Pipeline". Every other year we run a full-day "How to Become Judge Program" on a Saturday in December and we invite a diverse panel of judges to speak about their experiences. We hold these programs at the City Bar and in local jurisdictions as well. I think we can do even more and I will continue to treat this as a high priority of my Presidency. Engaging diverse students at a younger age, and helping them to connect the dots from middle school through their first legal or law-related job, is part of the foundation we need to keep building in order to promote all avenues of diverse representation in our profession.

I thank you for your time and am happy to take any questions.

Respectfully submitted,

Roger Juan Maldonado
President, New York City Bar Association