

## RESOLUTION OF THE BROOKLYN BAR ASSOCIATION DATED NOVEMBER 11, 2020

The Brooklyn Bar Association unanimously resolves to support our Judges during the current budget cutting measures imposed by the Office of Court Administration ("OCA").

The present measure provides for not recertifying 43 Judges who are 70 years of age or older at a savings of \$55 million of an approximate total of \$300 million in cuts.

Not only will this have severe consequences for the Judges, these cuts will impact upon the administration and access to justice and the public at large. These cuts will have a profound impact upon lawyers, litigants and the citizens of Brooklyn. The independence, scholarship and legal acumen of our Judges is without equal and perhaps a more targeted approach to these cuts is necessary.

Brooklynites can rightfully feel proud about the Appellate Division, Second Judicial Department, whose courthouse makes its home in Brooklyn Heights. The busiest appellate court in the nation, with jurisdiction over appeals from ten counties, it serves roughly half the population of New York State. The Court's geographic reach stretches from Montauk Point on Long Island, along the Atlantic Ocean to Tottenville on Staten Island and then heads north along the Hudson River up to Rhinebeck. The Court, and the people it serves, now face a crisis. In fact, the crisis has already begun.

For years, the Court and its staff have worked overtime to keep pace with the growing caseload while eliminating a backlog of cases--a truly Herculean task. It is supposed to be a court composed of 22 jurists but in the recent past it has managed with only 21. To hear more cases, the Court long ago switched from 5 judge panels to 4 judge panels. The Court hears approximately 20 cases per day, four days a week, and maintains a calendar that includes criminal, family and civil cases. On average, the Court issues 4,400 decisions a year, not including decisions on approximately 10,000 motions. Additionally, each year the Court admits approximately 2,000-3,000 applicants to the New York State Bar and handles disciplinary matters involving about 200 existing members of the Bar.

Even after two justices announced their retirements effective at the close of this year, four of the most experienced justices, one of whom is the Court's authority on DNA evidence, were not certificated. The law requires that each justice be a member of the Court when a decision is released. Given the generally expected time needed to write, review and issue a decision, those justices whose terms end this year cannot as a practical matter serve on panels which will issue decisions after the end of their terms on December 31<sup>st</sup>. Because 6 of the 21 judges have already stopped hearing cases, the Court's membership effectively stands now at only 15 justices. The Court cannot do its current work with 15 Justices. It simply cannot.

In the current financial environment, cost savings are no doubt necessary. This appellate court, however, was overtaxed even before the most recent cuts. The private Bar had already stepped up to assist the court in managing its caseload. In an attempt to reduce the cases heard and decided by the panels, unpaid members of the Bar have been conducting mediations in an effort to settle perfected cases before oral argument.

This past September, OCA cut the funding for the "Civil Appeals Management Program ("CAMP")" Conference Program, which each year settled between 800 and 1,000 appeals before the litigants ever submitted briefs. Without this program, the number of appeals to be heard by the Court could potentially increase by about 25%. The program continues at this time, but only because the former judges who conduct the conferences have, for now, agreed to work without pay.

Ironically, appellate courts have the ability to actually save the court system money. These courts do more than resolve the disputes among the parties in a particular case. Written decisions explain the applicable law, set boundaries for its application and serve as a guide for trial court judges and for those attorneys and litigants who might consider bringing a similar case in the future. A thoughtful written decision has the potential to actually limit future litigation in the same areas, as well as encourage settlements in cases where the facts are analogous or similar. There is a trickle down impact of these decisions that can produce future cost savings.

Justice delayed is, as the saying goes, justice denied, and that will certainly apply if the number of members of the bench is not restored quickly. Appointment to a position on the Appellate Division, Second Department is not a lifestyle assignment. Justices must read literally thousands of briefs and records on appeal during available time when they are not sitting on the bench or conferencing with other members. They work weekends and long past five o'clock on the weekdays. What is the real cost of a system where judges potentially do not have time to actually read the briefs and records.

WHEREAS, it appears that the busiest appellate court in the country will bear a disproportionate loss of judges.

WHEREAS, these significant reductions will likely have an immediate impact on access to justice for the citizens of ten counties of New York State.

WHEREAS, these cuts may also have a chilling effect on attracting the best and the brightest to this Court in particular.

WHEREAS, more analysis of the impact of these cuts on specific courts may be needed.

WHEREAS, we are mindful that cuts are necessary in light of the overall state budget shortfalls, but assessment of the cuts in each court is essential.

THEREFORE, BE IT RESOLVED, that the Brooklyn Bar Association respectfully implores the Office of Court Administration to reassess the implementation of these budget reductions and to reconsider certifying experienced, talented and knowledgeable jurists.