

## Reorganization Of NY Courts Would Ease Inefficiency Issues

By **Peter Shakro and Muhammad Faridi** (October 8, 2019, 2:57 PM EDT)

New York Chief Judge Janet DiFiore issued a press release on Sept. 25 announcing proposed amendments to the New York State Constitution that would streamline and simplify the state's unified court system.

The chief judge's proposal calls for the elimination of "New York's complex maze of 11 separate trial courts" and would "replace it with a simplified three-level structure to make the courts easier to navigate, increase operational efficiency and reduce costs to litigants, among other potential benefits." [1]

If adopted, these structural changes would represent the first major constitutional changes to court system organizations since the reforms that were passed over 40 years ago in 1977. [2]

### The Chief Judge's Proposal

Among the core components of Judge DiFiore's proposal is the restructuring of the trial court system. The press release provides the following key elements of this aspect of the proposal:

- Consolidating New York's 11 different trial courts into a three-court system consisting of a Supreme Court, a municipal court, and justice courts serving New York's towns and villages.
- Merging the Court of Claims, county courts, family courts and surrogate's courts into the current Supreme Court. The merged Supreme Court would contain six divisions: (1) Family; (2) Probate; (3) Criminal; (4) State Claims; (5) Commercial; and (6) General.
- Abolishing New York City's civil and criminal courts, Long Island's district courts, and the 61 city courts outside New York City by merging those courts into a new municipal court in those jurisdictions.
- Designating New York City's housing court judges as municipal court judges, to be appointed by the mayor to 10-year terms.



Peter Shakro



Muhammad Faridi

- Preserving the current method for selection and the terms of office for all judges of the courts, which would be abolished and merged into the Supreme Court and municipal court, respectively.
- Eliminating the constitutional cap on the number of Supreme Court judgeships that can be established by the Legislature.

The chief judge's press release highlights that the proposal is supported by over 100 legal, business and community leaders and organizations across New York.

### **The Likely Consequences of the Proposal, if Adopted**

If implemented, the proposal would result in a broader pool of applicants who would be eligible for appointment to the Appellate Division, New York's intermediate appellate courts (appointments to which are now restricted to New York State Supreme Court justices). In particular, the consolidation of New York's trial courts into a new Supreme Court as outlined above would result in a more diverse pool of candidates and provide opportunities for former commercial practitioners — who may not previously have been Supreme Court justices — to be eligible for appointment to the Appellate Division.

Moreover, the proposal would authorize the Legislature to change the number of Appellate Division departments once every 10 years to best meet the needs of New York's appellate system. The Appellate Division was established during the Constitutional Convention of 1894 when New York County was designated as the First Department and the Legislature was directed to set boundaries dividing the population of the state into roughly equal portions for the remaining departments.[3]

While the resulting four departments were of relatively equal proportion more than a century ago, population changes have created starkly uneven caseloads and shortages of judges in the Appellate Division.[4] A reorganization of the Appellate Division would therefore help balance disproportionate caseloads allocated among the departments of the Appellate Division.

The proposal would also allow for an increase to the number of Supreme Court judgeships, easing the burdens placed on the courts, litigants and the legal community resulting from insufficient numbers of judges assigned to the Supreme Court. The New York State Constitution allows for increases in the number of justices of the Supreme Court once every 10 years, but such increases are subject to a cap based on population per judicial district.[5] By lifting the constitutional cap on the number of Supreme Court justices, the proposal, if enacted, will likely alleviate backlogs and delays resulting from growing caseloads and allow resources to be allocated more efficiently.

The proposal provides for a five-year phase-in period to allow for any statutory, regulatory, administrative or other changes which may be needed to accommodate the new organizational structure.

The proposal to merge the Court of Claims into the Supreme Court would eliminate the need to litigate cases arising from the same transaction or occurrence simultaneously in both the Supreme Court and the Court of Claims whenever the state and a nonstate actor are named as parties in a dispute.[6] This, in turn, eliminates the need for redundant court appearances and to file duplicative briefs in multiple courts in connection with a dispute related to the same transaction or occurrence.

Although the proposal is not specifically designed to address commercial litigation in New York courts, if

implemented, it is nonetheless likely to affect the handling of commercial cases. That is so because, if adopted, the proposal will likely increase the overall efficiency of the state court system and the way judges are appointed to the Appellate Division, which, in turn, will likely affect the development of commercial law in the state.

### **Next Steps**

In order to take effect, the chief judge's proposal will need to be passed by the Legislature in two successive sessions and ultimately approved by the voters at a general election.[7] It has been reported that the Judiciary Committees of the New York Legislature will hold hearings on these streamlining proposals this fall.

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*Peter Shakro is an associate and Muhammad U. Faridi is a partner at Patterson Belknap Webb & Tyler LLP.*

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[1] Press Release, Chief Judge Proposes Constitutional Reforms to Simplify Outdated Court Structure, Aiming to Enhance Access, Optimize Resources, (Sept. 25, 2019), [https://ww2.nycourts.gov/sites/default/files/document/files/2019-09/PR19\\_22.pdf](https://ww2.nycourts.gov/sites/default/files/document/files/2019-09/PR19_22.pdf).

[2] Three amendments relating to the Judiciary were approved by voters in 1977. The first created a Commission on Judicial Nomination for the Court of Appeals. The creation of that Commission brought about a "merit selection" system of appointment for selecting judges to the State's highest court. N.Y. Const. art. VI, § 2(c)-(f) (1977). The second amendment provided for statewide court administration under the leadership of the Chief Judge of the State of New York and Chief Administrator of the Courts. N.Y. Const. art. VI, § 28 (1977). The third amendment created a Commission on Judicial Conduct with authority to discipline members of the Judiciary, subject to review by the Court of Appeals. N.Y. Const. art. VI, § 22 (1977).

[3] The Special Commission on the Future of the New York State Courts, A Court System for the Future: The Promise of Court Restructuring in New York State, Feb. 2007, at 25.

[4] The Special Commission on the Future of the New York State Courts, A Court System for the Future: The Promise of Court Restructuring in New York State, Feb. 2007, at 25.

[5] N.Y. Const. art. VI, § 6(d).

[6] The Special Commission on the Future of the New York State Courts, A Court System for the Future: The Promise of Court Restructuring in New York State, Feb. 2007, at 7.

[7] N.Y. Const. art. XIX, § 1.