

# **NYSBA Committee on Court Structure & Operations**

## **Report by Subcommittee on Court Re-organization**

September 6, 2011

### **I. Introduction**

Under its Stated Purpose, the Committee on Court Structure & Operations (the “Committee”) is charged with "review[ing] issues and proposals regarding the structure and operation of the state court system" and submitting any report and recommendation as directed by the President.

In accordance with that Stated Purpose, the Committee formed a subcommittee to study the issue of re-organization of the courts of New York State (the “Subcommittee”) -- a subject that practitioners, scholars, and commentators have studied for decades in hopes of alleviating inefficiencies in the current court structure that have long been obvious to those who work in the court system, those who practice there every day, and litigants who come in contact with the court system.

Most recently, in 2006, then-Chief Judge Judith S. Kaye appointed a special commission, chaired by Carey R. Dunne, to study New York’s court structure and recommend change (“the Dunne Commission”). In 2007, the Dunne Commission produced a detailed report, which concluded that the fragmented and complex court structure imposed unacceptable costs and hardships upon litigants, lawyers and the public. For example, the current structure requires injured individuals, businesses, and government bodies to litigate cases simultaneously in the Supreme Court and the Court of Claims whenever the state and a non-state actor are named as parties in certain disputes. It also requires that families in crisis run from court to court when a single problem is fragmented among the Supreme Court, the Family Court and a criminal court, for separate adjudication of matrimonial, custody and domestic violence matters.

More fundamentally, the current court structure creates inefficiencies that waste not only the time of judges, lawyers and litigants, but also waste already limited state funds.

## II. Position of the New York State Bar Association

In April 1998, the House of Delegates of the New York State Bar Association (“NYSBA”) passed a resolution adopting an official position in support of reorganization, which included the following five recommendations:

- The nine major trial courts should be consolidated into a two-tiered system with the present Supreme Court, Court of Claims, County Court, Family Court and Surrogate's Court to be merged into Supreme Court and the New York City Civil Court, New York City Criminal Court, City Court,<sup>1</sup> and District Court to be merged into a statewide District Court.<sup>2</sup>
- Instead of a constitutional provision mandating separate divisions of Supreme Court, any merger plan should provide that the Chief Judge and the Office of Court Administration (“OCA”) establish such divisions as are necessary, to include a commercial division, criminal division, family division, public claims division, probate division, tort division, and a civil division to cover other matters.
- All judicial positions affected by the court reorganization should continue to be filled by election or appointment as they are under existing law.
- The population cap limiting the number of Supreme Court Justices per judicial district should be abolished.
- A Fifth Department should be established consistent with prior positions adopted by NYSBA.

The Subcommittee has reviewed those recommendations anew, and concludes that they express a policy that continues to be as valid and relevant today as it was in 1998.

As to the recommendation that the Chief Judge and OCA determine what specific separate divisions of the Supreme Court should be established, the Subcommittee concludes that the Committee should advocate implementation of the recommendation in a way that leaves to the Chief Judge and OCA which particular divisions to create for any particular county's Supreme Court. The Subcommittee discussed the Dunne Commission's recommendation that these divisions be set forth in the constitutional amendment but rejects that proposal as being too restrictive.

As discussed below, the Subcommittee recommends that the Committee and NYSBA support a campaign to encourage New York State to implement these recommendations. Given the scope of these recommendations and the resources that will likely be needed to launch such a campaign, the Subcommittee recommends that

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<sup>1</sup> The “City Court” refers to the City Courts outside of New York City. Dunne Commission 2007 report at 10, 71-75.

<sup>2</sup> See illustration at Appendix A.

the Committee not attempt to address at this time issues relating to merger or consolidation of town and village justice courts. In a September 2008 report, the Dunne Commission made a series of recommendations to improve these courts that do not require constitutional change.

### **III. NYSBA's Role**

The Subcommittee believes that NYSBA should serve as the catalyst for change such that the court system operates more effectively and economically for the public benefit. The Subcommittee believes it is incumbent upon NYSBA to be the leader of efforts to achieve the stated policy goals, and the goal of an effective re-organization of the courts is no exception.

To that end, the Subcommittee recommends that NYSBA create a coalition to advance the five recommendations for re-organization. Members of that coalition should include, but not be limited to, non-profit organizations which have long supported court improvement measures, such as the Fund for Modern Courts, the League of Women Voters and the Citizens Union; members of academia, including the deans of New York law schools; leaders of the business community; and other respected leaders of the legal profession. As an initial step, NYSBA should act promptly as convener of the coalition.

We recognize that the successful campaign to bring constitutional change to the manner of selection of Judges of the Court of Appeals required significant funding from private contributions. It is fair to project that this new proposal, broader in scope than that previous one, also will require substantial funding from private sources.

### **IV. Landscape for Reform**

The campaign to re-organize the courts will be a major endeavor, and therefore must have the support of State government leaders. To make the case for reform to the Governor, the Chief Judge, and the leaders of the Legislature, it will be important for NYSBA to provide concrete details about the impact re-organization will have on the State, including, at a minimum:

- a credible case for actual and significant savings to the State budget;
- specifics as to how the new model would operate, and not just high-level organization charts; and
- which important stakeholders and communities support the effort and where further outreach and effort is needed to bring others along.

The Subcommittee believes that the campaign for court re-organization must acknowledge the current budgetary environment and the present weakness in the economy. Indeed, these current fiscal challenges should be a strong factor in favor of reform because court re-organization will make more efficient and effective use of State government funds and provide overall productivity enhancement savings statewide for municipalities, businesses, and individuals.

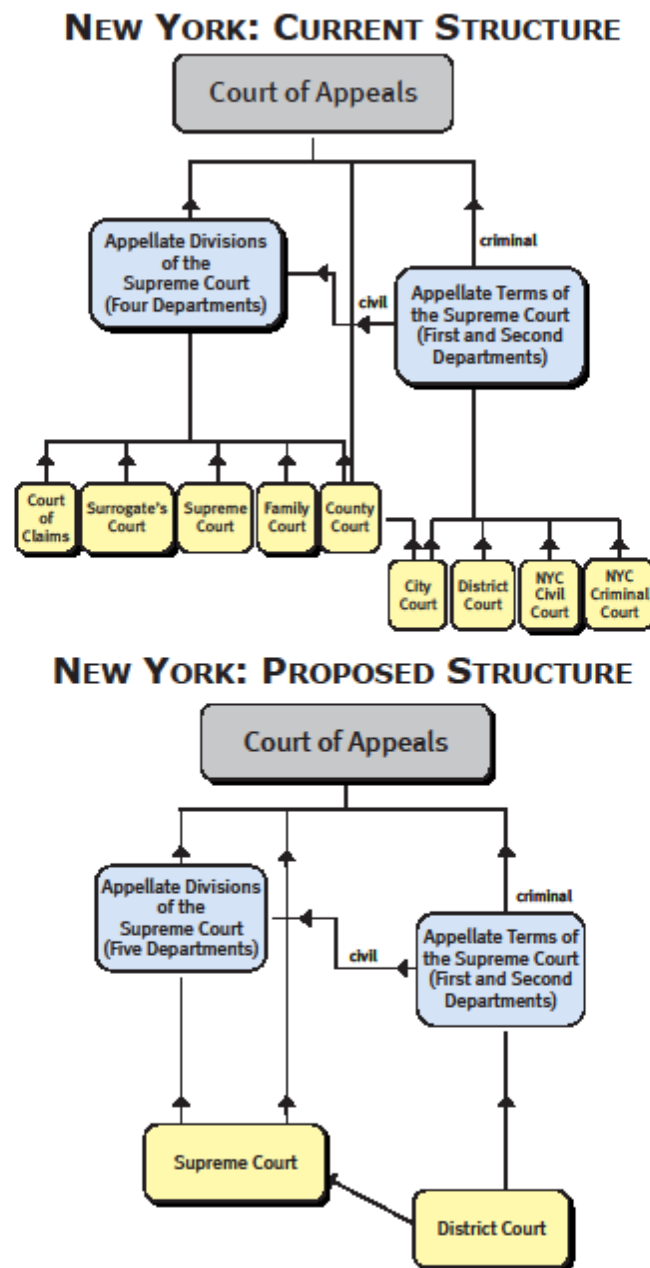
The calculation of savings attributable to reorganization listed in the Dunne Commission's 2007 report serves as a starting point. The Subcommittee will explore means to verify those and other projected savings.

## **V. Schedule**

To achieve first legislative passage of a constitutional amendment in 2012, with a view to second passage in 2013 and submission to the voters later that year, it will be necessary for NYSBA to reaffirm its 1998 position and to make a commitment to a strong leadership role at its November 2011 Executive Committee and House of Delegates meetings. With those measures in place, NYSBA then can organize a coalition of committed and active proponents of reorganization and convene them to structure a campaign to "go public" with a Spring 2012 launching. (As for the Committee's work, a critical review of this draft with input at the September 8, 2011 meeting would permit a finalized report to President Doyle and the Executive Committee in late September or early October to allow sufficient vetting prior to the November meetings).

## Appendix A

Figure 6



Note: Town and Village Courts and direct appeals excluded; in the Third and Fourth Departments, criminal appeals from the City Court proceed to the County Court and can be further appealed to the Court of Appeals.

Source: Dunne Commission 2007 report at 109.