



The Judicial Friends Association, Inc.
347 Fifth Avenue, Suite 1402-361
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November 2, 2020

Honorable Janet DiFiore
Chief Judge of the State of New York
New York State Unified Court System
25 Beaver Street
New York, NY 10004

Honorable Lawrence K. Marks
Chief Administrative Judge
New York State Unified Court System
25 Beaver Street
New York, NY 10004

Re: The Judicial Friends Association's opposition to OCA's denial of the Judicial
Certifications and Re-Certifications

Dear Chief Judge DiFiore and Justice Marks:

As you may recall, the Judicial Friends Association, Inc. was established in 1976 by a group of minority Judges within the State of New York seeking the fair and just treatment of African-American Judges, judicial staff, and attorneys. We are the oldest established organization committed to racial equality in the field of law for racial and language minorities in the State of New York. We also serve to educate and advocate on behalf of all members of the judiciary, judicial and non-judicial court staff, and attorneys on issues affecting the court.

On behalf of the Judicial Friends Association, we vehemently oppose the decision of the Unified Court System (the Court System) to deny the certifications and re-certifications of 46 of the 49 Supreme Court Justices who have passed the age of 70, and the ninety-day notification to, and termination of, each of the Judges support staff (principal law clerks and assistant law clerks/secretaries). In one fell swoop, the Court System has lost 138 judicial employees with only ninety-days notices to leave their positions, clear out their offices, and seek other employment to support themselves and their families. This is all in the middle of a pandemic, where there is a statewide hiring freeze and private legal positions are nearly nonexistent.

It appears that the Court System settled for an easy way out of making a difficult budgetary decision by simply terminating the Judges with pending certifications and re-certifications like low-hanging fruit, rather than seeking alternative methods of budget reduction. Although this approach delivered a quick result, it failed to adequately assess its consequences and the detrimental impact on the Court System and its litigants. We join with other Judicial groups and State Legislators in urging the Administrative Board of the Court System to recognize the

detrimental and inequitable effect of their decision, to reconsider this decision, and to find alternative solutions to reduce the court's budget that will have a far lesser impact on the efficiency of the Court System.

Indeed, the Administrative Board of the Court System, established pursuant to Article VI, section 25(b) of the State Constitution, New York State Judiciary Law §§ 114 and 115, and the Board's amended resolution on January 24, 1996, was intended to correct the outdated State Constitution provision that required mandatory retirement of Justices at the age of seventy (70). The mandatory retirement age provision was enacted more than one hundred seventy years ago, in 1846. The resolution requires that when the Administrative Board makes decisions on certification that the Board consider, among other things, the need for the services of a Judge to expedite the business of the Supreme Court. (See Board Resolution, Subd. 1, dated January 24, 1996). Hence, the Board must consider the needs of the Court System and they are not authorized to act with a complete lack of transparency when making such decisions.

We must question the criteria and alternatives the Board considered in making the decision to deny the pending certifications and re-certifications of the Justices. Was the issue of under-representation of African-American Judges in the judiciary considered? Were the findings of implicit bias within the New York State Courts, as indicated by Secretary Jeh Johnson's Report and the Judicial Friends Association's Report, considered when the Board was deciding the business of the Court? Did the Board consider the loss of staff through normal attrition? Conversely, was this a case in which the Board's only consideration was the age of the Justices, which may very well indicate possible age discrimination? We submit that these and other questions must be answered.

In addition, the timing of losing these experienced Justices and their staff coincides with the normal retirement of Justices. This will serve to create chaos, requiring the immediate reassignment of what may be inexperienced Justices to cover cases in the midst of an exponential increase in the number of cases due to the pandemic. Moreover, the loss of Justices and staff in the Appellate Terms and Appellate Divisions seems particularly disproportionate and short-sighted. Justices were disproportionately eliminated in judicial departments that have six times the caseloads than other departments, and their departure as amplified by the flood of new cases due to the pandemic will increase the ever existing backlogs. These Justices will be particularly difficult to replace.

Finally, the Judicial Friends Association recognizes the difficulty that the Court System is facing in the midst of the Covid-19 pandemic. However, Judge Marks' September 29, 2020 memorandum articulated that the Administrative Board's decision was motivated by the Judges' ages in the middle of the budget concerns caused by the pandemic. We take issue with such a unilateral, short-sighted decision that smacks of bias. This decision will have the short term effect of creating mass confusion among litigants and attorneys alike. Additionally, the drastic

reduction of experienced Justices and an already overburdened court staff will result in higher caseloads and undue hardship resulting in delays in case processing. This will ultimately compromise the operation of the Court System. Caseloads will continue to increase as a result of the pandemic. The loss of the extensive experience of these learned jurists is certain to adversely impact the court's ability to serve the public.

Respectfully Submitted,

Erika Edwards

Hon. Erika M. Edwards
President, Judicial Friends Association, Inc.

Cc: Hon. Rolando T. Acosta
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