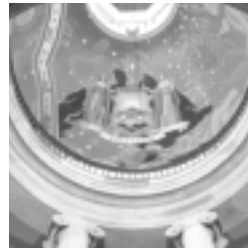


# The State of the Judiciary

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**Judith S. Kaye**

CHIEF JUDGE OF THE STATE OF NEW YORK

# The State of the Judiciary

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**W**ELL, AT LEAST ONE SIMMERING CONTROVERSY RESOLVED ITSELF this year without resort to the courts. Whether you believe that the old millennium ended December 31, 1999 or that it ended December 31, 2000, we are today decidedly, unequivocally, inarguably in the new millennium. That leads me to a few introductory perceptions about the New York State courts.



Clearly, no corner of life was untouched in the last millennium—beginning with such fundamental matters as how life begins and how it ends. Particularly in recent decades, societal roles and institutions like the family have been radically reshaped, and drug abuse has sapped our youth and swelled our prisons. With courts—especially state courts, the courts closest to the people—a mirror of society, our dockets have been radically reshaped as well, with huge growth in our family courts and misdemeanor courts, tangible evidence of a recycling, downward spiraling segment of our population.

My second perception is that, judging from our statistics, few controversies were resolved as peaceably as the arrival of the new millennium, which was settled merely by the passage of time. New York State court caseloads remain astronomical—nearly three and a half million new filings. We may have passed into a new millennium, but we are still clinging to an old habit: litigation.

Finally, resort to the courts to resolve every dispute—well, virtually every dispute—reflects a paradox about us as a people. We are on the one hand negative and cynical, especially about government. Yet, on the other hand, the public has a certain reserve of respect for the rule of law and the courts that administer and safeguard it with integrity and impartiality, outside the political fray. Undeniably, sadly, that public respect—vital to the effectiveness of the Third Branch—has in recent years suffered seriously.

These perceptions form the core of my report on the State of the Judiciary. I intend to start with a description of the court system's new, problem-solving approaches aimed at halting the recycling of people through the courts. Then I will proceed to modern-day operational initiatives to streamline our astronomical dockets. And I will conclude with

our public-oriented measures directed at the regrettable erosion of trust and confidence in the courts.

I first express thanks to my Court of Appeals Colleagues and the entire Court staff; to the Presiding Justices, who make up the Administrative Board, with special thanks to the fabulous retiring Second Department Presiding Justice, Guy Mangano; to our incomparable, phenomenal Chief Administrative Judge, Jonathan Lippman, who last week marked his fifth anniversary in that office, and going strong; to the Deputy Chief Administrative Judges and the entire administrative team; to each and every one of our hard-working Judges and nonjudicial staff; to our partners in government and the Bar, for what has been a terrific year for New York State's courts, with the promise of another ahead. No good idea originates, and surely no good idea takes hold, without the talent, dedication and support these extraordinary people provide.



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## PROBLEM-SOLVING COURTS

**A**ND THAT BRINGS ME DIRECTLY TO THE MATTER OF PROBLEM-SOLVING COURTS, proof beyond a reasonable doubt both of the strength of our court system and of the efficacy of our partnerships.

Just so that we all are 100% clear on terminology, courts by tradition receive evidence presented by the parties; based on that evidence, they determine which party prevails under the law; and then they move on to the next case. Problem-solving courts, by contrast, attempt to reach beyond the immediate dispute to the underlying issue, and then to involve community agencies and others in resolving it so that the same people need not return to court time and again with the same problem.

Problem-solving approaches are obviously inapt for many cases. Did defendants, for example, breach a contract, or defraud a customer, or produce a defective product, or commit robbery, or overstep statutory authority, or unjustly deny a government entitlement. Our State courts have thousands upon thousands of such matters, resolved case-by-case, applying the law to the facts in familiar fashion. But consider other huge, and growing, categories of repeat State court business involving complex social problems like the spouse-batterer, who statistics tell us may well follow an assault charge with a homicide;

or the drug-addicted mom who loses custody of her children to years of court-supervised foster care limbo; or the substance abuser who, after a sentence of “time served” returns to the same street corner to resume his unlawful behavior until his next arrest. For the thousands upon thousands of those cases, mere disposition of a particular dispute, without reaching the underlying, persisting problem, may not best serve the interests of the parties, or the court system, or society.

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## FAMILIES

One fertile area for new thinking is family issues, probably the fastest growing portion of our dockets. We need only glance at the daily newspapers to know families in crisis—children neglected, abused, even mutilated by their parents; murder by intimate partners; seemingly endless divorce and custody wars. These tragic situations are brought to our courthouses every day, in large numbers.

### ■ INTEGRATED DOMESTIC VIOLENCE COURT PILOTS

It was, in fact, murder by intimate partners that challenged us to take a closer look at the way we handle domestic violence cases. There are striking differences between domestic violence and other criminal behavior. For starters, domestic violence victims often have an ongoing, intimate relationship with the batterer. They may be living together, raising children together, the victim entirely dependent on the batterer for life’s essentials. We know too that the recidivism rate for violent crimes between intimates is two and one-half times that for stranger crimes—a bone-chilling statistic for the victim, the family and the justice system.

Effective justice therefore requires us to do more than process each case fairly and efficiently in the tens of thousands of domestic violence cases before the New York State courts each year. Effective justice challenges courts, as we adjudicate each case, also to focus on victim safety, on the potential for future abuse, and on the need for connections to agencies that deal knowledgeably with the modern-day scourge of domestic violence.

Our most advanced experiment is the Brooklyn Felony Domestic Violence Court. Launched in June 1996 through collaborative efforts with the District Attorney, Safe Horizon, our own Center for Court Innovation and others, the Brooklyn DV Court was

the State's first specialized court dedicated to hearing domestic violence felonies.

We have learned a great deal from the Brooklyn DV Court, now a model for domestic violence courts throughout the State and nation, with dedicated Judges and court staff, enhanced monitoring of defendants, readily available victim counseling and other services, and a Resource Coordinator to link the court and its social service partners. We have also learned that we can do more. In the coming months, we will take a giant step forward in our service to the public by erasing the barriers of multiple courts and multiple judges in order to resolve these family issues more effectively.

I've made no secret of the urgent need to restructure our courts, to simplify the labyrinth we have the temerity to call a "Unified Court System." Nowhere is that need more compelling than for families in crisis, whose legal difficulties are rarely confined to one docket in one courthouse. A domestic violence case may be filed in a criminal court or in Family Court, or both; child neglect and abuse petitions, however, must be brought in Family Court; matrimonial matters only in Supreme Court; custody and visitation petitions either in Family Court or in Supreme Court; adoption matters, of course, can also be brought in Surrogate's Court. One can only hope that a family on its way to Criminal Court, Family Court, Supreme Court and Surrogate's Court is not in an automobile accident on a State highway. Then they'll have to be in the Court of Claims too. Senseless. Utterly senseless.

I am pleased today to announce that we will eradicate these needless barriers to meaningful justice for families in crisis by establishing, within the next several months, integrated domestic violence courts in each Judicial Department. These new courts—based on a One Family/One Judge concept—will allow a single Judge, instead of several, to hear related matters involving domestic violence victims and their families and ensure that appropriate services are promptly provided. In establishing these courts, our goals are both to remove unnecessary burdens for these families and to continue the incremental progress we have made, pending constitutional reform I most strenuously advocate, to simplify our court structure so that we can better serve not just a finite number of families in crisis but all New Yorkers.

#### ■ THE MODEL FAMILY COURTS

We will continue also to apply problem-solving approaches to cases involving New York's

foster care children. Approximately ten percent of the nation's half-million foster care children are in New York State, most of them in New York City. Too many children spend too much time in foster care limbo.

In 1998, with the help of the National Council on Juvenile and Family Court Judges, we launched Model Courts in Erie and New York County Family Courts, hoping thereby to shorten foster care stays and promote early permanency. We will now build on those successful efforts, replicating the Model Courts Statewide. Like domestic violence courts, the Model Courts emphasize close judicial monitoring, strictly enforced time frames and Resource Coordinators to link the courts with the agencies involved in services and planning. Given the numerous court appearances beleaguered families and children often have to make, we will also look for linkages, through the Model Courts and otherwise—for example, by facilitating enrollment in Child Health Plus, or promoting Head Start and literacy through our 28 superb court-based Children's Centers.

We are confident that these courts will reduce time spent in foster care, speed up the process that provides children the stability of a permanent home and move us closer to making the “model” the norm in New York's Family Court.

#### ■ PARENTAL EDUCATION

I next turn to a problem-solving tool we will adopt for divorce cases: parental education. In many areas of the State today, Judges already are asking divorcing parents to participate in education programs where they learn about the impact of divorce on their children. We know from our own good sense, from our experience in New York and from the experience of other States that these programs work.

I am pleased, therefore, to announce that the court system will now institutionalize parental education programs Statewide. A Parental Education Advisory Board of outstanding Judges, child psychologists, law guardians and others, chaired by Monroe County Supreme Court Justice Evelyn Frazee, will oversee the implementation of these programs across New York. The Board will work with local courts and providers to ensure quality programs, including effective protocols to screen out families touched by domestic violence. Hopefully, this Statewide initiative will temper the conflict that can both damage children and prolong matrimonial cases.

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## DRUG COURTS

I'd like to shift the problem-solving discussion just a bit to a subject afflicting many families in crisis—and that is drugs. Suffice it to say that, in 1980, we had 27,000 drug arrests in New York. Last year we had 145,000—a whopping increase of 430%. That number, of course, doesn't even begin to reflect the arrests that are drug-related. Undeniably, the New York courts have a drug problem.

What are we doing about it? As a first step, we opened specialized Drug Courts around the State, starting six years ago in Rochester. With broad-based cooperation, Drug Courts link nonviolent addicts to drug treatment as an alternative to incarceration, and then rigorously monitor compliance. We have seen remarkable results, like a retention rate for court-mandated treatment programs that is twice that of voluntary programs and, equally important, a significantly lower rate of re-arrest and recidivism among Drug Court graduates. Our Drug Courts get all-round high marks.

Months ago, our Commission on Drugs and the Courts, the blue-ribbon group chaired by Robert Fiske, concluded the country's most exhaustive study on the impact of drugs on the justice system. The Commission confirmed that the New York courts were on the right track, and made a series of recommendations we intend to follow to the letter, beginning with expansion of Drug Courts to all 62 counties.

The potential benefits are palpable—for offenders, a move from continued addiction and repeated crime to sobriety and a productive life; for families, the return of children lost to foster care; for communities, a measure of relief from drug-fueled crime and disorder; for the State, huge savings in prison and public entitlement costs and in reduced recidivism; for the courts, more meaningful dispositions, more manageable caseloads and an increase in public confidence.

As a critical step forward, we have named Deputy Chief Administrative Judge Joseph J. Traficanti, Jr., as our first Director of Court Drug Treatment Programs, and I am enormously grateful to him for taking on this responsibility. With his capable leadership, I know we will succeed.

The initial phase of our program, already underway, will establish the necessary infrastructure to support drug treatment in criminal courts and Family Courts throughout the



State, beginning with a universal screening process to identify eligible addicts; a system for matching them with appropriate treatment slots; and tools to facilitate ongoing judicial monitoring, including on-site drug testing, to ensure that our sanctions have teeth. We will first test our treatment approach—which will focus on nonviolent felonies and the persistent misdemeanor so common in New York City—in Kings, Erie, Monroe and Onondaga Counties. In the second phase, we will extend these prototypes to the remaining boroughs of New York City, the heavily populated suburban districts surrounding New York City and the Capital District. The third and final phase—full Statewide implementation—should be complete by the end of next year.

Unquestionably, we can accomplish a great deal even within the strictures of existing drug sentencing laws. But there remains a compelling need for statutory reform. I was greatly heartened to read in a recent Fund for Modern Courts study that an overwhelming percentage of New York State legislative candidates surveyed expressed their support for reforming the Rockefeller Drug Laws.

Two years ago, I offered a proposal for Appellate Division “interest of justice” jurisdiction to reduce the most onerous sentence required under the current laws—the class A-1 felony sentence—from 15 years to a minimum of five years. While that sparked a lively debate, regrettably, in the end, there was no reform of any sort—not my proposal, or any of the other sound suggestions offered. I am convinced that the present deadlock can be broken if the three branches of government work together—the Legislature and Executive addressing the critical policy issues, and the Judiciary bringing to the table its unique perspective based on long firsthand experience in actually applying these laws.

Let’s get this done! With our Statewide Drug Court initiative and reform of the Rockefeller Drug Laws, we would go a long way toward rewriting a scenario that dooms too many young people, consumes the courts and erodes our quality of life.

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## COMMUNITY COURTS

I cannot close a report on problem-solving courts without a word about community courts.

We will continue the pioneering work begun in 1993 at the Midtown Community Court in Manhattan. Maybe the best evidence of the success of the Midtown Community Court

is the result of a phone survey of area residents conducted by the National Center for State Courts, which is evaluating the Midtown Community Court. Sixty-four percent said they would be willing to pay additional taxes to support a community court.


The Midtown Court has become a beacon for community courts around the nation, and the model for us in New York as well. This past summer in the Red Hook neighborhood of Brooklyn, we launched the next generation of community courts. Operating out of an abandoned, refurbished school building made available to us by the Archdiocese of New York, the Red Hook Community Justice Center is a multi-jurisdictional facility, with a single Judge hearing neighborhood cases that under ordinary circumstances would be split among three different courts—Civil, Family and Criminal—and a thriving Youth Court where teenagers sanction their peers for wrongful behavior.

We will soon open the Harlem Community Justice Center in what was once a Magistrate's Courthouse on 121st Street in Manhattan. This state-of-the-art Justice Center will hear housing court and juvenile delinquency matters—two issues of critical importance to the community. In Queens, there is significant local interest in establishing community courts in the neighborhood of Long Island City and Far Rockaway—areas that suffer from persistent quality-of-life crime. And we will continue to test the community court idea outside New York City, in the central and western parts of the State.

What does all this add up to? An ambitious Statewide effort, spearheaded by the courts, in which courts and communities work together to our mutual benefit.



## OPERATIONAL INITIATIVES AND INTERNAL IMPROVEMENTS

 **BEGAN THIS REPORT WITH THE OBSERVATION** that no corner of life was untouched in the last millennium. That was something of an overstatement. In actual fact, a nineteenth century lawyer—if not Mel Brooks' 2000 Year Old Man himself—would be quite comfortable in many courthouses today. I refer not merely to the age and condition of some court facilities but also to the process of trials and appeals, which in many respects has been little changed over the decades. To some that represents

the virtue of stability, to others the vice of stodginess. I believe we need the best of the old and the new, keeping what is good of the past while remaining relevant to modern needs in a significantly changed world.

With that thought in mind I turn from problem-solving courts to operational initiatives to improve the larger court system.

Facilities, of course, are always a topmost concern. The condition of our courthouses speaks volumes about public regard for the litigants and problems they bring to us. Deteriorated court facilities diminish both the people and the process.

This has been a good year for court facilities, I am pleased to say, and for this we thank the localities, our landlords. A number of projects were completed during 2000, including the Red Hook Community Justice Center, the Troy and Rome City Courthouses, and the initial phase of the renovation of the Queens Supreme Courthouse in Jamaica. Near completion are several desperately needed, long-awaited projects, such as the Queens and Erie County Family Courts, the Harlem Community Justice Center, the Orange County court complex and an addition to the Rockland County Courthouse. Hopefully, by the end of next year, the 2000 Year Old Man will feel genuinely out-of-date in our new and modernized facilities in New York City, as well as Albany, Herkimer, Jefferson, Oneida, Onondaga, Rensselaer, Schoharie, Westchester and Yates Counties.

As for the business conducted inside those courthouses, we are embarked on ambitious programs here as well. Our strategy in recent years has been to shine a spotlight on one area of operations at a time. We began with a special report on Criminal Courts, then Family Justice I and II, Civil Justice and Housing Court. Family Justice III is next. We will continue that process, court by court, examining operations top-to-bottom, assuring that our procedures are as effective as humanly possible. I will not lengthen this report by detailing the dozens of specific operational initiatives in every court—from Differentiated Case Management, a technique for separating civil cases by their complexity for more efficient case management, to measures to help our increasing population of self-represented litigants navigate the courts, to Night Parts in Housing Court and Family Court that increase court access, to automation and education programs in our Town and Village Justice Courts.

I would, however, like to linger on one initiative that began five years ago and is today a

pride of our court system and the envy of others. I speak of the Supreme Court Commercial Division, now situated in New York, Monroe, Nassau, Erie and Westchester Counties. As the commercial and financial capital of the world, New York deserves a first-rate State court to serve our business community—and we indeed have one, as business contracts increasingly designate this court as their forum of choice. The Commercial Division is the source of many distinctions, most especially the excellent work product of its dedicated judges, as is evident in the Commercial Division Law Report available in hard copy as well as on the Web. And now having mentioned one facet of modern technology, I'd like to tell you how courts are wading into this new millennium technologically.

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#### TECHNOLOGY IN THE COURTS

Perhaps the biggest operational change in the courts is technology that facilitates our work and makes the courts more user-friendly. Just a few examples.

Thanks to recent legislation, electronic filing is currently being piloted in parts of New York, Monroe and Westchester Counties. As of this time, participation is voluntary, but those who choose e-filing can complete the process over the Internet, even paying applicable fees with a credit card. Our goal is Statewide e-filing as soon as possible. Imagine: No more races to the courthouse to file papers on time!

And soon, no more costly treks to the courthouse simply to retrieve information about a case, or copy a decision. Increasingly over the coming months, much of that will be available over the Internet, accessible 24 hours a day, seven days a week. For 13 counties across the State, information on civil Supreme Court cases is already available electronically. Within the year we expect to have virtually all court decisions on the Internet. And there is more. More state-of-the-art courtrooms; more video conferencing; more video court appearances.

In a system that only a few years ago included rotary telephones, I am happy to report that we are now fully computerized. Indeed, we are in Round Two, now replacing laptops and updating PC's. And we are close to perfecting our Universal Case Management System—a tool that would enable every Judge to better oversee individual cases and assist in the management of complex cases, with less waiting time and fewer appearances for litigants.

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## THE JUDICIAL INSTITUTE

Courts, of course, have a responsibility to stay on their toes in every respect, given not only the new technology but also the need to deal with breathtaking legal issues, space age scientific evidence, twenty-first century case management techniques and a changing public. It is no small task to assure that every member of the New York State court system has the skills, knowledge, training and sensitivity we need to stay abreast—if not ahead—of today's challenges.

It is therefore a particular pleasure for me to announce our alliance with Pace University School of Law in Westchester, to establish a Judicial Institute, the very first training and research facility in the nation custom-built by and for a State court system. Now approved by the Legislature and signed into law by the Governor, the Judicial Institute, located on the grounds of Pace Law School, will have full access to Pace's outstanding faculty and resources, and will benefit in innumerable ways from this unique partnership. With an opening date in 2002, we expect the Institute to assure the continuing excellence of our courts, in addition to serving as a hub for judicial scholarship.

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## JURY REFORM

As a final example of our ongoing operational initiatives, I have chosen what is for me an irresistible subject: jury reform. Twenty-first century issues stimulate reform; so do twenty-first century jurors. As many of you know firsthand, we have since 1994 been knee-deep in jury reform. With more than 650,000 New Yorkers called for jury duty every single year, I'd say it was high time, wouldn't you?

Over these past six-plus years, again with the assistance of our partners in government and the Bar, we've broadened the pool of available jurors—we're now reaching an astounding number of first-time jurors—thus doing a much better job of spreading the benefits and burdens of jury service. We've been able to limit terms of service for everyone; we've increased juror fees, spruced up juror facilities, and improved the summoning and qualification process with such modern-day treasures as automated juror status call-in systems, bar-coded summonses and attendance scanning systems. We have a toll-free hot line for questions and complaints, a spiffy newsletter and a juror website that

can tell you where to park in Chenango County, where to lunch in Westchester County, and where to learn about snow closings in Erie County. We are pretty much at one day/one trial Statewide, with a minimum of four years between callbacks. Quite an achievement if you remember that only a few years ago, jury service was typically two weeks—minimum—with callbacks every two years like clockwork.

What's ahead? Grand jury reform is ahead. We are implementing recommendations of the Grand Jury Project, including pilot projects to reduce terms of service, a grand juror handbook and an orientation film. Juror comprehension initiatives are ahead. Already in New York juror note-taking is permitted in the court's discretion. So are juror notebooks, and providing deliberating jurors with a copy of the charge in civil cases. Preliminary instructions, interim summations—these measures, and more, to aid juror comprehension are on our plate.

And so are measures to improve juror utilization. No one's time should be wasted. I will continue to seek statutory reform both to end automatic sequestration of jurors and to reduce criminal case peremptory challenges, meaning challenges to jurors for no reason at all. Nothing is more rankling to jurors—or to the Chief Judge, or to our distinguished lawyer/Judge Advisory Committee on the Criminal Procedure Law—than the fact that so many New Yorkers are called and so few are chosen. New York continues to lead the nation in the number of peremptory challenges allowed in criminal cases—up to 20 challenges for a party—causing an extraordinary number of qualified jurors to be excluded and inviting *Batson* challenges that charge invidious discrimination in jury selection.

What else is ahead? A national Jury Summit is ahead. Since the inception of our program, jury reform has swept the nation. To provide an opportunity for us to share information and spur further reform, the New York State court system and the National Center for State Courts beginning January 31 will co-host a first-of-its-kind Jury Summit in New York City for jury gurus nationwide. This will be a terrific opportunity for us to show how far we've come, to learn what more we can do, and to continue the momentum to improve our jury system.

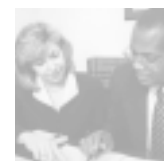
Continued jury reform, more technology, better facilities, enhanced judicial education—all unquestionably essential to court operations and the future of the courts. True improvement, however, requires a sufficient complement of Judges to address our bur-

geoning caseloads in misdemeanor and family courts, which have seen tremendous growth in their dockets with little increase in the size of the bench. We need more Judges. I therefore close this second segment of my report by urging—yet again—that, this year, as part of a comprehensive assessment of judicial caseloads, we add Criminal Court and Family Court Judges where they are so vitally needed.

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## PUBLIC TRUST & CONFIDENCE MEASURES

**U**NFORTUNATELY, ROBES, GAVELS AND EFFORTS TO ASSURE the effective delivery of justice do not guarantee public trust and confidence, which is essential to the courts. And recent national events, while riveting attention on the Third Branch, in the end may only have fueled further skepticism about us, with Judges and courts repeatedly portrayed in the most partisan terms. Clearly we have our work cut out for us.



## OUTREACH TO THE PUBLIC

Viewing the issue most broadly, there can be little doubt that the public's mistrust of the courts is in part rooted in a lack of accurate knowledge about the real-life role and function of the justice system in this great democracy. We have in a sense become the nation's number one entertainment—the airwaves are drenched with the lingo of the law—yet the public has little appreciation of the true day-to-day significance of courts in their lives. And while others, like schools, bear a good deal of responsibility for that gap, we too are at fault for having remained inattentive to the need to educate the public about what we do.

Last year we embarked on our Year 2000 Program, a series of joint initiatives with local governments, community and civic groups, educators and lawyers all across the State, to enlarge public understanding about the courts. We've had a great year, raising awareness with programs like Senior Citizen Law Days, Court Appreciation Month, Media Days, mentoring programs, internships, mock trials, law-related education, court tours and visits. We will soon unveil our new Public Affairs Website, with interactive Justice in Schools programs for teachers and students, geared to educating students in grades two to twelve about the court system.

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## FIDUCIARY APPOINTMENTS

Public education about real-life courts is surely important, and we will continue our outreach efforts. But public cynicism about us doesn't rest solely on a lack of knowledge about us. It also rests in part on some things the public does know about us that generate concern regarding integrity and impartiality. Here I have in mind the issue of fiduciary appointments, an issue that erupted in the headlines precisely a year ago, as I was putting the finishing touches on last January's State of the Judiciary report. As promised, in February we announced both the appointment of Special Inspector General Sherrill Spatz, to look into compliance with existing requirements, and the appointment of a Commission on Fiduciary Appointments, chaired by Sheila L. Birnbaum, to make recommendations for reform. We expect their comprehensive reports in the coming months.

In the meantime, however, we will not stand idly by. Already we know of noncompliance with existing rules requiring the filing of information on the appointment and compensation of fiduciaries. The failure to report this information undermines the strong public interest in knowing who receives these appointments and how much they are paid. Having consulted with the Commission on Fiduciary Appointments, we will next month put in place a new oversight system to ensure that existing requirements are met. The Administrative Judges, assisted by special fiduciary clerks, will verify that all relevant information on appointments in their Judicial Districts is reported to the Chief Administrative Judge and properly entered in the court system's fiduciary database. Fiduciaries will not be paid unless reporting requirements are satisfied. All information on appointments and compensation will, of course, be published and otherwise readily available for public inspection.

As we await the investigative findings of the Special Inspector General regarding past conduct, and the recommendations of the Commission on Fiduciary Appointments for future reform, these systemic changes will guarantee that existing reporting requirements are scrupulously followed and that the public has access to accurate information on fiduciary appointments.



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## ATTORNEY FEE DISPUTE RESOLUTION PROGRAM

I have no doubt that public negativism rests in part on a lack of knowledge about us, which we are addressing. I have no doubt that public negativism rests in part on incidents of favoritism and partiality in fiduciary appointments, which we are addressing. And I have no doubt that public negativism about the justice system also rests in part on discontent with the legal profession, with which the courts are inextricably bound. Here too we are working, with the Bar, to earn the confidence of the public.

Just a few years ago, for example, on the recommendation of the Committee on the Profession and the Courts—better known as the Craco Committee—we adopted a Continuing Legal Education requirement. While we are now in the process of conducting audits to assure compliance, at the many programs I have myself attended I have been gratified to see large numbers of lawyers brushing up their skills, connecting with one another and with bar associations, thereby hopefully avoiding the sort of missteps that hurt clients and tarnish the profession. More recently we established a permanent Judicial Institute on Professionalism, which only weeks ago opened a dandy Convocation right in this very courtroom addressing twenty-first century challenges to our venerable profession.

Today I announce an Attorney Fee Dispute Resolution program, which officially takes effect on June 1, 2001.


Fee disputes arise in just a small percentage of attorney-client relationships, but they cast a large shadow. Except for matrimonial matters, where fee disputes are arbitrated, dissatisfied clients today have but two limited avenues for redress—filing a grievance with disciplinary authorities, which is often dismissed because fee disputes typically do not involve disciplinary violations, or full-scale litigation, with new legal fees potentially exceeding the disputed amount. These are hardly meaningful remedies for already frustrated clients. The Craco Committee recommended a Statewide Fee Dispute Resolution Program to address the serious gap between client expectations and available remedies in this area. Through the arbitration of fee disputes, both clients and attorneys can avoid the cost of acute adversarialism.

Beginning June 1, all civil clients with a fee dispute can opt for a speedy, fair out-of-court resolution through arbitration or, where available, mediation. For the client, the procedure offers a simplified forum without the necessity for hiring yet another lawyer. For the attorney, the procedure offers the prospect of more expeditiously recovering fees that are justly due.

The court system and organized Bar will develop and administer this program jointly, and we look forward to having the cooperation and assistance of the New York State Bar Association and its President, Paul Michael Hassett. Letters will shortly be sent to every bar association in the State announcing the details of the new program, including designation of a Board of Governors to set Statewide guidelines and provide oversight and monitoring.



## COURT RESTRUCTURING AND ASSIGNED COUNSEL RATES

 **HAVE LEFT FOR LAST TWO SUBJECTS OF ABIDING FRUSTRATION.** Having already spoken of the first, I will do no more than mention it. And that is the subject of court restructuring, an essential foundation for a vibrant court system. While we can, through our integrated domestic violence pilots, address a few egregious consequences of splintered courts, we need systemic, comprehensive court merger. I frankly cannot understand why this measure—supported by every New York State Chief Judge, every editorial board and good government group, by the Citizens Budget Commission (which has verified our projected savings), by the Governor of the State of New York, now reportedly even by legislators—without reason, year after year, fails.

I can only say that persistence and optimism are the hallmarks of this Chief Judge. And it's a good thing, given my final subject: assigned counsel rates.

Last year, we released a report entitled “A Growing Crisis,” documenting the impact of the acute shortage of qualified private counsel to represent indigent litigants in criminal and Family Court matters. The situation has worsened. Assigned counsel fees—\$40 an hour for in-court work, \$25 an hour for out-of-court work—were barely adequate 15 years ago when they were set by the Legislature. Today, they have decimated assigned counsel panels. And the consequences are severe. Criminal matters are repeatedly

adjourned, delaying justice for victim and accused alike. In Family Court, particularly in New York City, increasing numbers of litigants must either postpone their matters endlessly or proceed without counsel.

Our proposal—modest by any measure for legal services today—would raise current rates to \$75 an hour for felony and Family Court cases, and \$60 an hour for nonfelony cases. As a source of State revenues to help meet those increases, I previously suggested use of the mandatory surcharges. I continue to believe that court-imposed fines and surcharges can be a significant funding source, but now make that proposal more attractive and make it much more urgently. Recently, the court system contracted with a private collection firm on a pilot basis to recover every cent of unpaid, sometimes long outstanding, fines and surcharges. I believe this effort to find, in effect, “new money” will prove successful. We will this year introduce legislation to expand the program Statewide and have those funds applied to help offset the cost of increased assigned counsel fees.

It is the responsibility of all of us in government to address this deepening crisis now. We simply cannot let another year pass without resolving this problem.

## CONCLUSION

**P**ERSISTENCE AND OPTIMISM. SURELY I FEEL BOTH, but those are not my dominant thoughts as I consider the State of the Judiciary at the crossroads of the millennia. Instead, overwhelmingly, I feel gratitude for the work that is done every single day to advance the ideal and the reality of justice in New York State. And I feel gratitude for the cherished opportunity I have as Chief Judge to be part of that great endeavor. ■

JUDITH S. KAYE

Chief Judge of the State of New York