



Sent via email to: greenbergh@gtlaw.com

September 21, 2022

Commission on Judicial Nomination
c/o Henry M. Greenberg, Counsel
Greenberg Traurig LLP
54 State Street, 6th Floor
Albany, New York 12207

RE: Nomination for New York State's Chief Judge

Dear Members of the Commission:

New York State's Chief Judge plays many important roles in our judicial system, which include being a public face for justice in the community and ensuring access to justice for all litigants throughout the court system.

In 2022, former Secretary of Homeland Security Jeh Johnson issued the [Report from the Special Advisor on Equal Justice in New York State Courts](#) which described a "second class system of justice for people of color in New York State." The report went on to describe the most under-resourced and overburdened courts—civil, housing, criminal, and family courts. These are also the courts most likely to be serving people of color.

It is critical that the Chief Judge of the state understand and have experience addressing the urgent issue of race in our court system. As attorneys who represent people in criminal and family courts, where harsh and race-based outcomes are undeniable, we are writing to strongly recommend that the Commission nominate the Hon. Jenny Rivera and the Hon. Rowan Wilson as candidates for the position of Chief Judge. Each is qualified to remedy New York's court system's role in perpetuating the severe outcomes for people of color in our state. As current members of the Court of Appeals, they are also highly respected jurists and are well qualified in every way to take on the role of Chief Judge of the State of New York.

There are many roles that the Chief Judge plays throughout the court system, the legal profession and government in general. Aside from managing New York's entire court system and setting a path for the future in conjunction with the Chief Administrative Judge, the Chief Judge is a strong leader for the legal profession and with policymakers. Another role of the Chief Judge that impacts our work is their role as board member and chair of New York's Office of Indigent Legal Services. In this role, the Chief Judge is a strong advocate for the public defense function in all 62 counties of the state and ensures that all

litigants receive a qualified attorney, which in turn avoids wrongful convictions, harsh sentences, and unnecessary family separation as well as guarantees all eligible litigants are assigned an attorney.

The importance for New York’s next Chief Judge to have experience and understanding of the legal needs of low-income New Yorkers and communities of color cannot be overstated. In addition to the historical experiences described in the Jeh Johnson report, the pandemic has had a profound impact on litigants of color. The inequities laid bare over these past two plus years have deepened the disparities across the state in housing, health care, and employment and put Black, brown, Indigenous, and other people in our communities at greater risk of court involvement. Despite the increased risk, there are fewer external supports and resources to assist litigants and the courts in achieving fair and just outcomes. New York’s Chief Judge must hold a strong vision for how the legal system moves forward out of this pandemic. It is critical that a thoughtful analysis is done about the way the court system navigated this crisis, including lessons learned for the future. Our experience has been that the courts forced our clients bear the brunt of the risk of COVID-19 at every stage of the pandemic and had little regard for the well-being of those practicing inside the courts. If there is another crisis, the decision-maker must be someone who can factor in the implicit and explicit bias that plays out in decisionmaking, especially in criminal, family and housing courts and adjust policies to eliminate that bias.

New York’s Chief Judges have created problem solving courts, addressed implicit bias in jurors, increased language access inside courts, and taken on other issues that have had a positive impact on the court system and the lives of those impacted by the courts. Yet, there is much more work to be done. New York’s next Chief Judge must be poised to take on the extremely complex and difficult issues presented in the Jeh Johnson report and those that we see on a daily basis playing out in courtrooms throughout the state.

Sincerely,



Mark D. Funk
President, CDANY



Susan Bryant
Executive Director, NYSDA

The Chief Defenders Association of New York (“CDANY”) is a membership organization of the appointed Public Defenders, Conflict Defenders, Executive Directors of non-profit public defense offices, and Administrators of Assigned Counsel Panels throughout New York State. Our member organizations collectively represent the vast majority of people prosecuted in every county of New York State – hundreds of thousands of people each year. Collectively, public defense offices represent close to 400,000 individuals in the criminal, family, and appellate courts, every year.

The New York State Defenders Association (“NYSDA”) is a not-for-profit membership association of more than 1,600 public defenders, legal aid attorneys, assigned counsel, and individuals dedicated to the right to counsel. NYSDA, through our Public Defense Backup Center and its Veterans Defense Program, provides comprehensive services to the approximately 6,000 public defenders, legal aid society lawyers, and court-appointed attorneys in over 130 county-based programs who represent people accused of crime and adults involved in family court cases who cannot afford to hire an attorney. We offer training, legal research, a statewide clearinghouse, and substantial technical and legal assistance that is critical to the effectiveness of overburdened defenders, and vital for improving racial and social justice.