

NEW YORK STATE
A S S E M B L Y

SHELDON SILVER, SPEAKER



committee on
Judiciary

Helene Weinstein, Chairperson



Annual Report 2010

December 9, 2010

The Honorable Sheldon Silver
Speaker of the Assembly
Room 932, Legislative Office Building
Albany, New York 12248

Re: Annual Report of the Committee on Judiciary – 2010

Dear Speaker Silver:

As Chairperson of the Assembly Standing Committee on Judiciary, I am pleased to present to you the Annual Report for the 2010 Legislative Session.

The Annual Report reviews the work of the Committee on Judiciary and highlights many of its major initiatives. It also includes a brief overview of various budgetary matters that concern the courts of the state and other areas within the committee's purview.

I would like to acknowledge the hard work of the members of the Committee on Judiciary and all of the members of the Assembly for their continued commitment to its work and to progressive legislation. As always, your continued support is deeply appreciated.

Sincerely,

Helene Weinstein, Chairperson
Assembly Standing Committee on Judiciary

2010 ANNUAL REPORT

STANDING COMMITTEE ON JUDICIARY

Helene E. Weinstein, Chair

Committee Members

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Jeffrey Dinowitz
Michael N. Gianaris
Janele Hyer-Spencer
Hakeem Jeffries
Susan V. John
Rory I. Lancman
Charles D. Lavine
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Tom Alfano
William A. Barclay
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Staff

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Richard Ancowitz, Counsel
Clayton Rivet, Team Counsel
Amy Maggs, Associate Counsel
Sarah Beaver, Committee Clerk
Nadia Gareeb, Counsel for Helene Weinstein
Kathi LaFontaine, Administrative Assistant

I. JURISDICTION

The Assembly Committee on Judiciary has jurisdiction over legislation affecting all aspects of both state and local courts. It has primary jurisdiction over amendments to the State Constitution, Civil Practice Law and Rules, Judiciary Law, Uniform Court Acts, Family Court Act, Surrogate's Court and Procedure Act, Domestic Relation's Law, Estates Powers and Trusts Law, Uniform Commercial Code, Lien Law, Debtor-Creditor Law, General Obligations Law, Real Property Law, Real Property Actions and Proceedings Law, Civil Rights Law, Partnership Law, and the Eminent Domain Procedure Law. It shares budgetary oversight of the Office of Court Administration and the Department of Law with the Assembly Ways and Means Committee.

The Judiciary Committee works closely with other committees of the Assembly, including the committees on Rules, Ways and Means, and Codes. All committees in the Legislature report proposed constitutional amendments to the Judiciary Committee.

II. NEW YORK STATE'S JUDICIARY BUDGET

In December 2009, the Office of Court Administration proposed a General Fund State Operations and Aid to Localities budget request for SFY 2010-11 of \$2.4 billion, a 7.4% increase. The All Funds budget totaled \$2.7 billion, an increase of \$183.5 million or 7.2% over the previous fiscal year. The vast majority of the Judiciary's budget was for non-discretionary costs. Caseloads continued to increase last year with another new record for total filings.

The budget included increased funding in the following amounts:

- \$58.5 million for increments, salary increases, longevity bonuses and other mandated collective bargaining costs;
- \$4.9 million to annualize the costs of current year line adjustments, including approved temporary service conversions and changes in certificated justice staffing;
- \$10 million for implementation of caseload standards for attorneys assigned to represent indigent criminal defendants in New York City;
- \$4.1 million in increased child legal representation costs which relate to guardian caseload caps; and
- \$15 million for the Interest on Lawyer Accounts fund used to support civil legal services.

The budget included decreased spending in the following amounts:

- \$2.0 million in miscellaneous personal service reductions;
- \$2.8 million in baseline overtime savings resulting from administrative controls;
- \$3.6 million in temporary service reductions attributable to approved temporary service conversions.

In addition to these decreases, the State Fiscal Year (SFY) 2010-11 Enacted Budget included an additional reduction of \$53 million to the Judiciary as negotiated between the Legislature, Executive, and Office of Court Administration (OCA). These reductions include:

- a General Fund reduction of \$18 million;
- a reduction of \$25 million associated with pension amortization; and
- a reduction of \$10 million associated with the Court's participation in an early retirement incentive.

These reductions considered, the Enacted Budget resulted in a year to year change of \$116.3 million or 5.1 percent and an All Funds change of \$121.4 million or 4.8%. The Enacted Budget was 2.4 percentage points below OCA's original request. Also of budgetary note was the Judiciary Committee's successful effort to create the Office of Indigent Defense, which will oversee the distribution of state aid and evaluate the quality of such services.

III. LEGISLATIVE ACCOMPLISHMENTS¹

A. PROTECTING CHILDREN AND FAMILIES

1. Low-Income Support Obligation Performance Improvement Act - Chapter 182 – A.8952 [Weinstein]/S.5570A [Hassell-Thompson].

This comprehensive bill relates to modifying child support orders, employer reporting of availability of dependent health insurance benefits to employees, work experience programs and non-custodial earned income tax credit.

2. Attorneys for Children – Chapter 41 – A.7805B [Weinstein]/ S.5461B [Schneiderman].

This law will change references from "law guardian" to "Attorney for the Child" to better describe the role and responsibilities for these attorneys.

3. Restoration of Parental Rights – Chapter 343 – A.8524 [Scarborough]/ S.3868A [Montgomery].

This law will authorize the family court, in certain situations, to restore a birth parent's parental rights after they have been terminated.

4. Adoption of Children – Chapter 509 – A.5652B [Rosenthal]/ S.1523A [Duane].

This law permits unmarried adult couples to jointly adopt a child including those circumstances where neither applicant is the child's biological parent.

B. PROTECTING VICTIMS OF DOMESTIC VIOLENCE

1. Electronic Transmittal of Orders of Protection to Law Enforcement - Chapter 261 – A.10410 [Rosenthal]/S.7289 [Sampson].

This law makes permanent and statewide a pilot project authorizing the electronic or facsimile transmission of orders of protection and associated papers from the court to law enforcement authorities for the purpose of the service thereof.

2. Order of Protection Standards - Chapter 341 – A.8393A [Weinstein]/S.5696-A [Sampson].

¹ All references to chapters, except where otherwise noted, are to chapters of the laws of 2010.

This law requires courts not to deny applications for orders of protection merely because the events alleged are not contemporaneous with the application or hearing for that order of protection.

3. Extension of Orders of Protection - Chapter 325 – A.6195A [Weinstein]/S.2972-A [Sampson].

This law authorizes the family court in family offense proceedings to extend an order of protection upon the showing of good cause or consent of the parties.

4. Orders of protection for witnesses – Chapter 421 – A.1870A [Pheffer]/S.5421 [Sampson].

This law authorizes family courts to issue orders of protection against the respondent in juvenile delinquency cases for the protection of designated witnesses based upon a showing of actual intimidation or the likelihood thereof.

5. Orders of Protection issued by Referees – Chapter 363 – A.10851A [Weinstein]/ S.8013 [Sampson].

This law extends for two years, the authority of the Chief Administrator of the courts to allow referees in family court to decide ex parte applications for orders of protection and orders of protection issued on default. It also requires training in domestic violence for such referees.

6. Service of Orders of Protection – Chapter 446 – A.11100 [Weinstein]/ S.8058 [Hassell-Thompson].

This law makes available the same options for service of orders of protection by peace and police officers in modification, violation and extension of order of protection cases as is currently available for service of original orders and pleadings. It also clarifies that such service must be available at no cost to the litigant.

The following bill was passed by the Assembly only:

1. Translation of orders of protection – A.5273A [Espaillat]/S.4594A[Schneiderman].

This bill would help non-English speaking or hearing impaired parties to better understand the essential terms of an order of protection as outlined by the court.

C. MATRIMONIAL LEGISLATION

1. No-Fault Divorce - Chapter 384 – A.9753A [Bing]/S.3890 [Hassell-Thompson].

This law adds irretrievable breakdown of a marriage for a period of six consecutive months as an additional ground for divorce. It also requires all financial, custody and visitation matters to be resolved before a divorce can be granted on this ground.

2. Maintenance - Chapter 371 – A.10984B [Paulin]/S.8390 [Hassell-Thompson].

This law establishes numerical guidelines for the award of temporary maintenance in matrimonial actions, updates the final maintenance provisions, and also directs the Law Revision Commission to undertake a comprehensive study of maintenance.

3. Counsel & Expert Fees – Chapters 329 and 415 – A.7569A and A.11576 [Weinstein]/S.4532A and S.8391 [Sampson].

This law creates a rebuttable presumption of counsel and expert fees pendente lite in favor of the non-monied spouse in matrimonial actions.

4. Automatic Restraining Orders – Chapter 32 – A.8378A [Weinstein]/S.5588A [Sampson].

It exempts payments from a retirement plan in pay status from the automatic restraining orders against dissipation of assets imposed at the commencement of a matrimonial action.

D. CIVIL PRACTICE²

1. Service of Notice of Claim against City of New York - Chapter 12 – A.2575 [Weinstein]/S.5693 [Sampson].

This law will dispense with the requirement serving a Notice of Claim only by personal service upon the City in Lower Manhattan. Instead, a Notice of Claim will now also be able to be served electronically, i.e. via e-mail, allowing for greater efficiencies for both the City and for prospective claimants.

2. Court of Claims jurisdiction – Chapter 316 – A.2876 [Weinstein]/S.4090 [Sampson].

This law will empower the Court of Claims to determine claims for retaliatory actions by state officers and employees.

² In addition to the Assembly Judiciary Committee, Civil Practice related bills are also reported from the Assembly Codes Committee.

3. State Court Decisions Regarding Real Property – Chapter 427 – A.6922 [Weinstein]/S.4536 [Sampson].

This law establishes the priority of state court awards of real property over bankruptcy liens under certain limited conditions.

4. Jurisdiction to Determine Fee Disputes – Chapter 65 – A.8394 [Weinstein]/S.3680 [Sampson].

This law will authorize courts to entertain certain declaratory judgment actions commenced pursuant to the fee dispute resolution program.

5. Electronic Filing – Chapter 528 – A10987B [Weinstein]/ S.7806A [Schneiderman].

This law continues and expands New York's program for use of electronic means for filing certain papers in civil litigation in certain courts.

E. ACCESS TO JUSTICE

1. Jury Selection Reform – Chapter 112 - A.2374 [Lancman]/S.2613 [Klein].

This law authorizes the commissioner of jurors of each county to collect demographic information concerning the ethnicity, race, gender, and age, of jurors.

The following bill was passed by the Assembly only:

1. Attorney's fees in actions against the state - A.7395 [Schimminger]/S.4534 [Sampson].

This bill would amend New York's Equal Access to Justice Act of 1989 to restore the Act's original intent, eroded by Federal court decisions, to authorize an award of attorney's fees to litigants who have been wronged by the unjustified actions of New York State agencies.

F. PROTECTING CONSUMERS/TENANTS/HOMEOWNERS

1. Unlawful Practice of Law – Chapter 91 – A.4300 [Canestrari]/S.5445 [Sampson].

This law will permit the Attorney General to bring actions for the unlawful practice of law.

2. Advisory Council for Housing Part – Chapter 488 – A.6192 [Weinstein]/ S.7621 [Krueger].

This law will alter the composition of the advisory council for the housing part of the New York City Civil Court. This council provides the Chief Administrative Judge of the Office of Court administration a slate of qualified persons for appointment to the bench in housing court.

3. Notice to Rent Regulated Tenants – Chapter 358 – A.10226 [Rosenthal]/ S.7139 [Sampson].

This law enhances the existing requirements for notice of tenant's rights to those in rent regulated buildings which have entered foreclosure.

4. Distressed Property Consultants – Chapter 553 – A.9784C [Gianaris]/ S.5896D [Klein].

This law bolsters consumer warning requirements for distressed property consultant advertisements.

The Assembly and Senate passed the following bill which awaits a decision by the Governor:

1. Increased Bankruptcy Exemptions - A.8735A [Weinstein]/ S.7034A [Schneiderman].

This bill would increase various exemptions from money judgments and in bankruptcy.

The following bills were passed by the Assembly only:

1. Foreclosure Standing – A.11465 [Weinstein]/S.8174 [Klein].

This bill would ensure that only the actual holder of the mortgage note or their legal representative will have standing to maintain a foreclosure action.

2. Consumer Credit Fairness Act – A.7558A [Weinstein]/S.4398A [Schneiderman].

This measure would shorten the statute of limitations to commence consumer credit actions from six years to three years; strengthen evidentiary requirements for default judgments; and enhance requirements for notice to defendants.

3. Private Cause of Action – A3532A [Gianaris]/S.2458A [Sampson]

This bill would grant consumers a private cause of action against debt collectors who violate New York law.

G. TRUSTS AND ESTATES & POWERS OF ATTORNEY

1. Renunciation of Inheritance - Chapter 27 – A.7132A [Lavine]/S.3528A [Sampson].

This law, which amends Section 2-1.11 of the EPTL, Section 5-1502G of the General Obligations Law and Section 81.21 of the Mental Hygiene Law, clarifies the process and consequences of refusing an inheritance.

2. Non-marital Children - Chapter 64 of the Laws of 2010 – A.7899A [Jeffries]/S.3682A [Sampson].

This law safeguards the rights of children to inherit by further defining the way a non-marital child can establish status to inherit from his or her father under section 4-1.2 of the EPTL.

3. Powers of Attorney - Chapter 340 – A.8392C [Weinstein]/S.7288A [Sampson].

This law provides technical amendments to Chapter 644 of 2008 in regard to the execution of powers of attorney. This bill also provides further guidance regarding the use of the statutory gifts rider.

4. Tax Interpretation - Chapter 349 - A.9857C [Carrozza]/S.8056 [Kruger].

This law provides for the interpretation of trust and will clauses relating to federal estate taxes and generation-skipping transfer taxes when a spouse or parent dies during 2010.

5. Assets for Benefit of Family - Chapter 437 – A.8969 [Weinstein]/S.7201 [Sampson].

This law expands and increases assets that are available for the benefit of a decedent's family, and also allows for payment of compensation to the estate if the family wishes to acquire assets which have a value in excess of the aggregate limit established by this law.

6. Lifetime Trusts - Chapter 451 – A.11316 [Weprin]/S.8298 [Sampson].

This law requires that a person establishing a lifetime trust execute and acknowledge such trust when it is formed.

7. Right of Election - Chapter 545 - A.11255 [O'Donnell]/S.8057 [Savino].

This law protects spousal rights by providing that a surviving spouse must exercise a right of election within two years of the deceased spouse's death. In addition, a court may, in its discretion for good cause shown, extend the two-year period in which a surviving spouse may exercise this right.

8. Pet Trusts – Chapter 70 – A5985A [Glick]/S.3070A [Krueger].

This law permits pet trusts to last for the lifetime of the affected pets.

H. OTHER LEGISLATION OF INTEREST

1. Agency Disclosure – Chapter 443 – A.10443B [Bing]/ S.7672A [Klein].

This law refines the disclosures necessary for dual-agency relationships in real estate transactions.

2. Court approval of Structured Settlements – Chapter 511 – A.6786 [Weinstein]/ S.3681 [Sampson].

This law strengthens the requirements necessary to obtain court approval of the transfer of a structured settlement.

3. Credit Line Mortgages – Chapter 529 – A11380 [Towns]/ S.7830 [Kruger].

This law extends the length of certain credit line mortgages.

IV. HEARINGS

IOLA and the future of civil legal services in New York State

The Assembly Judiciary Committee held a joint hearing with the Senate Judiciary, Senate Crime Victims, Crime and Corrections, Senate Codes and Senate Veterans and Military Affairs Committees on January 7, 2010, to examine the funding crisis for Civil Legal Service providers.

Testimony focused on the severe economic conditions, the resulting increased demand for these critical services and the simultaneous drop in funding available to support them. Presenters noted that the New York Interest on Lawyer Account ("IOLA") Fund – a primary source of funding for these services - dramatically lost revenue due to economic contraction and historically low interest rates. The Chief Judge of the State of New York, Hon. Jonathan Lippman, and leaders of various other legal, academic, business, government and community groups, as well as from individuals who rely upon assistance from civil legal service providers emphasized in their testimony how vital legal services are to low-income New Yorkers, and that are cost effective and provide economic benefits to the state. Witnesses called for finding a long term solution to address the civil legal services funding crisis.

As part of the budget for State Fiscal Year 2010-2011, the Assembly restored approximately \$4 million for civil legal services, including \$609,000 for domestic violence programs. The legislature for the first time also appropriated \$15 million to IOLA, addressing their dramatic shortfall in revenues for funding civil legal services. In addition, a joint resolution was enacted by the legislature asking Chief Judge Jonathan Lippman to annually report to the governor and legislature the findings from his statewide hearings held to assess the extent and nature of unmet civil legal services needs with recommendations to address gaps in available resources to meet the need for civil legal services in New York.

Impact of the mortgage foreclosure process and impact of funding for foreclosure prevention and civil legal services on behalf of homeowners.

The Assembly Judiciary, Banks and Housing Committees held a joint hearing on November 17, 2010, to examine the mortgage foreclosure process and the impact of budgetary support in SFY 2010-11 for civil legal services and counseling on distressed homeowners.

Among other items, witnesses testified about the problems with the foreclosure process. In particular testimony focused upon the importance of the pre-foreclosure conferences and the need for additional steps to improve their effectiveness; the difficulties in unraveling the web of mortgage note assignments; the importance of addressing issues related to standing; and the need for more accurate submission of documents in foreclosure cases. The

need for additional funding for representation of homeowners in foreclosure cases was made manifest, as was the need to change the foreclosure process through new legislation. The Judiciary Committee expects to take up legislation in the coming session to address these concerns.

Implementation and Funding of the Rockefeller Drug Law Reform Legislation.

The Assembly Codes, Judiciary, Correction and Alcoholism and Drug Abuse Committees held a joint hearing on December 20, 2010, to explore the expenditure of funds appropriated in the SFY 2010-2011 New York State budget for the Rockefeller Drug Law reform legislation enacted in 2009. Specifically, the hearing examined the adequacy of funding for community-based residential and out-patient substance abuse treatment and case management services for drug offenders court-ordered into treatment as an alternative to incarceration; how the judicial diversion program was implemented by the courts; and the role and funding of alternative-to-incarceration and defender-based programs in the implementation of these reforms.

2010 SUMMARY SHEET

SUMMARY OF ACTION ON ALL BILLS REFERRED TO THE COMMITTEE ON

_____ judiciary _____

<u>FINAL ACTION</u>	<u>ASSEMBLY BILLS</u>	<u>SENATE BILLS</u>	<u>TOTAL BILLS</u>
BILLS REPORTED WITH OR WITHOUT AMENDMENT			
TO FLOOR; NOT RETURNING TO COMMITTEE	10	0	10
TO FLOOR; RECOMMITTED AND DIED	0	0	0
TO WAYS AND MEANS	5	0	5
TO CODES	23	0	23
TO RULES	14	0	14
TO JUDICIARY	0	0	0
TOTAL	52	0	52
BILLS HAVING COMMITTEE REFERENCE CHANGED			
TO <u>local governments</u> COMMITTEE	1	0	1
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TO _____ COMMITTEE	0	0	0
TOTAL	1	0	1
SENATE BILLS SUBSTITUTED OR RECALLED			
SUBSTITUTED		13	13
RECALLED		0	0
TOTAL		13	13
BILLS DEFEATED IN COMMITTEE	1	0	1
BILLS HELD FOR CONSIDERATION WITH A ROLL- CALL VOTE	77	0	77
BILLS NEVER REPORTED, DIED IN COMMITTEE	301	18	319
BILLS HAVING ENACTING CLAUSES STRICKEN	12	0	12
MOTIONS TO DISCHARGE LOST	0	0	0
TOTAL BILLS IN COMMITTEE	444	31	475
TOTAL NUMBER OF COMMITTEE MEETINGS HELD	9		