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Thoughts on Court Consolidation, Revisited

BY RAYMOND RADIGAN

The proposed “consolidation” of New York’s court system has, once again, become headline news. In 2019, I wrote an article concerning court consolidation then proposed by Judge Janet DiFiore, the Chief Judge of the Court of Appeals, for the purposes of addressing the history of the Surrogate’s Court and how it may be improved as a result of consolidation. See “Thoughts on Court Consolidation: The Surrogate’s Court,” *New York Law Journal*, Vol. 262, No. 101, Nov. 22, 2019.

Since that article, there have been continued discussions, and the Surrogates from across the state (as members of the Surrogate’s Association) met with Office of Court Administration (OCA) officials to discuss the issue. Given the renewed interest in the proposal, I am setting forth many of the highlights of the previous article as well as providing further insights for discussion

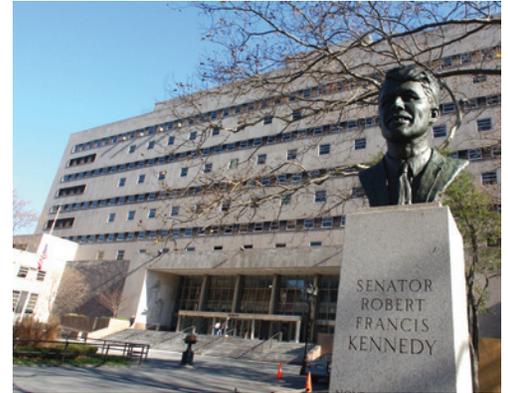
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among practitioners and others with an interest in Surrogate’s Court practice.

In the earlier article, I noted that Judge DiFiore has joined her predecessors, among them former Chief Judges Sol Wachtler, Judith Kaye and Jonathan Lippman, who have also proposed court consolidation for the purposes of streamlining New York’s court structure and providing greater efficiency in administering matters that come before the various courts. See, e.g., “Chief Judge Offers a Plan to Consolidate the Court System,” *New York Times*, March 20, 1997. Judge DiFiore has encouraged comments regarding the proposal and hopefully, this article will aid in the discussions concerning consolidation.

In my prior article, I expressed my own views with respect to the potential consolidation of the Surrogate’s Courts with the Supreme Court, as follows:

- The Surrogate’s Court is a constitutional court, and not a creature of the Legislature. Any changes to the scope of the jurisdiction of the Surrogate’s Court would require a constitutional amendment,



Brooklyn Surrogate’s Court

which is recognized in the proposal.

- Under the present New York State Constitution, the Legislature may add to the jurisdiction of the Surrogate’s Court, but cannot take away what is already prescribed.
- There are constitutional questions concerning the merger of Surrogate’s Court into Supreme Court, with respect to the election of Surrogates and whether they will complete their terms as Surrogates.
- Consideration must be given to the diversity of the bench, and the election of Surrogates by the communities in which they reside.
- Given the knowledge and expertise of Surrogates

throughout the state, Surrogate's Court matters should not be assigned to non-Surrogate's Court judges in other parts, and should instead be transferred to other Surrogates.

- Documents filed with the Surrogate's Court should not be co-mingled with what is now handled in the county clerk's office, such as Supreme Court filings. This is particularly true with respect to original wills and sealed adoption records, because Surrogate's Courts are their own county clerks for these purposes.
- Court clerks and staff with knowledge and experience working in the Surrogate's Court should not be permanently assigned to other court parts.

In my prior article, I also discussed many potential advantages of consolidation, many of which could be accomplished by the Legislature and may not require any constitutional amendments. I expand on them here:

As part of consolidation, the Surrogates' jurisdiction could be expanded to include exclusive jurisdiction over certain matters, such as adoptions and guardianships, which are now dealt with the Supreme Court, the Family Court and the Surrogate's Court. This may ease the burden on the existing Supreme Courts and Family Courts, given that the Surrogates already have expertise in dealing with these matters.

Expansion of the Surrogates' jurisdiction may also reduce the likelihood of inconsistent results in matters such as wrongful death and personal injury actions if they relate to a decedent, where jurisdiction is now split between the Supreme Court and the Surrogate's Court. Presently, for example, Surrogates are involved in wrongful death and personal injury actions to the extent that the Surrogate's Court first appoints a fiduciary of the estate, in order to give the fiduciary the capacity to commence the wrongful death and/or personal injury action in another

As a follow-up to his previous article on court consolidation, Raymond Radigan continues the discussion by providing further insights for practitioners and others interested in Surrogate's Court practice.

forum, such as Supreme Court or federal court.

When a recovery is made in the other forum, whether by judgment or settlement, the fiduciary is required to return to Surrogate's Court once again to commence a compromise proceeding to determine the proper distribution of the proceeds to the estate and/or the decedent's distributees.

Under present practice, many of our upstate Surrogates who act as "triple hatters" (i.e., they are Surrogates, Supreme Court justices, and Family Court judges) do, in

effect, handle wrongful death and personal injury actions from start to finish. Therefore, it may be appropriate to give the Surrogates expanded jurisdiction to adjudicate the causes of action themselves, rather than limiting the Surrogate's jurisdiction to the issuance of Letters and compromise proceedings.

Likewise, if Surrogates will be the equivalent of Supreme Court justices, consideration should be given to allowing Surrogates to adjudicate other disputes between living persons where related to an estate or trust. Surrogates would not have to decline jurisdiction in some cases where their expertise may serve the litigants.

As I indicated in my prior article, the Surrogate's Association will give careful, constructive consideration to all proposals concerning consolidation and if there is cooperation by all parties concerned, one can envision an even better Surrogate's Court than what we have today.