Commission on Judicial Nomination
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To the Commission on Judicial Nomination:

We write to urge you to send the Governor a list of candidates for nomination to the Court of Appeals that includes lawyers who have spent substantial portions of their careers directly representing individual New Yorkers, particularly marginalized people with limited access to institutional power or resources. These experiences would bring much-needed professional diversity to the Court and deepen its understanding of how its rulings affect the New Yorkers whose lives are most shaped by the law.

The Commission's rules expressly commit it to advancing diversity. The rules mandate that the Commission consider candidates who "reflect the diversity of New York's citizenry," including diversity in "nature of legal practice or professional background" because "A diverse Judiciary ensures that a broad array of perspectives and experiences are brought to the bench; reinforces public trust and confidence in the fairness of the justice system and the administration of justice; and ultimately enhances the delivery of justice and the Judiciary's credibility and moral authority."[1] This mandate recognizes an important truth: diversity in professional background and types of legal practice makes all courts and court systems stronger. Judges' experiences before taking the bench influence the questions they have confronted and considered, how they have related to institutions and individuals, and their understanding of how the law shapes New Yorkers' lives.

The Court of Appeals has historically been—and remains—dominated by judges whose substantial professional experiences before taking the bench involved prosecution, corporate law, or representing government entities and other powerful institutions. Among the Court's current judges, four spent years working in prosecutors' offices, three spent substantial portions of their careers at corporate law firms, and two spent years as lawyers for government agencies. (Some judges have experience in more than one of these categories.) Only one—Judge Jenny Rivera, for whose current seat the Commission is now considering candidates—spent a significant portion of her career working in civil rights and legal services on behalf of low-income and marginalized people. What remains underrepresented are lawyers with substantial experience directly representing individual New Yorkers, particularly people who are poor, working class, experiencing housing insecurity or disputes with employers, or otherwise confronting and navigating institutions that have vastly greater resources and power.

The upcoming appointment offers an opportunity to begin addressing this imbalance. We urge the Commission to ensure that the list it produces includes multiple outstanding candidates with significant experience directly representing individual New Yorkers and marginalized

[1] 22 N.Y.C.R.R. Part 7100.8(e).

communities, including lawyers who have devoted substantial portions of their careers to public defense, civil rights, labor rights, tenant representation, civil legal services, and similar public-interest work.

New York has no shortage of exceptionally qualified lawyers with these backgrounds, particularly since its public interest bar is among the most accomplished in the country. Attorneys in these jobs routinely handle complex legal matters while helping their clients navigate a legal system that can be extraordinarily difficult to navigate without resources or institutional power. For them and their clients, the outcomes of legal proceedings are not abstract: they determine whether people remain free or are incarcerated, stay in their homes, keep their jobs, recover owed wages, work safely and freely from discrimination, and vindicate their rights in a range of other contexts.

Those experiences matter on any court, and they especially matter on a court of last resort like the Court of Appeals. They shape the questions judges ask, the assumptions they scrutinize, and their understanding of how their rulings affect people far beyond their courtroom. Having more judges with these experiences on the Court of Appeals would broaden the perspectives that inform the Court's deliberations and ensure that its decisions better reflect the extraordinary breadth of the state's legal profession and the people whom the New York bar serves.

The Commission occupies a uniquely consequential position to address the lack of professional diversity on the Court of Appeals. Because the Governor must select a nominee from among the candidates the Commission recommends, the composition of the Commission's list constrains the rest of the appointment process. A list full of candidates from the familiar professional pipelines is highly unlikely to result in a more professionally diverse Court. In contrast, a list that includes numerous highly qualified candidates with backgrounds different from those of former and current judges will encourage the Governor to strengthen the Court by nominating someone who would broaden the range of experiences and perspectives on the Court.

New Yorkers deserve a Court of Appeals that reflects the breadth of legal experience in our state and is attuned to the lived realities of the people whose rights and lives its rulings affect. Our highest court should see the law not only through the eyes of powerful institutions, but also from the perspectives of the people who must live with the consequences of its decisions. We respectfully urge the Commission to send the Governor a list that includes multiple exceptional candidates whose careers have included substantial direct representation of individual New Yorkers and marginalized communities.

Sincerely,

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