

HEARINGS SHED LIGHT ON UNMET NEEDS

Henry J. Scudder, Presiding Justice
Appellate Division, Fourth Department

In a speech on Law Day in 2010, Chief Judge Jonathan Lippman pledged to address the critical need of low-income New Yorkers for legal representation in civil proceedings. He stated:

“No issue is more fundamental to the constitutional mission of the courts than providing equal justice for all.”

The chief judge announced the formation of the Task Force to Expand Access to Civil Legal Services in New York, and scheduled public hearings in the four departments of the Appellate Division to evaluate the unmet need for civil legal assistance in New York.

These public hearings were intended to assist the chief judge in formulating his budget proposals to the legislative and executive branches of the government regarding the level of public resources necessary to ensure that the most vulnerable New Yorkers have access to legal assistance in civil proceedings involving the basic necessities of life.

The Appellate Division hearing in the Fourth Department was held in Rochester on Sept. 29, 2010. Chief Judge Lippman presided over the hearing, and I was joined on the panel by Chief Administrative Judge Ann Pfau, and New York State Bar Association President-Elect Vincent Doyle. Our panel heard from judges, educators, healthcare providers, business leaders and legal services providers and their clients.

The judges described how the increasing number of unrepresented litigants adversely impacts the administration of justice. Supreme Court Justice Joanne M. Winslow, who presides over matrimonial and foreclosure cases in the Seventh Judicial District, described a state court system that is increasingly becoming overwhelmed by unrepresented litigants in civil cases.

Justice Winslow predicted: “If the number of pro se cases increases it will likely double the amount of time for [matrimonial and foreclosure cases] to reach completion. In cases where both litigants are pro se, it will quadruple the amount of time needed for the case to reach completion.”

The judges also detailed other problems that arise when one or both parties are unrepresented. Fact-finding is difficult because unrepresented litigants are unable to identify the relevant issues, make objections or properly present evidence. A judge's ability to remain a neutral arbiter of disputes is compromised when an unrepresented litigant seeks assistance in questioning a witness or introducing evidence.

Educators described how a family's inability to resolve its legal problems may disrupt a child's education. Jean Claude Brizard, Superintendent of the Rochester City School District, stated that “children displaced from their homes due to foreclosure, eviction, or abuse face enormous barriers to educational success.”

Rachel Gazdick, executive director of Say Yes to Education, echoed those concerns:

“If the family is evicted the child may become homeless or have to change schools. They may have to move in with other family members or friends. None of these results will provide an environment that will enable a child to perform well in school.”

Dr. Anne Kress, President of Monroe Community College, noted that the problem is not limited to children; the inability of young adults in community college to access legal assistance may end their dreams of obtaining a college degree.

Healthcare providers testified that legal issues, such as housing, special education and domestic violence, significantly impact the physical and mental health of their patients.

Dr. Catherine Cerulli, from the Department of Psychiatry at the University of Rochester, highlighted the critical role that civil legal service providers play in protecting victims of domestic violence. Dr. Cerulli, an attorney with extensive experience in working with victims of intimate partner violence, emphasized the key role that attorneys play in securing orders of protection.

Civil legal services providers stressed the need for a consistent, stable funding source. Kenneth Perri, executive director of Legal Assistance of Western New York, explained that the primary source of support has been the Interest on Lawyers Account Fund of New York State (IOLA), a source that has dramatically declined due to plunging interest rates during the economic downturn.

In 2008 the amount generated by interest on IOLA accounts neared \$32 million. By 2010 that figure had fallen to \$6.5 million. The decreased funding has resulted in staff reductions at a time when the demand for civil legal services has never been greater.

Our panel also heard from witnesses who were fortunate enough to receive civil legal services. Their testimony demonstrated the benefits of meeting the critical legal needs of such individuals and their families.

One witness had a second grade daughter with a learning disability who initially was denied services by the Committee on Special Education. With the help of an attorney from the Empire Justice Center, the parent appealed the decision and ultimately was able to obtain the special education services her daughter needed to succeed in school.

Another witness was victimized in a property flipping scheme to defraud first-time home buyers. She summed up the importance of having an attorney assist her when she stated: “Without the help from Legal Services of Central New York we would not have a roof over our heads.”

Task Force Report

The Task Force to Expand Access to Civil Legal Services in New York considered the evidence from the four public hearings and submitted its report to the chief judge in November 2010.

Not surprisingly, the report demonstrates that current funding is inadequate to meet the critical need for civil legal assistance in New York. The task force recommended that the chief judge allocate an additional \$25 million in civil legal services funding this year, and then increase that allocation by an additional \$25 million each year until the funding reaches an annual allocation of \$100 million in the fourth year.

The well-documented report reveals that more than 2.3 million individuals are unrepresented in civil legal proceedings in New York state courts. This is clearly a conservative estimate because it does not include those individuals who are unrepresented in the town and village courts.

For every eligible client who sought legal assistance at a legal services office, another eligible client was turned away for lack of resources. Those eligible clients turned away were facing matters involving what the chief judge has termed the “essentials of life,” such as foreclosure, eviction, eligibility for disability and health benefits, child custody and domestic violence.

The task force concluded that, at best, 20 percent of the overall need for civil legal assistance is being met at current funding levels.

Chief Judge Lippman accepted the recommendation of the task force and allocated \$25 million for civil legal services funding in the judiciary's April 1, 2011– March 31, 2012 budget. While this allocation will not solve the problem, it will significantly reduce the number of eligible New Yorkers in need of assistance who are turned away by underfunded civil legal providers, and enable the state to move closer to the ideal of equal access to justice for all.

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