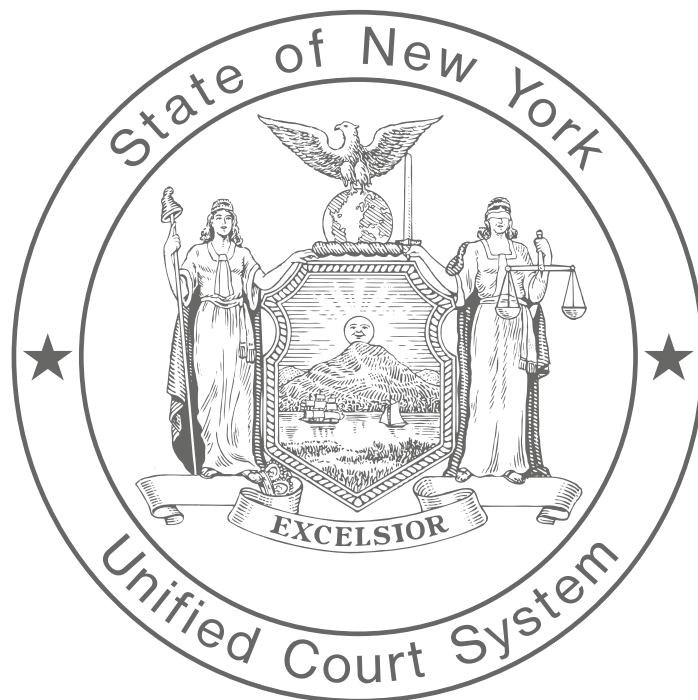


# PERMANENT COMMISSION ON ACCESS TO JUSTICE

REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK



## APPENDICES

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NOVEMBER 2023

# PERMANENT COMMISSION ON ACCESS TO JUSTICE

## REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK

### APPENDICES

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**PERMANENT COMMISSION ON ACCESS TO JUSTICE**

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**REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK**

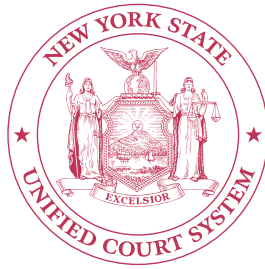
**APPENDIX 1:**

**Report of the Funding Working Group Adopted  
by the Permanent Commission**

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**NOVEMBER 2023**

# A Realistic Estimate of the Funding Necessary to Close the Justice Gap in New York



New York State  
Permanent Commission on  
Access to Justice



Report of the  
Funding Working Group

NOVEMBER 2023

This Report of the Funding Working Group  
has been approved and adopted by the  
New York State Permanent Commission on Access to Justice.

## **New York State Permanent Commission on Access to Justice**

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# **New York State Permanent Commission on Access to Justice Report of the Funding Working Group**

## **A Realistic Estimate of Funding Required to Close the Justice Gap in New York**

### **Executive Summary**

In January 2022, at the request of former Chief Judge Janet DiFiore, the New York State Permanent Commission on Access to Justice ("Permanent Commission") began to develop a realistic estimate of the funding and resources required to close the justice gap in New York. This estimate was limited to matters involving the essentials of life and to low-income individuals and households at or below 200% of the Federal Poverty Guidelines; all forms of effective assistance that a litigant may require, based on their individual circumstances, were to be considered. Due to the specific eligibility requirements involved in its study, the resulting estimates necessarily understate the amount needed to close the civil justice gap completely.

This Report reviews the process undertaken by the Permanent Commission's Funding Working Group to develop its estimate. The Working Group selected the types of matters to study, gathered information for each type, created preliminary budget models for each type, identified and employed key inputs to the analysis, enumerated noteworthy observations about each matter type, and identified factors that could impact the realistic estimate and open questions. Having completed its work, the Working Group estimates that between \$842 million and \$1 billion is a realistic estimate of the additional annual funding necessary (at full implementation), over and above existing funding, to close the justice gap for low-income New Yorkers involved in civil legal matters impacting the essentials of life.

The Funding Work Group proposes an initial five-year goal of adding \$100 million to the currently planned annual JCLS funding and proposes reaching that goal with incremental increases beginning in the upcoming fiscal year (FY) starting April 1, 2024. The Working Group recommends that this additional funding be administered in the same manner as current JCLS funding, which enables local legal services organizations to respond to the unique local needs of their community in the manner most effective for their organization and community.



## A. Introduction

In his May 2010 Law Day Speech, announcing the appointment of the Task Force to Expand Access to Civil Legal Services in New York, which became the New York State Permanent Commission on Access to Justice, then-Chief Judge Jonathan Lippman emphasized that: “No issue is more fundamental to our constitutional mandate of providing equal justice under law than ensuring adequate legal representation.”<sup>1</sup> He added that New York was making “the singular and unequivocal commitment to providing civil legal representation to the poor in matters where they need it most, where their well being as human beings, and that of their families, is at stake.”<sup>2</sup>

It is well documented that the effects of poverty are often reflected in civil case dockets. Poverty causes other crises that lead to civil legal problems, including poor educational attainment, housing instability and eviction, justice system involvement (civil and criminal), health disparities and morbidity rates, unemployment and underemployment, community or family instability, and social safety net resource usage. In 2021, 14% of New York residents were living below the Federal Poverty level, a full percentage point higher than the national average, with pockets of poverty in the State and among some populations that are considerably greater.<sup>3</sup> In October 2022, 47% of New Yorkers had difficulty paying for household expenses.<sup>4</sup>

Individuals living in poverty often cannot access legal representation or other forms of effective assistance because they are unable to pay for professional services or are turned away by under-resourced providers of free legal services. Those living in poverty also may have limited technology proficiency or access to technology, transportation, and childcare, which can complicate their ability to participate effectively in the civil justice system.

Adequate funding for effective assistance needed by court users is critical to ensuring the opportunity for justice for all. It also enhances the effective and efficient functioning of the court system by significantly reducing the frequency with which court users appear without legal representation and by reducing the necessity of an appearance altogether by avoidance of civil litigation or early and effective resolution. Further, investments in civil legal services have a significant positive return on investment for state and local communities and their economies.

Key aspects of the mission of the Permanent Commission are to make an annual assessment of the unmet needs for civil legal services in New York and the additional resources necessary to respond to those needs and to make recommendations to the Chief Judge accordingly. In 2011, in

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<sup>1</sup> *Law Day 2010, Law in the 21<sup>st</sup> Century: Enduring Traditions, Emerging Challenges*, (May 2010), available at <https://www.nycourts.gov/whatsnew/pdf/Law%20Day%202010.pdf> at 3.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> Office of Budget Policy and Analysis, New York State Comptroller, *New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade* (Dec. 2022), available at <https://www.osc.state.ny.us/reports/new-yorkers-need-look-poverty-trends-new-york-state-last-decade>.

<sup>4</sup> *Id.* at 8.

response to the Permanent Commission recommendations, the New York State Judiciary began the process of phasing in funding for civil legal services through the Judiciary Budget, administered through the court system’s Judiciary Civil Legal Services program (JCLS), and limited to low-income individuals and families at or below 200% of the Federal Poverty Guidelines in matters involving the essentials of life.

In 2016, JCLS funding reached \$100 million annually and remained at that level until the addition of two recent cost-of-living adjustments; it is now \$116 million annually. That is only a part of the approximately \$750 million total annual funding from all sources for civil legal services matters in New York.<sup>5</sup>

## **B. Scope of the Justice Gap Funding Study**

In January 2022, the Permanent Commission established a Funding Working Group (“Working Group”), composed of members of the legal services community from across New York and long-standing members of the Permanent Commission with significant experience and expertise involving civil access to justice.

The scope of the Working Group’s inquiry was limited to:

- Providing for assistance to individuals living at or below 200% of the Federal Poverty Guidelines,<sup>6</sup> and
- Matters involving the “essentials of life.”<sup>7</sup>

Given this eligibility criteria, the Funding Group’s estimate inherently understates the full need for funding for New Yorkers: (1) whose income exceeds 200% of the Federal Poverty Guidelines; (2) who may need assistance in matters not involving the essentials of life; and (3) who need assistance in matters involving the essentials of life, but do not have a court case;<sup>8</sup> and/or (4) who do not know they have a civil legal problem for which they can seek legal assistance.

Significantly, the funding needs studied were not to be limited to the provision of full legal representation in every case but were to cover the provision of “effective assistance”—which contemplates a spectrum of services, from full representation on one end of the spectrum to self-help materials on the other end. It includes full and limited-scope representation by attorneys, pro

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<sup>5</sup> Estimate provided by the New York State Interest on Lawyer Account Fund (IOLA).

<sup>6</sup> This standard is consistent both with the eligibility limit the Permanent Commission and JCLS funding have employed from the outset and with the eligibility limit applicable to many of the services offered by civil legal services providers,

<sup>7</sup> These matter types include housing (including evictions, foreclosures, and homelessness); family matters (including domestic violence, children, and family stability); access to health care and education; and subsistence income (including wages, disability, and other benefits), and consumer debt.

<sup>8</sup> This category excludes income maintenance and public benefits matters at the administrative level, which are part of this funding analysis.

bono lawyers, law school clinics, pre-filing diversion programs, assistance from trained, supervised non-attorneys, mediation and other forms of ADR, community-based resources (including Legal Hand and Community Dispute Resolution Centers), and technology (including, but not limited to, guided interviews, online automated forms, e-filing, and other technology innovations).<sup>9</sup>

The result is a realistic estimate of the additional funding needed to close the justice gap (as defined in this study) at full implementation. It has measured only the cost of services or effective assistance necessary *in addition to that already being provided* (i.e., the incremental funding that is needed). It has been developed based on the data and information presently available. As additional funding is allocated and implemented and as technological, social, cultural, and governmental change occurs, the funding need may change, and these estimates may need to be updated.

### **C. Identification of Matter Types**

The Working Group determined that developing an estimate of the funding necessary to close the justice gap would require separate estimates for each of the matter types to be considered.

First, the Working Group identified several court matter types, relying on data provided by the New York State Office of Court Administration (OCA). The matter types include:

- Consumer credit
- Eviction (inside and outside New York City)
- Child support
- Disability benefits assistance
- Guardianship
- Contested matrimonial
- Foreclosure
- Paternity
- Family offense not involving intimate partner violence
- Custody matters for kinship caregivers

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<sup>9</sup> The Permanent Commission has reported extensively about the meaning of effective assistance. *See, e.g.,* Permanent Commission on Access to Justice, *Report to the Chief Judge of the State of New York* 6-39 (Nov. 2015), available at <https://ww2.nycourts.gov/accesstojusticecommission/annual.shtml>. The New York State Senate and State Assembly adopted a Concurrent Resolution on June 18, 2015, proclaiming it to be the State's policy that low-income New Yorkers facing legal matters concerning the essentials of life have effective legal assistance. N.Y. Legis. Assemb. Res. C776, Sess. 2015–2016 (2015), <http://legislation.nysenate.gov/pdf/bills/2015/C776>. See also National Center for State Courts Resolution 5, [https://ccj.ncsc.org/data/assets/pdf\\_file/0013/23602/07252015-reaffirming-commitment-meaningful-access-to-justice-for-all.pdf](https://ccj.ncsc.org/data/assets/pdf_file/0013/23602/07252015-reaffirming-commitment-meaningful-access-to-justice-for-all.pdf).

Collectively, these matter types constitute approximately 50% of the total civil case docket in New York state courts<sup>10</sup> and represent more than 540,000 civil case filings for the twelve months ended March 31, 2023.<sup>11</sup> For many of these case types, fewer than 5% of respondents (or petitioners, depending on the case type) have legal representation at any time during their case.

Second, the Working Group examined income maintenance and access to public benefits matters involving administrative hearings and other actions at the administrative level. Although those are not court cases, the JCLS program funds providers for these matters, they are essential to the livelihood of legal services clients, and effective assistance in these matters can reduce or avoid the filing of court cases.

## **D. Methodology**

Having identified the matters to be studied, the Working Group developed a methodology that included the following five phases:

*Phase 1 – Stakeholder Engagement:* The Working Group spoke with a variety of stakeholders with expertise in each matter type, including legal services providers, law school clinics, members of the academic community, the courts, and others. Appendix A contains a list of the stakeholders contacted by the Working Group.

The conversations provided background on the case type, factors impacting case complexity, experience providing effective assistance, and the costs of providing effective assistance. Stakeholders consistently offered ideas about court reforms and other opportunities for change that could improve access to justice. They identified barriers to access to justice, reforms that could have a transformative impact on the number of individuals experiencing civil justice issues, and how those persons could more easily access resources to assist them to resolve these cases effectively. Some of the reform opportunities mentioned were improvements to service of process, judicial training, e-filing and access to electronic records, evidentiary requirements, community outreach, and the assurance of sufficient time and notice for litigants to connect with resources to assist them. The feedback provided went beyond the cost of funding that may be necessary and discussed a diversity of issues across the various case type. These observations provide valuable context and demonstrate the unique nature of each matter type when assessing the funding and other reforms that can contribute to closing the justice gap in New York. A summary of the most relevant observations by case type is set forth in Appendix B.

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<sup>10</sup> Not included in the Working Group's analyses are case types heard in federal courts, case types that do not involve the essentials of life, case types for which there is already a right to representation, and case types for which sufficient information could not be collected to inform this analysis. Excluded case types include, but are not limited to, immigration, employment disputes, custody, no-fault, motor vehicle, medical malpractice, and other case types meeting these criteria.

<sup>11</sup> The remaining 50% of the civil case docket are related to case types that do not involve the essentials of life or that provide for the right to representation.

Stakeholders also commented on the need for funding that contemplates competitive wages for those providing effective assistance, wages and costs associated with necessary supportive personnel, and infrastructure costs necessary for sustainable programs, in order to address challenges in hiring and retaining staff<sup>12</sup> or investing in various forms of infrastructure (including, but not limited to, technology).

*Phase 2 – Research:* When possible, the Working Group supplemented initial stakeholder outreach with independent research. The Working Group drew on the experience of other initiatives that significantly improved access to justice, including but not limited to, New York City’s Universal Access to Legal Services program, changes to the adjudication of foreclosure matters in New York after the 2008 financial crisis, and changes to the process of adjudicating consumer debt matters in New York City.

*Phase 3 – Preliminary Analysis and Budget Models:* The Working Group developed a budget model that could be adapted to the specifics of each matter type. This model allows for a wide variety of effective assistance services, such as full legal representation, limited representation, assistance from trained and supervised non-lawyers. The Working Group used the information gathered from stakeholders and research to develop a preliminary analysis of the costs necessary to close the justice gap for a particular matter type.

Throughout its work, the Working Group used budgeting and financial analysis techniques and models that had been successfully used in the measurement of estimated civil legal services program costs in New York and around the country, including for New York’s proposed eviction right to counsel outside New York City.

For purposes of its preliminary analysis, the Working Group examined data from OCA on the total number of cases filed in calendar years 2019 and 2022, as well as FY 2023, ending March 31, 2023.<sup>13</sup> While calendar year 2019 data was pre-pandemic and does not reflect the changes made in certain case types during the pandemic, the early portions of calendar year 2022 still reflected the lingering effects of the pandemic. Therefore, the Working Group decided to use FY 2023 data, when possible, as a starting point for the number of cases filed; it also considered any significant deviations from prior periods and whether a decline in the number of filings could reasonably be expected if significantly more resources were available to court users.

The preliminary analysis includes hundreds of modifiable inputs that assisted in the estimation of the number of matters that may require effective assistance, the types of effective assistance

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<sup>12</sup> Stakeholders consistently told the Working Group that staff attorneys and supervising attorneys have left their organizations primarily for the opportunity to earn higher wages, often in a less-demanding work environment. Many with deep commitments to public service work have been attracted to higher-paying positions in state and local government law departments or the New York State Attorney General’s office. Stakeholders also indicated that they were unable to attract and hire qualified attorneys, had positions open for over 18 months, and could not use funding allocations from sources other than JCLS funding due to the lack of applicants.

<sup>13</sup> The Working Group is grateful for the assistance of OCA in preparing and providing data that serves as an important foundation for its work.

provided, the staffing required to provide that effective assistance, and the personnel and non-personnel costs that would be required to sustainably provide that effective assistance. The Working Group was mindful that the current practices, processes, and procedures of legal services organizations across the state can differ for any matter type.

*Phase 4 – Stakeholder Re-engagement and Analysis Refinement:* After completing its preliminary analysis for each matter type, the Working Group re-engaged stakeholders with follow-up questions, which often involved inputs related to staffing requirements, matter complexity, and the proportion of cases that could be served effectively using different forms of assistance. The Working Group focused on inputs with the most significant impact on the total expected cost of effective assistance.

When the Working Group found significant unknowns about the diversity of case circumstances and need for effective assistance (or in the potential impact of certain court reforms), it developed scenarios that analyzed a range of possibilities for the funding necessary to close the justice gap for these matter types.

*Phase 5 – Finalizing the Budget Models:* The Working Group then reviewed the analysis, solicited additional feedback, and revised the model budget inputs. In each iteration of the model, the Working Group identified inputs that could use additional stakeholder feedback and sought further guidance until it was confident in the model inputs.

Results were then aggregated to develop a comprehensive assessment of the initial estimate of the funding and resources necessary to close the justice gap. In addition to the costs of providing effective assistance for each matter type, the Working Group considered and estimated the costs of statewide investments needed for effective implementation of the funding, such as technology and self-help resources, community-based outreach and organizing, and statewide program administration.

## **E. Key Inputs**

The Working Group’s estimate is the cost of closing the justice gap measured at the time when the services necessary to provide the assistance now needed by unrepresented or unassisted individuals have been fully implemented. Thus, the estimate is described as the amount at “full implementation.”

During a reasonable period of implementation and considering the impact of potential reforms, the number of filings for certain matter types would be expected to decline, the number of matters where there is no appearance or a default may decline, and various costs will likely increase over time. The Working Group analysis does not measure the cost of providing all these services today, nor would it be reasonable to expect that all such services could be immediately implemented. These estimated costs may differ for various reasons, including the period during which implementation would be completed.

Key inputs to the Working Group's analysis are:

- **Number of annual filings** – For each matter type, the Working Group considered the number of civil case filings in calendar year 2019, calendar year 2022, and FY 2023 (ending March 31, 2023); in most instances, the Working Group found the filings for FY 2023 to be the most reasonable expectation of the number of future filings.<sup>14</sup> For administrative hearings and income maintenance matters, the Working Group collected information from various sources starting from 2019 to develop a reasonable, preliminary estimate of the number of these matters.
- **Proportion of people who may need and seek some form of assistance** – The Working Group considered the proportion of people who will become involved in a civil legal matter (or income maintenance matter), will need assistance resolving those matters effectively, and will also seek such assistance. The Working Group also considered that the proportion of people seeking and receiving assistance is likely to increase over time for certain matter types. Thus, while the number of cases filed may decrease, the number of people served may increase. Several factors were considered to develop this proportion and estimate of the number of people likely to be provided effective assistance:
  - *Default/No Appearance* – The Working Group considered OCA data and feedback from legal services providers on the percentage of people involved in each matter type that may not appear for a hearing or otherwise participate in the process, even when sufficient resources are available to assist them. Even when additional resources are fully implemented, it is unlikely that all persons will seek assistance.
  - *Eligibility* – As noted, the analysis of the Working Group applies only to providing effective assistance for those individuals at or below 200% of the Federal Poverty Level with matters involving the essentials of life.
  - *Self-resolution* – The Working Group also considered that certain individuals may resolve their legal issues without assistance. The Working Group relied on feedback from the legal services providers to apply reasonable estimates of the percentage of people that will resolve their issues on their own, even when effective assistance is widely available.
- **Forms of assistance** – For each matter, based on the experience and expertise of the Working Group, as well as that of the stakeholders it engaged with, the Working Group considered various forms of effective assistance that could be provided to individuals

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<sup>14</sup> For certain types (such as family offense matters not involving intimate partner violence), OCA was not able to provide data on a sub-category of cases. To develop reasonable estimates for such matters, the Working Group considered data on the broader classification of cases along with the expectations of legal services organizations. This number of case filings was then adjusted over a reasonable time period based on whether the availability of effective assistance or court reforms would be expected to result in a decline in the number of case filings over time (which may be offset by higher rates of assistance, as described *infra* at pp. 15-16).

seeking assistance. The nature of each matter type, variation in complexity of each matter type, and current practice was considered when developing the estimated proportion of people seeking assistance that would be served effectively by various forms of assistance.

- Much is still to be learned about which forms of assistance are indeed effective for which matter types and client circumstances. While the Working Group expects that a reasonable proportion of clients could be served with a spectrum of forms of effective assistance based on the client's circumstances, careful consideration should be given to the design and evaluation of all forms of assistance to ensure they are meeting the clients' needs and goals.
  - The Working Group considered the role of pro bono for each matter type. Pro bono service can be an effective and efficient form of assistance. The proportion and type of matters that could be served effectively through pro bono service will be impacted by local factors and the capacity of legal services organizations or other stakeholders to provide supervision over attorneys providing pro bono services. If additional funding is available, legal services providers, bar associations, private law firms, private corporations and other organizations should consider how to leverage and encourage available pro bono resources within their entities and community whenever and however possible.
- **Staff hours per matter** – For each matter type, the Working Group used information from legal services providers and other stakeholders to assess the number of staff hours that would be required to provide each form of effective assistance.
  - **Staffing ratios** – The Working Group relied on feedback from legal services providers and other stakeholders regarding appropriate staffing to ensure that effective assistance can be provided sustainably. These staffing ratios considered the need for supervisors, social workers, case managers, paralegals, administrative staff, and intake and outreach resources, depending on the form of effective assistance considered for each matter type.
  - **Personnel costs** – Over 90% of the estimated costs associated with delivering effective assistance in the identified case types relate to personnel (salaries, wages, benefits, etc.). Based on feedback from legal services providers and other stakeholders, the Working Group carefully considered the variation in personnel costs across the state in developing reasonable estimates of the salaries, wages, and benefits.<sup>15</sup> Sustainable implementation and scaling of programs require that wages and benefits are adequate to minimize the disruption caused by turnover and the inability to attract a sufficient qualified staff. Many legal services providers and other stakeholders indicated that they lack sufficient

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<sup>15</sup> Current attorney staff compensation at New York civil legal services organizations may be at least 30% less than that of civil service positions requiring similar experience and expertise (*e.g.*, staff positions with the New York Attorney General or local government law departments) and is significantly less than the market rate of compensation of lawyers at private, for-profit law firms in New York and in-house counsel at private corporations.



resources to be able to offer competitive salaries and wages, which exposes programs to regular staffing disruptions and the costs associated with hiring, training, and mentorship and compromises their programs' ability to deliver effective assistance to clients. The Working Group analysis contemplates reasonable competitive salaries, wages, and benefits<sup>16</sup> that will minimize turnover and maximize the sustainability and effectiveness of the programs' ability to provide effective assistance.

- **Other categories of cost** – The Working Group also considered the additional costs necessary for providers of effective assistance to sustain the operation of their programs. These costs include physical space, training, recruitment, retention, postage and printing, office operations, telecommunications, information technology, professional services, and insurance.
- **Statewide infrastructure costs** – The Working Group also considered costs necessary to ensure that New York's residents are aware of the resources designed to assist them and are able to access them. Such costs may include investment in statewide technology platforms and resources, statewide outreach initiatives, and statewide call center resources. Such costs can be difficult to measure, particularly when considering the rapid advancement of technology. The Working Group's estimates of these amounts are intended to be reasonable estimates based on the information currently available.

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<sup>16</sup> The salaries, wages, and benefits the Working Group used in its analysis are commensurate with the wage scale of the New York State Attorney General's office, with annual increases commensurate with expected cost-of-living changes. See Assistant Attorney General Compensation, available at [https://ag.ny.gov/sites/default/files/assistant\\_attorney\\_general\\_compensation.pdf](https://ag.ny.gov/sites/default/files/assistant_attorney_general_compensation.pdf).

## F. Estimated Range of Funding Necessary to Close New York’s Justice Gap

The Funding Working Group estimates that between \$842 million and \$1 billion is a realistic estimate of the additional annual funding necessary (at full implementation) to close the justice gap for low-income New Yorkers. The amounts presented below represent the additional annual funding required by matter type.

<b>Matter Type</b>	<b>Estimated Range of Additional <u>Annual</u> Funding Required to Ensure Access to Effective Assistance in New York</b>	
Consumer credit	\$40,000,000	- \$50,000,000
Eviction – NYC <sup>17</sup>	\$300,000,000	- \$400,000,000
Eviction – Outside NYC <sup>18</sup>	\$130,000,000	\$160,000,000
Child support	\$20,000,000	- \$30,000,000
Disability benefits assistance	\$65,000,000	- \$75,000,000
Guardianship	\$10,000,000	- \$15,000,000
Contested matrimonial	\$40,000,000	- \$45,000,000
Foreclosure	N/A	- N/A
Paternity	\$2,000,000	- \$5,000,000
Family offense not involving intimate partner violence	\$40,000,000	- \$50,000,000
Custody matters for kinship caregivers	TBD	TBD
Administrative Hearings and Income Maintenance	\$175,000,000	- \$200,000,000
<b>Sub-Total</b>	<b>\$822,000,000</b>	<b>- \$1,030,000,000</b>
Annual statewide outreach and technology	\$20,000,000	- \$30,000,000
<b>Total</b>	<b>\$842,000,000</b>	<b>- \$1,060,000,000</b>

<sup>17</sup> The additional funding required to fund and sustain the New York City Universal Access program is estimated using a weighted average case rate developed by legal services providers, applied to an estimated number of non-payment and holdover cases that may require assistance each year. This preliminary estimate is subject to change based on further analysis by the Working Group and/or legal services providers.

<sup>18</sup> The range presented here differs from the range presented by Stout in its March 2022 study of the potential funding required for an eviction right to counsel outside New York City (\$144M - \$200M), available at <https://www.stout.com/-/media/pdf/evictions/cost-rtc-onyc-stout-report-march-2022.pdf>. The difference is due to the use of updated eviction filing data supplied by OCA for eviction filings outside NYC and the use of an eligibility criteria of 200% of the Federal Poverty Guidelines. This analysis reflects variation in staffing models, caseloads, and practices of legal services organizations outside New York City. The inputs of this analysis, as with that for other matter types the Working Group analyzed, may require revision in the future as legal services organizations implement additional funding and respond to various local and statewide changes.

The current civil legal services system in New York is staffed by approximately 2,700 staff attorneys who are supported by approximately 1,100 paralegals and an additional 1,100 other (administrative, secretarial, managerial) staff (a total of over 5,000 staff). The Working Group estimates that the various forms of effective assistance that would be deployed with additional funding could require thousands of additional personnel (lawyer and non-lawyer client-serving staff and support).

Importantly, the Working Group's estimates do not assume that every court user will be represented by a lawyer or that all court users will use available effective assistance during their cases. Rather, the analyses assume reasonable expectations regarding eligibility and engagement based on historical data, stakeholder feedback, and the implementation of additional funding.

While the Working Group's estimated total amounts of required funding reflect costs at full implementation of such funding, the amounts required will increase due to inflation and increased expenses. As already noted, the amounts presented may change and require further research and analysis due to a variety of economic factors.

### **G. Initial Recommendation for Additional JCLS Funding**

A critical consideration is how best to move incrementally from the current funding for legal services toward this realistic estimate, while providing the opportunity to grow, learn, and adapt at an appropriate pace. The courts, legal services organizations, community-based organizations, and other stakeholders would need to be engaged to develop the appropriate initial strategies for the expansion of services. Just as it took over five years to phase in JCLS funding to the current level of \$116 million, numerous years would also be required to move from \$116 million to the substantially larger amount necessary to close the justice gap in New York.

For those reasons, the Working Group recommends an initial goal of adding an incremental \$100 million to the annual JCLS funding (relative to currently planned funding), over the next five years (exclusive of any COLA increases that may be warranted) while longer-term strategies for the expansion of the civil legal services are developed. Included in such strategies should be the role of the other branches of state government, along with local government, in providing portions of this funding.

The Working Group recommends that initial additional funding be administered in a manner consistent with that of current JCLS funding, which provides legal services organizations with the flexibility necessary to respond to the unique local needs of their community in the manner most effective for their organization and their community.

As detailed in past annual reports of the Permanent Commission, as well as in research and scholarship around the country, investments in civil legal services can have a significant positive

return on investment for state and local communities.<sup>19</sup> This return arises in part because civil legal help has been proven to assist clients in avoiding outcomes that require social safety net responses and other costs—such as the costs of responding to the harm, trauma, and crises individuals and families face when confronting unsheltered living, emergency shelter entry, emergency healthcare needs, disruption to children’s education, disruption to employment, and other impacts. In addition, when monetary relief is obtained for clients, it not only can provide stability in their lives but also can be used in local economies, amplifying the impact of the civil legal services they received.<sup>20</sup> Thus, any increased funding to expand civil legal services to close the justice gap will be recouped in part by a return on investment. The Commission has estimated that every dollar invested in civil legal services returns up to \$10 to the state and local communities.<sup>21</sup>

## **H. Factors that Could Impact the Realistic Estimate**

The estimate of the Funding Working Group is intended to be realistic based on the information we know now and takes into consideration the current variations in legal services organizations’ service models for different matter types. This estimate is likely to change in the years ahead as legal services organizations adapt, change, and develop new service models as additional funding is provided and as economic, technological, social, cultural, and governmental change occurs. As additional funding is made available and as the civil justice ecosystem continues to evolve, further analysis will be warranted to continue to evaluate, update, and refine these estimates.

Several factors that could affect, directly or indirectly, the funding necessary to close the justice gap in New York, include:

- *The importance of reasonable and competitive compensation*
  - As described above, the estimates of the Working Group include salaries for all personnel that reasonably approximate the competitive compensation necessary to attract and retain the staff necessary to close the justice gap. These estimates of compensation are higher than what is currently paid at legal services organizations across the state due to funding limitations.

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<sup>19</sup> See, e.g., Permanent Commission on Access to Justice, *Report to the Chief Judge of the State of New York* 47-49 (Nov. 2020) (“2020 Report”), available at [https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/20\\_ATJ-Comission\\_Report.pdf](https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/20_ATJ-Comission_Report.pdf); Permanent Commission on Access to Justice, *Report to the Chief Judge of the State of New York* 10-12 (Nov. 2019) (“2019 Report”), available at [https://www.nycourts.gov/LegacyPDFS/19\\_ATJ-Comission\\_Report.pdf](https://www.nycourts.gov/LegacyPDFS/19_ATJ-Comission_Report.pdf); Permanent Commission on Access to Justice, *Report to the Chief Judge of the State of New York* 7-9 (Nov. 2018) (“2018 Report”), available at [https://ww2.nycourts.gov/sites/default/files/document/files/2019-10/18\\_ATJ-Comission\\_Report.pdf](https://ww2.nycourts.gov/sites/default/files/document/files/2019-10/18_ATJ-Comission_Report.pdf).

<sup>20</sup> See, e.g., 2020 Report at 47-49; 2019 Report at 10-12; 2018 Report at 7-9.

<sup>21</sup> See, e.g., 2020 Report at 47-48; 2019 Report at 10; 2018 Report at 7-8.

- Ensuring staff are paid competitive compensation is an important part of closing the justice gap as it provides a pay scale that avoids an increasing gap in needed funding as programs expand.
  - Expanding civil legal services using a model of inadequate staff compensation will only serve to exacerbate the risks, disruption, and costs they are already enduring.
  - Ensuring legal services organizations are able to offer competitive salaries may require funding and commitment from all funders of legal services, including the three branches of state government, local governments, federal government, and other funders.
  - Further analysis and research are necessary to determine the additional funding necessary to address any pay inequities among non-attorney staff. The estimates of the Working Group may require revision as more is learned about the salaries and wages necessary to sufficiently attract and retain the number of staff necessary to close the justice gap.
- *The continuing rural justice crisis and the ability to serve clients in legal deserts.*
    - Addressing the rural justice crisis presents a set of unique challenges that would require much more than additional civil legal services funding. Many rural areas of the state have few, if any, lawyers; civil legal services organizations are unable to attract sufficient numbers of attorneys willing to work in rural areas.<sup>22</sup>
    - These factors add to the difficulty in estimating how rural residents would respond to greater access to effective assistance.
  - *The impact of caseload guidelines under New York City’s Universal Access program.*
    - The court system recently released a report and analysis, in consultation with legal services organizations, providing an objective guideline for the number of cases that an attorney can handle effectively under New York City’s Universal Access program.<sup>23</sup>
    - The report’s conclusions do not appear to require any material change to the estimates in this funding analysis, but serve as an example of how analyses of

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<sup>22</sup> See, e.g., Permanent Commission on Access to Justice, *Report to the Chief Judge of the State of New York* 15, 18 (Nov. 2022), available at <https://ww2.nycourts.gov/accesstojusticecommission/annual.shtml>. Several presenters at the Chief Judge’s 2022 Annual Hearing on Civil Legal Services addressed the rural justice crises. As the Permanent Commission reported, low-income individuals living in rural areas face heightened challenges to accessing justice. Apart from geographical distance from court facilities, the lack of public transportation, and limited or unreliable broadband networks, there are limited numbers of lawyers or legal services organizations available to serve those individuals, and it is extraordinarily difficult to recruit lawyers to serve in rural communities. These factors have created a rural justice crisis. Id. at 50. See also New York State Bar Association, *Report & Recommendations of the Task Force on Rural Justice: Interventions to Ameliorate the Access-To-Justice Crisis in Rural New York* (2020).

<sup>23</sup> See Universal Access to Justice Caseload Working Group, NYS Office of Court Administration, *Report and Recommendations* (August 2023) (“Caseload Working Group Report”), available at [UA-Caseload-Working-Group-Report-and-Recommendations\\_08312023.pdf](https://citylimits.org/UA-Caseload-Working-Group-Report-and-Recommendations_08312023.pdf) (citylimits.org).

costs necessary to close the justice gap will continue to be subject to further consideration and revision.

- *The rapid development and advancement of new technologies (such as artificial intelligence [AI], including ChatGPT)*
  - AI has the potential to disrupt and transform traditional modes of civil legal services delivery in ways we cannot possibly imagine today. Due to the rapid pace of AI advancement and the unknown impact of the adoption of new AI tools, the Working Group has not incorporated their impact on the estimated costs to close the justice gap in New York.
  - The advancement of such AI technologies could create efficiencies for the delivery of effective assistance and potentially reduce the cost to close the justice gap. Nonetheless, the complexities, harm, and trauma that can result from many civil legal circumstances will necessitate human involvement even when technology can assist. Technology may lead to enhancements in the delivery of civil legal services, but should not be considered an alternative to the important role of human-centered civil legal services.
  - Further, the magnitude of costs estimated to close the justice gap in New York using primarily human delivery of assistance may provide the opportunity to consider investments in technology, innovations, and certain reforms that may reduce the number of civil legal issues that arise and thus reduce the costs that would be necessary to respond to those cases.
- *The potential for various court reforms that could be implemented over time.*
  - The Working Group endeavored to understand the potential impact of various court reforms and process changes on the need for funding to assist clients in matters involving the essentials of life. Certain reforms, if effectively implemented, could reduce the funding needed.
  - For example, as already noted in this report, it was frequently suggested that the transformative reforms implemented for foreclosure matters after the 2008 financial crisis could be adapted to consumer credit matters.<sup>24</sup> Additional examples of potential reforms by case type are set forth in Appendix B.

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<sup>24</sup> Specifically mentioned as potentially transformative in the consumer credit context were a 30-day (or more) pre-filing notice period, a communication referring consumer creditor defendants to community-based resources that could help with effective pre-filing resolution (such as financial counselors), pre-hearing settlement conferences to explain the process and consequences of inaction, effective use of e-filing, and clear communication that includes a specific date and location for the defendant to respond.

- *The ways in which courts and litigants will respond if there were a significant increase in community outreach and access to effective assistance.*
  - Decades of insufficient funding to meet the civil justice needs of low-income New Yorkers have left many communities fearful, skeptical, and frustrated with the delivery of civil legal services. As additional resources are made available to provide effective assistance, unexpected changes in the civil legal services ecosystem can occur. This may include a reduction in filings, an increase in appearance rates, an increase in matters effectively resolved pre-filing or post-filing but before a hearing, and greater awareness of the breadth and diversity of issues presented in various types of legal matters by civil legal services providers and other stakeholders.
  
- *The ways Legal Hand, Community Dispute Resolution Centers, and other forms of under-utilized effective assistance could be engaged to assist in closing the justice gap in New York.*
  - The Working Group is aware of certain resources across the state (both physical and virtual) that could be leveraged using innovative models of service delivery to provide effective assistance. When possible, the Working Group considered how these resources could participate in providing effective assistance in each matter type, but additional coordination and development will be required to develop and implement such solutions for each matter type.
  
- *The potential for greater utilization of County Law 18-B counsel.* For certain matter types, local courts can use 18-B counsel to provide effective assistance for unrepresented parties. If such models of service delivery continue to be used, or are expanded, continued adequate funding is necessary to ensure the hourly rate of compensation for 18-B counsel is adequate to attract competent counsel.
  
- Even at the Working Group’s estimated funding levels, unmet needs could remain. For example, additional outreach resources could further reduce default rates, and costs of service delivery could increase over time. Various other economic, legal, political, or other changes could alter the landscape for civil access to justice. Of course, it is also possible that the actual experience of the courts and legal services organizations proves to be different than anticipated by the Working Group’s assumptions.

Although the Working Group has proposed a five-year goal of an incremental additional \$100 million to be part of JCLS Funding, the potential implementation of the *total* funding contemplated by its analysis raises many questions that will require consideration as additional funding is made available. Developing answers to these questions is beyond the scope of the Working Group’s mission and may require further coordination and collaboration among the

court system, the Permanent Commission, state and local government, legal services providers, and other stakeholders. Some of the questions considered are:

- What is the appropriate time period for funding increases to be implemented?
- Should funding be increased based on specified priorities or strategies, such as by case type?
- Which court reforms should be prioritized to make the most significant and expedient impact on closing the justice gap?
- What entities would provide this funding?
- How would the funding be administered?
- How might technology innovations (such as AI) impact how effective assistance is provided in coming years?
- What reporting or data collection should be required to track, measure, and inform the implementation of such funding?

## **Conclusion**

The Funding Working Group of the New York Permanent Commission on Access to Justice estimates that between \$842 million and \$1 billion is a realistic estimate of the additional annual funding necessary (at full implementation) to close the justice gap for low-income New Yorkers involved in civil legal cases and income maintenance matters impacting the essentials of life. Due to the specific eligibility requirements involved in this study, the resulting estimates necessarily understate the amount needed to close the civil justice gap completely.

The Working Group proposes an initial goal of adding an incremental \$100 million to the annual JCLS funding (relative to currently planned funding) over the next five years (exclusive of any COLA increases that may be warranted). The Working Group recommends that additional funding be administered consistent with current JCLS funding, enabling local legal services organizations to respond to the unique local needs of their community in a manner most effective for their organization and community.



## **Appendix A: List of Stakeholders Contacted by the Working Group**

- Access Justice Brooklyn
- Albany Law School
- Brooklyn Bar Association Volunteer Lawyers Project
- Brooklyn Law School
- Center for Elder Law and Justice
- Civil Legal Advice Resource Office (CLARO) – Buffalo and Brooklyn
- Empire Justice
- Feerick Center for Social Justice at Fordham University
- LawHelpNY
- Legal Aid of Western New York
- Legal Aid Society of New York City
- Legal Aid Society of Rochester, New York
- Family Legal Care (f.k.a. Legal Information for Families Today / LIFT)
- Legal Services NYC
- Legal Services of the Hudson Valley
- New Economy Project
- New York State Interest on Lawyer Account Fund (IOLA)
- New York Legal Assistance Group (NYLAG)
- New York State Kinship Navigator
- New York State Unified Court System - Office of Alternative Dispute Resolution Programs - Community Dispute Resolution Centers
- NYC Consumer Help Finder (operated by City Bar Justice Center)
- NYS Unified Court System, Office of Court Administration
- ProBonoNet
- St. John's University School of Law
- Volunteer Lawyers Project of Central New York
- Western New York Law Center

## Appendix B: Select Observations for Each Matter Type

For each matter type, certain unique observations informed the Working Group’s analysis; the most relevant are summarized below.

### *Consumer Credit*

- Annual consumer credit filings have decreased nearly 50% since 2019, a significant portion of the decrease having occurred from 2021 to 2022, which may be partially attributable to the Consumer Credit Fairness Act that became law in 2022. It “establishes a 3-year statute of limitations for commencement of a cause of action arising out of a consumer credit transaction where the defendant is a purchaser, borrower or debtor; establishes a notice of lawsuit which must be mailed to the defendant in such a cause of action; [and] establishes certain requirements for the complaint in such an action.”<sup>25</sup>
- Consumer credit matters involve a broad range of complexities, and each matter requires one or more types of effective assistance.
- Civil legal services organizations are connecting with few consumer credit defendants due to resource constraints and other challenges. The high rate of defendants who do not appear in consumer credit cases and the exceptionally low rate of representation mean that much is unknown about the variety of circumstances consumer credit defendants face and the decisions they make when facing a consumer credit lawsuit.
- Consumer credit matters provide opportunities for significant and impactful reforms. Stakeholders consistently indicated that certain reforms implemented in New York City should be expanded statewide. Stakeholders also consistently indicated that statewide reforms implemented after the 2008 financial crisis had a transformative impact for defendants in foreclosure proceedings and proposed that many of those reforms be adapted to consumer credit matters to produce similar transformative impact.
- A significant increase in the availability of effective assistance, coupled with transformative reforms, could significantly reduce consumer credit filings, reduce the default rate, and increase the rate at which defendants connect with effective assistance when cases are filed.

### *Eviction*

- Although New York City has allocated significant funding to implement the historic Universal Access to Legal Services legislation, substantial additional funding is necessary to ensure essential staff can be hired to meet the needs of New York City residents facing eviction.<sup>26</sup>

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<sup>25</sup> Bill Summary, Senate Bill 153 (2021-2022 Legislative Session), <https://www.nysenate.gov/legislation/bills/2021/S153>

<sup>26</sup> See, e.g., Caseload Working Group Report, *supra* note 22.

- The challenges faced by legal services organizations in New York City inform the costs of providing an eviction right to counsel outside New York City (ONYC). As additional funding is allocated to an eviction right to counsel outside New York City, the estimated need for funding should be reevaluated as legal services organizations adapt to the challenges and opportunities of implementing an eviction right to counsel.
- Some New York legal services organizations are to receive supplemental funding for eviction defense services, but it is still significantly less than the full funding needed and has not yet been fully implemented.
- Investments in eviction prevention and diversion programs, combined with sustained and effectively implemented emergency rental assistance programs, may reduce filings.

### ***Child Support***

- Child support matters involve a broad range of complexities, and each matter requires one or more types of effective assistance.
- Supportive resources providing expertise in finance and business valuation are helpful in providing effective assistance in many complex cases.
- On-staff process servers would create efficiencies for legal services organizations in complex child support matters.
- A review of how Support Magistrates interact with unrepresented court users would help to determine whether there are missed opportunities to ensure court users in need of assistance can connect with resources.
- Additional judicial training regarding statutory requirements for case deadlines and discretion regarding case adjournments may assist in ensuring cases are resolved effectively and efficiently.

### ***Disability Benefits Assistance***

- According to the New York State Office of Temporary and Disability Assistance (OTDA): “The Disability Advocacy Program (DAP) was initially established by Chapter 627 of the Laws of 1983, adding Section 35 of the Social Services Law, which provides for the legal representation of individuals whose federal disability benefits have been denied or may be discontinued.”
- Data reported by OTDA indicate that DAP has been extraordinarily successful, has generated a significant positive return on investment, and was essential for the well-being of the clients served.<sup>27</sup>

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<sup>27</sup> Office of Temporary and Disability Assistance, *Disability Advocacy Program Report to the Legislature, Program Period: January 1, 2020, to December 31, 2021*, available at <https://otda.ny.gov/resources/reports/DAP-Report.pdf>.

### ***Guardianship***

- Additional funding and resources are necessary for case evaluators and counsel for unrepresented parties, including the alleged incapacitated person (AIP) and their family, if necessary.
- Additional resources could lead to successful diversion or early resolution of these matters, which could reduce the resources required of the courts and provide effective resolution before circumstances escalate.
- In addition to more funding for legal representation, adequate compensation for appointed guardians should be provided.

### ***Contested Matrimonial***

- Nearly all contested matrimonial matters involve significant complexity and risks to the client that will require extensive services from civil legal services organizations.
- Resolution of contested matrimonial matters may take hundreds of hours of professional time over a period of years.
- Various court reforms could expedite the timeline for these cases, reducing the professional time required and improving the lives of the parties that may otherwise endure years of contentious litigation.
- Judicial training could increase the frequency with which monied spouses provide funds for the non-monied spouse during these cases, which could significantly expedite the cases, reduce the trauma to the non-monied spouse, and provide resources for the retention of private legal representation, which would reduce the funding required to close the justice gap for these cases.

### ***Foreclosure***

- For New York foreclosure matters, the combination of effective reforms after the financial crisis and investment in additional funding has significantly reduced the justice gap.
- To ensure the access to justice gap continues to be minimized, advocates seek to ensure that current funding levels from all sources are sustained and increased annually commensurate with cost-of-living increases.

### ***Paternity***

- As DNA testing has improved, the number of paternity cases filed annually has declined.
- In New York, the respondent in a paternity case (which could be the mother or father of the child) has a right to assigned counsel, but the petitioner does not.
- Local DSS Support Collection Units have an obligation to assist petitioners filing for paternity, but typically will not appear in court.
- Legal assistance is particularly important for estoppel cases, which may be fewer than 10% of all paternity cases.

### ***Petitioners in Family Offense Cases Not Involving Intimate Partner Violence***

- These cases typically involve adult children living at home with parents or caregivers.<sup>28</sup>
- While certain respondents in such cases have a right to representation, petitioners who need legal assistance have no such right.
- Petitioners seek three primary means of resolution in these cases: mediation/conflict coaching, eviction, and orders of protection. The Working Group considered a reasonable distribution of these options by petitioners and the effective assistance needed for each.

### ***Custody Matters for Kinship Caregivers***

- Custody is more attainable than guardianship in specific situations.
- In a custody proceeding, an attorney may be assigned to the child and parents, but not to a kinship caregiver.
- The Working Group understands that a coalition of organizations, including Empire Justice Center and the Center for Elder Law and Justice, are developing an estimate for the expected cost of providing legal representation in these matters statewide. The Working Group plans to review these expected costs when available and incorporate them in its total estimated costs.

### ***Administrative Hearings and Income Maintenance***

- Administrative hearings and income maintenance matters include a wide range of proceedings, involving various public benefits, employment complaints, and human rights violations.
- Administrative hearings and income maintenance matters involve a wide spectrum of complexities, and each matter require one or more of a wide spectrum of effective assistance.
- While not involving cases filed with the courts, these matters are essential to the lives of low-income New Yorkers.<sup>29</sup>
- The Working Group estimated the number of these matters that require effective assistance based on several sources and may understate the need for funding these matter types.

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<sup>28</sup> Because New York currently does not have data on the number of family offense cases not involving intimate partner violence, the Working Group developed estimates based on other available information. *See supra* note 12.

<sup>29</sup> *See supra* pp. 4-5.

**PERMANENT COMMISSION ON ACCESS TO JUSTICE**

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**REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK**

**APPENDIX 2:**

**Acknowledgment of Law Firms that Provided  
Pro Bono Assistance to the  
Permanent Commission on Access to Justice,  
2023**

**Acknowledgment of Law Firm Pro Bono Assistance to the  
Permanent Commission on Access to Justice  
2023**

<b>Sullivan &amp; Cromwell</b>	
Robert J. Giuffra, Jr. (Partner; Permanent Commission Member) Jessica Klein (Pro Bono Counsel) Madeline Jenks (Associate)	M. Devin Hisarli (Associate) Tessa Shimizu (Legal Assistant) Marissa Torelli (Legal Assistant) Ah Jin Youn (Legal Assistant)
<b>Davis Polk &amp; Wardwell</b>	
Robert B. Fiske, Jr. (Senior Counsel; Permanent Commission Member) Amelia T.R. Starr (Chief Pro Bono Counsel)	Mya Gelber (Pro Bono Senior Legal Assistant)
<b>Proskauer Rose</b>	
David A. Picon (Partner) Thomas J. Butler (Associate) Jake R. Butwin (Associate) Massimo B. Capizzi (Associate) Brianna E. Arscott Grant (Associate)	Shaina L. Maldonado (Associate) Gabren A. Webb (Associate) William S. Wyman (Associate) Dakshina H. Chetti (Law Clerk)
<b>Skadden, Arps, Slate, Meagher &amp; Flom</b>	
Scott D. Musoff (Partner; Permanent Commission Member) Klara Bieniasz (Law Clerk) Gaby Colvin (Law Clerk)	Edward Schaefer (CLE Training Supervisor) Amy E. McDonald (Marketing & Alumni Program Senior Coordinator)

**PERMANENT COMMISSION ON ACCESS TO JUSTICE**

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**REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK**

**APPENDIX 3:**

**Written Statements from Presenters,  
Chief Judge's Hearing on Civil Legal Services  
in New York**

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**NOVEMBER 2023**



# The Chief Judge's Hearing on Civil Legal Services

Monday, September 18, 2023 • 1:00 pm – 5:00 pm • Court of Appeals, Albany

Live Stream: [nycourts.gov/ctapps/civil.html](https://nycourts.gov/ctapps/civil.html)

## PRESENTERS

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- **Ronald S. Flagg, Esq.** (*President, Legal Services Corporation*)
- **Hon. Richard Rivera** (*Supervising Judge, Family Court, Third Judicial District*)
- **Matthew R. Dornauer, Esq.** (*Chief Legal Officer, HEINEKEN® USA*)
- **Hon. Fern A. Fisher** (*Executive Director, Legal Hand, and Visiting Associate Professor of Law, Maurice A. Deane School of Law at Hofstra University*)
- **Dede Hill, Esq.** (*Director of Policy, Schuyler Center for Analysis and Advocacy*)
- **Neil Steinkamp** (*Managing Director, Stout*)
- **Vernell Robinson** (*Client of Legal Services NYC*)  
**Raun Rasmussen, Esq.** (*Executive Director, Legal Services NYC*)
- **Lionel Harvey** (*Client of Legal Assistance of Western New York, Inc.*)  
**Lori O'Brien, Esq.** (*Executive Director, Legal Assistance of Western New York, Inc.*)
- **Terri Tupper** (*Client of Empire Justice Center*)  
**Kristin Brown** (*President and Chief Executive Officer, Empire Justice Center*)
- **Bobbie Dafoe** (*Client of Volunteer Lawyers Project of Central New York*)  
**Sal Curran, Esq.** (*Executive Director, Volunteer Lawyers Project of Central New York*)
- **Robert Burek** (*Client of Neighborhood Legal Services, Inc.*)  
**Mary C. Hanson, Esq.** (*Program Director, Western New York Eviction Prevention Program, Neighborhood Legal Services, Inc.*)
- **Rosemary Rodriguez** (*Client of The Legal Aid Society*)  
**Christine Rivera** (*Client's Daughter*)  
**Adriene Holder, Esq.** (*Chief Attorney, Civil Practice, The Legal Aid Society*)

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The Hearing will be recorded and published on the NYS Permanent Commission on Access to Justice's website: [nycourts.gov/accessjusticecommission](https://nycourts.gov/accessjusticecommission).

**Ronald S. Flagg, Esq.**  
*(President, Legal Services Corporation)*

**Ronald S. Flagg, Esq.** was appointed President of Legal Services Corporation effective February 20, 2020, and previously served as Vice President for Legal Affairs and General Counsel since 2013. He previously practiced commercial and administrative litigation at Sidley Austin LLP for 31 years, 27 years as a partner. He chaired the firm's Committee on Pro Bono and Public Interest Law for more than a decade.

Flagg served as president of the District of Columbia Bar in 2010-2011 and currently serves as Chair of the Bar's Pro Bono Task Force and on the Board of the DC Bar Foundation. He previously also served as Chair of the Board of the National Veterans Legal Services Program, Chair of the District of Columbia Bar Pro Bono Center, Chair of the Board of the AARP Legal Counsel for the Elderly, and as a member of the American Bar Association's House of Delegates, the Board of the Washington Lawyer's Committee for Civil Rights and Urban Affairs, and the District of Columbia Judicial Nomination Commission.

Flagg graduated with honors from the University of Chicago and cum laude from Harvard Law School. He began his career as a law clerk to Judge Myron L. Gordon, U.S. District Court of the Eastern District of Wisconsin and as attorney-advisor in the United States Department of Justice, Office of Intelligence Policy.

[Ronald S. Flagg | LSC - Legal Services Corporation: America's Partner for Equal Justice](#)

Ronald S. Flagg Remarks for The Chief Judge's 2023 Hearing on Civil Legal Services in New York  
New York Court of Appeals  
Albany New York  
September 18, 2023

Good afternoon.

Chief Judge Wilson, Presiding Justices LaSalle, Renwick and Whalen, Justice Clark, Chief Administrative Judge Zayas, and President Lewis – thank you for inviting me today to discuss the urgent need for civil legal aid here in the state of New York and throughout the country.

My name is Ron Flagg and I serve as the President of the Legal Services Corporation, more commonly known as LSC. Today, I will largely be discussing the needs of civil legal aid on a national level, but I look forward to the New York state-specific Funding Working Group report that will be discussed after my comments.

LSC is the largest funder of civil legal aid in the United States. We are governed by a bipartisan board appointed by the President of the United States and confirmed by the US Senate. We fund 131 legal aid programs operating over 900 offices serving clients in every state and territory. Here in New York, there are seven LSC-funded grantees that serve low-income individuals in every community throughout this great state.

In establishing LSC 49 years ago, Congress stated, “there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances” and “a need to provide high-quality legal assistance to those who would be otherwise unable to afford adequate legal counsel. . .”

Put simply, Congress reaffirmed nearly half a century ago what our nation's founders sought to enshrine in the creation of our justice system. The very first sentence of the US Constitution identifies the establishment of “justice” as a priority. Indeed, the Constitution refers to this word “justice” before even “ensuring domestic tranquility” or “providing for the common defense.” We know that this was not an accident, but rather the clear and unmistakable dedication to “equal justice under law” that our founders knew was essential to nurturing a free and fair society. So essential is this principle that it is engraved above the front steps of our nation's Supreme Court.

Unfortunately, as you all know, this principle of equal justice has become less and less reflective of how our legal system actually operates. Nowhere is this truer than our civil justice system where economic means too often dictate the viability of one's legal rights.

People living in poverty are reminded of this painful truth every day. Some of the largest client populations that LSC grantees serve include domestic violence survivors, veterans, and elderly individuals. The access to redress for survivors fleeing the violence of an abusive partner, veterans seeking a benefit that they earned for their service, or elderly people protecting their structured income should **not** turn on whether they have the means to pay a lawyer. And yet, far too many people living in poverty are forced to face life-changing legal issues on their own.

In 2022, LSC released its fourth Justice Gap study which examines the volume of civil legal needs faced by low-income Americans, assesses the extent to which they seek and receive help,

Ronald S. Flagg Remarks for The Chief Judge's 2023 Hearing on Civil Legal Services in New York  
New York Court of Appeals  
Albany New York  
September 18, 2023

and measures the shortfall between their civil legal needs and the resources available to address these needs.

What we found was stunning.

Nearly **75%** of low-income households encounter significant civil legal problems each year. Yet, a striking **92%** of these problems received little to no legal aid, leaving individuals to face these challenges alone and often with devastating consequences. In other words, only **8%** of the civil legal problems confronted by low-income Americans receive adequate legal assistance.

Another shocking metric evidencing the Justice Gap is the rate at which eligible applicants for legal aid are turned away for lack of resources. Nearly **50%** of individuals seeking help for their legal issues are turned away without any assistance from LSC grantees due to resource constraints. And this nearly one in two turn-away rate substantially **understates** the Justice Gap. It doesn't reflect the millions of people who don't even know they face a civil legal issue. Maybe they don't know that their landlord's eviction attempt is illegal, or that they are being denied a benefit to which they are entitled, or that they can get a protective order against their abuser. And even if they understand they face a legal issue, they may be unaware of the availability of legal aid, or how to find it. Or perhaps they are afraid of or don't trust lawyers or our legal system.

With this lack of trust and understanding, it is no surprise that only **28%** of low-income Americans believe that the US civil justice system treats people like them fairly.

You might wonder, does getting legal assistance really make much of a difference? In a system designed on the premise people will have lawyers, **not** having a lawyer can often be dispositive. In many landlord/tenant courts across the country, unrepresented tenants prevail **less than 10%** of the time. By contrast, in jurisdictions establishing a right to counsel in eviction cases, often **over 80%** of represented tenants are able to stay in their homes.

These tragic Justice Gap data are a direct consequence of our country's chronic underfunding of civil legal aid. In FY 1994, Congress provided LSC with \$400 million – with inflation that is equivalent to more than \$730 million today. Thirty years later, our appropriation has only edged up to \$560 million. We haven't received even remotely enough funding to keep up with inflation, much less the increased service needs, recessions, and the pandemic that have occurred over the last three decades. Congress currently appropriates as much money for civil legal aid as Americans spend on Halloween costumes – **for their pets**.

This underfunding has also caused our grantees to fall behind in providing competitive pay for employees. According to the National Association for Law Placement, civil legal aid lawyers continue to be the lowest paid group in the legal profession, earning less than public defenders and other public interest lawyers. Too many law school students graduating with increasing debt simply can't afford to become legal aid lawyers or remain legal aid lawyers.

And, unfortunately, it appears the Justice Gap is widening. The COVID-19 pandemic aggravated the civil legal issues facing low-income Americans. Our 2022 Justice Gap study revealed that

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one-third of all civil legal problems reported by low-income Americans are directly related to the pandemic.

The surge in eviction cases that we have seen throughout the country evidences this trend. Housing issues have become far and away the largest area of our grantees' work, now representing more than 41% of the total closed cases handled by LSC grantees. Here in New York, that number is even higher with housing cases representing 49% of all cases closed by LSC grantees. With eviction moratoria expiring and emergency rental assistance depleted, this trend will likely accelerate.

And the devastating effects of evictions are not limited to housing. Without a secure roof over their heads, individuals and families experience worse health outcomes, higher unemployment, and educational struggles.

We are also seeing a dramatic spike in domestic violence across the country. Domestic violence cases have been steadily rising over the past decade, a trend that worsened during the pandemic when many survivors were forced to quarantine with their abusers. Like housing, domestic violence does not exist in a silo, but rather has wide-spread adverse effects on homelessness, health outcomes, and custody issues. And while the stakes of these cases could not be higher, far too often, these survivors are forced to face legal problems on their own.

This becomes a tremendous burden on our courts, our judges, our administrators, and everyone involved in the civil justice system. It is no wonder why the Conference of Chief Justices and the Conference of State Court Administrators, 37 bipartisan state attorneys general, and some of you here today have asked Congress for increased funding for LSC. We have heard from legal professionals from every state and territory in this country and their message could not be clearer—our system cannot handle the demand of low-income Americans facing civil legal issues on their own.

At a time when it seems like elected officials can't agree on anything politically, the cause of equal justice has gained strong bipartisan support. This is not a coincidence. We see the data and we hear from our grantees who operate in rural areas as well as densely populated urban communities across the country. We know that while the demographics of the individuals served may differ from community to community, the legal needs of people living in poverty are similar. Again, take housing for example. People often assume evictions to be an inherently urban issue facing cities like New York, Los Angeles, and Washington, DC. While these cities unquestionably face high eviction rates, we see high incidence of housing instability in rural areas throughout the country.

Rural communities also often constitute what we call "legal deserts," the inadequate access to legal services due to geographic isolation. According to the American Bar Association, 40% of counties in the United States have fewer than one lawyer per 1,000 residents, and in ten states some counties with large rural populations have no attorneys at all. In seven states, over 30% of the LSC-eligible population lives more than an hour's drive from the nearest LSC grantee office.

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That is why LSC has worked with our rural grantees as well as state and local partners to address these legal deserts. In December 2021, LSC established the Rural Justice Task Force to identify and publicize the barriers to access to legal services in rural areas and innovative service delivery models to address them. Additionally, LSC's Technology Initiative Grants are often used by grantees to develop new innovations to empower and improve services to low-income rural residents. By providing funding for projects such as building out self-help kiosks, mobile legal services, and easily accessible legal assistance online, these grants help break down the geographic barriers of legal deserts.

This is exemplified here in New York where LSC recently awarded Legal Aid Society of Mid New York a Technology Initiative Grant to create a coordinated online intake portal for the six LSC-funded service providers outside of New York City. The portal will focus on eviction services in the state with an eye to ensuring that applicants will not be bounced between service providers and miss timely pre-hearing assistance. This is a good example of how additional economic resources can be used to provide better services to clients and help our civil legal system run more efficiently.

I would like to highlight the critical role civil legal aid plays in helping low income Americans recover from natural disasters. Since 2013, LSC has worked with Congress to provide supplemental funding to our grantees grappling with natural disasters. In fact, our first disaster supplemental appropriation helped New York and New Jersey grantees deal with the effects of Superstorm Sandy. Over the past three years, Congress has given LSC roughly \$20 million per year to deal with the increasing number of natural disasters across the country. LSC just announced the recipients from the 2022 appropriation, and we are currently working with Congress to include funding to help deal with the effects of the Maui wildfires, Hurricane Idalia, and the other natural disasters of 2023. Although people may not necessarily think of civil legal aid as a form of disaster relief, Congress has come to appreciate just how vital these basic emergency services are for individuals and their communities.

Clearly, LSC's seven-funded New York grantees cannot meet the legal needs of every community they serve. The funding that the Judiciary awards to these organizations and other legal services providers around the state is crucial. Given the Justice Gap data I have shared and LSC's role as a legal aid funder, I will tell you we need to devote far more resources to civil legal aid. I strongly advocate for an increase in JCLS funding.

I believe we are up to this challenge, and I believe many of you here today share my optimism. The very existence of the Permanent Commission on Access to Justice as well as today's hearing signal that we are taking this problem seriously. But as we all know, it will take more than words and testimony to break down the barriers and siloes to which I've referred. The Permanent Commission plays a critical role in helping to overcome those barriers.

The long-term effects of a widening Justice Gap jeopardize the sustainability of our democracy. We have no choice but to take this threat seriously. We desperately need more resources on federal,

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state, and local levels. Again, I believe we are up to this challenge, and I thank you all for allowing me the opportunity to discuss this urgent matter with you today.



**Hon. Richard Rivera**

*(Supervising Judge, Family Court, Third Judicial District)*

**Hon. Richard Rivera** is a graduate of Colgate University and Albany Law School. His legal career began as an associate counsel for the Law Office of Gaspar M. Castillo, Esq., where he represented litigants in local, city and town courts, handling criminal matters, traffic violations and appeals.

It wasn't until he became staff counsel for the Albany Law School Family Violence Clinic that his career in Family Court began. As staff counsel, Judge Rivera represented victims of domestic violence with all matters pertaining to orders of protection, custody, and support. Judge Rivera also served as an Attorney for Children in both Albany and Rensselaer counties; Assistant Conflict Defender representing litigants in family and criminal courts; Assistant County Attorney, prosecuting Juvenile Delinquents and PINS and as a Support Magistrate.

In November 2014, Judge Rivera was elected to a 10-year term in Albany County Family Court, becoming the first Person of Color elected to a Countywide Bench and the first Latino elected to any Bench in the entire Third Judicial District. On February 27, 2017, Judge Rivera was appointed to preside over the newly created Domestic Violence Part at the Albany County Family Court. Judge Rivera also presides over the Albany County Youth Part since its creation in 2018 pursuant to the Raise the Age legislation.

On January 1, 2019, Judge Rivera was designated Acting Supreme Court Justice for the 3rd Judicial District and was named as the first Supervising Judge for Domestic Violence Courts and Mentor Courts in the District. In 2019, Judge Rivera was also appointed to the Board of Advisors of the National Consortium on Racial & Ethnic Fairness in the Courts.

Effective January 1, 2022, Judge Rivera was appointed Supervising Family Court Judge to the 3rd Judicial District becoming the first person of color to hold that position. On February 22, 2022, NYS Chief Judge Janet DiFiore appointed Judge Rivera, Co-Chair of the Franklin H. Williams Judicial Commission, established to develop programs to improve the perception of fairness within the Court system and to ensure equal justice in New York State.

Judge Rivera is a member of the New York State Bar Association, Albany County Bar Association, the Capital District Black and Hispanic Bar Association, the Puerto Rican Bar Association, the Hispanic National Bar Association, the Latino Judges Association, the Judicial Friends, and the New York State Family Court Judges Association.

**CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES**

**September 18, 2023**

**Hon. Richard Rivera**

**Supervising Family Court Judge, Third Judicial District**

Good afternoon Chief Judge Wilson, Chief Administrative Judge Zayas, Presiding Justices Renwick, LaSalle, and Whalen, Justice Clark, and Bar President Lewis. Thank you for giving me the opportunity to address this very important issue and to share my perspective concerning the need for civil legal services in Family Court.

As you may know, I was elected as an Albany County Family Court Judge in 2014 and was designated an Acting Supreme Court Justice in 2019. As an Acting Supreme Court Justice, I preside over the Integrated Domestic Violence parts in Rensselaer, Schoharie, Columbia, and Albany Counties with Greene County Integrated Domestic Violence Court starting soon. Prior to becoming a Judge, I served family court litigants and children in a variety of capacities including working with the Albany Law School Family Violence Clinic to represent survivors of domestic violence, with the office of the Alternate Public Defender to represent indigent adult litigants, as an attorney for children, as an Assistant County Attorney prosecuting juvenile delinquents, and finally as a Child Support Magistrate.

Each of these experiences has allowed me to see the importance and need for civil legal services in family court. In family court matters individuals face some of the most critical points in their lives including parents battling for custody of their children, fighting for time with their children or fighting for the ability to make decisions for their children. Cases of neglect and abuse carry the highest stakes with the safety of the children at risk and the parents facing losing custody of their children and potentially the permanent termination of their parental rights. Cases of family offenses are often matters of life or death, where unfortunately the best efforts and protections that the court can offer may not be enough to protect a domestic violence victim from their abuser. On the other hand, the Court is also cognizant that not every allegation against a respondent is truthful and that the respondents in these matters face certain losses of liberty and are at risk of incarceration if they are found to have violated an order of protection. In juvenile delinquency matters, respondent youth who are at a vulnerable age are facing residential or secure detention which can potentially be extended until the age of 21 years old.

While the Family Court Act provides for counsel in each of the cases, and rightfully so, there is a gaping deficiency in the statutory right to the assignment of counsel in other family court cases.

Family Court Act §262 provides that the court may assign counsel in each of the following types of cases:

- a) Respondents in Article 10 or Article 10A matters and the petitioner in certain Article 10 matters; (Article 10 are abuse and neglect matters).
- b) Petitioner and respondent in an Article 8 proceeding (family offense matter).
- c) The respondent in a custody matter and a parent in a custody matter.
- d) The parent, responsible adult, foster parent with custody of a child in certain proceedings pursuant to Social Services Law.
- e) A person facing a violation proceeding or a contempt proceeding.

The statute sets forth several other proceedings in which counsel may be appointed such as a respondent in an action to determine paternity or a parent opposing adoption of their child.

However, noticeably absent from the delineated matters for which counsel may be appointed are child support matters. The Court cannot assign counsel for either the petitioner or the respondent in an initial child support application or in any case to modify child support. With respect to paternity matters, assigned counsel is permitted only for the respondent and not the petitioner. Similarly, only the respondent in a violation of support case is entitled to counsel while the petitioner is not. The lack of the ability of the court to assign counsel in these matters is problematic on several levels. For example, litigants in a child support matter are typically not knowledgeable of the law and as payees, they are do not know what they may be entitled to on behalf of their children, nor as the payor are they aware of what factors may be a basis for a child support obligation to be reduced or what information should be provided to the court in defense of the court imputing additional income to the payor. This may result in a payor being required to pay an amount of support that is unreasonable, leads to unmanageable arrears, ongoing litigation, and potentially facing violations and jail time.

Similarly, the petitioner in a child support case is not familiar with the legal arguments to demonstrate the full financial needs and expenses of the child or the legal bases why a payor may be obligated to either pay a greater support obligation or increased payment towards the expenses of the child such as activities, educational expenses, college tuition, etc. From my experience sitting as a Support Magistrate, I know firsthand that there were many instances where a parent had to sacrifice time with a child in order to work an additional job or additional hours in order to meet their support obligation for which if they had counsel, there may have been valid legal bases to assert that the ordered obligation was unreasonably burdensome.

Other times a parent will agree to an order out of frustration, the misconception that they do not have a choice, or because they are too embarrassed to admit that they do not understand the court proceedings or how to defend their case. It always saddens me when I hear a litigant agree to an order after stating, “Go ahead, you all are going to do what you want anyways”, or something along those lines and refuse to participate any further in their case. On far too many occasions, a non-custodial parent has walked of the courtroom and/or failed to appear and wound up with an order of support on default that they could not afford to pay. These same litigants may then appear as the respondent on a violation petition for which they may face jail time.

Regarding representation in paternity matters, only the respondent is entitled to representation. While presumably the legislature envisioned the putative father to be the respondent and desired to ensure legal representation for the litigant facing a determination of parentage which would create permanent custodial, caretaking, and legal and financial responsibilities. However, it is not always the case that the putative father (or parent) is the respondent. For example, at times the putative father may be the petitioner filing against the respondent mother for a declaration of paternity. Pursuant to the statute, the putative father as the petitioner would therefore not be entitled to assigned counsel. While this may be a statutory oversight, the provision of counsel for only the respondent on a paternity matter leaves the petitioner, who is typically unrepresented, with the task of defending the matter against a legally trained professional. This is especially challenging when a respondent may raise a defense such as estoppel. A *pro se* petitioner would be completely unfamiliar with the associated legal arguments and standards which could potentially stop the action from going forward.

The difficulties of counsel being assigned to only the respondent and not the petitioner are also troublesome in matters of violation of child support. There is a striking imbalance of power when the respondent is represented by experienced legal counsel and the petitioner is left to present and defend their case without the requisite experience or knowledge.

The lack of representation for litigants also creates case delays and difficulty in litigants understanding basic court protocols such as requirements of service. At times, litigants come to court only for matters to be adjourned due to simple procedural issues. For example, I had a litigant in a child support case who did not understand that it was her responsibility to provide the respondent’s address or locate the respondent and to have him served. This litigant returned to court on several occasions and was adamant that it was the Court’s responsibility and advised me that that we (the court) have greater access to his information and are therefore better capable of finding the respondent father. The litigant was increasingly frustrated and no matter how I tried to explain it to her, she expected the Court to find and serve the respondent. If I had been able to assign counsel to the petitioner, service upon the

respondent might have been easily accomplished or in the alternative, the repeated court appearances merely to adjourn the matter for service upon the respondent could have been avoided.

It is imperative that both legislation and funding for civil legal services are expanded to encompass representation for all litigants in paternity and child support matters. The ability of civil legal services to provide representation for clients in these types of cases would ensure that cases are more efficiently resolved that the due process rights of litigants are preserved, and that the rights and interests of children are better protected. Furthermore, increased funding for legal services is necessary not only to hire and train more attorneys to represent litigants facing child support and paternity matters, but increased funding is also necessary for civil legal services agencies such as The Legal Project and Legal Aid Society of Northeastern New York to have the budget to hire investigators and process servers so that they may fully meet the legal needs of their clients.

Finally, increased funding is necessary for civil legal services to expand the availability of representation by offices such as The Legal Project and Legal Aid. In the Capital District area, The Legal Project provides representation only for those individuals who are victims of domestic violence. Any indigent litigants who are not victims of domestic violence are not eligible for representation by The Legal Project. On the other hand, Legal Aid does provide representation to indigent individuals who are not victims of domestic violence, but their representation does not expand into Family Court.

These agencies are crucial to the functioning of the courts and to affording indigent litigants with representation, however, with the current limitations on agencies such as The Legal Project and Legal Aid, there is just not enough representation available through civil legal services.

Although the legislature stressed the importance of assigned counsel in family court matters when it stated in section 261 of the Family Court Act:

“The purpose of this part is to provide a means for implementing the right to assigned counsel for indigent persons in proceedings under this act.”

It is my experience and belief that the legislature has not adequately provided for the right to assign counsel, that it is imperative that the right to counsel be extended to all family court matters, and that the Court have the discretion to appoint counsel for all parties as the Court deems necessary to further the interests of justice.

Furthermore, as you are aware, the low rate of pay has been a recurring problem for assigned counsel and attorneys for children. While the legislature has recently passed and the Governor signed into law the much-needed increase on the rate of pay for 18-b attorneys and

attorneys for children, this pay increase was far overdue. It took over 20 years since the prior pay rate was implemented.

This is not just a matter of adequate pay for attorneys, but this is also a matter of justice and the right to counsel. I am certain that our family courts throughout the state would join me in stating, that prior to the rate change, our lists of attorneys willing to do the 18-b or attorney for child work has significantly dwindled, especially since the height of the pandemic. Attorneys increasingly took their names off our lists and explained that they could no longer afford to take the cases at the low rate of pay. This impacted our caseloads and impacted litigants as it was not unusual for cases to be adjourned merely because the Court was having difficulty identifying a willing and available attorney to take the case. Even where attorneys are assigned to a case, the shortage of attorneys leads to further adjournments due to attorney scheduling conflicts with other matters. With such a small pool of attorneys available to appoint, the Court is at the mercy of individual attorney's scheduling availability and conflicts. While the pay increase will hopefully remedy the lack of attorneys, the damage has been done in that many good and experienced attorneys have left our panels and have taken other jobs or even entered other careers and will not be returning.

It is crucial that we avoid seeing this scenario play out again in another 10, 15, or 20 years down the road. As you know I am one of the Co-Chairs of the Franklin H. Williams Judicial Commission and in our update to the Report on New York City Family Courts, we recommend that 18-b attorneys receive COLA increases when other court employees do, and that base salary increases be provided at least every three years. Such a structure is not unheard of. The Judicial Conference of the United States has the authority pursuant to 18 U.S.C. sect. 3006A (d)(1) to increase hourly rate maximums annually at rate comparable to raises given to federal employees. In fact, Criminal Justice Act Counsel have received raises on a near-annual basis since 2005. If 18-b attorneys and attorneys for children know that they will receive regular pay increases, it may make these positions more attractive.

Family Court is a demanding environment and requires not only an attorney educated and experienced in the law, but also requires a demeanor that not all attorneys find is a good fit for them. We cannot afford to lose the experienced and committed practitioners. When we do, the courts suffer harm, the litigants suffer harm, and most importantly, the children suffer harm.

Finally, I want to thank you for your commitment to addressing the issue of unmet civil legal services, expanding access to all litigants in family court, and thank you for allowing me the opportunity to testify today.

**Matthew R. Dornauer, Esq.**

*(Chief Legal Officer, HEINEKEN® USA)*



**Matthew Dornauer** is the Chief Legal Officer of HEINEKEN® USA ("HUSA"), leading the company's legal, compliance, and regulatory functions. Matt joined HUSA after nine years as the first General Counsel of Phusion Projects, a U.S.-based alcohol beverage company. While at Phusion, he established and grew the company's legal department, helped drive numerous successful product launches, and resolved challenging litigation across the globe. Prior to joining Phusion, Matt began his legal career as a commercial litigator in the Chicago office of Sidley Austin LLP. He earned his undergraduate degree from The Ohio State University and law degree from the University of Notre Dame Law School.



## **The Chief Judge's Statewide Hearing on Civil Legal Services**

**Remarks of Matthew R. Dornauer, Esq., Chief Legal Officer, HEINEKEN USA**

**September 18, 2023**

### **New York Court of Appeals**

Chief Judge Wilson, Presiding Justices LaSalle, Renwick and Whalen, Justice Clark, Chief Administrative Judge Zayas, New York State Bar Association President Lewis, other distinguished guests, ladies, and gentlemen. Good afternoon. My name is Matthew Dornauer, and I am presenting today on behalf of HEINEKEN USA, based in White Plains, where I am the Chief Legal Officer.

It is my honor and privilege to appear before you today to discuss the vital importance of expanding access to justice to the millions of residents of New York whose legal needs are far too often unmet in our current system. Before I do, however, I would first like to thank the Chief Judge for holding this hearing and for his continued leadership and support of civil legal services in New York.

Everyone deserves fair and equal access to justice in our country and, more specifically, New York. This is at the heart of our legal system and the rule of law. Unfortunately, however, that is often not the *reality* of our legal system. Even with the tremendous work and progress of New York's court system as well as the civil legal services providers across the State, as the Legal Service Corporation's Justice Gap study recently highlighted, low-income Americans do not get *any* or *enough* legal help for 92% of the legal problems they face. That is a startling statistic. The justice gap continues to be a crisis in New York and throughout the country and requires our continued focus and effort to close that gap as much as possible.

Advocating for fair and equal access to justice has been an integral part of my legal practice since law school and continues to this day. While at Notre Dame Law School, I witnessed firsthand the critical importance of providing civil legal aid while representing low-income residents of South Bend, Indiana through the law school's legal aid and mediation clinics. Our clients could not afford an attorney and needed help navigating our complex legal system in order to secure and protect some of life's most basic needs related to consumer debt, housing, immigration, and mental health. And, like many of the legal services providers in New York, far too often we had to turn away many potential clients because of limited resources.

My commitment to pro bono representation continued as I began my legal career at Sidley

Austin in Chicago, where I gained a deeper understanding of the numerous areas of unmet need for civil legal services in the city, while representing clients in immigration cases and wrongful termination and discrimination suits. After I became an in-house attorney, I taught the foundational principles of constitutional law and the Bill of Rights to middle-school students in Chicago Public Schools. And today, I am in the midst of working with my legal team at Heineken USA to revive our company's pro bono program. To that end, we have recently partnered with one of our neighboring civil legal services providers – Legal Services of the Hudson Valley – to assist with their Virtual Pro Bono Housing Advice Clinic, which will involve support from both attorneys and non-attorneys from our legal team.

Since the Heineken brand was introduced in the U.S. in 1933 following Prohibition, New York State has been our home. Our hundreds of New York-based employees are part of a global network of over 85,000 employees that help us sell our portfolio of over 300 beers and ciders in more than 192 countries throughout the world. Although we are a global brewer, we operate at a very local level in New York – we are headquartered in White Plains and our products are delivered, warehoused, and sold in thousands of locations throughout the state.

At Heineken, our focus is on people, which is embodied in our company's purpose: "We Brew the Joy of True Togetherness to Inspire a Better World." This company purpose is predicated upon a strong societal infrastructure, which begins with ensuring people have fair and equal access to justice. In turn, this creates a stable, healthy society and business environment for Heineken USA and the thousands of other companies throughout the state.

As lawyers and business leaders, in-house counsel are uniquely positioned to not only provide legal services in our communities, but also to advocate for the additional funding of civil legal services. Last year, a record number of 208 general counsel and chief legal officers – including myself – signed a letter to Congress requesting increased funding for Legal Services Corporation in order to support civil legal aid providers across the country, including in New York. This was the sixth year such a letter was sent to Congress, and I am confident that we can break last year's record number of signatories and hopefully secure increased funding this year. As retiring federal appellate Judge David S. Tatel (D.C. Circuit) said in a recent interview, "[Lawyers] have a *special obligation* – because of our legal expertise – to ensure the legal system works for *everyone*."

It is imperative that business leaders use their voices to help the significant numbers of low-income New Yorkers who do not have adequate access to civil legal services. Simply put, we can and must do more as a business community. Therefore, I implore my fellow business leaders to advocate for additional funding of these indispensable resources for New York's most vulnerable citizens.

With inflation persistently high, the expiration of COVID-related financial assistance, and increased demand for civil legal services while staffing constraints persist, now – more than ever – we must continue to support increased annual funding for civil legal services. To that

end, Heineken USA respectfully requests that the Judiciary Civil Legal Services funding be increased to the maximum amount deemed feasible.

In closing, on behalf of Heineken USA, thank you for your continued, tireless efforts to close the justice gap and for giving me the opportunity to speak at today's hearing.

# **Hon. Fern A. Fisher**

*(Executive Director, Legal Hand, and Visiting  
Associate Professor of Law, Maurice A. Deane  
School of Law at Hofstra University)*

**Judge Fern A. Fisher** is the Executive Director of Legal Hand, Inc., and a Visiting Associate Professor of Law at the Maurice A. Deane School of Law at Hofstra University. Until July of 2017, she was Deputy Chief Administrative Judge for New York City Courts and also served as the Director of the New York State Courts Access to Justice Program.

Judge Fisher's career started in the Civil Court as a Legal Services attorney practicing in Manhattan Housing Court. She served as Deputy Director of Harlem Legal Services, Inc. and as an Assistant Attorney General of the New York State Department of Law. For four years, she provided pro bono legal services to Harlem-based community organizations as a project director of the National Conference of Black Lawyers. In 1989, she was appointed Judge of the Housing Part of the Civil Court, and later, in 1990, was elected to the Civil Court where she served as Deputy Supervising Judge. Judge Fisher was elected in 1993 to the Supreme Court of the State of New York. After serving in both the City and the Matrimonial Parts of Supreme Court, in December 1996 she was appointed Administrative Judge of the Civil Court where she served until March 2009 when she was appointed to her current position.

Judge Fisher contributed the Views from the Bench in the Thomson-West practice guide, "Residential Landlord-Tenant Law in New York" for twenty-one years. She served as the host of a series of television shows on housing issues for Crosswalk's, a public service cable show. Judge Fisher served as an expert on courts of lower jurisdiction for the Yale Law School China Law Center during two workshops in China devoted to exploring improvements to the Chinese judicial system. In 2006, Harvard Law School awarded her the Gary Bellow Public Service Award. She is the recipient of many other awards too numerous to list here.

Judge Fisher received her B.A. summa cum laude, Phi Beta Kappa in 1975 from Howard University and received her J.D. in 1978 from Harvard Law School.

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**September 18, 2023**

**Hon. Fern A. Fisher**

Executive Director, Legal Hand, and Visiting Associate Professor of Law  
Maurice A. Deane School of Law at Hofstra University

Good afternoon Chief Judge Wilson, Chief Administrative Judge Zayas, Presiding Justices Renwick, LaSalle, and Whalen, Justice Clark, and Bar President Lewis. I am honored to have this opportunity to speak to you today about the housing crisis in our State and changes and reforms that the court system can make to address the crisis. I have spent almost all of my legal career enmeshed in housing law issues. I started as an attorney representing low-income tenants, and I was a New York City Housing Court Judge. For years, I was the court administrator in charge of the Housing Parts of the New York City Civil Court for 21 years, I authored the Views From the Bench for Residential Landlord-Tenant Law in New York, and I was the Director of the New York State Courts Access to Justice Program. I am currently a visiting law professor at the Maurice A. Deane School of Law at Hofstra University where I teach housing-related classes and I am the Executive Director of Legal Hand Inc. where we assist unrepresented litigants with their housing and other matters in three regions of the State. Based on my extensive experience, I am recognized as a housing expert.

## **The Perfect Storm**

The unforgettable words from Dorothy from the Wizard of Oz, “there's no place like home” comes to mind. For many New Yorkers, maintaining or acquiring a home is elusive. Having a home is a fundamental human need. The absence of a stable home starts the spiraling down into other social service and legal problems that are difficult to recover from. Lives are forever altered. People and communities of color are most affected by evictions. In my nearly 45 years as an attorney and Judge, I fully believe that we are in the worst housing crisis I have experienced. Every region in this state is affected in various ways by this housing crisis. Rural New York has experienced the sharpest increase in eviction rates. 40 counties upstate have eviction rates that have surpassed pre-pandemic rates. The full impact of eviction upstate cannot be fully assessed due to the lack of data from Town and Village Courts. Manufactured homes provide affordable housing and make up 10.3% of the housing stock in rural New York. Manufactured home numbers are dwindling due in part to closing of places where these homes are placed and the inability of homeowners to purchase the land their homes are located on. In Nassau and Suffolk Counties, between 19-26% of residents are in structural poverty. The rental desert in those counties have created housing shortages and economic strife that is contributing to increases in evictions. In Westchester, rents

are the second highest in the state, impacting the poor. In Buffalo, filings are outpacing pre-pandemic numbers. In New York City, Rent Stabilization rent increases and 20% to 30% increases in non-regulated housing will push many individuals over the edge. This crisis is caused by a perfect storm of factors including increased poverty due to a bad economy and COVID, an aging population, increased mental illness, a growing immigrant population with language and documentation challenges, lack of affordable housing, complex substantive and procedural housing laws, insufficient funding for legal assistance, lack of training of Judges and court personnel, and slow implementation of court reforms.

I want to note that housing law is complex and multi-layered. Real Property Law, Real Property Actions and Proceedings Law, Civil Practice Laws and Rules, Multiple Dwelling Law, General Business Law, local housing maintenance codes, housing discrimination laws, fair housing laws, laws affecting manufactured homes and other local, state, and federal laws may apply depending on the type of housing involved and where the housing is located. It takes years to develop an expertise in housing law. Attorneys who don't specialize in landlord and tenant law find the area complicated and the courts that handle the cases daunting. You just cannot hand over a housing case to an inexperienced pro bono attorney.

Unrepresented litigants are in a worse position. Tenants often can't identify the type of housing they live in to determine what laws affect them. They are totally unable to identify substantive and procedural defenses. Unrepresented litigants settle their cases often with unfair terms that do not account for defenses or they are forced to trial. During trials they have no knowledge of trial procedure or rules of evidence. Unrepresented litigants are unable to complete forms, make motions to have their cases dismissed and obtain subpoenas to obtain evidence. They are on a playing field without the rules or the appropriate resources.

Keeping tenants in their homes is essential to preventing homelessness. Eviction in most cases will result in an individual having to pay a higher rent and possible relocation to a different community. Evictions are traumatic and destabilize families. Communities are affected when there are high rates of evictions and homelessness. Gentrification is an unfortunate outcome when there are high rates of evictions. Preventing unwarranted evictions must be a societal goal or we risk having a state where low-income persons have no place to call home. But there are things that the courts can do about this.



## I. Support Legislative Change

### a) More Free Eviction Representation and Assistance is Needed

Increasing legal representation will address much of the inequities faced by those being evicted but will not solve the problems of all litigants who will face evictions. In a perfect world all low-income persons would receive full representation in eviction cases. We are far from that perfect world for low-income persons in most parts of this state. Access to counsel is particularly acute in rural areas. Please note Russell Weaver's written testimony. Russell is the Research Director of Cornell University ILR School Buffalo Co-Lab. He indicates that in 11 counties where eviction rates are extremely high there is also an undersupply of legal assistance. Additional funding must be devoted to eviction for low-income individuals until 100% are served. We are unlikely to reach the 100% mark in the near future. Until 100% funding is obtained many low-income individuals will continue to be unable to obtain a lawyer. The Court must provide access to justice in eviction cases to all litigants unable to obtain lawyers. The Court must look at all avenues of legal assistance from full or unbundled representation to providing targeted legal information and help filling out forms to accomplish fairness.

### b) Good Cause Legislation

Preventing evictions is not simply limited to allocating dollars toward paying rent as many evictions are not based on the non-payment of rent. Currently, when a tenant does not have a lease and lives in an unregulated premises, the owner does not have to provide a reason for seeking to evict. The number of persons living in unregulated apartments without leases is massive. The numbers of evictions could be decreased with the passage of legislation that would require owners to establish good cause before an eviction is approved by the Court. The Court's support for legislation requiring good cause might assist in making it a reality. Good cause requirements will make a big difference in the volume of cases filed and the evictions that result.

### c) Obtaining Orders to Correct Housing Violations and Make Repairs in a Housing Summary Proceeding

In New York City judges are able statutorily to order an owner to make repairs and correct housing violations within a non-payment or holdover case. In other parts of the state judges can't order the repair or removal of a violation. The judge is limited to giving an abatement of the rent. In New York City tenants can also commence a simple and low-cost proceeding to compel the correction of housing violations. Litigants living in substandard housing in most jurisdictions outside of New York City must rely on their city, town, or village to act in order to obtain a habitable home. Depending on the location there is mixed success. Too often the locality issues a vacate order rather than

compel an owner to make repairs. A New York Supreme Court case could be commenced, but most New Yorkers do not have the ability to start a Supreme Court case to obtain repairs. Faced with dangerous conditions, many are forced to leave their homes due to a lack of a simple, low-cost, and effective enforcement mechanism. Those that leave their homes may end up in more expensive homes, in a different community or in a homeless shelter. Allowing judges to handle repairs and violations within cases started by owners is effective. Allowing tenants to commence an action solely to obtain a habitable home in the lower courts would also be effective. Court rule changes and new legislation will be required to make these changes. The Court's support for change would pave the way.

## II. Uniform Court Procedures, Practices and Programs

Access to justice in a unified state should be the same from jurisdiction to jurisdiction. There should not be more justice in one part of the state but less in another. Unfortunately, New York is less than uniform. Examples of the lack of uniformity are offered in these remarks but are not intended to be an exhaustive list. It is suggested that a study be completed that examines completely disparities and best practices.

### a) Recording of Oral Answers

In New York City oral answers of tenants in non-payment cases are recorded on a triplicate form listing most of the defenses. The tenant gets a copy, the owner or owner's attorney is provided a copy and the original is on file. The form serves more than one purpose. First, the tenant can look at the form to see what defenses can be raised in a non-payment case. Most tenants have no idea what can be raised as a defense. The owner has written notice of the defenses the tenant is raising. The judge obtains notice of what defenses the tenant is raising. A recorded answer allows the judge to determine if a settlement agreement addresses the defenses. At a trial the judge would know in advance what the tenant is raising as defenses and be able to insure a hearing and disposition on those defenses. If there is an appeal after trial the appellate court has a record of the answer that was interposed when reviewing if a tenant had an opportunity to have defenses properly heard. In most jurisdictions there is no record of an answer by a tenant either on a form, endorsed on the file or recorded by tape or a reporter. It is noted that in holdovers that often there is no answer by a tenant in New York City or any other jurisdiction a practice that should be remedied.

### b) Service of Orders to Show Cause by Unrepresented Litigants

In New York City unrepresented litigants are permitted to serve orders to show cause (OSC) papers to stop an eviction themselves on opposing lawyers and parties and the

Sheriff or Marshall. This practice has existed for decades. An informal survey conducted by a Hofstra law school student showed that in some parts of the state the New York City practice is followed but that in other parts of the state it is not. The CPLR provides that a Judge can grant permission for the litigant to serve an OSC themselves. Court publications and information sheets distributed by various jurisdictions indicate that a litigant can't serve papers without reference to the Judge being able to grant permission to do so. Various Clerk's offices tell litigants that they can't serve the OSC themselves. For many litigants having to get someone else to serve an Order Show Cause is a hardship or an impossibility. Elderly persons often are isolated and have no friends or family to serve papers for them. For some the embarrassment of being evicted stops them from asking someone they know to serve the OSC. Hiring a process server to serve an OSC is not feasible for most persons being evicted. At a minimum litigants should be made aware that they can ask the judge for permission to serve the papers themselves and judges and clerks should be educated on the possibility.

#### c) Notices to Quit and Notices to Terminate

Jurisdictions vary on the issue regarding if a Notice to Quit must be served or merely given to a squatter or licensee. RPAPL section 713 requires that a Notice to Quit is served as required by RPAPL section 735. The Court website and a Court publication do not indicate that a Notice to Quit must be served. Practice also varies throughout the state regarding how a Notice of Termination is provided to a month-to-month tenant. Some Judges require service others do not. The Court website seems to indicate that service is required but is unclear. There is no statutory requirement for service.

#### d) Programs for Appointments of Guardians Ad Litem

CPLR Section 1202 provides for the appointment of a guardian ad litem in all cases including housing cases. When a litigant is incapable of adequately protecting their rights, CPLR 1203 prevents the entry of a default judgment until a guardian is appointed. A judge can appoint a guardian *sua sponte*. Throughout the state, Judges are failing to appoint guardians for some of our most vulnerable citizens. New York City has a court-based Guardian Ad Litem program in the Housing Court run by the Civil Court and guardians are appointed regularly. The Westchester courts recently launched a court-based Guardian Ad Litem housing program. There are no other programs available in the state. Steps must be taken to remedy this potentially harmful deficiency in complying with the CPLR which impacts the elderly, and persons with mental and other disabilities. Court programs for the vulnerable must be available throughout the state. No matter where vulnerable citizens live, they should have equal access to services.

### **III. Provide Statewide Resources for Unrepresented Litigants**

#### **a) Plain Language Forms and Instructions in Many Languages**

New York City has the best availability of housing forms for unrepresented litigants. Throughout the state there is no uniformity of forms available for both unrepresented owners and tenants. Many forms that are being used are not in plain language and are not available in the most common languages used in this state other than English.

Court users are from diverse populations and can have reading levels as low as 5th grade. This requires that there be a robust number of plain language forms and instructions in many languages. New York lags in this effort. Massachusetts, for example, has court forms in eight languages.

#### **b) More DIY and Other Form Programs**

The DIY (Do-It-Yourself) Programs that are currently available provide greater access to justice for unrepresented litigants. More should be created for housing such as an illegal eviction program, an HP action program, an answer to a non-payment case program which is usable by all tenants. Thinking out of the box for the future, computer programs could be developed that will allow persons to answer in their primary language, but the court form is printed out in English. A program of this nature would be a major leap in access to justice for diverse populations.

#### **c) Update and Maintain Content on Court Web Pages**

The court system website pages on housing require updating and corrections. The public depends on the website information and online forms to start or respond to cases. Frequent review for accuracy is essential.

### **IV. Protection of Vulnerable Litigants Default Judgments and Individuals Who Need Guardians Ad Litem**

As mentioned previously, Judges outside of New York City and Westchester have no programs to assist them in appointing guardians ad litem and this difference between the jurisdictions must be remedied. CPLR 1203 requires that before a default judgment can be entered against a person who is incapable of defending or pursuing a claim a guardian ad litem must be appointed. Judges are likely not to be on notice that a litigant requires a guardian if there is a default in appearance. The programs currently in New York City and Westchester can't remedy this problem. Court administration must act to remedy the problem. The Commission has proposed that a statewide requirement be put in place that an owner upon applying for a default judgment submit a sworn affidavit

indicating, to the best of the affiant's knowledge, the respondent is not elderly, disabled or suffering from mental illness.

## V. Judicial and Non-Judicial Education

I have experienced first-hand court clerks providing inaccurate legal information and incorrect court forms to litigants in housing cases. I have also become aware of outcomes in cases decided by judges in violation of law. Housing law changes frequently requiring continued education on developments. Continuing education on housing law for both judges and court clerks is essential to avoid unjust outcomes. Education could be accomplished through seminars, informational sheets, web pages or bench cards. Sustained education on dealing with unrepresented litigants and impoverished diverse populations will also expand access to justice in housing.

## VI. Data Collection in Town and Village Courts

The full extent of the eviction crisis particularly in upstate cannot be fully determined until Town and Village courts collect and report data on filings and warrants. Steps must be considered by the Court to work with the State legislature and localities to cure this problem.

## Conclusion

Home is a shelter from storms – all sorts of storms. Many New Yorkers are caught in a massive storm without stable shelter due to poverty aggravated by COVID and a challenged economy. Too many families have already lost their homes or are about to be evicted. This court system has a moral and legal obligation to ensure that the only evictions that proceed are ones that are warranted. Some of what has to be done to stop unneeded evictions requires money and legislative change. The Court cannot control the state budget or pass legislation, but it can have influence. Other avenues of change do not require substantial money or outside assistance. The Courts must review and assess what it can do to ensure New Yorkers have a home by using innovation and resolve. With so many New Yorkers on economic precipices, the time is now for action.

**Dede Hill, Esq.**

*(Director of Policy, Schuyler Center for Analysis and  
Advocacy)*

**Dede Hill, Esq.** is the Director of Policy for the Schuyler Center. In this role, Dede coordinates the Schuyler Center's policy team and conducts policy analysis and advocacy in the area of economic security as well as overseeing child welfare and health policy. Prior to joining the Schuyler Center, Dede was a Professor of Law at Albany Law School, where her teaching and scholarship focused on labor and employment law. While in academia, Dede was active in local and statewide efforts to aid working families by increasing the minimum wage and organizing for stricter enforcement of labor and immigration laws to prevent wage theft in low wage and immigrant worker sectors.

Dede previously practiced law as an Assistant Attorney General and Labor Counsel for the Commonwealth of the Northern Mariana Islands, an Assistant Solicitor General for the New York State Attorney General's Office, and as an associate for a New York City labor law firm. Dede earned a J.D. from the University of Wisconsin Law School, where she was a member of the Wisconsin Law Review, and a Bachelor of Arts from Vassar College.



**Remarks before the New York State Chief Judge's  
Hearing on Civil Legal Services\*  
September 18, 2023**

**Dede Hill, Director of Policy  
Schuyler Center for Analysis and Advocacy**

The Schuyler Center thanks Chief Judge Rowan D. Wilson and the Permanent Commission on Access to Justice for the opportunity to testify at this hearing on ways in which New York's family serving systems – including the courts – can better work together to ensure all the state's children have the supports, resources, and opportunities they deserve and need to thrive.

The Schuyler Center is a 151-year-old statewide, nonprofit organization dedicated to policy analysis and advocacy in support of public systems that meet the needs of disenfranchised populations and people living in poverty.

Schuyler Center's priorities this year, as in the past, focus on strengthening families **before** they experience crises or trauma and **preventing** families from enduring hardships like ill-health, economic insecurity, child welfare involvement, or encounters with juvenile justice. Key to achieving this goal is ensuring that families experiencing poverty have ready access to civil legal services when they encounter barriers to accessing resources to which they are entitled to aid them in achieving economic security and stability. So too, key to ensuring that families who come into contact with the child welfare system are provided the resources they need, and preventing traumatic family separations, is ensuring families have access to timely, quality legal services.

## **OVERVIEW**

We are appearing at this hearing today to focus on three issues:

1. To turn the tide on New York's persistently high rate of child poverty, it is essential for all aspects of New York State government to treat this issue with the urgency it deserves, including the courts and judiciary.
2. Reducing child poverty. To turn the tide on New York's persistently high rate of child and family poverty, New York must also eliminate unnecessary, punishing barriers to access to social services in a number of ways, including by making civil legal services readily available to those wrongly denied services.

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\* Crystal Charles, Senior Policy Analyst, Schuyler Center for Analysis and Advocacy, assisted with the preparation of these remarks.



3. Transforming New York child welfare. Too many New York families - disproportionately Black and brown families - are swept up in the child welfare system because they are poor and unable to traverse the maze of means-tested benefits that might aid their family - IF they can gain, and retain, access. To prevent unnecessary and traumatic family separations, and ensure families that encounter child welfare gain access to the services they need to thrive as a family, all families should have access to civil legal services from first contact with child welfare. The stakes are too high, the rules associated with child welfare too complex, to deny families representation from the start.

At Schuyler Center, we work every day to advance evidence-based policies that create services and supports to set up low-income New Yorkers to thrive. Over the years, we have helped achieve some significant wins, including establishing, expanding and strengthening state refundable tax credits (EITC and child tax credit) - among the most effective strategies for reducing poverty and building economic security; dramatic expansions in access to child care assistance; and the reorientation of NYS Medicaid to focus on the state's youngest residents during their "First 1,000 Days" of life. Our number one priority currently is to sharply - and quickly - reduce the number of children experiencing poverty in New York State. If New York can accomplish this goal, we will be on track to dramatically improve the overall well-being of the state's children including their physical and mental health, academic achievement, future earnings potential.

Yet, those policies are meaningless when real families encounter obstacles to accessing those services and supports. The obstacles take many forms: from onerous paperwork, short deadlines, long processing delays, complex requirements, onerous immigration status, activity and work requirements, frequent reauthorization requirements, and more. The reasons for the obstacles are many. Some are processes that were designed to keep enrollment low. Other obstacles are created by misunderstandings, mistakes, or bad actors. Regardless the reason, access to civil legal services helps ensure these services are not just available on paper. Families with a civil legal services lawyer in their corner are much more likely to be able to access the services they need and deserve, and in this way, avoid the hardship and trauma that too often come with poverty, including a far greater likelihood of having contact with the child welfare system than higher income families. This is because poverty creates conditions that are often interpreted as parental failings.<sup>1</sup> As a result, families experiencing poverty have a higher likelihood of experiencing crises related to lack of basic needs, and of having the symptoms of poverty be construed as "neglect," leading to entanglement with the child welfare system.

**NEW YORK HAS COMMITTED TO CUTTING CHILD POVERTY IN HALF IN A DECADE: TO MEET THAT GOAL WILL REQUIRE ENGAGEMENT FROM GOVERNMENT AT EVERY LEVEL, ACROSS ALL SECTORS, INCLUDING THE COURTS AND JUDICIARY.**

New York - a State with vast wealth and resources -- has for too long allowed hundreds of thousands of children endure the hardships of poverty - in times of recession, and in times of plenty. New York entered the pandemic with more than 700,000 children living in poverty, representing 18% of all New York children.<sup>2</sup> Due to systemic, historic and ongoing racism, Black

children live in poverty at twice the rate of white peers, and children in immigrant families are more likely (33%) to live in low-income, working households than their non-immigrant peers (21%).<sup>3</sup> Compared to the rest of the nation, New York's children are more likely to live in poverty than children in 31 other states.<sup>4</sup> The urgency of child poverty cannot be overstated. The American Academy of Pediatrics has bluntly described child poverty as being associated with "lifelong hardship," and notes that "children who experience poverty, particularly during early life or for an extended period, are at risk of a host of adverse health and developmental outcomes through their life course."<sup>5</sup>

While these statistics are sobering, in early 2022 New York took the historic step of enacting landmark legislation, the New York State Child Poverty Reduction Act, committing New York State to cutting child poverty in half in a decade.<sup>6</sup> The Act had near-unanimous, bipartisan support from upstate and downstate, rural, urban, and suburban legislators and constituents. Late in 2022, the State convened, and has continued to regularly convene, the Child Poverty Reduction Advisory Council to identify and recommend evidenced-based strategies to ensure New York fulfills this commitment. This historic effort is an opportunity for New York to act boldly to once and for all, take aim at child poverty with the urgency it deserves.

One of the key learnings of the last three years is that government policy can make a real and immediate difference in the lives of children and families who are struggling to make ends meet. Pandemic-era federal supports confirmed that it is possible to quickly and sharply cut child poverty and boost family economic security. The most dramatic example was the temporary pandemic expansion of the Federal Child Tax Credit in 2021, which contributed to a 46% decline in child poverty nationwide.<sup>7</sup> Another success: no one was cut from Medicaid roles during the pandemic state of emergency – referred to as "continuous eligibility." This government action caused the rate of uninsured children to decline during the pandemic nationally, from 5.7% in 2019 to 5.4% in 2021. According to a December 2022 report by Georgetown Center for Children and Families, "[c]ontinuous health insurance prevents harmful gaps in coverage, increases access to care including mental health services, checkups and vaccinations, and reduces expensive ER visits.<sup>8</sup> Gaps in coverage are harmful especially today when families are struggling to keep up with the rising cost of food, housing and other essentials. — a bright spot for children during the dark days of the pandemic."

With New York's Child Poverty Reduction Advisory Council convened and working hard to meet the state's bold poverty reduction goals, it is imperative that all New York leaders, across agencies and disciplines, including the courts and judiciary, act with intention, determination and coordination, to once and for all turn the tide on child poverty in New York State.

1. To meet its child poverty reduction commitment, New York must prioritize knocking down the complex, dehumanizing, and unnecessary administrative barriers that keep many New Yorkers experiencing poverty from accessing critical services.

In large part due to the lessons learned from the pandemic, there is growing recognition that erecting onerous application processes, long delays, and frequent reauthorizations is bad policy, harmful for families, and costly for government. New York leaders, including the Governor, have begun to take steps to knock down these barriers, including in the area of child care assistance, where last year New York passed policies to streamline, centralize, and standardize

the onerous child care assistance application process and eligibility criteria, and create uniform eligibility rules among counties. In the area of Medicaid, New York leaders have been considering offering young children continuous Medicaid eligibility from birth to age six, a policy that the pandemic confirmed can dramatically reduce churn (children falling on and off coverage, most of the time because of missed deadlines, not because they have become ineligible), and improve [child health outcomes](#) in numerous ways by ensuring children get necessary check-ups, screening, and treatments during their critical developmental stages, with long-term and short-term benefits.<sup>9</sup>

An even more effective approach to alleviating access barriers is to eliminate eligibility requirements altogether by making essential services universally available, free of means-testing or other eligibility requirements. One success story is New York's enactment of universal pre-K for four-year-olds in New York City and some other communities across the state. In the area of child care, the Governor has re-convened the Child Care Availability Task Force, and charged it with creating a plan for implementing universal child care in New York State.

Another dramatically effective strategy for reducing poverty that carries few restrictions are refundable tax credits. Tax credits are among the very few government resources made available to low-income families that, once accessed, come with few requirements or bureaucratic hurdles. The data overwhelmingly demonstrates that nearly all families use those resources for essentials.<sup>10</sup> This example of the efficacy of refundable tax credits has helped animate interest in dismantling the many administrative barriers that prevent many New Yorkers from accessing or continuing to be able to access services to which they are eligible.

**We urge New York leaders, including the courts and judiciary,<sup>11</sup> to continue to identify and take steps to knock down those barriers that have the effect of keeping New Yorkers from accessing essential services for which they are eligible and desperately need. Breaking down barriers to accessing services by advancing universal programs that eliminate all means testing and bureaucratic hurdles, like universal pre-K, child care, and school meals; by extending certification periods to minimize barriers and reduce churn; and adopting commonsense reforms to reduce paperwork and administrative hurdles, like categorical eligibility, are all policies that would dramatically improve access, and help reduce the overwhelming demand for civil legal services.**

2. New York must invest in civil legal services attorneys to ensure that when New Yorkers face barriers to accessing benefits, they get a second chance to gain access, in a timely manner.

While there is a shift in the conversation, and movement toward reducing barriers to accessing services, at present, the barriers remain intact and formidable in many service areas. That is certainly the case with respect to public assistance, which offers cash and other assistance for New Yorkers who are among the lowest income. During the period July 2021 to June 2022, more applications for Family Assistance were denied than opened (75,383 opened; 83,619 denied).<sup>12</sup> Of those denied, more than half – 45,133 – were denied due to “compliance issues.” Notably, when New Yorkers deemed ineligible for public assistance pursue a fair hearing, the majority either prevail, or achieve a settlement. (During the period July 2021 to June 2022, 61 hearings objecting to eligibility determinations were held. Of those only 5 decisions were affirmed; 6 reversed; and 44 were settled).<sup>13</sup>

Further, even as New York breaks down unnecessary access barriers, there will always be families and individuals who are denied access to benefits and services to which they are eligible. Typical families that are low-income have an average of \$600 to \$1,000 of savings.<sup>14</sup> This leaves many of them one denied-benefit – or even delayed-benefit – away from tragedy. Delayed or denied rental assistance or heating assistance or SNAP nutrition benefits can cause a family to miss rental payments, or find themselves unable to fix their car, which can lead to the loss of a job, which can lead to a downward spiral into homelessness.

The solution: more funding for legal services attorneys. New York's lack of civil legal services has been considered at crisis levels for over ten years.<sup>15</sup> The legal community has fought to establish the right to counsel at the city, state, and national levels because of the basic needs that are often at stake for families without access: shelter, food, safety, health and child custody.<sup>16</sup> Cost-benefit analyses of funding comprehensive legal services have found that doing so would save money in other systems, i.e. having access to counsel to fight evictions in New York City would save the state money in shelters, healthcare, and law enforcement.<sup>17</sup> In order to better support families, civil legal services need more, competitively paid, and well-trained attorneys to fill the gaps. There need to be enough attorneys so that each attorney's caseload allows them to fully focus on and support each client, so that they can be most effective in breaking down barriers to public assistance access.

### **TRANSFORMING NEW YORK'S CHILD WELFARE SYSTEM: ROBUST CIVIL LEGAL SERVICES CAN HELP INCREASE THE ACCOUNTABILITY OF THE CHILD WELFARE SYSTEM.**

Families involved in the child welfare system also often face barriers to public assistance, including legal services. By the time a family has been reported to the State Central Register, they have fallen through the cracks in other systems (i.e. health, mental health, public assistance, housing, etc.) either because they couldn't afford services, were never referred to services, or are on public assistance waiting lists.<sup>18</sup> Additionally, the symptoms of poverty and being rent-burdened are often confused with neglect once a child protective services (CPS) investigation begins: food insecurity, housing insecurity, inability to pay energy bills in the winter, inability to afford laundry and other basic necessities.<sup>19</sup>

The racial disparities in the child welfare system, which begin from the reporting stage, also indicate some level of discrimination in practice, at the very least due to cultural differences (i.e. differing ideas of "good parenting" v. whether the child is actually in danger) and at the most due to racial and other systemic biases.<sup>20</sup> The State Central Register receives about 150,000 reports every year. The vast majority (76%) of those reports are later deemed unfounded,<sup>21</sup> after a traumatic investigation has occurred, before legal counsel is ever accessed.

**We urge New York leaders to expand funding for legal services and support related accountability measures such as requiring CPS workers to read families their rights, including the right to counsel, at first contact.**

Once a family comes into contact with the child welfare system, they are often left to navigate interactions with the caseworker investigating them, getting assigned Preventive Services that

may not be appropriate for their needs, and facing family separation, all before meeting or being made aware of their eligibility for legal representation. By the time a family reaches court they have already gone through a traumatic investigation, likely without any support or knowledge about their rights and options. Currently, families cannot access counsel until CPS files a petition and parents have to appear in court.<sup>22</sup>

## CONCLUSION

Robust legal representation is a necessary part of New York's implementation of the Child Poverty Reduction Act's commitment to halving child poverty by 2032. Families should not be left to navigate complex systems without support, yet that is what is happening. In order to access the resources for which they are eligible, families must be provided high quality legal representation as early as possible, whether they are navigating the child welfare system, housing, food, health, or other public benefits.

Thank you. We appreciate the opportunity to present testimony and look forward to continuing to work with you to build a strong New York.

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<sup>1</sup> Azzi-Lessing, L. & Sinha, V. December 2021. Special Foreword: Family Poverty, Racism and the Pandemic: From Crises to Opportunity for Transformation. <https://www.cwla.org/special-foreword-family-poverty-racism-and-the-pandemic/>

<sup>2</sup> Schuyler Center for Analysis and Advocacy. 2023. The State of New York's Children Data Book: January 2023. <https://scaany.org/wp-content/uploads/2023/01/SONYC-2023-Data-Book.pdf>

<sup>3</sup> The Annie E. Casey Foundation Kids Count Data Center. December 2022. Children in Low-Income Working Families by Family Nativity in United States. <https://datacenter.aecf.org/data/tables/5059-children-in-low-income-working-families-by-family-nativity?loc=1&loct=1#detailed/1/any/false/2048,1729,37,871,870,573,869,36,868,867/78,79/11476,11477>

<sup>4</sup> The Annie E. Casey Foundation Kids Count Data Center. September 2022. Children in Poverty in United States. <https://datacenter.aecf.org/data/tables/43-children-in-poverty?loc=1&loct=2#ranking/2/any/true/1729/any/322>

<sup>5</sup> COUNCIL ON COMMUNITY PEDIATRICS, Benjamin A. Gitterman, Patricia J. Flanagan, William H. Cotton, Kimberley J. Dilley, James H. Duffee, Andrea E. Green, Virginia A. Keane, Scott D. Krugman, Julie M. Linton, Carla D. McKelvey, Jacqueline L. Nelson; Poverty and Child Health in the United States. Pediatrics April 2016; 137 (4): e20160339. 10.1542/peds.2016-0339 <https://publications.aap.org/pediatrics/article/137/4/e20160339/81482/Poverty-and-Child-Health-in-the-United-States?autologincheck=redirected>

<sup>6</sup> Schuyler Center for Analysis and Advocacy. December 15, 2021. The Child Poverty Reduction Act is Law: What Does it Do? <https://scaany.org/the-child-poverty-reduction-act-is-law-what-does-it-do/>

<sup>7</sup> [Child Poverty Fell to Record Low 5.2% in 2021 \(census.gov\)](https://www.census.gov/newsroom/press-releases/2021/child-poverty.html)

<sup>8</sup> Georgetown University McCourt School of Public Policy Center for Children and Families. December 7, 2022. Lesson from Pandemic: Medicaid Continuous Coverage Works! <https://ccf.georgetown.edu/2022/12/07/lessons-from-pandemic-medicaid-continuous-coverage-works/>

<sup>9</sup> Georgetown University McCourt School of Public Policy Center for Children and Families. September 28, 2022. Oregon Leads the Nation By Covering Children in Medicaid from Birth to Kindergarten – Which State Will Be Next?? <https://ccf.georgetown.edu/2022/09/28/oregon-leads-the-nation-by-covering-children-in-medicaid-from-birth-to-kindergarten-which-state-will-be-next/>

<sup>10</sup> A recent [report](#) by the National Bureau of Economic Research modeling households' use of the pandemic era expanded federal Child Tax Credit confirmed what has been reported for years: give families experiencing poverty ready access to resources, and they will use them to meet their needs. Specifically, the report found that for every extra \$100 received, families spent \$28 on food, \$31 on housing, and \$15 on child-related services or goods.

<sup>11</sup> See, Thomas P. DiNapoli, New York State Comptroller. New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade. Report. December 2022. Calling upon the New York State to "[m]ake poverty reduction a cross-agency priority." <https://www.osc.state.ny.us/reports/new-yorkers-need-look-poverty-trends-new-york-state-last-decade>

<sup>12</sup> [Family Assistance](#) "provides cash assistance to eligible needy families that include a minor child living with a parent/parents or a caretaker relative . . . operating under federal Temporary Assistance for Needy Families (TANF) guidelines."

<sup>13</sup> NYS Office of Temporary and Disability Assistance. 2022 Statistical Report On the Operations of New York State Public Assistance Programs. <https://otda.ny.gov/resources/legislative-report/2022-Legislative-Report.pdf>

<sup>14</sup> <https://www.jpmmorganchase.com/institute/research/household-income-spending/household-cash-balance-pulse-families#finding-1>

<sup>15</sup> The Task Force to Expand Access to Civil Legal Services in New York. November 2010. Report to the Chief Judge of the State of New York. <https://ww2.nycourts.gov/sites/default/files/document/files/2018-04/CLS-TaskForceREPORT.pdf>

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<sup>16</sup> Brito, T. L. Winter 2019. The Right to Counsel. *Daedalus*. <https://www.amacad.org/publication/right-civil-counsel>

<sup>17</sup> *Ibid.*

<sup>18</sup> American Public Human Services Association. May 21, 2021. Poverty and Neglect Are Not the Same — It's Time to Realign Our Response. <https://aphsa.org/APHSABlog/mhhspp/poverty-and-neglect-are-not-the-same.aspx>

<sup>19</sup> Center on Budget and Policy Priorities. May 1, 2023. Research Reinforces: Providing Cash to Families in Poverty Reduces Risk of Family Involvement in Child Welfare. <https://www.cbpp.org/research/income-security/research-reinforces-providing-cash-to-families-in-poverty-reduces-risk-of>

<sup>20</sup> New York State Office of Children and Family Services. 2022. Disproportionate Minority Representation Packet 2022 – County Comparison. <https://ocfs.ny.gov/reports/sppd/dmr/Disparity-Rate-Packet-2022-County-Comparison.pdf>

<sup>21</sup> New York State Office of Children and Family Services. 2023. 2022 Monitoring and Analysis Profiles With Selected Trend Data: 2018-2022. <https://ocfs.ny.gov/reports/maps/counties/New%20York%20State.pdf>

<sup>22</sup> Commission on Parental Legal Representation. February 2019. Interim Report to Chief Judge DiFiore. <https://www.nycourts.gov/ip/Parental-Legal-Rep/PDFs/InterimReport-FINAL.pdf>

**Neil Steinkamp**

*(Managing Director, Stout)*



**Neil Steinkamp**, Managing Director, Transformative Change and Pro Bono Practices at Stout, and Consultant to the NYS Permanent Commission on Access to Justice, is a well-recognized expert and consultant on a broad range of strategic, organizational, and financial issues to government, business, court and community leaders and their advisors. He has nearly 20 years of experience covering many industries and matter types. Clients seek Neil for his comprehensive understanding of: transformative change strategies; complex structured and unstructured data analysis and assessment; multi-stakeholder collaboration and coordination; the development of pathways to compliance and iterative change strategies; financial and fiscal impact analyses; and other complex topics. He has worked extensively to help resolve sophisticated problems involving large-scale industry and social issues.

Neil is a well-known author and speaker on important business-related financial topics and industry-specific matters, including groundbreaking analyses of industry trends and fiscal opportunities related to social and government initiatives.

Neil has provided testimony in a variety of venues, including bench and jury trials and domestic and international arbitration. He has also assisted parties in numerous complex resolutions involving settlement negotiations, mediation, and facilitation.

He also leads Stout's Pro Bono practice. In this capacity, Neil has served a wide range of individuals and organizations through the application of financial, economic, strategic, and data analysis concepts that benefit low-income individuals and underserved communities.

# Chief Judge's 2023 Hearing on Civil Legal Services in New York

Remarks of Neil Steinkamp, Consultant

New York Permanent Commission on Access to Justice

September 18, 2023

Chief Judge Wilson and distinguished panelists:

It is an honor for me to have the opportunity to provide this report for your consideration. My name is Neil Steinkamp, and I am a Managing Director at Stout where I lead the firm's Transformative Change practice and pro bono practice and serve as consultant to the New York Permanent Commission on Access to Justice. I offer this report regarding the Commission's effort to develop a realistic estimate of the funding and resources that may be necessary to close the justice gap in New York.

By way of background, in 2021, 14% of New York residents were living below the Federal Poverty level, a full percentage point higher than the national average, with pockets of poverty in the State and among populations that are considerably greater. In October 2022, 47% of New Yorkers had difficulty paying for household expenses. It has been well documented that poverty is causal to other crises, including poor educational attainment, housing instability and eviction, justice system involvement (civil and criminal), health disparities and morbidity rates, unemployment and underemployment, community instability, and social safety net resource usage. The effects of poverty are often reflected in the civil cases involving the essentials of life brought in state courts.

In January 2022, at the request of former Chief Judge Janet DiFiore, the New York State Permanent Commission on Access to Justice (hereinafter the "Permanent Commission"), through its Funding Working Group, began to develop a realistic estimate of the funding and resources required to close the justice gap in New York. This estimate was to focus on matters involving the essentials of life, for individuals and households at or below 200% of the Federal Poverty Guideline, and to include the various forms of effective assistance that a litigant may require based on their individual circumstance.

The Working Group determined that to develop an estimate of the funding necessary to close the justice gap, it would need separate estimates for each of the matter types that would be considered. The Funding Working Group, relying on data provided by the New York State Office of Court Administration (OCA) regarding the number of cases for each matter type, selected several matter types to assess in successive phases of its work. For each matter type, the Funding Working Group would conduct a preliminary discussion, identify key stakeholders to learn from, conduct research (as appropriate), further expand stakeholder connections, and use the information collected to create preliminary budget models for each matter type.

The matter types the Funding Working Group analyzed include:

- Consumer credit;
- Eviction – (NYC and Outside NYC);
- Child Support;
- Disability benefits assistance;
- Guardianship;
- Contested matrimonial;
- Foreclosure;
- Paternity;
- Family offense not involving intimate partner violence; and
- Custody matters for kinship caregivers.

Collectively, these matter types represent approximately 50% of the total civil case docket in New York courts (the remaining 50% being related to civil case types that do not involve the essentials of life or civil case types that already have a right to representation), representing over 540,000 civil case filings in New York for the twelve months ending March 31, 2023. For many of these case types, the percentage of respondents (or petitioners, depending on the case type) who have legal representation at any time during their case is less than 5%.

The funding estimate also includes the costs of providing effective assistance for persons involved in administrative fair hearings and other matters involving income maintenance and access to public benefits.

To provide a comprehensive estimate of program costs, the Funding Working Group considered a variety of forms of assistance that can provide access to justice. These include full and limited-scope representation by attorneys, pro bono lawyers, law school clinics, pre-filing diversion programs, assistance from trained, supervised non-attorneys, mediation and other forms of ADR, community-based resources (including Legal Hand and Community Dispute Resolution Centers), and technology (including, but not limited to, guided interviews, online automated forms, e-filing, and other technology innovations). Evaluating multiple solutions was key to estimating costs based on the spectrum of expected needs of eligible litigants.

The Funding Working Group also considered several other factors that could affect the funding necessary to close the justice gap in New York, including:

- The potential for various court reforms that could be implemented over time.
- The ways in which courts and litigants will respond if there were a significant increase in community outreach and access to effective assistance.
- The manner in which Legal Hand, Community Dispute Resolution Centers and other forms of under-utilized effective assistance could be engaged to assist in closing the justice gap in New York.

The provision of additional funding and the expansion or development of legal services programs to deliver additional services would necessarily require significant strategic development and an appropriate time period over which such programs could be implemented. The courts, legal services organizations, community-based organizations, and other stakeholders would need to be engaged to develop the appropriate initial strategies for the expansion of services and the means

of continual, iterative evaluation that would be necessary to assess how the civil legal aid landscape changes based on the availability of these resources, implemented reforms, and other factors.

The Funding Working Group of the Permanent Commission estimates that between \$842 million and \$1 billion is a realistic estimate of the additional annual funding necessary (at full implementation) to close the justice gap for low-income New Yorkers involved in civil legal matters impacting the essentials of life. Judiciary Civil Legal Services (JCLS) funding has provided \$100 million annually since 2016, with the addition of recent COLA increases bringing the total to \$116 million.

The Funding Working Group proposes an initial five-year goal of adding \$100 million to the currently planned annual JCLS funding and proposes reaching that goal with incremental increases beginning in the upcoming fiscal year that starts April 1, 2024. The Funding Working Group recommends that the additional funding be administered in the same manner as current JCLS funding, which enables local legal services organizations to respond to the unique local needs of their community in the manner most effective for their organization and their community.

The full report of the Funding Working Group will be included in the Permanent Commission's annual report to the Chief Judge later this year.

**Vernell Robinson**

*(Client of Legal Services NYC)*



**Chief Judge's Hearing on Civil Legal Services  
September 18, 2023**

**Presentation by Vernell Robinson, client of Legal Services NYC**

My name is Vernell Robinson, and I am sixty years old. I have lived at Carleton Manor at 71-15 Beach Channel Drive in Queens since 1989 and am the Vice President of the Resident Council. My daughter is also very active in the Resident Council and lives in the same building. I joined the board to make a difference, so that the New York City Housing Authority would do a better job of maintaining the 174 apartments in our building.

For many years, we had problems with the hot water in our apartments because of NYCHA's failure to maintain our building. In October 2021 the problems became unbearable and we were fed up. As a Resident Council, we informed NYCHA of the lack of hot water so that we could get inspectors to the building but no one followed up or investigated our claims for months. This was our experience in the past when the building was without gas. We did not have legal help then and the issues lingered for an extremely long time before gas was restored.

As you can imagine, it was extremely difficult to live without hot water. I have a physical disability and my doctor recommended that I have a shower chair. It was difficult to carry the water by myself and often I had to wait for assistance to just take a shower. And I'm not alone. Many residents in the building, which is predominately African American, are elderly and had a hard time dealing with this issue. The residents were unable to take showers and perform their normal daily functions. It was also embarrassing to have family visit. NYCHA's disregard for our dignity and well-being led some residents to pay for hotels to take proper showers and to seek refuge with family and friends. In fact, some families moved out because of the issues in the building and some died before the problem was corrected.

By November and December, we had had enough and sent a letter threatening to sue NYCHA in Queens Housing Court. I thought it would be more powerful to sue NYCHA as a group because it was easy for NYCHA to ignore individuals. On January 11, 2022, however, we were told by the housing court clerk that we could not file our case as a group. I fought back because I knew my rights. But even after filing as a group of 101 tenants, we were unsuccessful.

Before we had a lawyer, the court did not help us, so I was so relieved when Legal Services NYC got involved a few weeks after we filed. I was so happy to have a lawyer fight for us because I did not know what to do and how to do it. I assumed the case would just fall through the cracks and NYCHA would get away with it. Some residents became more optimistic once our lawyer took the case although some were still skeptical due to NYCHA's long-standing history of inaction and total disregard for our communities.

Our attorney requested multiple court appearances to hold NYCHA accountable but progress was slow. For example, HPD failed to inspect the building after our attorney made multiple requests. NYCHA failed to provide any helpful updates on the court dates. In fact, it became clear that they had no idea what caused the problem or how to fix it. NYCHA actually made matters worse by using unlicensed workers to restore the hot water, damaging everyone's bathrooms, taping plastic over very large holes, and greatly reducing the water pressure for the entire building so much that it no longer mattered if there was hot water: we could not take showers because there was no water pressure.

Because the progress in the court was so slow, our attorney tried to pressure NYCHA to do the right thing by highlighting the case in the media. We told our story to the *New York Daily News* which featured our story on the front page, even quoting the judge who was furious with NYCHA for making low-income residents of color live without hot water during the winter. Like many, the judge could not imagine this happening to other communities, especially those who live in private housing, nor could he stomach NYCHA's lack of remorse for what we went through. Being devalued and dehumanized was an extremely tough ordeal.

After months of negotiations, countless court appearances, press, and the filing of a contempt motion with affidavits from numerous tenants regarding the conditions in their apartments, NYCHA finally made repairs and agreed, thanks to our amazing lawyer, to a 25 percent rent abatement for all of the households who joined the case.

For most of us, this was an 8-month rent abatement from when we lost water pressure and hot water through the date NYCHA restored the hot water, water pressure and fixed everyone's bathrooms. This was a nice surprise for tenants who were not expecting any rent abatements and it was perfect timing for those who lost income during the pandemic. Some seniors had to choose between medication and food. The rent abatement gave people peace of mind.

We are all extremely happy with the results of our case. You might have no idea what it is like to be unable to take a hot shower for months at a time but it is really hard. We would not have been able to live in decency without our attorney and others at Legal Services NYC who pushed NYCHA from many different directions to treat us with the dignity and respect we deserve. We are grateful for their work and thank you for supporting legal services. We hope others in similar situations will be able to reach out for help from Legal Services NYC, so please help them so that they may continue to help others in New York City, especially my neighbors in public housing.

Thank You

**Raun Rasmussen, Esq.**

*(Executive Director, Legal Services NYC)*



**Raun Rasmussen, Esq.** has been the Executive Director of Legal Services NYC since June 2011. From 2003 to 2011 he served as LSNYC's Chief of Litigation and Advocacy, directing the Legal Support Unit, which provides litigation and advocacy leadership, training and support to legal services providers across New York City.

Mr. Rasmussen began his legal career as a housing attorney at South Brooklyn Legal Services (a program of LSNYC). He later became Director of the Housing Unit and then Director of Litigation, supporting the development of affirmative litigation and advocacy, helping to develop one of the first foreclosure prevention projects in the country to combat predatory lending practices, and creating the Child Care Network Support Project, which provides legal services and training to home-based child care providers.

Mr. Rasmussen has written numerous articles on residential displacement, foreclosure-related issues, ethics, affirmative litigation and leadership and management issues. He is a recipient of the New York Lawyers for the Public Interest Felix Fishman Award for Exemplary Service, the New York County Lawyers Association Public Service Award, and the New York City Bar Association Legal Services Award. He serves on the Permanent Commission on Access to Justice and is a member of the Board of Directors of the New York Legal Services Coalition. Mr. Rasmussen holds a B.A. from Amherst College and a J.D. from Harvard Law School.

[Raun Rasmussen, Executive Director, Legal Services NYC | NYCOURTS.GOV](http://NYCOURTS.GOV)



**Legal Services NYC**

**Raun Rasmussen, Executive Director**

**September 18, 2023**

Good afternoon, and thank you all, and especially Chief Judge Wilson, for this opportunity to appear before you. My name is Raun Rasmussen, and I'm the Executive Director of Legal Services NYC.

Legal Services NYC is the largest provider of free civil legal services in the country. Our staff of 680 works throughout all five boroughs of New York City to fight poverty and seek racial, social and economic justice on behalf of low-income New Yorkers. We are proud members of the New York Legal Services Coalition.

You've just heard a moving story about the challenges one woman—our client Vernell Robinson, and the Resident Council she helps to lead—faced in seeking to assert their legal rights: after years of problems getting sufficient hot water, and months of litigation trying to get water pressure restored and hot water sufficient to take a shower, 101 tenants at the Carleton Manor NYCHA development in Queens were finally able to get the most basic service restored: Hot water. As Ms. Robinson's daughter, Alisha, said to the Daily News: "This is the dead of winter, we need this corrected. It doesn't make any sense to me. I have to go to a hotel to take a decent shower."

A years' long battle for this most essential service doesn't make any sense to me, either, and should never be necessary. And it's only because of the determination, courage, and tenacity of Ms. Robinson and the other members of the Carleton Manor Resident Council that they were able to prevail: they fought hard; they got help from Robert Sanderman, a tenacious lawyer in our Queens office; and they finally succeeded, after months and months of litigation, after the judge put significant pressure on NYCHA to solve this problem, and after the Daily News exposed the fact that one of the most basic needs that we all have—for hot water sufficient to take a shower, wash your face, and do the dishes—was not being provided to hundreds of tenants for months on end: In 2022 in New York City in publicly subsidized housing!

Restoring the essential services for Ms. Robinson and her neighbors was the primary goal of our litigation; but putting NYCHA on notice that they cannot get away with neglecting essential services and disrespecting the humanity of tens of thousands of New Yorkers was also essential. We, and our colleagues throughout the City, will continue to hold NYCHA, and private

landlords, accountable to their duties as landlords, which include the most basic provision of essential services, such as heat and hot water and water pressure, to their tenants.

Tenants throughout New York State remain desperate for help. In New York City, where there is a first in the nation Right to Counsel for eviction cases, the funding is so limited that the legal services provider community is able to serve far less than half of those who are eligible for help. And that area of practice receives significantly more funding—albeit totally inadequate—than what is received for all of the other areas of need for our clients.

You may know the work of Harvard Sociology Professor Matt Desmond, who wrote the seminal book *Evicted*, a devastating account of the national homelessness problem, and who has recently published *Poverty in America*. Professor Desmond stated: “Without shelter, everything else falls apart.”

And that is certainly true. But it is also true that, without safety from domestic violence, everything else falls apart.

Without a sufficient, stable income, everything else falls apart.

Without a high-quality education, and access to health care, everything else falls apart.

Poverty makes things fall apart.

Our staff—and our colleagues throughout the State—help our clients hold their lives together, in all these ways that are so critical. But we can only do our work—to help amazing people like Ms. Robinson and her family and friends at Carleton Manor in Queens, with funding from you that supports the broad range of services that we provide. As a member of the Permanent Commission’s Funding Working Group, I join in the request for additional JCLS funding; and I underline that additional funding to achieve pay parity is essential so that we can recruit and retain the attorneys that are so desperately needed to provide the legal services you will hear about today.

Thank you, Chief Judge Wilson, and Chief Administrative Judge Zayas, and the entire Office of Court Administration, for your continued commitment to funding civil legal services. Without your support the results you’ve just heard described by Ms. Robinson, and which were realized through the settlement of this litigation, would never have occurred.

We look forward to continuing our work, in partnership with all of you, to address the ongoing needs of so many of our fellow New Yorkers.

# **Lionel Harvey**

*(Client of Legal Assistance of Western New York, Inc.)*

## **Remarks for Chief Judge's Statewide 2023 Civil Legal Services Hearing**

Good afternoon, your honor. Thank you for the opportunity to be here today and for allowing me to speak about my experience. My name is Lionel Harvey. I am 85 years old. I live in Hilton, New York, a village 19 miles northwest of Rochester, New York in Monroe County. I have joined you all today to speak about an experience that I had that is sadly all too familiar to many older adults in our area.

Over the course of about 4 years, my daughter, who was my POA, took several large sums of money from me without my knowledge. She took various personal items of value from me and used my credit card to benefit herself at my expense. Over that short period of time, she wrote over 80 checks using my checking account, leaving me almost totally broke.

In 2015, my daughter suggested that if I deeded my home to her, she would come and help me care for my wife, Joanne, who was very ill at the time. My wife passed away in July of 2019. I did as my daughter had asked, and deeded my home to her as well as making her my Power of Attorney in October 2015.

My daughter then took control of everything — my spending, savings, and all of my credit card accounts. Without my knowledge, she depleted almost everything I had. When I finally noticed this, she tried to tell me that I told her she could have

all my money. She then turned hostile, erecting a door to prevent me from using the laundry room, and the kitchen, and from having access to her side of the house.

I was even left with no food in my part of the house.

My daughter asserted so much control over my life that I was not allowed to do my dishes in the kitchen sink— I had to use the bathroom sink. She told my grandchildren that they were not to speak to me or to help me, and put up a sign to warn me that I was being surveilled by her.

I loved my daughter, and even while this was happening, I wished her a Happy Birthday. She did not respond, and I was devastated. That summer she put garbage in my car. On my 80th birthday, I was given a 2012 Cadillac. My daughter sold this car and I didn't receive anything for it. When I confronted her about the spending, she no longer allowed me to have breakfast, lunch, or dinner with my family.

I was referred to LawNY in May of 2021. Jeffrey Nieznanski and Karen Kammholz from LawNY helped me regain control of my life. With Jeff's help, and the help of an accountant that Lifespan provided, we discovered that my daughter had stolen over \$227,000 from me, in addition to several items of personal property.

Together with LawNY, I filed a lawsuit in the Supreme Court. With the assistance of a mediator, we negotiated a settlement that resulted in a lump sum payment of \$80,000, monthly payments of \$1,200 for up to 60 months, and the return of valuable personal property. More important to me than the money was that I was able to live with dignity again.

Now, my son is my POA, and I do not know what I would do without him. He helps me so much. I live away from my daughter in my own apartment that has everything I need, including air conditioning and friends nearby. I'm still getting over what my daughter did to me, but with time, and with help from people like Jeff and Karen at LawNY, I know I will be OK. He helped me during some of the hardest times of my life and I will always be grateful.

Lionel Harvey

**Lori O'Brien, Esq.**

*(Executive Director, Legal Assistance of Western New  
York, Inc.)*



**Lori O'Brien, Esq.** is a Deputy Director at Legal Assistance of Western New York, Inc. (LawNY). In that role, she is charged with the management of the Rochester office and development functions across LawNY's 14 county service area. LawNY provides free civil legal services to eligible community members in the areas of government benefits, eviction prevention, fair housing, health law, employment law, and elder law. In addition, LawNY provides holistic legal services to specific populations with expanded civil needs. Lori has worked for LawNY since 2007, and is a past presenter at national, state, and regional conferences on issues relating to government benefits, emergency services, and community partnering models. Lori was the recipient of the Daily Record's Leaders in Law Award (2020), an ATHENA Young Professional Award finalist (2019), the Daily Record's Excellence in Law Unsung Hero Award (2017), and the NYSBA Denison Ray Civil Legal Services Staff Attorney Award for the development of partnerships that address the legal and non-legal needs of community members (2014).

[Lori M. O'Brien, Esq., Deputy Director, Legal Assistance of Western New York, Inc. | NYCOURTS.GOV](#)

## **Remarks for the Chief Judge's September 18, 2023 Civil Legal Services Hearing**

**September 8, 2023  
Lori M. O'Brien, Esq.  
Executive Director**

## **Introduction:**

On behalf of LawNY, I would like to extend my gratitude to Chief Judge Wilson and the distinguished panelists for conducting this hearing on civil legal services. I am thankful for the opportunity to share comments relating to our work and the work of many civil legal services practitioners related to the provision of services to older adults and, in particular, in the area of elder abuse and financial exploitation. We also appreciate Mr. Harvey's willingness to tell his story.

My name is Lori M. O'Brien, and I am the executive director of Legal Assistance of Western New York, Inc. (LawNY). LawNY is a 501(c)(3) not-for-profit law firm whose vision is a society where access to justice is not determined by a person's social or economic status. I have been a civil legal services practitioner for over 16 years.

LawNY provides comprehensive civil legal services to the low-income residents of 14 counties located in three Judicial Districts - the 6th, 7th and 8th - and two Departments - the Third and the Fourth. The 14 counties that LawNY serves are Allegany, Cattaraugus, Chautauqua, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne and Yates - a geographical area of 9,729 square miles.

LawNY's services assist vulnerable older adults with a wide array of services. These include assisting Older Adults in securing safe housing, health and medical resources - including long term care, and other basic needs; preventing and remedying the ill effects of elder abuse, financial exploitation and scams; and preparing legal documents which support self-sufficiency (i.e. Powers of Attorney, Wills, and advance directives that include provisions that limit the chance for misuse by designated representatives).

## **Needs of Older Adults & Prevalence of Elder Abuse and Financial Exploitation**

According to the US Census, within LawNY's service area, there are 427,071 individuals aged 60 and over. A study funded by the National Institute on Aging of the National Institutes of Health found that, within New York State, over a 10-year period, roughly 11% of older adults are subjected to elder mistreatment. The Department of Justice's national elder abuse statistics indicate that at least 10% of adults age 65 and older will experience some form of elder abuse in a given year. The National Adult Protective Services Association reports that only 1 in 44 cases of financial abuse is ever reported. Perpetrators often act under the perceived authority of a power of attorney. Due to secrecy and shame or complicated family dynamics, older adults are often reluctant to reveal incidents of abuse. Moreover, many older adults and those that care for them do not understand or recognize elder abuse, neglect or exploitation. When they do recognize the problem, they often do not know where to turn for help. The New York State Cost of Financial Exploitation Study found that financial abuse costs victims about \$109,048,214 each year, and results in the government providing about \$8,272,554 in public benefits (such as SNAP, Medicaid and housing related benefits) to help victims cope with their losses. The study also stated that this is likely a major underestimate of the financial burden, since the numbers were based on only reported cases, and, as stated above, many cases go unreported. Poverty is a driver of elder abuse. And, elder abuse drives

individuals into poverty. Many individuals like Mr. Harvey would have never needed our services but for the loss of their income and resources resulting from financial exploitation.

### **The Impact of Legal Services**

Our work has shown that the provision of civil legal services to vulnerable older adults, particularly in combination with effective non-legal services, can make a tremendous impact on the lives of older adults.

Elder abuse victims often struggle to protect their rights and access legal remedies on their own. Many older adults in New York may not be fully aware of the legal protections available to them. Legal services offer education informing them of their rights and options when facing abuse and/or financial exploitation. By having access to legal advice and information, older adults can make informed decisions to protect themselves and seek help when necessary. Legal services can play a proactive role in elder abuse prevention. By conducting community outreach, educational workshops, and awareness campaigns, they can raise public consciousness about elder abuse, its signs, and available resources for support. Legal services can also provide support and guidance to caregivers and families dealing with the complexities of elder abuse cases.

Elder abuse cases often involve intricate legal matters related to guardianship, healthcare decisions, and estate planning. Legal services can offer specialized knowledge in these areas, ensuring that seniors' interests are protected and respected. Legal services provide crucial assistance in navigating the complex legal system, ensuring that victims receive the protection they deserve under New York's elder abuse laws. Lawyers and advocates can help victims file legal complaints, obtain restraining orders, and pursue civil actions against abusers. Financial abuse is a prevalent form of elder abuse in New York. Legal services can assist victims in recovering assets, preventing further financial exploitation, and holding perpetrators accountable. This is particularly important because financial exploitation can leave older adults in dire financial straits, affecting their overall quality of life.

Legal services are most effective in combating elder abuse and financial exploitation when that work is done in collaboration with various support organizations, social services, healthcare providers, and law enforcement agencies. By coordinating efforts, they create a comprehensive network of assistance for elder abuse victims, ensuring that all aspects of the issue are addressed effectively. LawNY is fortunate to have well established partnerships with providers that enhance our ability to effect change in the lives of Older Adults. Mr. Harvey connected with LawNY through an organization called Lifespan. Lifespan staff collaborated with LawNY staff throughout the course of the case and they brought essential resources, expertise and support to Mr. Harvey and his advocate to remedy the issues presented. Lifespan provides intervention, education and services that work to impact positive outcomes in the protection of victims of elder abuse. They also administer Enhanced Multidisciplinary Teams (EMDTs). Enhanced Multidisciplinary Teams (E-MDTs) are county-based teams that bring together various

disciplines, including civil legal services, to intervene in cases of older adult abuse, including financial exploitation.

### **Challenges related to the delivery of legal services in this area**

To serve communities across 14 counties, LawNY currently employs 73 supervising and staff attorneys. Twenty-two of those attorneys primarily serve the urban/suburban county of Monroe. Across LawNY's 13 rural counties (that collectively span over 8,000 square miles) just 51 attorneys represent our clients on legal matters affecting their income, housing, family, education, and health.

In LawNY's experience, two primary issues impact access to legal services for older adults in our geographic service area. The first is the lack of attorney resources in rural communities throughout the State of New York. The 2020 report of the New York State Bar Association Task Force on Rural Justice found that 96% of the attorneys in New York practice in the state's urban centers - Albany, Buffalo, New York City, Rochester, Syracuse, and Utica. Only 4% of New York attorneys practice in non-urban centers. Albany Law School published its Rural Law Practice in New York State Report in 2019 which informed us that 54% of rural attorneys were at or near retirement age. Attorneys who practice in the rural areas of Upstate New York area are often solo or small firm practitioners, who frequently have to turn clients away due to lack of resources, conflicts of interest, lack of expertise in specialized legal areas, or clients being unable to afford the services. Noncompetitive salaries for civil legal service practitioners have led to an inability to recruit and retain a sufficient number of talented attorneys and other legal professionals. While this particular issue has impacted services throughout LawNY's geographic catchment area, our rural offices have been the most affected where due to the limited supply of attorneys, competition in the market is particularly fierce.

The second is inadequate resources to handle complex legal cases. Bringing civil litigation against perpetrators of elder abuse and financial exploitation is complex and time-consuming. Mr. Harvey's matter alone required 207 service hours. Older adults often are unable to find affordable counsel or free civil legal services to undertake complex or litigated matters. Elder abuse often involves prolonged periods of financial exploitation, requiring specialized forensic and litigation skills. Victims often have cognitive impairment, loss of capacity, communication challenges and significant dependence on their caregivers, complicating both fact investigation and the development of legal remedies.

LawNY is fortunate to have specialized expertise in areas impacting older adults and to have the opportunity to work with individuals like Mr. Harvey. However, we are also impacted by significant challenges as we strive to meet the needs of individuals in our communities. In one of LawNY's rural offices, there is only one full-time elder law attorney for a five-county service area. Further, some funders place limitations on the number of hours of service we can provide on each matter, often severely limiting the scope of our services.

Increased funding in this area of law would reduce the number of individuals seeking assistance who are turned away, and allow us to increase outreach efforts in hard-to-serve areas, particularly rural areas where community members may be isolated from resources. It would increase full representation in complex matters. Enforcement of protections for vulnerable community members would ensure that more older adults are protected from abuse, while also dissuading individuals from committing acts of financial exploitation.

**Conclusion:**

I am hopeful that this has illustrated the challenges faced by older adults in communities across the state, the significant impact that civil legal services have on remedying the ramifications of elder abuse and financial exploitation, and the need for continued and expanded support to these programs and services.

We want to thank the judiciary for their current support. Those resources have a profound impact on the communities we serve. Thank you for allowing me, my colleagues, and our clients to share this important information with you today. We welcome the opportunity to continue to work with the Court and with the Permanent Commission to achieve the goal of providing meaningful access to the justice system.

**Terri Tupper**

*(Client of Empire Justice Center)*

**The Chief Judge's 2023 Hearing  
on Civil Legal Services in New York**

**September 18, 2023**

**Remarks by Terri Tupper**

My name is Terri Tupper. I have been a client of Empire Justice Center on and off since 2008 and I was a member in three class action lawsuits. The outcome of these lawsuits greatly improved the quality of life for my family. I continue to work with the organization as an advocate.

In 2007, after my 3rd C-Section, I was given the diagnosis of severe lipo-lymphedema which is the combination of two highly inflammatory disorders. Lymphedema which presents with a buildup of protein rich lymphatic fluid in the legs that when stagnant and without compression and Manual Lymph Drainage (MLD) Therapy causes fibrosis which is a hardening of the tissues. The other disorder, "Lipedema" simply put is a lipid storage disorder. When the two conditions develop in tandem it can cause massive, localized lymphedema (MLL) which happened to me at the knees wherein the circumference of each knee grew to 42 inches and due to not having the means to afford compression garments which were \$2,000 a pair, chronic cellulitis infections followed one after the other. This meant many hospitalizations, sometimes for weeks with extremely high fevers that lead to Sepsis. This, coupled with other autoimmune disorders, forced me to stop working – I had been a nurse LPN since 1990 and in the medical billing field since 1999 – as I quickly became bed bound and had to rely on Social Security Disability Income.

Around 2008, my family was living in temporary housing and having difficulty getting through the Medicaid application process. I reached out to Linda Hassberg Esq., at Empire Justice Center and became a client in a class action suit wherein ultimately I was granted access to Medicaid.

While she was assisting me to secure Medicaid, I explained to Ms. Hassberg that I also could not get the custom compression garments I needed which would ultimately – along with Complex Decongestive Therapy (CDT) – help me to be able to walk again. Ms. Hassberg referred me to another Class Action which was already in progress at Empire Justice Center. The Class Action was to ensure compression stockings were included as a Medicaid benefit. That suit was also successful, and I eventually was able to get the compression garments I needed. I was able to begin CDT Therapy, leave the bed and, over the next few years, get considerably healthier. For the past decade I have been an advocate for People with Disabilities as well as a New York State



Ambassador for the Lymphedema Treatment Act, petitioning on a federal level for similar rights to those which Empire Justice won at the state level. On December 23, 2022 the Lymphedema Treatment Act was passed by Congress, and the new insurance coverage will go into effect on January 1, 2024.

In October 2018, my family was rendered homeless due to a Holdover Eviction that involved a Reasonable Accommodation under the ADA wherein after a yearlong investigation "Probable Cause" was found by the Suffolk County Human Rights Commission that the Landlord had engaged in discriminatory behavior. My family reapplied and was approved for Temporary Housing Assistance, but Suffolk County Department of Social Services denied my reasonable accommodations of a hospital bed and a small dorm-size freezer to store the 25 ice packs I needed nightly to alleviate swelling. I reached out to Linda Hassberg again and became a class member of an Americans with Disabilities class action filed on behalf of Suffolk County residents with disabilities who needed reasonable accommodations to access Suffolk DSS's benefits and services (*Newkirk v. Pierre*). After being told by DSS representatives if I asked for my hospital bed to come with me to shelter again, I would instead be sent to the nursing home, Ms. Hassberg advocated for me with a phone call my reasonable accommodation requests were immediately granted.

In 2020 my family came up on a HUD (Housing and Urban Development) Mainstream list and qualified for Section 8. We gratefully turned in our Voucher to accept project-based housing in Bay Shore where we now still reside. In the 3 years that we have been in permanent housing our 16 year old son who was originally a straight "A" student before we became Homeless has gone from failing almost every subject to "Cum Laude" status and is on track to become a Biochemist/Scientist. My son has expressed that one day he would like to find the cure for Lymphedema. During my time spent in and out of shelters with failed rental supplement programs, lack of affordable housing and the disability discrimination which caused me great suffering, I co-founded a grass roots not for profit called Long Island Connections, in a heartfelt effort to assist others by connecting them with resources and advocacies such as Empire Justice Center. We now host a Peer Support Group on Facebook called HomelessLI which has a member base of over 3,000 as well as in addition we have a Mobile Medical Equipment Lending Closet and work with the local VA (Veterans Affairs) and Independent Living Centers as well as Long Island area Hospitals and other Town Lending Closets

Upon compiling a Legal Resource list one day, I came across the organization Legal Hand. Legal Hand was offering remote volunteer positions during the pandemic where the work I would be doing with the community was similar to what I was already providing in my own group but on a much larger scale. I jumped at the chance (well if I could, I would have). Soon after Long Island Coalition for the Homeless saw the work I was doing in the community and offered me a part time paid position assisting on their Helpline remotely from home 3 days a week. I happily said yes right away as my health was continuing to improve. I have now been with the Coalition for

over a year and, as of this November, I will be volunteering at Legal Hand for three years. I am striving to work full time again and no longer be dependent on Social Security Disability Income. My first-hand experience as a person with long-term disabilities has informed my work in advocacy every day.

I would not be where I am today if it were not for the assistance of Empire Justice Center. My contacts with Empire Justice Center did not end with the 3 Class Action suits. There were many ADA questions and questions related to DSS policy and procedure which lead to dozens of exchanges along the way. Their advocacy has been incredible, and I am so grateful. Without Empire Justice Center's assistance, I would never have known the power of Reasonable Accommodation under the ADA. My life is propelled forward now in a positive & uplifted way. I have tools I so desperately needed to piece life back together for my family and I am a survivor now instead of a statistic.

# **Kristin Brown**

*(President and Chief Executive Officer, Empire Justice Center)*

**Kristin Brown** is Empire Justice Center's President & CEO. She works out of the Albany office. Before becoming CEO, Kristin was a well-known and deeply respected presence in New York's legal services community and within the state legislative process. For over 15 years, she led the organization's extremely successful public policy and legislative advocacy as Vice President for Policy and Government Relations, designing, organizing, and advancing the annual budgetary and legislative agenda of the organization, leading multimillion dollar funding campaigns with community partners and advancing issues that expand access to justice.

Under Kristin's leadership as CEO since late 2019, Empire Justice Center completed and began implementing a Strategic Plan through which the organization deepened its commitment to systemic advocacy and has grown its footprint by expanding into new areas of law, such as public school discrimination, police reform and a new tenants rights practice focus on immigrant representation and systems change.

Kristin is Co-Secretary of the New York Legal Services Coalition and Chair of its Funding Advocacy Steering Committee, a member of the New York State Bar Association's President's Committee on Access to Justice Committee and Committee on Legal Aid, a Board Member of JustCause in Rochester New York and a Chief Judge of the State of New York appointee to the Permanent Commission on Access to Justice where she serves on multiple Committees.

After graduating cum laude from Hartwick College with honors in Anthropology and History in 1994, Kristin worked in nonprofit direct service and small business management before returning to school in 1999 to pursue a Master's Degree in Social Policy from Empire State College. A 2000 Center for Women in Government Fellow, part of the Rockefeller College of Public Affairs and Policy, Kristin also worked at the Hunger Action Network of New York State as Upstate Public Policy Coordinator and American Farmland Trust as Senior Policy Manager.

[Kristin Brown – Empire Justice Center](#)



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**The Chief Judge's 2023 Hearing on  
Civil Legal Services in New York**

**Presented by: Kristin Brown, President and CEO**

**9/18/2023**

Good afternoon. My name is Kristin Brown and I am President and CEO of Empire Justice Center. We are a statewide, not for profit law firm and advocacy organization with seven offices across the state: in Albany, Rochester, Yonkers, White Plains, Central Islip, and Hempstead.

Empire Justice focuses on areas of law where we can have the most impact, with the goal of addressing the root causes of injustice through our 360-degree approach to systems change. We center client experience to identify barriers and we break them down using targeted training, legal intervention, and policy advocacy. In this way, we practice, teach, and change the law to make it work for all New Yorkers.

Thank you, Chief Judge Wilson; Presiding Justices LaSalle, Renwick and Whalen; Justice Clark; Chief Administrative Judge Zayas; and New York State Bar President Lewis. We are deeply grateful for the Office of Court Administration's ongoing commitment to civil legal services. The Judiciary Civil Legal Services (JCLS) funding is a critical revenue source for Empire Justice Center and our peers and is a key element in our ability to help our clients access justice under the law. We are especially grateful for the recent commitment to cost of living adjustments for the JCLS funding which have assisted us in absorbing the increased cost of doing business. Each year, rent, health insurance, office supplies – the less interesting but integral elements of doing this work – consistently rise in cost and until 2022 our JCLS funding did not reflect this. Thank you.

Our JCLS funding is absolutely critical to our ability to hire attorneys to represent clients in the essentials of life in both individual and impact cases. As you heard from Ms. Tupper's involvement in not one, but three separate cases, Empire Justice Center's impact cases addressed the need for timely economic and medical resources that once available, served to dramatically change her life for the better. Ms. Tupper was just one of the over 365,000 New Yorkers who benefited from these cases.

When we are successful in impact cases, our experienced attorneys ensure that scores of New Yorkers are able to assert their civil rights, access government benefits and critical services that stabilize lives so people can focus on jobs, school, family; putting food on the table in a safe and stable home—the essential aspects of everyday life. The ability to do this work is particularly important for marginalized communities, including Black and Brown New Yorkers, LGBTQ+ and low-income individuals and families, folks with disabilities, and so many others. Examples of current cases in our Civil Rights practice include a pandemic related action involving thousands of bus drivers and bus attendants who were denied unemployment insurance benefits and another case addressing lack of access to special education services for thousands of students with disabilities across the Rochester City School District.

Life-altering systems change cases like these require a high level of expertise and talent. Seasoned attorneys are needed to guide our junior attorneys in their professional development and supervise their work. Unfortunately, filling positions is becoming increasingly difficult. Our civil rights managing attorney position has remained vacant for the better part of a year, and we have vacant housing, immigration, language justice, and educational debt advocacy positions. At the same time, the need is so great, we could easily triple the work we are doing if we could fill the positions. Speaking with colleagues from across the state, I know the hiring challenges and the acute need for services are not unique to Empire Justice Center.

A key element of the challenge in filling these critical roles is that civil legal service attorneys' salaries are so much lower than our peers in public interest law, including those working at public defenders' offices, within county and state government, and certainly, within the private bar. And while we were supportive of the much-needed increase in assigned counsel rates last year, increasing the salary in other areas of public interest law widens the public interest salary gap, compounding the civil legal services community's recruitment challenge.

Recognizing this, over the summer, the New York Legal Services Coalition, the membership association for civil legal services in New York state, conducted an informal survey of salary data from legal services providers. Preliminary findings indicate that civil legal service attorneys earn approximately 20-40% less than their counterparts working directly for the government. This is hard evidence demonstrating what we have known anecdotally for a long time. Starting attorney salaries in civil legal services are consistently the lowest paying public interest attorney jobs across the state. The widening salary gap is making it increasingly difficult to attract and retain legal talent. And of course unfilled positions result in clients not served – unlawful evictions executed, homes lost to foreclosure, lifesaving health coverage not received.

We all share the same goal of ensuring that justice is served for those who need it most. In order to achieve this goal, we have two requests.

First, we ask that you continue to make progress toward closing the justice gap by increasing the JCLS funding by a substantial amount so that we may meet the overwhelming need.

Second, we must come together to solve these salary and recruitment and retention challenge as well. To do this we ask that you develop a plan to engage in discussions with the Governor and Legislative leaders to work together on a multi-phase plan to achieve pay equity across government funded public interest legal systems.

We recognize that these are not small problems to be solved, but our community, working with our partners in government, solves intractable problems all the time. We know how to do this. Together, we can continue to close the justice gap, expanding services into critical areas of law, such as medical and consumer debt and public benefits, while also taking steps to ensure that our civil legal services providers are able to recruit attorneys with the skills and ability to meet these challenges with us.

Thank you so much for your attention today, for your past and future support for the work of Empire Justice Center and our colleagues in the Civil Legal Services community.

# **Bobbie Dafoe**

*(Client of Volunteer Lawyers Project of Central New  
York)*



## **Chief Judge's 2023 Hearing on Civil Legal Services in New York**

**September 18, 2023**

### **Remarks of Bobbie Dafoe, Client of Volunteer Lawyers Project of CNY, Inc.**

My name is Bobbie Dafoe. I am here to talk about my experience dealing with medical debt and the difference that having help from the Volunteer Lawyers Project of Central New York made in my life.

It was the year that I was battling breast cancer. I had pain in my abdomen, went to a hospital and got really unsatisfactory service. I was insured at the time, but my deductible was \$5,500. After that, I remember only getting one call from the hospital about the bill, was never offered charity care.

I started a new job after the pandemic. I had gotten Covid and had used the Hospital's services again. Shortly after that I got a letter saying that my wages were going to be garnished by the Hospital from the Sheriff. I immediately went into tears. There wasn't much of a timeframe to work with – the papers gave me very little time to fight it. The garnishment was for way more money than the original amount I owed to the hospital because of interest. I felt so overwhelmed I almost didn't do anything. But I knew it would devastate me if I had my check garnished. And I felt like the garnishment was sketchy – I had never received any paperwork at all about being sued or having a judgment against me.

I finally called Legal Aid in Cortland, which took a while, and I spoke to a few different people, and I was told they couldn't help me because they were too busy. One of them connected me to Volunteer Lawyers Project of CNY and told me that they might be able to help me.

I started working with Adam, who was not an attorney, at VLP. He asked me to share all of the paperwork that I had and asked me questions about everything that had happened. It immediately started to make me feel better. Then Sal started getting involved as an attorney and explained to me that the service was garbage. They said that they served me years ago and they had not. They served me at a different address – the summer cottage of a relative. Sal helped me to prove that it was never my address. They also helped me prove that I was eligible for charity care, and should have been offered financial help by the hospital. They helped me file paperwork to vacate the judgment, and worked with the Hospital's attorney to take care of everything.

When I got the news that the judgment was vacated, I never felt so grateful in my life. I never saw that coming. What better news could I have gotten? I absolutely would not have been able to fight this garnishment on my own. This legal service saved me headache and financial ruin.

But I also thought about all those people who just go along with it and have no idea that there are legal services out there. They don't even know they have a right to financial help with

medical bills, and they don't know how to fight bogus lawsuits like this. I wish that when people get this paperwork that there is a number to call for help. And that there are more lawyers available!

Thank you for this opportunity to tell my story and for your support of free legal services.

**Sal Curran, Esq.**

*(Executive Director, Volunteer Lawyers Project of Central  
New York)*

**Sal Curran, Esq.** is the Executive Director of the Volunteer Lawyers Project of Central New York, Inc. (VLPCNY), a pro bono legal services organization whose mission is to provide access to justice through engaging the legal community in volunteer service to those in need. In the past 11 years, Sal has guided VLPCNY through a spin off into an independent nonprofit, major technology upgrades, and expansion, including new programming to address immigration, elder law, family matters, LGBTQIA rights, tenants' rights, community economic development, debt and more. During this time the organization has grown from 2 FTE and a budget of approximately \$150,000 per year to over 25 FTE and a budget of nearly \$4 million per year. Sal graduated summa cum laude from the University of Maine and obtained their Juris Doctorate at the City University of New York College of Law. Sal is licensed to practice law in New York and Maine. From Fall 2016 through Spring 2018 Sal served as an Adjunct Professor of Law heading the LGBT Community Clinic for Cornell Law. Sal serves on the Boards of the New York Legal Services Coalition, United Way of Central New York, WISE Women's Business Center, and is a member of the NYSBA Committee on Legal Aid and President's Committee on Access to Justice and the Fifth Judicial District's Character and Fitness Committee. They are also a member of the New York State Permanent Commission on Access to Justice. They are a former Board member of the Onondaga County Bar Association, the Central New York Women's Bar Association, the Housing and Homeless Coalition of Central New York, and the Syracuse Parks Conservancy.



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## **Chief Judge's 2023 Hearing on Civil Legal Services in New York**

**September 18, 2023**

**Remarks of Sal Curran, Esq.**

**Executive Director, Volunteer Lawyers Project of CNY, Inc.**

My name is Sal Curran and I am the Executive Director of the Volunteer Lawyers Project of CNY, Inc. (VLPCNY). I am honored to have the opportunity to address this esteemed panel of Judges and leaders in of our legal community, and I want to start by expressing gratitude for your continued attention to and leadership in addressing gaps in justice in New York. We are a pro bono legal aid program in Central New York whose mission is to provide access to justice by engaging the legal community in service to those in need. In the past year, our staff of expert attorneys, pro bono coordinators and legal assistants work together with our panel of over 600 lawyers, law students and paralegals to serve over 4,100 clients in Central New York and throughout Upstate New York, benefiting over 10,000 community members. Volunteer Lawyers Project of CNY focuses on addressing civil legal needs that other legal aid organizations either do not address or cannot fully meet the needs.

I want to thank our client, Bobbie, for sharing her very personal story. Bobbie has demonstrated tenacity and strength in fighting an unjust legal action, even when doing so felt nearly impossible. Sadly, Bobbie's experience of facing a crippling medical debt is not unusual. Time and again we see that individuals with low incomes are disproportionately affected by medical debt due to being uninsured or under insured, and that there are few or no civil legal aid attorneys available to help them navigate a very confusing process of fighting the debt.

We started our debt program precisely because we knew that debt was a huge issue in Central New York. We did a civil legal needs survey in 2017 and discovered that debt was one of the most common legal issues that people were facing. But when we met with the other legal aid organizations in our region, we discovered that there was only one civil legal aid attorney in 13

counties whose practice was devoted to debt and bankruptcy matters. Only one. We began serving debt clients in 2019 and repeatedly met individuals who faced medical debt. The people we were seeing should have qualified for financial assistance from the hospital pursuant to New York Public Health Law but either had never been offered assistance or hadn't been able to navigate the confusing process of trying to determine who should have been paying for their bill. Whether the individual has Medicaid, no-fault, or a high deductible insurance plan, many individuals receive medical care, especially emergency medical care, and go home not knowing whether they owe money. They won't know for weeks, or sometimes months, if insurance will pay and their medical bills are never explained to them.

With medical debt, as with all debt cases, we saw clients like Bobbie, where sewer service meant that they were never made aware of the lawsuit, leading to a default judgment. We know from reviews of court records that there are thousands more individuals that are defaulting on their medical debt cases in court whether due to issues with service or simply feeling too overwhelmed to respond. Medical debt is the most common type of past-due bill for which consumers are contacted, well over half of bills in collections and on people's credit records are medical bills. Medical debt is especially onerous because it is often sudden, unplanned, unavoidable, and extremely expensive. Last year Elizabeth Benjamin, from the Community Service Society, presented impactful testimony on the prevalence and impact of medical debt on the lives of low-income New Yorkers. She highlighted that nonprofit hospitals had sued over 53,000 people for medical debt from 2015 to 2020, despite the fact that pursuant to New York and Federal law these hospitals are not to engage in extraordinary collection practices such as suing someone, and are not to do so unless they have evaluated someone for financial aid. All of the hospitals were represented by counsel, and 99% of patients were not, and 98% of the cases were won on default. Many of the pleadings were either insufficient or provided so little detail that it is impossible to know what the debt was for, and some were engaging in sewer service.

Since that time, the Urban Institute published a study on the disparities in medical debt in New York by region, race/ethnicity, income, and other factors.<sup>1</sup> The findings of the study are covered in greater detail in the written remarks of the New York Health Foundation. One finding that was both upsetting and unsurprising to me was that Central New York is disproportionately affected by medical debt. While an estimated 6% of consumers in NY have medical debt in collections, Central New York has the state's highest rate of medical debt at 14%. Even within the region, there are disparities, with 28% of our low-income communities of color being burdened by medical debt. These neighborhoods, incidentally, also have the greatest number of eviction filings in court every year, which I will address further in my written remarks. We have been incredibly fortunate to have the support of the New York Health Foundation which

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<sup>1</sup> <https://nyhealthfoundation.org/resource/medical-debt-in-nys-and-unequal-burden-across-communities-report/>

has allowed VLPCNY to focus on providing community outreach, education, and representation regarding medical debt for 18 months.

With this focus, we have taken on additional medical debt cases for full representation and discovered how ruthless some of the hospitals can be. We recently had a hospital continue to pursue a judgment against our client who had stage 4 pancreatic cancer for over \$10,000 of medical services related to the pancreatic cancer treatment he received during a time when he was dropped from his former employers' insurance while on disability and Medicaid had not yet gone into effect. Despite knowing that his diagnosis was terminal and that he was near death, the hospital continued to pursue the lawsuit right up until his death, refusing to waive or reduce the amount owed.

We know that the stress of being unable to pay back debt and dealing with debt collectors can result in negative health consequences. Those struggling with medical debt have been found to be three times more likely to experience anxiety, depression, elevated stress, and even increased likelihood of suicide attempt compared to people without medical debt. We have sadly seen this to be true. A single mother of a disabled child had been in a car accident that resulted in over \$8,000 of medical care for the two of them. While they had Medicaid, no-fault should have covered the costs. But the overwhelmed mother wasn't able to follow through with the no-fault application in the narrow 30-day window required. The hospital obtained default judgments against her which she only discovered when she was trying to start the process of saving up to buy her first home. Neither Medicaid nor the hospital would provide her any financial relief, even though at the time she was by all standards indigent.

Unfortunately, she came to us during the worst shutdowns of COVID and we were unable to resolve the matter at the time due to the courts being closed. When we followed up later she never responded. Two years after coming to us, she took her own life, a tragedy that was felt throughout the community.

Volunteer Lawyers Project of CNY has many suggestions on how to address medical debt. Because there continue to be real concerns regarding sewer service, and nearly all cases proceed without the debtor making an appearance, medical debt lawsuits should require additional notice directly from the courts about the action. Cases should not be allowed to go forward on default without the court doing its own inquiry into whether all laws regarding medical debt, including that patients must be screened for financial aid eligibility pursuant to Public Health Law, have been complied with. The Court should develop a simple standard answer form for individuals to use if they cannot obtain a lawyer. VLPCNY calls on the Court to establish a Medical Debt Part to bring resources and special attention to addressing medical debt, and propose that the pilot Medical Debt Court should be in Central New York, given the disproportionate share of debt burden in our region. Courts should provide information to respondents in all medical debt cases letting them know about the free legal assistance and legal information that is available.

But given how devastating and pervasive medical debt is, it is critical that the New York Courts take action to ensure that those who face medical debt have their rights protected through expanding access to attorneys. To that end, we ask that you continue to make progress toward closing the justice gap by significantly increasing the JCLS funding. Funding is needed not only to create and expand programs, but also to ensure that civil legal aid programs are sustainable and are able to attract and retain the experienced attorneys that are needed to supervise pro bono volunteers and litigate the most difficult cases. As a Board Member of the New York Civil Legal Services Coalition, I helped to conduct an informal survey of legal aid organizations that found that civil legal aid attorneys are consistently paid 20-40% less than their public service peers who work for government. This leads to serious issues such as difficulty hiring and a significant rate of attrition of attorneys, which practically speaking, leads to overwhelming caseload, high level of burn out, and means less client needs being met. The consequences of medical debt are dire, and low-income New Yorkers must have access to attorneys when they are in need.

The New York Courts also should support efforts to close the justice gap by ensuring that all tenants have access to legal representation in eviction proceedings, and that those who are entitled to legal representation are given time to obtain such counsel before the matter proceeds. Evictions have terrible consequences: they are tied to long-term housing instability, job loss, negative health consequences, education loss, and more. In Central New York, where rents have been increasing by 20% or more year over year for the past few years, tenants who are evicted are no longer able to find housing that they can afford, which has led to the highest rates of homelessness that have been seen in 10 years. The power imbalance in eviction proceedings is overwhelming -- the vast majority of landlords are represented by counsel, and the vast majority of tenants do not have attorneys. In Upstate cities like Syracuse, Rochester and Buffalo it is common for attorneys to have such overwhelming caseloads (with each attorney handling over 300 cases per year) that they cannot fully litigate matters, even when there are strong defenses. We know that having an attorney makes an incredible difference -- the majority of tenants who have a lawyer are able to stay in their homes, and when there is a right to counsel the number of eviction filings drops by as much as 30%.<sup>2</sup>

VLPCNY has represented 1,000 tenant households in eviction matters in the past year. We prevented the eviction in 46% of cases, substantially delayed the eviction to allow the tenant to find new housing in another 50% of cases, and we reduced the amount owed by tenants by \$2,216,563. We have countless stories of ways that representation by our attorneys made a profound difference for the client. In one recent case, a landlord had served our client with a notice to terminate their tenancy, likely because the landlord wanted to renovate the apartment and double the rent, but had gone on to accept rent after the termination of the tenancy before the filing of the holdover petition. The landlord's attorney tried to make creative arguments that this did not constitute a renewal of the tenancy, but we were able to successfully argue that the case should be dismissed. In another case, a client had suffered

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<sup>2</sup> [https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2022.pdf](https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2022.pdf)



multiple amputations which made it so that he could no longer access his walk-up apartment. Due to his hospitalizations, he fell behind in rent. The client did not want to stay, but needed substantial time to arrange for his move out and also could not afford to have a judgment against him. We were able to negotiate that the client could have several weeks to move out and no judgment would be issued. We, as attorneys, are responsive to each tenant's underlying desires and we fight zealously to achieve those outcomes every time. But burnout among staff attorneys due to overwhelming caseloads is a very real concern, and as housing law becomes more complicated we have greater difficulty recruiting pro bono attorneys to assist with these matters.

With the critical difference that attorneys make for tenants, VLPCNY calls on the Courts to do three things. First, we call on the NY Courts to issue an administrative order that all eviction cases where a tenant is eligible for universal access to representation, such as in New York City and Westchester, shall be administratively stayed until the tenant has had an opportunity to obtain an attorney. Second, we call on the Courts to take leadership in educating both the Legislative and Executive branches of NY government about the impact of legal representation in eviction proceedings to raise awareness about this critical issue. Finally, we renew our call for a significant increase in JCLS funding so that we may come closer to meeting the overwhelming need.

Thank you so much for the opportunity to speak on these important matters, for your past and future support for the work of the Volunteer Lawyers Project of CNY, Inc., and your support of our colleagues in the Civil Legal Services community throughout the State.

**Robert Burek**

*(Client of Neighborhood Legal Services, Inc.)*

**Remarks for the Chief Judge's 2023 Statewide Civil Legal Services Hearing**

**Robert Burek, Client**

**September 18, 2023**

Good afternoon,

My name is Robert Burek. I am 61 and disabled. I have limited income, consisting only of Social Security Disability Insurance benefits and a small pension.

My wife and I moved into our home in a manufactured home park in 2017.

Our daughter passed away in early 2019, and, after struggling with our finances, we fell behind in our rent in 2020. To help afford the rent, we applied for and began receiving Section 8 Housing Choice Voucher benefits; however, our past due balance remained.

My mother passed away in May of 2020, followed by my wife's passing in February of 2021.

Fortunately, the manufactured home park did not push for eviction due to my unpaid rent; however, in mid-2022, the owners sold the park.

I reported the sale of the manufactured home park to my Section 8 provider.

The new park owner did not demand payment of my rent arrears until November of 2022 when they sent me a 30-day notice to pay or quit. When I looked at the notice, the amount demanded was much higher than what I knew I owed. I contacted the park for an updated ledger. After reviewing the ledger, I discovered that no Section 8 payments had been received by the park for five months. This increased the amount owed to the park by almost \$1,000.00.

I tried to contact my Section 8 provider, but I was unable to reach anyone.

I was expecting a very small inheritance from my mother's estate, but I knew that I would not be able to afford to pay the extra \$1,000.00 in addition to what I previously owed. I feared that I would be evicted if I could not find help.

I then contacted Neighborhood Legal Services, and I was linked to one of their attorneys.

My attorney obtained payment records from my Section 8 provider and discovered that the park owner had not received payments because they had not submitted the paperwork necessary to transfer my Section 8 benefits. However, my Section 8 provider had continued making payments to the prior owner.

My attorney obtained the forms necessary for the new park owner to complete, forwarded them to the new park owner, and explained the situation, helping them to understand that they would need to seek the missing Section 8 payments from the prior owner. My attorney also negotiated time for me to pay the remaining balance due.

As a result of the assistance I received from Neighborhood Legal Services, the new park owner waived my late fees and never started eviction proceedings against me. Without Neighborhood Legal Services' assistance, not only would I have been at risk of homelessness, but the park would have obtained a judgment against me for court costs, attorney fees, and amounts already paid by the Section 8 program on my behalf.

The eviction process can be stressful and complicated for tenants without legal assistance. I hope that my testimony today helps to shed light on how important civil legal services are for housing stability for tenants like me.

Thank you for your time.

# **Mary C. Hanson, Esq.**

*(Program Director, Western New York Eviction  
Prevention Program, Neighborhood Legal Services, Inc.)*

**Mary Hanson, Esq.** is the Assistant Supervising Attorney of Neighborhood Legal Services' (NLS) Batavia Office and the Program Director of NLS's Western New York Eviction Prevention Program. She received her JD from the University at Buffalo School of Law in 2008 and shortly thereafter joined NLS. Mary is a generalist attorney, representing clients in housing, family, public benefits, and consumer credit matters. She provides holistic legal services to low-income individuals and families throughout NLS's rural service areas. Mary also serves on the board for the Homeless Alliance of Western New York. Upon the creation of the Western New York Eviction Prevention Program, Mary was promoted to Program Director, working collaboratively with staff and program partners to promote access to justice for tenants at risk of eviction.

**Remarks for the Chief Judge's 2023 Statewide Civil Legal Services Hearing**

**Mary Hanson, Program Director**

**Neighborhood Legal Services' Western New York Eviction Prevention Program**

**September 18, 2023**

Thank you, Mr. Burek, for sharing your experience with us today, and for illustrating the benefits of legal representation for tenants facing eviction, especially tenants with disabilities and limited means.

Neighborhood Legal Services created the Western New York Eviction Prevention Program to meet the growing legal need for representation in eviction cases within our client community. Neighborhood Legal Services, in collaboration with our partners: the Center for Elder Law and Justice, Legal Aid Bureau of Buffalo, Western New York Law Center, and the Erie County Bar Association Volunteer Lawyer's Project, provide free legal representation to eligible tenants facing eviction throughout our five-county service area. The Western New York Eviction Prevention Program is funded by the Office of Temporary and Disability Assistance's Emergency Rental Assistance Program. We provide representation to tenants residing in Erie, Genesee, Niagara, Orleans, and Wyoming Counties.

A tenant's need for counsel has never been more apparent. The shortage of safe and affordable housing, the increase in housing costs, the extensive, but welcome, 2019 changes in eviction law, and the discontent of property owners following the pandemic, among other factors, have converged into a perfect storm, leaving many tenants at risk of becoming homeless.

I have heard manufactured homes described recently as the new landscape of affordable housing. However, I recently reviewed manufactured home park listings in our five-county service area. Within the sample reviewed, lot rents alone range from \$324.00 to \$570.00 per month. These

figures do not include the cost of the home. Previously owned manufactured homes are generally selling for between \$21,000.00 and \$84,000.00. Buyers unable to afford these prices may only find substandard, often condemnable, homes. New manufactured homes are selling for an average of \$108,000.00. These prices are for the home alone, not the land on which they are located. For tenants who cannot afford to purchase the home, the combined rent for the lot and the manufactured home can be over \$1,000.00 per month.

In addition to affordability concerns, manufactured home park tenants, such as Mr. Burek, face a complicated legal landscape that is influenced by whether the manufactured home park tenant rents or owns the manufactured home in which they live.

Tenants who own their home, but reside in a manufactured home park, never own the land on which the home is placed. Often the “affordable” manufactured homes are in too poor a condition to be relocated. If the park seeks to terminate their tenancies, most frequently these homeowners face either:

- 1) A 30-Day Notice to pay their rent or vacate the lot; or
- 2) A 10-Day Notice to correct a lease violation, followed by a 30-Day Notice of termination if the violation is not corrected.

After these notices expire, the manufactured home park can start court proceedings, which can finalize in as little as 24 days from filing. If a court grants the eviction, a manufactured home park homeowner has a minimum of either 30 or 90 days (depending on the type of eviction) to not only move, but to also try to sell or relocate their home. Imagine losing your ability to live in your \$80,000.00 home in as little as three months after falling behind in your rent!



Tenants who rent their home from the manufactured home park, regardless of the underlying cause for the eviction may also receive a 10-Day or 30-Day notice, but if the court orders their eviction, the tenant may only have as few as 72 hours to move.

To further complicate manufactured home park evictions, as 83 to 84% of manufactured home communities are in rural areas,<sup>1</sup> these cases are often heard in rural town and village courts, primarily by non-attorney justices. Due to the expedited nature of summary eviction proceedings, the law requires strict compliance with established procedures; however, when a tenant appears without counsel, compliance with procedures tends to be more lax, and more complicated procedures tend to be overlooked. This can, and many times does, result in swifter evictions than would have been granted had the laws been followed.

Legal representation for evictions can be the difference between homelessness and housing stability – between employment and job loss. Eviction has a demonstrably negative impact on mental and physical health, educational outcomes, and familial stability. Legal representation often not only results in housing stability for vulnerable households, but it can also prevent the loss of savings that some tenants have spent their lives building.

Since our creation of the Western New York Eviction Prevention Program in late 2021, Neighborhood Legal Services and our partner organizations have greatly increased our staffing and expanded our representation throughout our service area. As a whole, our program has provided representation in more than 5,900 eviction matters using the Emergency Rental Assistance Program funds. While many of these cases are still ongoing, our program has prevented more than 1,900 evictions and delayed more than 860 evictions. We resolved many more matters

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<sup>1</sup> <https://ruralhousing.org/wp-content/uploads/FINAL-RHC-Manufactured-Housing-Community-Report.pdf>

without the need for court proceedings. It is our goal to promote housing stability and reduce the likelihood of homelessness through legal representation and advocacy for thousands of clients, like Mr. Burek, who face the specter of eviction and its many ripple effects.

Yet, for our rural service areas, our attorneys must endure pay that is not competitive with the private sector, non-traditional hours, frequent and distant travel, and conflicting court schedules. Increasing staff in our rural offices solely with eviction defense funding is not an efficient method of solving these issues. Nor is it an effective manner of addressing many of the root causes of housing instability. Housing instability does not exist in a vacuum. Hunger, poor health, family instability, employment instability, and lack of education all commingle with housing instability, sweeping their victims into a cycle of poverty.

One ancillary perk to our recent receipt of eviction defense funding is our ability to refocus some of our general funding into our other areas of service, including family law, public benefits (such as SNAP and cash assistance), health advocacy, disability law, and consumer debt. But funding for these other services still falls short. According to Legal Services Corporation's 2022 report, LSC-funded legal aid only had adequate resources to fully assist with 30-37% of the civil legal problems for which low-income Americans applied.<sup>2</sup> This is why funding such as the Judiciary's Civil Legal Services grant is so important: to help low-income New Yorkers with their unmet needs.

Thank you for allowing me this opportunity to highlight the importance of our work and the necessity of civil legal services in providing holistic legal representation to tenants in eviction matters.

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<sup>2</sup> <https://www.lsc.gov/about-lsc/what-legal-aid/unmet-need-legal-aid>

# **Rosemary Rodriguez**

*(Client of The Legal Aid Society)*

## **Christine Rivera**

*(Daughter of Rosemary Rodriguez)*

**Remarks of Rosemary Rodriguez presented by her daughter Christine Rivera**

Chief Judge's Hearing on Civil Legal Services

September 18, 2023

Good afternoon. My name is Rosemary Rodriguez and I am a client of The Legal Aid Society.

Good afternoon. My name is Christine Rivera and my mother, Rosemary Rodriguez, is a client of The Legal Aid Society. I am here today with my mother to present on her behalf and to express our support for continued funding for The Legal Aid Society and other civil legal services programs that assist New Yorkers like us.

My mother is a senior citizen whose only source of income is Social Security. She is also a Medicaid enrollee.

In March 2019, she went to a dentist in Manhattan to whom she was referred by her Medicaid Senior Health Partners Managed Long-term Care Plan. My mother is a cancer survivor and she went to this dentist for dental implants she needed as a result of damage done to her teeth and nerves by the chemotherapy she received to treat her cancer.

My mother had Medicaid at the time she visited this dentist's office. She informed the dentist's office about this. On the day she visited this dentist, the dentist performed a dental procedure on her that was or should have been covered by Medicaid. But instead of billing Medicaid, she was signed up for CareCredit card without her consent or knowledge.

Mid-procedure—after the dentist had administered anesthetic medication to my mother and begun performing dental surgery on her—the dentist directed my mother, a senior citizen with limited reading abilities, to sign papers, which was not explained to her and that she did not understand. My mother thought the papers she was signing had to do with the services the dentist was going to provide and her consent to treatment. It was only later that she learned that these papers included an application for a Synchrony Bank CareCredit account. At no time did the dentist explain to her that these papers were a credit card application or agreement. The dentist then charged this CareCredit account that same day for \$6,000.00 for services that were never completed. My mother first received notice that she had been signed up for this CareCredit account when she later received a statement from Synchrony Bank in the mail.

This experience was traumatic for my mother. She trusted this dental provider to provide her with the care she went to this office to receive, but her vulnerability was preyed upon. Despite informing the dentist's office that she was a Medicaid enrollee, they enrolled my mother in a CareCredit account and charged this account in full for services that were never provided to her and that should have been billed to Medicaid. She left the dentist's office that day with holes in her mouth from the multiple tooth extractions the dentist performed. The dentist pulled her teeth but never provided the dental implant services she went to this office for in the first place, leaving my mother with holes in her mouth, making it difficult for her to eat, and she later got an infection.

After she received the billing statement from Synchrony Bank in the mail and realized what had happened, my mother tried unsuccessfully to resolve this issue on her own and with my help. She contacted the dentist's office to request a refund, which the dentist's office refused to do even though they failed to perform the services for which she charged this CareCredit account. She filed a complaint with her Medicaid managed care provider. She made several payments on this CareCredit account with my help, even though she did not believe she owed this debt and despite the financial strain it put on her and our family, because she believed she had to and because she was worried about debt collection and the harm to her credit if she didn't. When she stopped making payments on this account, she received debt collection letters from a law firm seeking to collect the alleged \$7,940.20 CareCredit account balance.

In April 2020, my mother contacted The Legal Aid Society's Consumer Law Project for help. They agreed to represent her to stop the debt collection related to CareCredit/Synchrony Bank account and to assist her with filing a Medicaid complaint for the services improperly billed to her by the dentist's office.

In June 2020, they sent a Cease Contact and Verification Demand letter to the debt collection law firm seeking to collect on the Synchrony Bank CareCredit account. In August 2020, they sent a cease and desist letter to Synchrony Bank and the dentist's office, (1) disputing this account and all transactions made on it, (2) informing them that my mother did not owe this debt and that my mother, a Medicaid enrollee, could not lawfully be billed for the services; and (3) demanding that they stop collections, reinvestigate this matter, and discharge this alleged debt. They worked with the Health Law Unit at The Legal Aid Society and assisted my mother with filing Medicaid billing complaints regarding this dental provider with the Medicaid managed care provider. And they referred my mother to a free financial counselor for assistance with non-litigation financial matters, including damage to her credit score as a result of the CareCredit account.

Then, in November 2020, Synchrony Bank sued my mother in Queens County Civil Court for the debt and my mother contacted The Legal Aid Society's Consumer Law Project again for assistance. They assisted her with drafting and filing an Answer and serving discovery demands and continued to advise her while she waited for the court to schedule the first court appearance in her case. During this time, Synchrony Bank continued to state in additional subsequent communications they sent to my mother that they investigated this matter in response to the 2019 dispute letter to Synchrony Bank and that they found no fraud and the account balance was valid.

Other than these communications, there was no further action in the case for about two and a half years as we waited for a court date during the pandemic. Finally, in June 2023, before a court date was even scheduled, Synchrony Bank agreed to discontinue the case against my mother. This result would never have been possible without the extensive efforts by The Legal Aid Society proving the debt was not owed. My mother and our family are tremendously thankful for the work of The Legal Aid Society. Though this experience has been traumatic for my mother and family, Legal Aid's dedicated assistance has allowed my mother to avoid garnishment and levy of her money and to get back on the path to financial and medical recovery.

The Legal Aid Society provides essential legal services and advocacy for New Yorkers. I've been told that so much of what Legal Aid does would not be possible without the consistent investment of Judiciary Civil Legal Services funding since 2011. Thank you for the invitation to appear before you today and share my story.

**Adriene Holder, Esq.**

*(Chief Attorney, Civil Practice, The Legal Aid Society)*

**Adriene Holder** serves as Chief Attorney of the Civil Practice of The Legal Aid Society and has devoted her entire professional career to challenging poverty and racial injustice for the advancement of equal rights. Adriene is responsible for managing the provision of comprehensive civil legal services through a network of neighborhood offices, courthouse-based offices, and specialized city-wide units serving all five boroughs of New York City with over 500 staff working on more than 50,000 cases each year. Prior to her appointment to Chief Attorney of the Civil Practice, Adriene served as Attorney-in-Charge of the Harlem Office; practiced law as a staff attorney in the Law Reform Unit of the Civil Practice; and began her career as a staff attorney in the Harlem Office Housing Law Unit.

In addition to her formal duties, Adriene also serves as a member of the New York State Permanent Commission on Access to Justice, is the Co-Chair of the New York State Bar Association Committee on Legal Aid, is a member of the New York State Bar Association President's Committee on Access to Justice, is an executive board member for Housing Court Answers, and previously served as a Tenant Representative on the New York City Rent Guidelines Board. Adriene has also served as an adjunct professor at The New School and as a volunteer instructor at Columbia Law School.

Often called upon to work on the Society's legislative agenda, Adriene frequently testifies before legislative bodies on the city and state levels. She also is consulted on various legal and policy matters impacting low-income communities by the media, law schools, and policy or governmental agencies.

Adriene received her B.S. in Political Science from Spelman College, and received her J.D. from Columbia Law School.

[Adriene Holder - The Legal Aid Society \(legalaidnyc.org\)](http://legalaidnyc.org)



**Adriene Holder, Attorney-in-Charge, Civil Practice**

**The Legal Aid Society**

**Remarks for the Chief Judge's Statewide Civil Legal Services Hearing**

**September 18, 2023**

Good afternoon, I am Adriene Holder, Chief Attorney of the Civil Practice of The Legal Aid Society. I also serve as a member of the Permanent Commission on Access to Justice. I first want to thank Chief Judge Wilson; Presiding Justices LaSalle, Renwick, and Whalen; Justice Clark; Chief Administrative Judge Zayas; and New York State Bar Association President Lewis for the opportunity to address you today.

Although there is always more work to do, today we highlight some of our successes. So much of this work would not have been possible without the consistent investment of Judiciary Civil Legal Services funding since 2011. Investing in legal services is a long-term investment in the fight against racism, injustice, and poverty. We are also grateful for the recent commitment to incorporating cost-of-living adjustments into the JCLS funding. This crucial adjustment has been instrumental in helping us navigate the ever-increasing operational expenses such as rent, health insurance, and technology that we encounter year after year in our line of work. On behalf of The Legal Aid Society, I thank you for your continued support, and again for the invitation to share a part of our work with you today.

The Society's Consumer Law Project, in our Civil Practice, represents and assists low-income consumers in a range of matters, including consumer debt lawsuits that involve credit card debt, medical debt and financial products, student loans, and rent arrears; affirmative litigation for violation of consumer rights, including under the Fair Debt Collection Practices Act (FDCPA); victims of fraud, identity theft, financial abuse and scams and advocating on their behalf with financial institutions as well as government regulators. Through this work we hear regularly from clients about challenges they face navigating the court system and have seen first-hand the critical role that access to legal services can play in determining an individual's ability to assert their rights and seek justice.

**Background**

There continues to be a significant "justice gap" when it comes to consumer debt collection lawsuits. Every day distressed New Yorkers learn that their wages have been garnished and their bank accounts frozen due to these cases.

- Over 100,000 consumer debt cases are filed in New York Civil Court each year. Courts in New York, as well as throughout the country, have had staggering numbers of debt collection lawsuits filed against consumers.<sup>1</sup>
- Defendants in these cases lack representation. Less than 4% of defendants are represented by counsel in consumer credit cases in New York City Civil Court, while 100% of plaintiffs are represented.
- Representation means better outcomes i.e. a much greater likelihood of winning a case outright or reaching a settlement favorable to the represented party. However, most defendants cannot afford to hire a private attorney and there is limited free legal assistance available to assist individuals in these cases. There are few legal services providers with consumer units, most of which are small and have limited capacity.
- Unrepresented litigants who are unfamiliar with court process and procedure do not know how to assert their defenses, even with knowledge of defenses applicable to their case.
- Unrepresented litigants also face pressure to settle, and often agree to unfair repayment terms that ultimately lead to default judgments when payments become unaffordable.
- Approximately 70% of debt collection lawsuits result in default judgments for Plaintiff. The impact of the default judgment can be devastating for consumers. Plaintiffs prevail in almost all cases.
- Pervasive in these cases is the very real concern that people are paying debts they may not even owe, and that the plaintiff cannot prove they owe (but know they can win by suing and using the court process against unrepresented defendants).

After an initial halt in consumer debt filings during the early part of the pandemic, new filings are back to almost pre-pandemic numbers. Despite some efforts, there was no moratorium on consumer debt collection or judgment enforcement, and pre-pandemic undue pressure on litigants to settle cases has increased dramatically with court docket backlog and limited hearings. Recently, we have seen an increase in medical debt cases involving medical credit cards and other predatory financial products.

### Ms. Rodriguez's Case

As Ms. Rodriguez's case shows, medical debt cases involving medical credit cards has real consequences for people. Similar to her situation these products are often offered to patients when they are in significant stress and when they are even eligible for free care through Medicaid.<sup>2</sup>

In Ms. Rodriguez's case, the dentist she went to for care improperly billed and collected payment from her for Medicaid-covered dental care and engaged in improper and deceptive enrollment processes regarding the Synchrony Bank CareCredit account. As a Medicaid enrollee, Ms. Rodriguez could not lawfully be billed for these services, nor could her account be referred to a collection agency. On the dates of service in question, she was in receipt of full Medicaid

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<sup>1</sup> For example, according to a PEW Charitable Trusts report, "[f]rom 1993 to 2013, the number of debt collection suits more than doubled nationwide, from less than 1.7 million to about 4 million, and consumed a growing share of civil dockets, rising from an estimated 1 in 9 civil cases to 1 in 4. PEW Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts*" (May 6, 2020), at 8, <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>.

<sup>2</sup> Consumer Financial Protection Bureau, *Medical Credit Cards and Financing Plans* (May 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_medical-credit-cards-and-financing-plans\\_2023-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf)

benefits. She informed the dentist that she was a Medicaid enrollee, yet Ms. Rodriguez subsequently received bills for dental services that were or should have been covered by Medicaid but were instead charged to Ms. Rodriguez and to the CareCredit account. Furthermore, the dentist's practices related to this CareCredit account also violated several provisions of the 2013 settlement agreement entered into by GE Capital Retail Bank and CareCredit with the New York Attorney General in *In the Matter of GE Capital Retail Bank and CareCredit, LLC. Assurance of Discontinuance*, Assurance No. 12-103 (June 3, 2013). In addition, despite obtaining assistance from The Legal Aid Society and repeatedly disputing this debt with the creditor and debt collection law firm sending her pre-litigation debt collection letters, submitting complaints to her Medicaid managed care provider, the creditor in her case still sued her in court in an attempt to collect a debt Ms. Rodriguez was adamant she did not owe.

When creditors sue individuals like Ms. Rodriguez for these debts in New York courts, they are represented by attorneys in nearly 100% of these cases. In stark contrast, 97% of individuals sued for consumer debts in New York courts do not have an attorney.

While the amounts sought in many consumer debt cases may be considered small, the cost they impose on the individuals sued are significant.

For defendants in consumer credit cases, the risk of a civil money judgment being entered against them is very real and the consequences of these judgments are great.<sup>3</sup> Creditors enforce judgments through wage garnishment, levied bank accounts, and liens on and forced sales of real property. Other consequences include harm to credit, which negatively impacts access to housing, employment, and general creditworthiness and perpetuates the cycle of poverty and harms financial stability for litigants and their families. Not to mention the significant non-monetary cost on defendants and judgment debtors in these cases, including emotional and psychological harm, distress, embarrassment, and humiliation imposed as result of entry and enforcement of judgments.

### Conclusion

Today, in testimony presented by a range of experts and civil legal services providers, we have heard the case made for addressing the access to justice gap with continued and increased funding for civil legal services, and the imperative of achieving pay equity with our peers in public interest law working in county and state government positions to retain staff. These interconnected issues have a profound impact on the accessibility, quality, and sustainability of legal assistance for those who need it most.

First and foremost, let me recognize the extraordinary strength of our New York State legal services community. The community of providers stands as a beacon of hope for countless low-income individuals and families who face legal challenges. Our legal services organizations, staffed by dedicated attorneys and professionals, work tirelessly day in and day out to uphold the principles of justice and fairness. They are the front line of defense for vulnerable communities, providing critical assistance in housing disputes, family matters, immigration cases, government benefits, and more. I am proud to stand with them.

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<sup>3</sup> Judgments are valid for 20 years and renewable for 20 additional years with any partial voluntary or involuntary payment. Amounts include pre- and post-judgment interest, court costs and fees, Marshal 5% poundage, and in many cases attorney fees, all of which makes judgment collection/enforcement perpetual and unpayable.

However, this brings us to the pressing issue of funding. While our Legal Services community does remarkable work, we operate under constant financial strain. The demand for civil legal services far outstrips the available resources, leaving many individuals without the representation they desperately need. This imbalance undermines the very principles our legal system is built upon. Therefore, we must advocate for increased funding for civil legal services. Adequate funding is not merely an investment in legal aid; it is an investment in justice, equity, and the protection of some of the most vulnerable members of our client communities. Therefore, I respectfully request a substantial increase to JCLS funding to help close the justice gap and to meet the urgent needs of our communities.

Furthermore, achieving pay equity with legal positions in government agencies is paramount. Currently, the pay gap between our legal aid organizations and government agencies is substantial, making it difficult to recruit and retain experienced legal professionals. To continue providing high-quality legal services, we must close this gap. Competitive salaries will not only attract top talent but also ensure that our legal aid organizations can retain experienced staff who bring invaluable expertise to their work. Therefore, we respectfully ask that you develop a plan to engage in discussions with the Governor and Legislative leaders to work on a multi-phase plan to achieve pay equity across government funded public interest legal systems.

As a community of legal services providers, we have witnessed and been the beneficiaries of your leadership on access to justice issues that serves as a blueprint for other states in our nation. With the support of JCLS funding we are closing the justice gap. We appreciate your leadership and your partnership.

On behalf of The Legal Aid Society, thank you for your continued support, and for the opportunity to speak with you today.

**PERMANENT COMMISSION ON ACCESS TO JUSTICE**

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**REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK**

**APPENDIX 4:**

**Written Submissions from Non-Presenters,  
Chief Judge's Hearing on Civil Legal Services  
in New York**

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**NOVEMBER 2023**

## **Index of Non-Presenter Written Submissions**

### General Submissions

Center for Elder Law and Justice  
Cornell University ILR School Buffalo Co-Lab  
Legal Services Access Alliance  
Nassau Suffolk Law Services Committee Inc.  
National Consumer Law Center  
New York City Bar Association  
New York Health Foundation (NYHealth)  
New York Legal Services Coalition  
New York Veterans Law Working Group

### Right to Counsel Submissions

American Association of Retired Persons (AARP) New York  
Catholic Migration Services  
Center for Independence of the Disabled, New York  
Central Park Gardens Tenants' Association  
Church Avenue Merchants Block Association (CAMBA), Inc.  
Community Service Society (CSS) of New York  
District Council 37 Municipal Employees Legal Services  
For the Many  
Housing Conservation Coordinators  
Housing Court Answers, Inc.  
Housing Opportunities Made Equal (HOME)  
Long Island Activists  
New York Civil Liberties Union  
People United for Sustainable Housing (PUSH) Buffalo  
The Right to Counsel NYC Coalition  
United Tenants of Albany  
Westchester Residential Opportunities, Inc.

## **General Submissions**

## **Center for Elder Law and Justice**

**2023 Chief Judge's Hearing on Civil Legal Services**





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Written Testimony  
Chief Judge's Statewide 2023 Civil Legal Services Hearing  
September 18, 2023

Submitted by:  
Karen L. Nicolson  
Chief Executive Officer  
Center for Elder Law & Justice  
438 Main St., Suite 1200  
Buffalo, NY 14202

Thank you for the opportunity to submit written testimony. The Center for Elder Law & Justice ("CELJ") is an 80-person full service regional civil legal services delivery structure with dedicated staff for outreach, training, and pro bono activities. Our work includes both policy advocacy and individual direct legal services and we have units dedicated to health care, housing, kinship care, public benefits, elder abuse & consumer scams, and more. Our mission is to use the legal system to ensure that our clients live independently and with dignity.

Incorporated in 1978, in Erie County New York, Judiciary Civil Legal Services funding enabled us to expand. We now provide outreach and brief services to all counties in the Fourth Department, full-service representation to 11 Western New York Counties and run a statewide telephone helpline for older adults and their families.

CELJ is also part of the New York Legal Services Coalition, (NYLSC) a 501(c)(3) nonprofit organization formed in 2014 that consists of approximately 45 civil legal services organizations serving every county in New York State. Member organizations provide a full range of legal advocacy and assistance to address the needs of persons eligible for legal assistance in non-criminal matters and conflicts, such as family law, tenants' rights, immigration, elder law, and a host of other areas. Member agencies ensure access to civil legal assistance for all New Yorkers in need, with a commitment to social justice and equal opportunity for all. We share the NYLSC concerns regarding pay parity.

After observing a need for more expansive advocacy in long-term care settings, CELJ partnered with Region 15 (Reg. 15) of the New York State Long Term Care Ombudsman Program (LTCOP) in 2015 to address systemic issues and expand access to resident rights resources and ombudsmen. As "Legal Liaison," CELJ has broadened the advocacy reach of both agencies by navigating residents between programs for coordinated legal and ombudsman advocacy, provision of 'in-house' legal support to Reg. 15 LTCOP staff and volunteer ombudsmen through legal/regulatory research and case-specific guidance and helping coordinate and develop advocacy initiatives. In 2021, through partnership with the New York State LTCOP, CELJ's 'in-house' support was expanded statewide to address systemic issues pertaining to abuse, neglect, exploitation, and involuntary discharges in long-term care facilities.



The pandemic exacerbated long-standing systemic social and health inequities and discriminatory practices and policies for BIPOC, LGBTQ+ communities, persons with disabilities and older adults who live in long-term care settings. When addressing the unmet legal needs for civil legal services by low-income New Yorkers, it is important that persons residing in long-term care facilities are not forgotten.

### **Nursing Home Resident Advocacy is Unmet Civil Legal Services Need**

The latest justice gap report, released April 2022, shows that 92% of the civil legal problems of low-income Americans did not receive any or enough legal help. Nearly three quarters (74%) of low-income households experienced at least one civil legal problem in the previous year. A third (33%) of low-income Americans had at least one problem they attributed to the Covid-19 Pandemic. Moreover, as detailed in the 2021 Access to Justice Report by New York's Permanent Commission on Access to Justice, lockdown not only disproportionately impacted black and brown people, but also seniors and those with cognitive deficits.<sup>1</sup>

***The justice gap is even greater when trying to provide services to underserved populations, such as the elderly or disabled.*** According to Justice in Aging, nationally 45% of individuals over age sixty-five have trouble meeting their basic needs.<sup>2</sup> According to LSC, approximately 7.6 million seniors have family incomes below 125% of the Federal poverty level (up from 6.4 million in the last report) and 70% of senior households had one or more legal problems in the past year. Each day, 10,000 people turn age 65 in the United States.<sup>3</sup>

Unrestricted legal services providers like CELJ can help address this issue through both policy work and litigation. CELJ frequently testifies at public hearings, submits written testimony and advocates for New York Legislation to improve quality of care in nursing homes and assisted living centers. We are active members of the New York State Elder Law & Special Needs (ELSN) Section and our Supervising Attorney for policy, Lindsay Heckler, in partnership with ELSN membership, transformed promoting the ELSN nursing home taskforce into an official committee: Committee on LTC Facility Reform, where she served as a co-chair.<sup>4</sup> As member, then co-chair of the committee, she kept the ELSN and committee members up to date on legislative developments, advocated and obtained ELSN support on key pieces of legislation such as minimum nurse staffing in nursing homes, authored ELSN journal articles, and presented on resident rights and nursing home discharges.

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<sup>1</sup> Permanent Commission on Access to Justice REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK, available at: [https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/21\\_ATJ-Comission\\_Report.pdf](https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/21_ATJ-Comission_Report.pdf). Last accessed September 6, 2023.

<sup>2</sup> JUSTICE IN AGING, <https://justiceinaging.org/>. Last accessed September 6, 2023.

<sup>3</sup> <https://www.hhs.gov/aging/index.html#:~:text=More%20than%2010%2C000%20people%20turn,more%20important%20than%20ever%20before>

<sup>4</sup> Lindsay Heckler remains active on that committee and currently serves as the ELSN Treasurer.



However, we are one of the very few legal services programs that is advocating on nursing home quality of care and rights issues. Additional funding needs to be allocated to address older adult issues in general, as the statistics show that the need is not being met and the justice gap will only continue to grow as the country and state ages.

The Nursing Home Reform Act of 1987 (NHRA) was passed after a National Academy of Medicine study showed that many nursing home residents were not receiving adequate care and abuse and neglect was common.<sup>5</sup> The NHRA created national nursing home standards and makes clear that every resident, whether their stay is for short-term rehabilitation or long-term care, has the right to receive the necessary care and services to attain or maintain their highest practicable physical, mental, and psychosocial well-being.<sup>6</sup> The NHRA and corresponding regulations require each resident be free from abuse, mistreatment, and neglect; mandate person centered care and discharge planning; and set forth the basics in a range of services: dietary, pharmaceutical, social, nursing, and more.<sup>7</sup> States can have additional resident rights protections; not less.<sup>8</sup>

As part of this, nursing home operators are required to ensure minimum nurse staffing standards are met, exceed those minimum standards based on resident need, and ensure all staff have the appropriate competencies and skillsets needed to ensure each resident attains or maintains their highest practicable physical, mental, and psychosocial well-being.<sup>9</sup> Nursing homes are also required to establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.<sup>10</sup>

While some nursing homes take the federal and state requirements seriously and do their best to ensure each resident can attain or maintain their highest practicable physical, mental, and psychosocial well-being, far too many do not. Substandard care in nursing homes is by no means a new issue and has grown exponentially worse during the pandemic. For example, 2022 Centers for Medicare & Medicaid Services (CMS) data show that one quarter of all nursing home beds in WNY,<sup>11</sup> 4,796 out of 15,744 beds, are located in a one- or two-star facility as rated by CMS, a

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<sup>5</sup> See Nursing Home Abuse Center, Nursing Home Reform Act of 1987, [Jan. 7, 2022]

<https://www.nursinghomeabusecenter.com/resources/nursing-home-reform-act/#:~:text=The%20Nursing%20Home%20Reform%20Act,homes%20receive%20high%20quality%20care> [last accessed Sep. 6, 2023].

<sup>6</sup> Omnibus Reconciliation Act of 1987, Pub. L. No. 100-203, codified at 42 U.S.C. § 1395i-3 (Medicare), 42 U.S.C. § 1396r (Medicaid).

<sup>7</sup> *Id.*, 42 C.F.R. §§ 483 *et seq.*

<sup>8</sup> For example, NY Public Health Law § 2895-B requires each nursing home maintain minimum daily average staffing hours equal to 3.5 hours of care per resident per day (HPRD). Of this, at least 2.2 HPRD must be provided by a certified nurse aide, and at least 1.1 HPRD by a licensed nurse (Licensed Practical Nurse and/or Registered Nurse.) While the Centers for Medicare & Medicaid Services recently released proposed regulation that would implement minimum staffing standards, currently no such standards exist at the federal level.

<sup>9</sup> 42 C.F.R. § 483.35; 10 NYCRR § 415.13.

<sup>10</sup> 42 CFR § 483.80; 10 NYCRR § 415.19.

<sup>11</sup> Allegany, Chautauqua, Cattaraugus, Erie, Genesee, Livingston, Monroe, Niagara, Orleans, Steuben, Wyoming.



performance of “much below average” or “below average” quality. Of the 34 one- and two-star facilities in WNY, 23 have remained at one- and two-stars over the past 5 years, suggesting that the area’s worst performing nursing homes are not improving.

This is a clear indicator that there are issues that have gone unaddressed in the overall quality of care, quality of life and dignity for the older adults and disabled people residing in those facilities. In addition, black nursing home residents are more likely than other populations to be admitted to lower quality nursing homes, nursing homes with limited resources, and have high rehospitalization rates.<sup>12</sup>

The horrors brought to the public’s attention during the pandemic were not new. What the pandemic did was exacerbate longstanding failures and inequities that continue today.<sup>13</sup> In order to achieve health equity, disparities must be addressed. This includes ensuring residents who live in long-term care settings, have access to civil legal services.

### **Non-Lawyer and Pro Bono Partnerships Can Reduce the Unmet Need**

#### *Overview of CELJ Partnership with Reg. 15 LTCOP*

In 2015, the New York State LTCOP moved to a regional model comprising of 15 regional LTCOPs. CELJ and People Inc., the host agency of the Reg. 15 LTCOP, used this as an opportunity to work together in partnership to improve the capabilities of the program. CELJ is contracted with People Inc., as Reg. 15 LTCOPs “Legal Liaison.” As the Legal Liaison, CELJ supports Reg. 15 LTCOP in its advocacy by:

- Training ombudsmen to identify potential legal issues and navigating residents between Reg. 15 LTCOP and CELJ for coordinated and wholistic assistance, support, and representation.
- Providing in-house support to staff and volunteer ombudsmen through legal and regulatory research and ombudsman case guidance.

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<sup>12</sup> <https://justiceinaging.org/issue-brief-racial-disparities-in-nursing-facilities-and-how-to-address-them/>

<sup>13</sup> See, for example: Mollot, Richard., Long Term Care Community Coalition, *Chronic Deficiencies in Care-The Persistence of Recurring Failures to Meet Minimum Safety & Dignity Standards in U.S. Nursing Homes.*, available at <http://nursinghome411.org/wp-content/uploads/2017/02/LTCCC-Report-Nursing-Homes-Chronic-Deficiencies-2017.pdf> (February 2017); US Dept of Health and Human Services Office of Inspector General report, *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries*, <https://oig.hhs.gov/oei/reports/oei-06-11-00370.pdf>; Sick, Raped and Dying in America’s Nursing Homes. <http://www.cnn.com/interactive/2017/02/health/nursing-home-sex-abuse-investigation/> NYS Office of the Attorney General Medicaid Fraud Control Unit. Staffing Levels in New York Nursing Homes: Important Information for Making Choices,” (January 2006), <https://ag.ny.gov/sites/default/files/press-releases/archived/final.pdf>.

<sup>13</sup> Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic, (May 20, 2020), <https://www.gao.gov/products/gao-20-576r>



- Partnering on resident rights and other presentations (including, but not limited to: Medicare, Medicaid, voluntary third-party decision-making tools such as Powers of Attorney and Health Care Proxy) before resident and family councils.
- Systems advocacy initiatives such as in-depth reports, development of facility specific ombudsman action plans, legislative advocacy, and resident rights training.

Through our partnership we have been able to increase resident access to legal representation in a variety of areas: involuntary discharge/transfers, discharge planning to return to the community; elder abuse prevention; Powers of Attorney, Health Care Proxies, and Wills; access to needed skilled therapies, and more. Our work in this area relies upon a team of ombudsmen volunteers, most of whom are not attorneys, although we have trained a few retired attorneys through the Attorney Emeritus program. The volunteers are in the nursing homes daily and are the ears and eyes on the ground. They have a direct link to our attorney coordinator who provides support, counseling and training. Issues that require either affirmative or defensive litigation are referred to CELJ attorneys, or attorneys in other programs outside of our catchment area, if necessary.

In partnership with LTCOP, at the State and regional level, CELJ conducts resident rights and issue spotting trainings to ombudsmen to bolster their advocacy and connect residents to CELJ and other legal services organizations for free legal representation. Such trainings, and corresponding legal representation, is essential to ensuring residents are not unlawfully removed from their home or discharged without proper planning and services in place.

### *Partnership Examples*

Involuntary (and unsafe) transfers/discharges from nursing homes remains a major problem in New York State and nationally.<sup>14</sup> For example, there is a continued issue of nursing homes discharging residents who have been admitted to the facility for short-term rehabilitation (often covered by Medicare) to another nursing home because they need “long-term care.” This violates federal and state laws and regulations and is only one example of an involuntary/inappropriate discharge residents face. Residents are discharged to nursing homes across the state (and out of state) for a variety of reasons: non-payment, needs cannot be met, and endangerment. Residents are discharged to the community setting too soon, without adequate services and supports in place, and to hotels, shelters and the Local Departments of Social Services. These unsafe discharges, due to failure of the nursing home to properly care and discharge plan, result in resident harm and set off what we refer to as the “vicious cycle”: hospital → nursing home → discharge location → hospital; health inequities continue.

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<sup>14</sup> See i.e. <https://oig.hhs.gov/oei/reports/OEI-01-18-00250.pdf>.





In 2021-2022, CELJ handled 163 cases involving involuntary discharges/transfers and evictions from nursing homes and adult care facilities.<sup>15</sup> While this issue is ongoing, the CELJ-Reg. 15 LTCOP partnership has been successful in ensuring residents know their rights and have access to legal representation.

In addition to ensuring residents have legal representation and advocacy in involuntary discharge/transfer situations, the partnership has been instrumental in ensuring residents have the information needed to not only make informed decisions about their legal needs (i.e. navigating long-term care services and supports, Medicaid eligibility, etc.) but also have access to free legal representation for Medicare and Medicaid coverage appeals.<sup>16</sup>

For example, one area that was brought to our attention through the partnership, is the situation where skilled therapy services, that should be covered by Medicare, are discontinued incorrectly because the resident is “not showing improvement” or has “plateaued.”<sup>17</sup> Our goal in coordinated and holistic advocacy is to ensure residents receive the skilled therapy (and/or nursing) services, as appropriate, the resident needs to achieve or maintain their greatest well-being based on their individual plan of care. Otherwise, the resident faces many risks and consequences including accumulating a private pay bill, declining in functioning capacity, and remaining in the nursing home permanently when they could have returned to the community.

We address this as follows:

- CELJ as Legal Liaison: conducts trainings to Reg. 15 LTCOP and facility staff on the proper Medicare coverage standards and resident rights.
- LTCOP: works with resident and facility to keep therapy going, or have therapy restarted under different plan of care/goals. To do this, Reg 15. LTCOP brings the focus on the resident and their goals through care planning and discharge planning.
- CELJ as attorney for the resident: provides legal representation for the Medicare appeal (as appropriate) and provides counsel and advice on related issues such as applying for Medicaid, and long-term services and supports in the community.

CELJ also works in partnership with Reg 15. LTCOP in advocating to ensure residents have the opportunity to live in the least restrictive setting of their choosing by addressing legal barriers to returning to the community such as accessible housing and home care.

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<sup>15</sup> Note: not every case made it to the hearing/appeal level, many included counsel and advice on discharge planning, Medicare, Medicaid, and other related legal issues.

<sup>16</sup> Since the formation of our partnership, we have increased the number of cases CELJ has handled pertaining to Medicare and Nursing Homes: 2015: 71 cases; 2016: 160 cases; 2020: 300 cases.

<sup>17</sup> For additional information, see <https://medicareadvocacy.org/medicare-info/improvement-standard/>



### **Nursing Homes are Illegally Suing Family Members for the Debts of Residents**

Legislative changes regarding nursing home debts have brought increased protections for residents and their families. Unfortunately, most litigants who are sued for a debt are unaware of these protections unless they retain counsel to represent them. Nursing Home Reform Act 42 U.S.C. §§ 1395i-3 bans third parties from providing financial guarantees as a condition of admission. In spite of this, many facilities still bring actions against responsible parties; alleging misuse of funds that would have otherwise gone toward payments. For agents serving under a Power of Attorney, facilities will allege a breach of the agent's fiduciary duty without providing any evidence of the breach.

Many third-party litigants are fearful of their loved one losing the care they desperately need when they are served with these lawsuits. They additionally fear that they may have a very large money judgment assessed against them. As a result, many litigants will try to pay the debt or enter long, and expensive payment plans to pay off the debt over time – not knowing that they cannot be held financially responsible.

Having access to counsel at two stages of this process can be instrumental in preventing unnecessary judgments and payments – thus furthering the goals of the legislative changes brought in the Nursing Home Reform Act. First, any individual who is asked to sign an admission agreement, whether it be the resident or a loved one, should have the opportunity to speak with counsel regarding their rights and responsibilities. All too often the admissions process is rushed. Individuals must often sign these agreements in a vestibule or common area, without privacy or adequate time to review the document and ask questions. Individuals are told that if the document is not signed immediately, the individual in need of care will be turned away. Our staff saw one instance during the covid pandemic where a family member had to turn to the last page, hold the document against a wall and sign for their loved one to gain admittance to the facility.

The second instance where counsel can play an essential role is when an individual is served with a lawsuit to collect an alleged debt. This is a frightening time for the individual, whether they be a resident or loved one. Individuals who are served often make arrangements to pay the debt they may not be responsible for, or otherwise fail to respond entirely – resulting in a default judgment and a money award for the facility. Requiring plaintiffs to list legal services agencies and their contact information on their pleadings so that a defendant can receive adequate counsel for making a response can be an essential service that would go to further the spirit of the Nursing Home Reform Act. We have seen the tremendous outcomes that this practice has done in the foreclosure arena, where default rates dropped, and homeownership was maintained in a majority of cases.



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Persons living in nursing homes and other long-term care settings need better access to legal services and this need increases daily as New York State is aging. According to the New York State Office for the Aging, New York has the fourth largest population of older adults in the nation: 4.6 million New Yorkers are 60 years of age or older, and 4.2 million are between the ages of 45 and 59. By 2025, the population of individuals age 60 and over is projected to account for 25% of all people in 33 counties and 30% of all people in 18 counties. The time is at hand for the New York legal services community and the Permanent Commission on Access to Justice to focus on this important issue.

CELJ appreciates your consideration of this important issue and we are available to answer any questions and provide any requested follow-up information.

Karen Nicolson, CEO



## **Cornell University ILR School Buffalo Co-Lab**

**2023 Chief Judge's Hearing on Civil Legal Services**



**Russell Weaver, PhD**

*Research Director, Cornell University ILR School Buffalo Co-Lab*

NYS Permanent Commission on Access to Justice, c/o Jessica Klein, Esq.,  
Sullivan & Cromwell LLP, 125 Broad Street, 32nd Floor, NY, NY 10004-2498

September 8, 2023

Dear Hon. Judge Rowan D. Wilson:

Thank you for convening this public hearing. I am grateful for the opportunity to contribute to the discussion on unmet needs for civil legal services for low-income New Yorkers, especially those who are facing residential evictions.

My name is Russell Weaver, and I am the Director of Research at the Cornell University School of Industrial and Labor Relations Buffalo Co-Lab. My research and teaching programs focus on equitable community change and the development and evaluation of strategies for advancing goals of shared prosperity, ecological sustainability, housing security, and participatory democracy.<sup>1</sup> Within that framework, I regularly engage with questions related to the geographies of and barriers to accessing secure and stable housing. Since the January 2022 expiration of the New York State moratorium on evictions that emerged in response to the COVID-19 pandemic, one of the most urgent clusters of such questions concerns the patterns and volumes of residential evictions and eviction filings across New York State ("NYS"), as well as the capacity to provide legal and other supporting services to households facing eviction.

To begin grappling with these questions, my colleagues and I have drawn on the NYS Unified Court System (UCS) public Landlord-Tenant data products,<sup>2</sup> U.S. Census Bureau data, and recent peer-reviewed research<sup>3</sup> to examine current patterns of eviction filings across NYS and their implications and potential consequences. Among the most prominent findings from our work to date are:

- The annual number of eviction filings during the eleven-month post-moratorium period for 2022 equaled or exceeded pre-pandemic (2019) annual eviction filing counts in 40 of New York's 62 counties.<sup>4</sup>
  - This trend is an upstate phenomenon that does not [yet] apply to New York City (NYC), where tenant protections tend to be stronger compared to the rest of NYS.<sup>5</sup>

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<sup>1</sup> <https://scholar.google.com/citations?user=FDkhZ7MAAAAJ&hl=en>

<sup>2</sup> <https://ww2.nycourts.gov/housing-tab-35946>

<sup>3</sup> Refer to the endnotes and citations in: Weaver, Russell. 2023. *No Shelter, No Safety: How Rising Evictions in New York Could Pose a Risk to Public Safety – And How Eviction Prevention Is Violence Prevention*. Cornell University ILR Buffalo Co-Lab. Available at: <https://blogs.cornell.edu/nysevicitions/no-shelter-no-safety/>

<sup>4</sup> Casey, Michael and Rico, R.J. 2023 (June 16). "Eviction filings are 50% higher than they were pre-pandemic in some cities as rents rise." *The Associated Press*. Available at: <https://apnews.com/article/evictions-homelessness-affordable-housing-landlords-rental-assistance-dc4a03864011334538f82d2f404d2afb>

<sup>5</sup> <https://blogs.cornell.edu/nysevicitions/home/>



- Filings experienced the sharpest increases in relatively rural counties. For example, in Herkimer County, where the most recent, 2017-21 Five-Year U.S. Census American Community Survey (ACS) estimates the population to be 60,596 residents, annual filings more than tripled, from 94 in 2019 to 284 in 2022. In Orleans County (estimated population of 40,588, per the 2017-21 ACS), filings nearly doubled – from 134 in 2019 to 249 in 2022.
- In Erie County, home to New York’s second largest city in Buffalo, there were nearly 1,000 more filings in 2022 compared to the pre-pandemic annual total in 2019.
- Patterns of eviction [filings] in NYS ostensibly contribute to the perpetuation of poverty and inequality by: (1) isolating evictees from social networks, (2) disrupting residential stability, and straining social relationships in communities, all of which works to (3) reduce civic engagement and keep communities from developing the types of norms and internal capacities that are critical for crime prevention and public safety.<sup>6</sup>
  - There is a strong, highly statistically significant, negative relationship between evictions and electoral participation across New York. More specifically, zip codes with the highest rates of eviction filings per 1,000 renter households tend to have among the lowest voter turnout rates in NYS. Alternatively, zip codes with fewer eviction filings per 1,000 renter households tend to have above-average voter turnout.<sup>7</sup>
  - Zip codes with high rates of eviction filings per 1,000 renter households<sup>8</sup> are most often communities of color that are characterized by high poverty rates.<sup>9</sup>
  - Taken together, the prior two observations imply that eviction in NYS may actively be “suppressing the political voice of the poor and blunting the full power of the Black and Hispanic vote.”<sup>10</sup>

These findings point to the increasingly universalizing nature of eviction and eviction filings in NYS: whereas the largest *volumes* of evictions and filings are found in urban spaces, especially downstate communities of color,<sup>11</sup> the largest *rates* – and biggest jumps in rates – of eviction filings per renter household are now situated in upstate, especially rural, counties.<sup>12</sup> Put differently, New York’s eviction problem is one that cuts across the rural-to-urban gradient to harm residents from all backgrounds, living in all types of settings.

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<sup>6</sup> <https://blogs.cornell.edu/nysevicitions/no-shelter-no-safety/>

<sup>7</sup> *Ibid.*

<sup>8</sup> <https://blogs.cornell.edu/nysevicitions/city-and-district-court-filings-by-zip-code/>

<sup>9</sup> <https://blogs.cornell.edu/nysevicitions/make-a-zip-code-factsheet/>

<sup>10</sup> Desmond, M. and Gershenson, C., 2017. “Who gets evicted? Assessing individual, neighborhood, and network factors”. *Social Science Research*, 62: 362-377.

<sup>11</sup> <https://blogs.cornell.edu/nysevicitions/city-and-district-court-filings-by-zip-code/>

<sup>12</sup> <https://blogs.cornell.edu/nysevicitions/home/>



This observation is critical to questions of whether NYS possesses the institutional capacity and labor force needed to support households facing eviction. Because this Court is likely to hear from numerous organizations that are rooted in and serve urban areas, especially NYC, I will use the remainder of my testimony to speak to what I see as red flags and growing concerns in upstate communities (however, nearly all of these concerns are likely to apply downstate as well).

### Undersupply of Legal Assistance

Although NYS maintains an open database of attorney registrations,<sup>13</sup> the dataset does not capture or provide information on a given attorney's specialization (e.g., housing, landlord-tenant relations, etc.) or economic sector (public, for-profit, nonprofit). For that reason, to my knowledge, there is no data source that conveys the precise number of legal professionals who may be available to assist tenants facing eviction in communities across NYS. As a proxy measure, however, the U.S. Census American Community Survey (ACS) Public Use Microdata Samples (PUMS) – which is a representative survey that is weighted to provide population-level estimates of various demographic, socioeconomic, and housing indicators – asks respondents to report their primary occupation and the sector in which they work.<sup>14</sup> Using that information, it is possible to identify the number of New Yorkers who self-report that they are lawyers working in the nonprofit sector.<sup>15</sup> Whereas this number is not by any means a perfect representation of the universe of lawyers who are potentially available to assist tenants facing eviction (e.g., not all nonprofit attorney positions are found in legal aid or housing agencies, and many attorneys at for-profit firms also provide legal services to tenants in eviction cases), it can act as a useful proxy measure for the number of legal aid attorneys in a given location.

According to the PUMS data, there are an estimated 9,260 lawyers in NYS who self-report as working for a nonprofit employer. That number translates to approximately 6.5% of all attorneys living in NYS who are represented in the PUMS dataset. Expressed in per capita terms, there are roughly 4.6 nonprofit lawyers per 10,000 NYS residents (or about 11.2 per 10,000 NYS tenants). However, the pattern of where such lawyers live is highly uneven: 58.7% live in the five counties of NYC and an additional 11.3% live in Nassau and Suffolk Counties, while the other 30.0% live in the remainder of upstate counties. Stated somewhat differently, downstate counties (NYC plus Nassau and Suffolk) contain 70% of the state's nonprofit lawyers, compared to just 57.9% of the state's population. One implication of these data is that **upstate counties contain disproportionately few nonprofit (i.e., legal assistance) attorneys**. This statement is not to say that the downstate supply of nonprofit/legal assistance attorneys is sufficient to meet the area's needs. Rather, it is simply an observation that prospective evictees in many upstate counties – particularly the rural counties that are experiencing doubling or tripling in their annual eviction filings (see above) – might be even less likely than their downstate counterparts to have access to nonprofit legal assistance.

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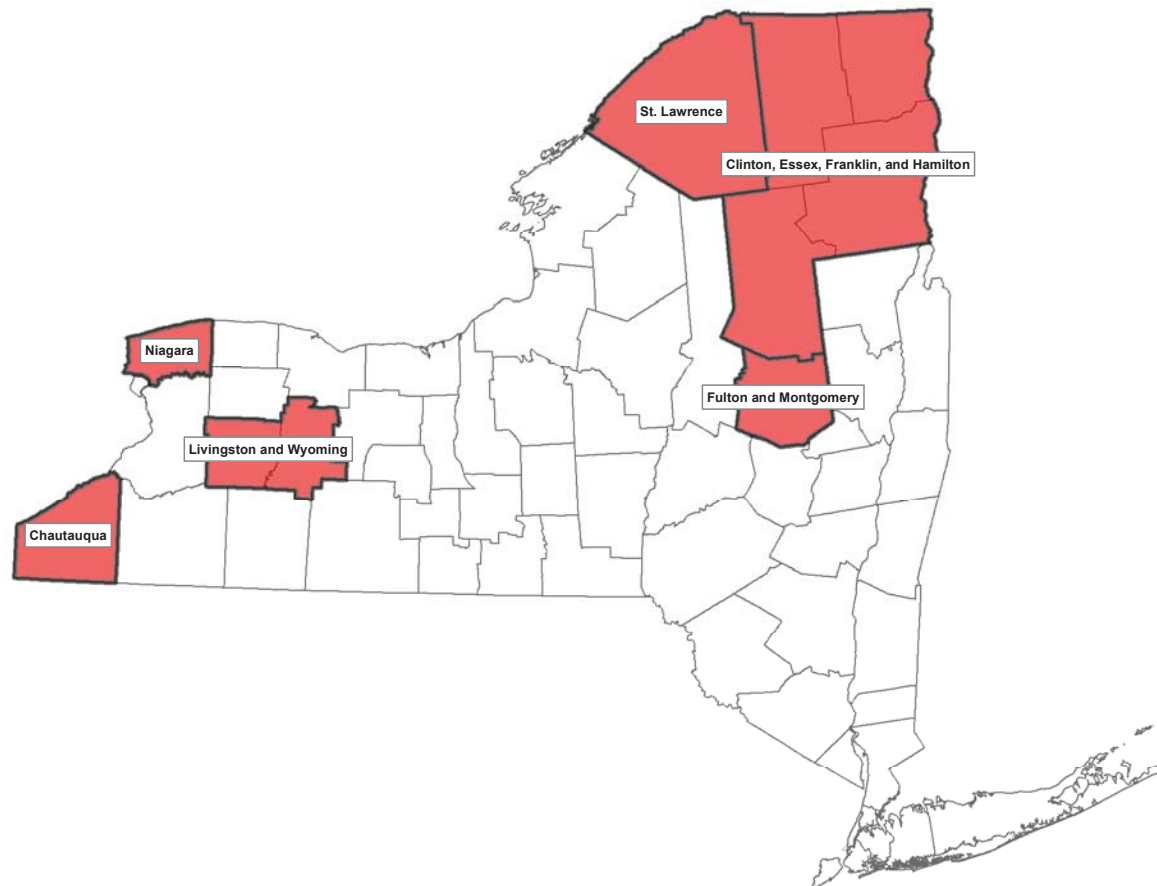
<sup>13</sup> <https://data.ny.gov/Transparency/NYS-Attorney-Registrations/eqw2-r5nb>

<sup>14</sup> The current version of this dataset is the five-year vintage for 2017-21. See: <https://www.census.gov/programs-surveys/acs/microdata/access.html>. All analyses of PUMS data included herein were obtained from IPUMS USA. See: <https://usa.ipums.org/usa/index.shtml>

<sup>15</sup> The occupation code 2100 covers "Lawyers, and judges, magistrates, and other judicial workers", but is used herein as a proxy for attorneys. See: <https://usa.ipums.org/usa/volii/occ2018.shtml>. The variable CLASSWKR in the PUMS dataset captures a worker's sector (public, private-for profit, private-nonprofit, etc.). See: [https://usa.ipums.org/usa-action/variables/CLASSWKR#codes\\_section](https://usa.ipums.org/usa-action/variables/CLASSWKR#codes_section)



Due to the geographic resolution of PUMS data, it is not possible to provide a county-by-county breakdown of the distribution of nonprofit or other public interest lawyers; however, this distribution can be explored at a slightly coarser spatial resolution that leverages geographic relationships between counties and the Public Use Microdata Areas (PUMAs) for which PUMS data are published.<sup>16</sup> For instance, in the following map, **the 11 counties highlighted in red fall in PUMAs for which, according to the 2017-21 PUMS data, no members of the local workforce identify as lawyers who are employed at nonprofit organizations.**<sup>17</sup>



*Map of Public Use Microdata Areas (PUMAs) Where Zero Workforce Members Identify as Lawyers Working in Nonprofit Organizations (Highlighted in Red)*

<sup>16</sup> In higher-population areas like NYC, Erie County, and Monroe County, PUMAs are fully contained within their parent counties. In more rural locations, PUMAs cross county boundaries; however, these boundary crossings generally do not *split* counties. In other words, if a PUMA crosses into more than one county, it typically combines those counties into a single PUMA (example: Fulton and Montgomery Counties are combined into a single PUMA).

<sup>17</sup> Note that the absence of nonprofit lawyers living in these PUMAs does not mean that there are zero public interest attorneys practicing in these areas. The nonprofit Neighborhood Legal Services, for example, has a satellite office in n Niagara Falls, NY (Niagara County). Once again, the PUMS data is not a perfect representation of an area's public interest law workforce – it is a proxy that can be used to identify spaces where there is likely a serious undersupply of public interest lawyers.



### Rising Numbers of Eviction Filings and Eviction Warrants

Collectively, in the 11 counties highlighted in the map on the previous page, for which there appears to be a deficient supply of public interest attorneys, NYS Unified Court System (UCS) data show that both eviction filings and warrants are exceeding pre-pandemic levels. Annual filing totals were up by almost 20% between 2019 and 2020 (from 4,099 pre-pandemic to 4,799 after the statewide eviction moratorium expired); and annual warrants rose by over 25%, from 1,735 in 2019 to 2,172. As of 1 September 2023, there have been 1,465 warrants issued in these 11 counties so far in 2023. Combined with the filings data, these figures speak to a concerning trend: in addition to rising frequencies of both filings and warrants, **warrants as a percentage of total filings has been climbing**. Prior to the pandemic, the number of annual warrants (in 2019) represented 43.3% of annual filings. Following the expiration of the statewide moratorium in 2022, that fraction rose to 45.3% -- and, so far in 2023, it is at 49.4%. Although correlation cannot be interpreted as causation, the seeming absence of nonprofit (e.g., legal assistance) attorneys in these spaces is coinciding with: (1) more eviction filings, (2) more eviction warrants, and (3) a greater share of eviction filings leading to eviction warrants. One implication of these intersecting trends is that more tenants in these areas are facing housing insecurity after their experiences in the civil legal system.

### Warrants as a % of Annual Filings

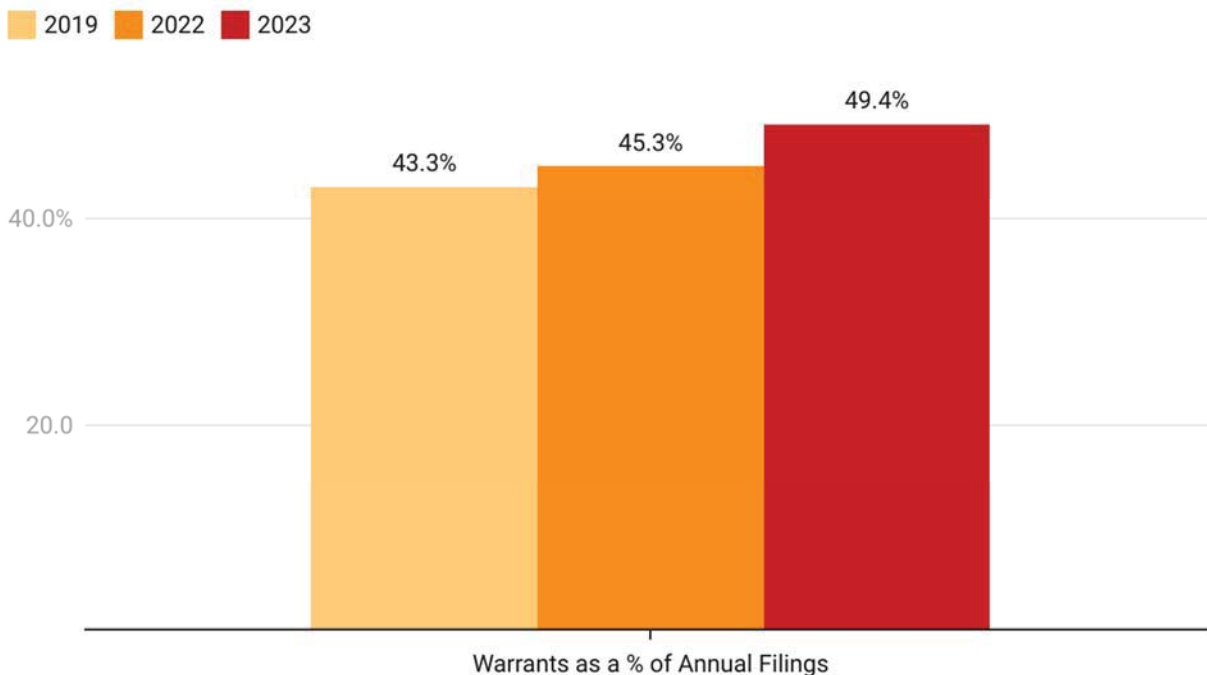


Chart: Russell Weaver, PhD • Source: New York State Unified Court System Eviction Dashboard • Created with Datawrapper

Even though the foregoing focus was on 11 specific counties for which there is evidence of an undersupply of legal assistance, recall that nearly all of upstate – 40 counties in all – experienced increases in annual eviction filings that saw their pre-pandemic (2019) levels eclipsed by post-





moratorium (2022) levels. Further, recall that, despite being home to roughly 42% of the NYS population, upstate counties (all counties outside of NYC and Long Island) contain just 30% of New York's lawyers who self-identify as working for nonprofit organizations (a proxy for legal assistance attorneys).

### **Incomplete and Missing Data**

Whereas the New York State (NYS) Unified Court System (UCS) publishes both an interactive eviction dashboard and annual landlord-tenant data extracts,<sup>18</sup> these datasets and accompanying tools do not presently allow researchers to generate a comprehensive picture of the populations and spaces that are most impacted by evictions. The data extracts, in which each record represents an individual eviction filing case and with which researchers can identify the zip code of the property in question, only cover city and district courts. Town and village court records are not included – presumably because these smaller courts do not input their data into the same system as their city and district court counterparts. Further, the data extracts do not offer any information on the number of persons facing eviction, nor, it follows, do the datasets tell researchers and policymakers *who* is facing eviction (e.g., number of children under 18, number of adults age 65 or older, breakdown of persons by race-ethnicity and/or disability status, etc.). These information gaps add to and compound existing capacity shortages (see above) and related difficulties in designing and implementing both short-term and long-term/structural policy solutions.

### **Closing Remarks**

Despite speaking to a mere sliver of the unmet needs for civil legal services for low-income New Yorkers, especially those who have been evicted or are at risk of eviction, it is my hope that this testimony called the Court's attention to the following three main points:

- The dam that held evictions at bay through the early portion of the COVID-19 pandemic has been dismantled, leading to floods of eviction filings and warrants throughout New York State. The largest surges in these phenomena have been observed in upstate, especially rural, areas that have had relatively little past experience with mass evictions. Many, if not most, such counties appear to lack the legal assistance infrastructure and workforce needed to support the waves of new tenants suddenly facing housing insecurity.
- That lack of capacity might be actively contributing to greater housing insecurity across NYS. In 11 counties for which U.S. Census data point to a virtual absence of robust nonprofit legal assistance infrastructure, eviction filings and warrants are both exceeding pre-pandemic levels, and a rising percentage of filings are resulting in evictions. Without substantive intervention, it is difficult to imagine how these trends can be slowed, let alone reversed.
- Data that would allow researchers and policymakers to craft more locally-tuned, context sensitive, and culturally competent policy solutions to eviction and related housing crises are not currently available. Some such data, like the number of people facing eviction and their demographic characteristics, do not appear to be part of existing data collection protocols – suggesting that these data do not exist anywhere in state government. Other such data, like

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<sup>18</sup> <https://ww2.nycourts.gov/housing-tab-35946>



town and village court filings and warrants, are not inputted into the same channels used by city and district courts – meaning that these data get omitted from statewide data extracts and tools built on those extracts.

Clearly, these challenges do not come with simple solutions. The shortage of public interest attorneys, for instance, is a longstanding problem that goes well beyond New York State. National organizations like Teach For America<sup>19</sup> in the field of education or AmeriCorps VISTA<sup>20</sup> in the fields of community economic development and poverty alleviation offer useful models on which to base a new, NYS-specific program for developing and deploying legal assistance attorneys across the state (especially in ostensible legal assistance deserts like the counties highlighted in the map above). However, these are longstanding models that were developed and refined over decades, and which receive significant public funding. For these and many other reasons, such institutions cannot be established overnight to solve New York's immediate challenges. Thus, short-term changes – including steering more resources to existing organizations that provide direct service support to potential and actual evictees – are urgently needed as the State works toward longer-term, *systems-level* change and institution-building. Changing and updating data collection protocols to capture – and to provide public access to – *complete, statewide* information on who is facing eviction or has been evicted, where such persons live, whether they have (had) access to legal representation, and the nature of that representation (e.g., privately hired counsel, nonprofit/legal aid counsel, etc.) will be critical to these efforts going forward.

Thank you for your time and for convening this hearing. I look forward to following the results.

**/s/ Russell Weaver**

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<sup>19</sup> <https://www.teachforamerica.org/what-we-do/our-approach>

<sup>20</sup> <https://americorps.gov/serve/americorps/americorps-vista>



# **Legal Services Access Alliance**

**2023 Chief Judge's Hearing on Civil Legal Services**

**THE CHIEF JUDGE'S 2023 HEARING ON  
CIVIL LEGAL SERVICES IN NEW YORK**

MONDAY, SEPTEMBER 18, 2023

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COMMENTS SUBMITTED BY:



237 MAIN STREET, SUITE 400  
BUFFALO, NY 14203

Thank you for the opportunity to submit comments at this important hearing to examine the continuing unmet civil legal services needs in New York State.

The Legal Services Access Alliance represents the six Legal Services Corporation (LSC) funded not-for-profit law firms outside New York City that are the primary providers of civil legal services for tenants in eviction proceedings in many parts of the state. With the assistance of federal and state eviction rental legal assistance program funds, and through our collective efforts, and our subcontracting partners, we have handled over 20,000 cases to maintain housing stability throughout New York State since October 2021.

While these resources were initially provided to assist with the COVID-19 emergency relief efforts, the continued need for eviction legal services has not diminished since that time. Moreover, as illustrated in LSC's recent report on [the justice gap](#), an estimated 92% of people are not able to access the legal representation they need to help support them through their legal struggles. This report also demonstrated the incredible value and impact that civil legal services has when an individual can connect to these services, and 80% of people are then able to remain in their homes when they have the appropriate legal representation.

Civil legal services funding provides support for a myriad of programs throughout New York, helping people access basic necessities such as health care, housing, government and disability benefits, employment, and educational services, to name only a few. Significant investments in civil legal services funding is needed at the federal and state level to close the justice gap, and to provide equitable and competitive salaries to recruit and retain the necessary attorneys and legal support staff to provide these vital services.

The Legal Services Access Alliance members prioritize representation in underserved areas including City, Town and Village Courts in our rural counties, and all other underserved areas, and has helped to establish a high standard of representation for tenant rights in eviction proceedings. However, despite our best efforts we know that tenants in New York still struggle to find representation, with many tenants unrepresented and appearing in justice courts with non-attorneys presiding.

Through our eviction work, the Legal Services Access Alliance has embarked on several significant projects that will help to create a more solid foundation and model for future civil legal services programs, investment, and expansion efforts, such as providing right to counsel in New York.

Some of these exciting projects include:

- Applying for an LSC Technology Initiative Grant to develop a statewide online intake portal to ease access to representation for tenants throughout New York;
- Creating a toll-free hotline that tenants can call to be directed to the appropriate local legal services provider in their area; and
- Strengthening partnerships with local law schools to recruit a diverse work force and create a pipeline of future civil legal service lawyers and leaders.

In closing, the Alliance is grateful for the opportunity to provide comments on this issue and looks forward to working with the Chief Judge, the NYS Permanent Commission on Access to Justice, and all our civil legal services partners to effectuate the change needed to provide more meaningful access to civil legal services throughout the State.

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***For additional information on the Alliance and their member programs, please feel free to contact:***

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The members of the Legal Services Access Alliance include:

- Neighborhood Legal Services, Inc. (NLS) has 90+ staff and offices in Batavia, Buffalo, and Niagara Falls. Their service area includes 5 counties in Western New York. NLS subcontracts with the Center for Elder Law & Justice, Erie County Bar Association Volunteer Lawyers Project, Legal Aid Bureau of Buffalo and the Western New York Law Center on this program
- Legal Assistance of Western NY (LawNY) has over 170 staff and offices in Geneva, Elmira, Bath, Ithaca, Jamestown, Olean and Rochester, and serves 14 counties with several subcontractors that include JustCause, Legal Aid of Rochester, Cornell Law School and Western New York Law Center.
- Legal Aid Society of Mid New York (LASMNY) has 79 staff and offices in Utica, Syracuse, Binghamton, Watertown, Oswego, Oneonta, and Cooperstown. Their service area covers 13 counties in central New York.
- Legal Services of Central New York (LSCNY) has 61 staff with offices in Syracuse, Utica, Binghamton, Cortland, Oneonta, Watertown, and Oswego. Their service area covers a 13-county region and overlaps with LASMNY. LSCNY subcontracts with LASMNY to assist in providing eviction legal services in this region.
- Legal Aid Society of Northeastern New York (LASNNY) has 103 staff and offices in Canton, Plattsburgh, Saratoga Springs, Amsterdam, Gloversville and Albany. Their service area covers 16 counties and the St. Regis Indian Reservation. LASNNY subcontracts with the Albany Law School Justice Center on this program.
- Legal Services of the Hudson Valley (LSHV) has 180 staff and offices in Yonkers, Mount Vernon, White Plains, Peekskill, Poughkeepsie, Kingston, Nanuet, Newburgh, Goshen, and Monticello. LSHV partners with Hudson Valley Justice Center on this program.
- Nassau Suffolk Law Services (NSLS) has over 140 staff and offices in Hempstead, Islandia, and Riverhead and their service area spans all Long Island. NSLS partners with Empire Justice Center on this initiative.

## **Nassau Suffolk Law Services Committee Inc.**



## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK

MONDAY, SEPTEMBER 18, 2023

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COMMENTS SUBMITTED BY:  
**Nassau Suffolk Law Services Committee Inc.**  
Victoria Osk, Esq.

Thank you for the opportunity to provide this testimony on our work over the last year.

NSLS is the Legal Services Corporation (LSC) grantee for Nassau and Suffolk County and largest provider of free civil legal services on Long Island. We have three offices and over 140 staff members. We appear in civil matters in every court on Long Island including city (Long Beach and Glen Cove), district and justice courts (in the rural east end of the island).

As we continue to build back from the pandemic, we have worked hard to restructure our service delivery models to maximize our contact with the community. With the addition of NYS funding in eviction matters provided to LSC organizations in Rest of State (ROS), we have been able to strengthen our impact in landlord/tenant court by increasing the presence of staff attorneys in those courts. We are doing our best to establish the framework for an eventual Right to Counsel (RTC) in eviction matters in NYS. Although our current level of resources is not sufficient to meet that need, our hope is for the eventual passage of RTC, and to be ready to provide services in a meaningful way as soon as it goes into effect.

The increase in Eviction Defense/Housing Stability funding has allowed NSLS to re-allocate resources such as the Judiciary Civil Legal Service funding to other areas of incredible need, like consumer debt matters. NSLS is working with the Nassau County District Court to provide in court services to defendants in consumer debt matters, where defaults have been as high as 85%. The court has graciously agreed to calendar Order to Show Cause motions completed by defendants on dates that our staff is present, so that we may evaluate and represent on cases when appropriate. By more directly connecting with the community through the courts our intake in these matters have increased by over 400%.

We are also working hard with our local bar associations to maintain a presence in our local libraries by expanding our Community Legal Help Project to Nassau County. Through that project, we provide free consultations in family law, immigration and other legal matters not typically handled by our organization or other legal service providers.

Although we have experienced growth with the increase of Eviction Defense/Housing Stability funding, NSLS faces the same challenges as legal services providers around the state. We do not have enough resources to close the justice gap. Additionally, pay parity between civil legal services attorney and other public interest attorneys is large. We are generally the lowest paid public servants in any community, ranked last after state attorneys, county attorneys, district attorneys and public defenders. In order to maintain high quality legal service standards, we need to be able to offer pay and benefits that can attract and retain talent. Towards that end, we humbly request increased funding to be more competitive and able to recruit necessary staff to provide needed civil legal services.

Thank you for the time to consider our testimony and we would be happy to answer any follow up questions via phone or email at 631-232-2400 ext. 3329 or [vosk@nsls.legal](mailto:vosk@nsls.legal).



# **National Consumer Law Center**

**2023 Chief Judge's Hearing on Civil Legal Services**



**Written Testimony of Anna Anderson  
Staff Attorney, National Consumer Law Center**

**Before the Chief Judge of the Court of Appeals and the State of New York  
*2023 Hearing on Civil Legal Services in New York***

**September 13, 2023**

On behalf of the National Consumer Law Center,<sup>1</sup> I thank the Chief Judge of the Court of Appeals and the State of New York, Hon. Rowan D. Wilson, for inviting us to provide written testimony regarding the state of nursing home debt collection in New York. I offer the testimony here in the hopes that the Court will continue to address the unmet civil legal services needs in New York and to provide resources necessary to meet those needs. This testimony also expands on previous comments made to the Permanent Commission on Access to Justice's Statewide Stakeholders Meeting in June 2023.

**I. The Larger Medical Debt Crisis**

The issue of nursing home collection is part of a broader medical debt crisis that has only worsened as a result of the pandemic. Pre-pandemic, people in the United States owed at least \$195 billion in medical debt.<sup>2</sup> In 2022, the burden of that medical debt fell on 100 million

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<sup>1</sup> The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of twenty-one practice treatises and annual supplements on consumer credit laws. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted training for thousands of legal services and private attorneys on the law and consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC's attorneys have been closely involved with the enactment of all federal laws affecting consumer credit since the 1970s, and regularly provide extensive comments to the federal and state agencies on the regulations under these laws. Anna Anderson, staff attorney at NCLC, also chairs a national coalition of attorneys and advocates working across the country to address nursing home debt collection issues.

<sup>2</sup> Matthew Rae, Gary Claxton, Krutika Amin, Emma Wager, Jared Ortaliza, and Cynthia Cox, KFF, *The Burden of Medical Debt in the United States* (March 2022), available at <https://www.kff.org/health-costs/issue-brief/the-burden-of-medical-debt-in-the-united-states/>.

people.<sup>3</sup> Despite near universal coverage by Medicare, gaps in that coverage caused 22% of adults 65 and over to report that they currently had medical debt in 2022 and an additional 15% reported that they have had medical debt in the past 5 years.<sup>4</sup> The burden of medical debt falls even more heavily on Black older adults, who are 2.6 times more likely to carry medical debt than older white adults.<sup>5</sup> These racial disparities are present in medical debt collection actions, as well. For example, while the average rate of people facing medical debt collections in all of New York is 8 %, the rate for communities of color in Onondaga County, however, is much higher—at 41 %.<sup>6</sup>

Even people with robust health insurance coverage deal with medical debt and collection, as insurance and provider billing departments too often fail to help patients adequately resolve their bills before they are turned over to aggressive collection agencies. Consumers are also facing increasingly complex medical billing systems. It is not uncommon to receive inaccurate or erroneous bills, and medical providers and insurance companies devote too few resources to prevent, identify, and correct billing mistakes. Older adults in particular face an increased risk of errors and inaccurate medical bills because they are more likely to have chronic conditions and to have multiple insurance plans and often have difficulty navigating complex billing systems to correct inaccurate bills.<sup>7</sup>

The lack of transparency in medical costs also exacerbates this problem. Most people cannot plan and shop around for better rates when seeking medical help, as services are often sought during a time of crisis or emergency. Even when consumers attempt to get pre-approvals and a list of charges in advance, those numbers and approvals frequently do not match the bills that are issued. In order to cope with unexpected medical expenses, some consumers may turn to risky

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<sup>3</sup>Noam N. Levey, KFF Health News, *Diagnosis Debt: 100 Million People in America Are Saddled With Health Care Debt* (June 2022), *available at* <https://kffhealthnews.org/news/article/diagnosis-debt-investigation-100-million-americans-hidden-medical-debt/>.

<sup>4</sup>Lunna Lopes, Audrey Kearney, Alex Montero, Liz Hamel, and Mollyann Brodie, KFF, *Health Care Debt In The U.S.: The Broad Consequences Of Medical And Dental Bills* (June 2022), *available at* <https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/>.

<sup>5</sup>Berneta L. Haynes, National Consumer Law Center, *The Racial Health and Wealth Gap Impact of Medical Debt on Black Families* (March 2022), *available at* <https://www.nclc.org/wp-content/uploads/2022/09/RacialHealth-Rpt-2022.pdf>.

<sup>6</sup>Amanda Dunker, Elisabeth Ryden Benjamin, Community Service Society of New York, *Discharged into Debt: New York's Nonprofit Hospitals are Suing Patients* (March 2020), *available at* <https://www.cssny.org/publications/entry/discharged-into-debt>.

<sup>7</sup>Consumer Fin. Prot. Bureau, *Issue Spotlight: Medical Billing and Collections Among Older Americans* (May 2023), *available at* <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-medical-billing-and-collections-among-older-americans/full-report>.

medical credit cards<sup>8</sup> or medical loans<sup>9</sup> to pay their medical bills—often at high interest rates or with deceptive terms like deferred interest.

Despite programs meant to protect low-income patients from medical debt, many fall through the cracks and wind up in debt. In New York, all hospitals are nonprofits subject to the Public Health Law.<sup>10</sup> These hospitals receive over \$1 billion each year to provide financial assistance to patients who cannot afford medical care.<sup>11</sup> Yet alarmingly, there is a significant disconnect here, and many patients who are eligible for financial assistance never receive or are even made aware of the fact that this help is available, leading to substantial debts they cannot pay back.

Medical debt can have cascading life consequences. Many debt collectors report medical debts to credit bureaus. Despite recent reforms,<sup>12</sup> medical debt on a credit report can make it harder to obtain housing, employment, or credit, even before factoring in additional financial strains caused by wage garnishments and bank account freezes.

Importantly, medical debt collection actions not only have financial consequences, but also have a significant impact on the health and well-being of New Yorkers. A high percentage of those with medical debt report regularly skipping doctors' visits and prescription refills for fear of getting into more debt, even if they have insurance coverage. Delaying and avoiding healthcare not only leads to worse health outcomes but also to increased healthcare costs down the line.<sup>13</sup>

## **II. Medical Debt Collection in New York**

Medical debt collection involves a wide variety of issues, including hospital bills, out-of-network services such as ambulance and anesthesiologists, nursing home debt, and costs for laboratory work. Regardless of whether the consumer owes the medical provider, a credit card company, or another lender, medical bills may end up being placed for collection with private debt collection

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<sup>8</sup>April Kuehnhoff, Chi Chi Wu, National Consumer Law Center, Health Care Plastic: The Risks of Medical Credit Cards (April 2023), available at [https://www.nclc.org/wp-content/uploads/2023/04/Report\\_Health-Care-Plastic.pdf](https://www.nclc.org/wp-content/uploads/2023/04/Report_Health-Care-Plastic.pdf).

<sup>9</sup>Consumer Fin. Prot. Bureau, Medical Credit Cards and Financing Plans (May 2023), available at [https://files.consumerfinance.gov/f/documents/cfpb\\_medical-credit-cards-and-financing-plans\\_2023-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_medical-credit-cards-and-financing-plans_2023-05.pdf)

<sup>10</sup>Amanda Dunker, Elisabeth Ryden Benjamin, Community Service Society of New York, Discharged into Debt: New York's Nonprofit Hospitals are Suing Patients (March 2020), available at <https://www.cssny.org/publications/entry/discharged-into-debt>.

<sup>11</sup>*Id.*

<sup>12</sup>The Big Three credit bureaus have voluntarily stopped reporting medical debts under \$500 as of the Spring of this year. Last year, the credit bureaus stopped reporting paid medical debts. They also agreed to wait one year before reporting medical debts. New York State legislation to prevent medical debt from being included on credit reports, The Fair Medical Debt Reporting Act, passed the New York State legislature in May 2023 and is awaiting signature from the Governor.

<sup>13</sup>Berneta L. Haynes, National Consumer Law Center, The Racial Health and Wealth Gap Impact of Medical Debt on Black Families (March 2022), available at <https://www.nclc.org/wp-content/uploads/2022/09/RacialHealth-Rpt-2022.pdf>.

agencies. As a result of all of the compounding factors of the medical debt crisis, there has been a 64% increase in medical debt collection lawsuits in NY in recent years.<sup>14</sup>

Between 2015 and 2020, hospitals in New York sued over 53,000 people for medical debt.<sup>15</sup> The average lawsuit was for just \$1,000, and the default rate in these cases is a shocking 98%.<sup>16</sup> Despite hospitals receiving State funds to provide assistance to patients, consumers are still being harassed, sued, and forced into costly judgments.

Medical debt cases are quite different from other consumer credit cases, in that the consumer is almost never aware of the charges they will incur when they are first seen by the medical provider and agree to be responsible for the charges. Consumers are also almost never represented by an attorney in these cases, which means that important protections that were passed recently in New York—such as heightened pleading requirements, key statute of limitations provisions, limitations on judgment interest rates, and prohibitions on judgment liens and wage garnishments—are not being enforced.<sup>17</sup>

Consumers with valid defenses in these cases but who also lack representation understandably get discouraged by the hurdles of litigation and often give up. Furthermore, pleading requirement standards are not enough to ensure that consumers are protected in settlement and mediation programs. While diversion programs can be helpful in some access to justice initiatives, they are often harmful in consumer cases, where mediators facing a high volume of cases pressure consumers into settling cases without first ensuring that debt collectors have met their burdens. When only the debt collectors have legal representation in these cases, the power imbalance is too severe. I have seen in my work with legal aid groups how *pro se* consumers are pressured into settling collection cases that are procedurally and factually deficient. When consumers settle these cases with the little funds and resources they have, it impacts their ability to afford housing and ongoing medical care.

### **III. Illegal Nursing Home Debt Collection in New York**

The medical debt crisis also impacts caregivers, many of whom are lower income and older Americans. Alarming, we have seen an uptick in caregivers being pursued in collection

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<sup>14</sup>Amanda Dunker, Elisabeth Ryden Benjamin, Community Service Society of New York, Discharged into Debt: New York's Nonprofit Hospitals are Suing Patients (March 2020), *available at* <https://www.cssny.org/publications/entry/discharged-into-debt>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> NYCPLR § 213-d; NYCPLR § 5004; NYCPLR § 5201(b); NYCPLR §5231.

lawsuits for their loved ones' nursing home bills.<sup>18</sup> These cases have increased nationally in the wake of rising long-term care costs that have only been compounded since the COVID-19 public health emergency.

The Nursing Home Reform Act, a federal law, prohibits third party guarantees of payment and co-signers in nursing home admission agreements.<sup>19</sup> While the Nursing Home Reform Act allows nursing homes to require a resident's representative with legal access to a resident's resources to agree to provide payment from the resident's resources, the representative cannot be held personally liable to pay the resident's debt.<sup>20</sup> Despite this clear prohibition on holding third parties personally liable for these debts, nursing homes and collection lawyers have been able to obtain settlements and judgments against caregivers that can total hundreds of thousands of dollars.

Nursing home collection lawyers routinely file baseless complaints against caregivers and other third parties, using the threat of litigation and potential judgment to pressure families and caregivers into settling these debts out of their own funds, even while knowing that the claims are at best precarious and at worst illegal and deceptive. These complaints often consist of boilerplate language that has been copied and pasted over and over again with only bare recitations of legal claims and statutes, and no factual support. Third parties who are sued for these nursing home bills often face baseless allegations of fraudulent conveyance, conversion, and unjust enrichment, in addition to breach of contract claims that illegally seek to impose personal liability on them.

To a layperson and a caregiver who has been served with one of these lawsuits, the effect can be terrifying. Many third parties settle baseless lawsuits for fear that they will lose their own homes if the case goes on, or worse that their loved ones will be kicked out of the nursing home. In their own words, caregivers have explained to the CFPB:

- “I ended up getting sued for my Dad's nursing home bill, even with the [multiple] insurances... I signed [a settlement agreement] under duress because of a threat of garnishment for the entire amount.”<sup>21</sup>

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<sup>18</sup>Noam N. Levey, NPR, Nursing Homes Are Suing Friends and Family to Collect on Patient Bills (July 2022), available at <https://www.npr.org/sections/health-shots/2022/07/28/1113134049/nursing-homes-are-suing-friends-and-family-to-collect-on-patients-bills>.

<sup>19</sup>42 U.S.C. § 1395i-3(c)(5)(A)(ii).

<sup>20</sup> *Id.*

<sup>21</sup>Consumer Fin. Prot. Bureau, Issue Spotlight: Nursing Home Collection (September 2022), available at <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-nursing-home-debt-collection/full-report/>.

- “I thought, I won’t be able to afford my mortgage – I am definitely going to lose my house. I could face a garnishment of my paycheck and be forced to live on a reduced income when money was already tight to begin with. What will I tell my kids? What does it mean, to have this kind of judgment against you, how will that impact the rest of my life?”<sup>22</sup>
- “My Mom passed away on October 3, 2020. It was just two days before ... I had received mail which said that I was personally being sued by the nursing home for close to \$80,000. I never had time to grieve. I kept so much inside; the stress was unbearable.”<sup>23</sup>

In New York, thousands of these cases have been filed—many lacking any factual or legal support. For example, in Monroe County, 24 nursing homes filed 238 debt collection cases from 2018 to 2021 seeking almost \$7.6 million.<sup>24</sup> In nearly two-thirds of those cases, a friend, relative, or other caregiver was sued for the resident’s bills.<sup>25</sup> Due to a lack of legal assistance, as well as a lack of familiarity with these issues in the courts, the overwhelming majority of these cases end with costly settlements or judgments.

While caregivers need to be protected and know their rights before they sign these concerning nursing home contracts and admissions agreements,<sup>26</sup> New York State can also step up to help ensure that unlawful collection practices are not allowed to continue. There are a number of steps that the courts can take to ensure improper judgments are not entered,<sup>27</sup> in addition to legislative measures to stop these cases from being brought in the first place.<sup>28</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup>Noam N. Levey, NPR, Nursing Homes Are Suing Friends and Family to Collect on Patient Bills (July 2022), available at <https://www.npr.org/sections/health-shots/2022/07/28/1113134049/nursing-homes-are-suing-friends-and-family-to-collect-on-patients-bills>.

<sup>25</sup> *Id.*

<sup>26</sup>National Consumer Law Center, Justice in Aging, Can a Nursing Home Force a Resident’s Family and Friends to Pay the Bill (September 2023), available at <https://www.nclc.org/resources/can-a-nursing-home-force-residents-family-and-friends-to-pay-the-bill/>. See also, Consumer Fin. Prot. Bureau, Know Your Rights: Caregivers and Nursing Home Debt (November 2022), available at <https://www.consumerfinance.gov/consumer-tools/educator-tools/resources-for-older-adults/know-your-rights-caregivers-and-nursing-home-debt/>.

<sup>27</sup>National Center for State Courts, Tiny Chat Companion Piece: Nursing Home Debt (September 2023), available at [https://www.ncsc.org/\\_data/assets/pdf\\_file/0024/94038/CFPB-TC-Companion-Sheet-1.pdf](https://www.ncsc.org/_data/assets/pdf_file/0024/94038/CFPB-TC-Companion-Sheet-1.pdf) [https://www.ncsc.org/newsroom/tiny-chats?utm\\_campaign=349411\\_June%2016%202023&utm\\_medium=email&utm\\_source=dotdigital&dm\\_t=0.0.0.0.0](https://www.ncsc.org/newsroom/tiny-chats?utm_campaign=349411_June%2016%202023&utm_medium=email&utm_source=dotdigital&dm_t=0.0.0.0.0).

<sup>28</sup>Natasha Khwaja, Pew Charitable Trusts, How State Courts Can Help Address America’s Medical Debt Problem (July 2023), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/07/19/how-state-courts-can-help-address-americas-medical-debt-problem>.

Without further action from New York State, improper and unlawful nursing home collection actions will continue, forcing caregivers to make difficult choices between helping their elderly loved ones get the care they need in their final years or facing their own financial ruin.<sup>29</sup>

#### **IV. Conclusion**

Additional attention and focus on medical debt, and nursing home debt in particular, is needed in New York. This includes funding for legal services attorneys and better enforcement of existing protections in these cases. Until steps are taken to address these gaps in our justice system, the outcomes for low-income and vulnerable New Yorkers will continue to languish, resulting in significant financial and medical harm that will burden the courts and the State at large.

Thank you for the opportunity to provide testimony on this important issue.

Sincerely,

Anna Anderson  
Staff Attorney  
National Consumer Law Center

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<sup>29</sup>Consumer Fin. Prot. Bureau, Issue Spotlight: Nursing Home Collection (September 2022), *available at* <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-nursing-home-debt-collection/full-report/>.



# **New York City Bar Association**

**2023 Chief Judge's Hearing on Civil Legal Services**



**WRITTEN TESTIMONY  
SUBMITTED FOR THE CHIEF JUDGE’S STATEWIDE 2023  
CIVIL LEGAL SERVICES HEARING**

**NEW YORK CITY BAR ASSOCIATION  
BY SUSAN J. KOHLMANN, PRESIDENT**

**SEPTEMBER 8, 2023  
COURT OF APPEALS  
ALBANY, N.Y.**

The New York City Bar Association (“City Bar”) appreciates the opportunity to submit testimony today and thanks Chief Judge Wilson, Chief Administrative Judge Zayas, the Presiding Justices, and all our court leaders for their steadfast support for civil legal services. Our testimony will be in three parts: first, a reflection on why robust civil legal services funding remains critically important for New York; second, a discussion of why safe and affordable shelter and preserving socio-economically diverse communities are essential to access to justice; and third, an invitation to consider how the civil legal services ecosystem has a unique, post-pandemic role to play in addressing the digital divide.

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## **I. ROBUST CIVIL LEGAL SERVICES FUNDING REMAINS CRITICALLY IMPORTANT**

The City Bar sees firsthand how important it is that civil legal services and access to justice programs continue receiving robust funding. Many City Bar committees work on substantive areas of law impacting New York's poorest and otherwise most vulnerable residents; the City Bar's policy arm advocates for law reform to increase access to justice; and the staff of the City Bar Justice Center ("Justice Center"), the City Bar's civil legal services affiliate, leverages the pro bono time and talent of the private bar to provide free, high quality civil legal services that each year benefit over 25,000 New Yorkers struggling with poverty and other forms of socioeconomic vulnerability and exclusion. A member of the New York Legal Services Coalition, the Justice Center is among legal services organizations benefiting from the recent inclusion of a COLA adjustment in Judiciary Civil Legal Services funding, and shares the Coalition's concerns regarding pay parity that is essential to improve hiring and retention of the talent necessary to keep civil legal services programming flourishing for New Yorkers in need.

Civil legal services funding remains critically important, if not lifesaving, for New Yorkers of low income who cannot afford counsel. It translates into an individual or family moving from a homeless shelter to their own home, or avoiding eviction or foreclosure to stay in their home; accessing public benefits, medical care, or other vital life essentials; or, in the case of the burgeoning community of asylum-seekers arriving in New York, starting a new life away from the threat of persecution. Each victory in matters like these can and should make us proud. At the same time, civil legal services funding brings great value to New York's economy. By now, the civil legal services community is well familiar with the 2019 report of the Permanent Commission on Access to Justice detailing an analysis conducted by Neil Steinkamp finding that Judiciary Civil Legal Services funding resulted in a return of \$10 to our state's economy for every \$1 of funding.<sup>1</sup> Given this context, and the goal of extending and deepening New York's post-pandemic recovery, maintaining if not further increasing each dollar of that funding remains imperative. That is especially true as the safety net effects of pandemic assistance funding and the eviction and foreclosure moratoriums fade, and providers like the Justice Center see a rise in appeals for free civil legal assistance.

Indeed, leading studies by the Legal Services Corporation and by the Poverty Tracker Research Group at Columbia University and Robin Hood continue highlighting the persistent and widespread forms of poverty and disadvantage that far too many of our neighbors endure, particularly both during and then coming out of the pandemic. Both studies also not only demonstrate the consequences of economic insecurity on access to justice, but also make clear that these problems disproportionately impact people and communities of color.<sup>2</sup>

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<sup>1</sup> Permanent Commission on Access to Justice, Report to the Chief Judge of the State of New York at 10 (Nov. 2019), [https://www.nycourts.gov/LegacyPDFS/19\\_ATJ-Comission\\_Report.pdf](https://www.nycourts.gov/LegacyPDFS/19_ATJ-Comission_Report.pdf). (All websites last visited Sept. 8, 2023.)

<sup>2</sup> See generally, Legal Services Corporation, The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans (April 2022) (hereinafter, LSC Justice Gap Report), <https://lsc-live.app.box.com/s/xl2v2uraiotbbzrhwtjlgioemp3myz1>; and Poverty Tracker Research Group at Columbia University and Robin Hood, The State of Poverty and Disadvantage in New York City, Vol. 5 (Winter 2023)

- **LSC’s April 2022 Justice Gap Report**, the fourth in a series and the first since 2017 (and, therefore, the first since the pandemic), found that an estimated 15% of U.S. households were below 125% of the Federal Poverty Line (FPL) in 2022.<sup>3</sup> Additionally, an estimated 74% of low-income individuals experienced more than one civil legal issue last year – and 39% experienced more than five such issues – with the most common problems reported being consumer issues (50%), health-related problems (39%), housing instability (33%), and custody disputes (26%).<sup>4</sup> Yet individuals at 125% or below FPL did not receive assistance for 92% of legal problems having a substantial impact, compared to 86% of those between 125% and 400% of the FPL and 78% of those at 400% or above the FPL.<sup>5</sup> And in what should be of concern to all invested in increasing access to justice, LSC’s findings that 74% of low-income households experienced at least one civil legal problem in the previous year, and that 92% of the civil legal problems of low-income Americans did not receive any or enough legal help, represented an increase over the findings for these categories in its prior, 2017 report, which had found 71% of low-income households having experienced at least one civil legal problem in the previous year, and 86% of low-income Americans’ civil legal problems insufficiently assisted.<sup>6</sup> While the increase can be attributed to a number of factors, it is unsurprising that the 2022 report included a finding that 33% of low-income Americans traced at least one civil legal problem to the pandemic.<sup>7</sup>
- **Statistics from the Columbia-Robin Hood Poverty Tracker Report** document these issues even closer to home, finding that poverty rates in New York City were double the national average for adults (18% vs. 9%), and triple the national average for children (15% vs. 5%) – although, in a glimmer of hope, the report also noted that this was the lowest annual child poverty rate since the tracker began collecting child poverty data in 2017, and that stable overall rates of poverty between 2019 and 2021 – amidst the pandemic – “are a testament to the efficacy of historic, though temporary, policy interventions.”<sup>8</sup> The Poverty Tracker Report also found that poverty is unequally distributed across demographic groups. Latino New Yorker poverty rates were twice that of white New Yorkers (24% vs. 12%); poverty rates among Black and Asian New Yorkers were also higher (at 21% and 20%, respectively, vs. 12% for white New Yorkers); across metrics, women experienced higher rates of disadvantage than men; and New Yorkers born outside the U.S. experienced higher poverty and hardship rates than U.S.-born New Yorkers.<sup>9</sup> Moreover, 25% of adults and 26% of children faced

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(hereinafter, NYC Poverty Tracker Report), [https://www.robinhood.org/wp-content/themes/robinhood/images/poverty-tracker/pdfs/POVERTY\\_TRACKER\\_REPORT38.pdf](https://www.robinhood.org/wp-content/themes/robinhood/images/poverty-tracker/pdfs/POVERTY_TRACKER_REPORT38.pdf).

<sup>3</sup> LSC Justice Gap Report at 22.

<sup>4</sup> *Id.* at 32-33.

<sup>5</sup> *Id.* at 60.

<sup>6</sup> LSC Justice Gap Research, Introduction, <https://www.lsc.gov/initiatives/justice-gap-research>.

<sup>7</sup> *Id.*

<sup>8</sup> Poverty Tracker Report at 6, 15-16. Note that the NYC Poverty Tracker Report assesses data from two years prior – i.e., the most recent, Winter 2023, report provides an in-depth look-back analysis at 2021 data.

<sup>9</sup> *Id.* at 8.

material hardship related to food access, housing, bills, medical assistance, and general finances, all of which closely intertwine with legal issues.<sup>10</sup>

Much of this data is similar to what the Justice Center typically sees, with the top six legal areas most frequently addressed in its most recently completed reporting year being housing and family issues (at roughly 24% and 20%, respectively, of all matters the Justice Center handled), followed by consumer and income maintenance issues (at roughly 9% and 5%, respectively), and then employment and immigration (each at roughly 5%).<sup>11</sup>

## **II. SAFE AND AFFORDABLE HOUSING AND SUPPORT FOR OUR MOST VULNERABLE – YOUTH, SENIORS, AND IMMIGRANTS TO NEW YORK – ARE ESSENTIAL TO ACCESS TO JUSTICE**

This section of our testimony focuses on areas of practice core to so many legal services providers, including the Justice Center. We cover three areas: (a) how New York City’s Housing Court Right to Counsel Law (RTC) is working and should be bolstered and enforced, not undermined; (b) how New York’s 2019 Uniform Partition of Heirs Property Act must continue to be studied, understood and properly applied so as to preserve inter-generational wealth especially among homeowners of color; and (c) the importance of access to civil legal services for our most vulnerable neighbors – children and youth, seniors, and immigrants to New York.

### **A. Supporting New York City’s Housing Court Right to Counsel Law**

It is clear that legal representation of tenants in Housing Court that meets the highest standards of our profession is a powerful response to evictions, racial discrimination, and the challenges identified in Secretary Jeh Johnson’s October 2020 Equal Justice report.<sup>12</sup> Similarly, it is clear that legal representation of tenants in Housing Court provides for a fairer, more efficient, better understood judicial process, the benefits of which also inure to court personnel and judges.

NYC’s RTC law was enacted in 2017 and showed very promising early results, demonstrating that disturbing trends could be reversed.<sup>13</sup> Prior to passage of RTC, we saw the court and a high-stakes legal process being used to the consistent disadvantage of unrepresented litigants: that is, high numbers of eviction filings and unacceptably high numbers of default judgments against largely unrepresented litigants of color living in rent-regulated housing in New York City. Proceedings were conducted in quick order, or settlements were “negotiated” and

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<sup>10</sup> *Id.* at 21-23.

<sup>11</sup> City Bar Justice Center, Impact Report at 3 (June 2023), <https://www.citybarjusticecenter.org/wp-content/uploads/2023/06/2023-City-Bar-Justice-Center-Impact-Report.pdf>.

<sup>12</sup> Report from the Special Advisor on Equal Justice in the New York State Courts (Oct. 2020), <https://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

<sup>13</sup> According to reporting by NYC’s Office of Civil Justice (“OCJ”), tenants with counsel are far more successful in being able to retain their homes (with 86% able to remain) in New York City. Universal Access to Legal Services: A Report on Year Four of Implementation, Office of Civil Justice (Fall 2021), [https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2021.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2021.pdf) at 17. Simply put, RTC is a game-changer. When done right, it levels the playing field in Court, gives people a fighting chance to assert their legal rights, and sends a message that the lives and homes of all New York City households are entitled to be treated with dignity and respect.

produced in hallways. We cannot go back to that system of injustice and, yet, legal services providers are reporting that we are at risk of doing *just that* if we do not effectively address the current situation in NYC Housing Court, where more and more tenants are being forced to appear *pro se* in proceedings in which the loss of their homes is a very real possibility. It seems that the collective commitment to RTC is faltering.

We must do better. We understand that an RFP has been issued by New York City for new contracts for legal services providers and that conversations among the Office for Court Administration (OCA), the Office of the Civil Justice Coordinator (OCJ) and providers are underway concerning the terms of future contracts. We also understand that the Caseload Working Group guidelines are viewed positively and as a good start by providers. Fundamentally, contracts must provide sufficient compensation to the providers to enable them to hire, train and retain a highly capable, diverse workforce to provide the highest quality assistance to all tenants who are entitled to counsel. RTC must be viewed as an integral goal of the proceeding, not as a hurdle to be overcome or set aside if difficulties arise.

While we understand that the entire judicial system has changed in many ways as a result of COVID-19 and that some court processes are returning thoughtfully and gradually, the perception is that RTC is expendable, as cases simply move forward without it. But the consensus cannot be in favor of returning to the “cattle call” culture of old - this is precisely what Secretary Johnson warned against. We suggest the following: (1) court calendars should be temporarily modified by first scheduling cases that already have two attorneys; then, adjourned cases that have two attorneys can be added to the calendar<sup>14</sup>; (2) RTC attorneys should be given a sufficient amount of time to establish the attorney-client relationship and research and investigate complex cases; (3) requests for virtual proceedings to accommodate a disability should be routinely honored in accordance with law; (4) the use of virtual appearances should be re-examined and re-integrated into the system for administrative and non-hearing appearances; and (5) judges should offer RTC at every stage of the proceeding, not just at the initial appearance.

Of particular note, the bulk of nonpayment cases can be shortened by the swift implementation of rental assistance. New York City Human Resources Administration (HRA) and OCA must work together to integrate the court system and aid applications. There are currently long waits for City FHEPS and one-shot deals which far exceed the reasonable time a tenant can be ordered to pay a rent balance. This means that more warrants of eviction are triggered, Orders to Show Cause must be filed and judicial determinations must be made that strain judicial resources and often end in evictions. Any disconnect between the agencies can be resolved by collaboration and a more efficient application process. When tenants are instructed to apply for a one-shot deal in or out of the courthouse, there must be knowledgeable HRA personnel available to walk them through the process. The HRA network must be available at the courthouses to achieve the best results. During the pandemic, HRA procedure and documents required to apply for aid were streamlined, and cases were discontinued when back rents were fully satisfied. A

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<sup>14</sup> Court calendars in Housing Court should not feel random; cases with two attorneys should be scheduled first. This approach can expedite settlement and funding. Moreover, there are scores of Housing Part cases with dire conditions that are not being calendared because many more judges are being allocated to the eviction cases in the resolution parts than to the HP parts. Two attorney cases can be handled first and housing maintenance standards can be enforced while stakeholders meet in partnership to improve the implementation of RTC.



partnership between the courts, OCJ and HRA should take these lessons into account. A speedier aid application process would make the right to counsel less arduous and easier to implement.

Since last year, Housing Court has almost fully returned to the oft-decried cattle call culture. Where other courts have continued virtual proceedings and taken steps learned from the pandemic to integrate technology and procedures to preserve the dignity and efficiency of the court process, the Housing Court has moved backward. Despite the existence of the biggest rent crisis ever experienced, housing court calendars are as long as they were pre-pandemic. In the midst of a shortage of court personnel and clerical staff, the Housing Court is flooded with cases in an ad hoc fashion which creates chaos. The courtrooms and hallways are crowded with people and more and more tenants are being forced to proceed without counsel. Providers simply cannot keep up with the demand and are forced to refuse representation. In other words, despite being the first municipality to enact a landmark and groundbreaking law, and despite all of its early promise, we are now allowing outdated and dysfunctional processes to plunge blindly forward.

Our Task Force on Civil Right to Counsel, led by Alison King, Andrew Scherer and Sara Wagner will continue to guide us on this important issue, as both a convener and a witness. We'll continue to examine and advocate for ways to assure that all tenants who are entitled to counsel are able to obtain counsel; to improve the physical conditions of Housing Court facilities in NYC; to wisely implement the use of remote proceedings; and to amplify the need to connect tenants with their lawyers as early in the eviction process as possible.

### **B. The Justice Center's Homeowner Stability Work Supports Intergenerational Homeownership Particularly by New Yorkers of Color**

As detailed in our testimony in each of the past two years, both the Justice Center and the City Bar took a leading role in a law reform movement culminating in New York's passage in 2019 of the Uniform Partition of Heirs Property Act (UPHPA),<sup>15</sup> which established significant state legal protections for heirship property owners. Armed with the tools of this reform, the Justice Center's Homeowner Stability Project (HSP), which for many years had focused more exclusively on foreclosure defense work, increasingly engages in direct representation, public education, and law reform work to advocate for individuals and families of limited economic means who possess heirship interests in intergenerationally-owned homes, often in areas of New York City with rapidly increasing home values.<sup>16</sup>

Over the past three and a half years, based on our review of the pleadings, we have located several hundred cases that appear to fall under New York's UPHPA. It remains a concern, however, that many of the attorneys handling the cases on both sides have no idea this now four-year-old law exists, and courts' handling of requirements under the law are at times uneven. We continue to engage in outreach and collaboration with elected officials, the courts, and community groups in order to increase awareness of the new law, as well as programming and training at the City Bar, including an upcoming hybrid in-person/live broadcast public forum on Deed Theft and

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<sup>15</sup> NY RPAPL 993

<sup>16</sup> See City Bar Justice Center, *Homeowner Stability Project*, <https://www.citybarjusticecenter.org/projects/homeowner-stability-project/>.

Scam Prevention to be hosted by City Bar and HSP on September 20.<sup>17</sup> HSP and its director, Scott Kohanowski, also continue conducting trainings for judges and other key stakeholders in the UPHPA's implementation, and is increasingly working with law enforcement to combat deed theft and other equity-stripping schemes that often involve heirs property.

This work is also important to advancing racial justice. The vast majority of New Yorkers served by HSP's advocacy belong to communities historically denied equal access to homeownership benefits due to structural racism in housing and lending policies. What we typically see in these cases is that the home in question is owned by a family of color that first bought the property when race-based redlining prevailed, and that also likely had unequal access to credit, also on account of race. Without services like those provided by HSP and several other legal services organizations, many such members of our community face the loss of longtime family homes (and often substantial home equity) following mortgage and tax lien foreclosure – or, especially, predatory partition actions brought by third-party investors who purchase heirs' often quite minimal partial interests in the homes and then sue to force a sale, displacing the heir occupants. Given the complexity of these matters, much of HSP's recent success in this area owes to successfully partnering with sophisticated pro bono litigation (as well as transactional) teams at leading New York law firms. Against this backdrop, taking on homeowner stability matters connects us (and pro bono partners) to the greater mission of nonprofit legal services – a mission that connects concrete cases and clients to the type of mindful, thoughtful advocacy that begets systemic change, such as has occurred with the UPHPA's passage and ongoing implementation.

### **C. Access to Civil Legal Services for Children and Youth, Seniors, and Immigrants to New York**

Both data and news-grabbing headlines make clear the need for access to justice particularly for many among our most vulnerable communities – children and youth, seniors, and immigrant New Yorkers.

As detailed in Section I's discussion of the most recent Columbia-Robin Hood Poverty Tracker Report, poverty rates among children in New York City are triple the national average (15% vs. 5%).<sup>18</sup> And while that data also revealed a hopeful sign in a drop in child poverty rates – quite likely, however, only a brief one<sup>19</sup> – the Justice Center saw increases in services benefiting households with children and youth under the age of 25 of nearly 3% from FY21 to FY22, and nearly 9% from FY22 to FY23. At the other end of life's spectrum, there is continued and growing

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<sup>17</sup> See also, e.g., Preserving the Family Home: From Partition of Heirs Property to Deed Theft, <https://www.nycbar.org/cle-offerings/webcast-preserving-the-family-home-from-partition-of-heirs-property-to-deed-theft/> (featuring Scott Kohanowski, Alan Kolod, Chair, City Bar Committee on Commercial and Uniform Laws; Mary Lynn Dlabola, Special Referee, Bronx Supreme Court – Civil; and Maureen Kokeas, First Deputy Sheriff, NYC Department of Finance).

<sup>18</sup> See discussion, *supra*, at 3; see also Poverty Tracker Report at 16.

<sup>19</sup> Center on Poverty & Social Policy at Columbia University, The State of Poverty and Disadvantage in NYC 2021 (Feb. 13, 2023), <https://www.povertycenter.columbia.edu/nyc-poverty-tracker/government-initiatives-cut-nyc-child-poverty-rate-in-2021> (observing that “[t]his year’s Poverty Tracker ... spotlights the temporary pandemic relief programs that dramatically—but only briefly—brought child poverty in New York City to historic lows. The reduction in poverty rates highlighted in the report shows that government policy can be an effective poverty-fighting tool.”).



need for legal services for the growing senior population, which is experiencing increased poverty. The senior population just in New York City (individuals aged 65+) rose from 963,000 in 2010 to more than 1.2 million in 2020 – making seniors the fastest growing segment of the population.<sup>20</sup> Unfortunately, poverty rates among NYC seniors also increased, hitting 21% in 2020.<sup>21</sup> The NYC Department of Health has identified several factors that explain the growth in poverty rates among seniors, including reduced employment opportunities for the elderly, the pandemic, rising healthcare costs, and barriers related to seniors’ immigration status, such as educational and language barriers.<sup>22</sup> At the same time, NYC Health has shown that as seniors’ poverty rates have grown, the population has increasingly experienced civil legal issues, including those related to access to housing, public benefits, medical assistance, and social support.<sup>23</sup> The City Bar and Justice Center work on such issues, as well as the closely related problem of frauds and scams that target older New Yorkers.<sup>24</sup> Focused civil legal services funding and programming addressing these issues remains critical if New York is to care in a holistic way for those who helped build the society we now enjoy.

Finally, none of us can ignore the headlines focused on New York’s asylum-seekers crisis, and on the whole, providing adequate immigration legal assistance to the many who cannot afford it remains deeply challenging in a state long a haven for immigrants. City Bar committees that examine immigration and social welfare issues will remain attuned to these issues; the City Bar and the Justice Center have supported efforts of the New York City Mayor’s Office to expand pro bono clinics serving asylum seekers;<sup>25</sup> and the Justice Center continues its own efforts to leverage pro bono partnerships and collaborate with other stakeholders to address this crisis. Absent substantial shifts in immigration legal policy at the federal level, increased resources for those providing on-the-ground legal services are critical to meeting these complex needs and ensuring that New York remains a place where immigrants can find a new home and build a new life.

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<sup>20</sup> Christian González-Rivera & Center for an Urban Future, A Call to Increase Support for New York City's Growing and Diverse Older Adult Population, Testimony before the New York City Council Committee on Aging Preliminary Budget Hearing – Aging Christian González-Rivera (March 12, 2019), <https://nycfuture.org/research/increase-support-for-nycs-growing-and-diverse-older-adult-population#:~:text=There%20are%20now%201.2%20million,just%20the%20last%20ten%20years.>

<sup>21</sup> See *id.*; see also Angely Mercado et al., A Snapshot of Poverty among Older NYers Shows Pockets of Deep Need, City Limits (Feb. 28, 2019), <https://citylimits.org/2019/02/28/aging-boom-poverty/#:~:text=The%20number%20of%20older%20adults,the%20borough%20jumped%2067%20percent;and> NYC Health, Health of Older Adults - New York City (2019), <https://www1.nyc.gov/assets/doh/downloads/pdf/episrv/2019-older-adult-health.pdf>.

<sup>22</sup> NYC Health, Health of Older Adults - New York City.

<sup>23</sup> *Id.*

<sup>24</sup> See, e.g., Vivienne Duncan, Seniors Beware: COVID-19 Scammers Are Targeting You, City Bar Justice Center (Aug. 21, 2020; April 30, 2021), <https://www.citybarjusticecenter.org/news/seniors-beware-covid-19-scammers-are-targeting-you/>.

<sup>25</sup> Office of the Mayor, Mayor Adams Announces Asylum Application Help Center has Helped Submit Over 1,300 Asylum Applications in Matter of Weeks, Announces Higher Education Partnerships for Fall Semester (Aug. 2, 2023), <https://www.nyc.gov/office-of-the-mayor/news/561-23/mayor-adams-asylum-application-help-center-has-helped-submit-1-300-asylum>.

### III. THE CIVIL LEGAL SERVICES ECOSYSTEM HAS A UNIQUE, CONTINUING ROLE TO PLAY IN BRIDGING THE DIGITAL DIVIDE

The City Bar reiterates its suggestion, outlined in testimony last year, that the civil legal services ecosystem has a unique and continuing role to play in bridging the digital divide that can further complicate access to justice on the part of New Yorkers of limited means or who experience other vulnerabilities.

#### A. The Issue

The “digital divide”<sup>26</sup> presented significant obstacles to our most vulnerable neighbors even before the pandemic, but in many ways became worse because of it,<sup>27</sup> as further shown below with respect to the digital divide’s effect on New Yorkers living in shelter. But the issue is not limited to that population, and indeed researchers have shown how “stark” this divide is across both rural/remote as well as urban areas even in countries like the United States with otherwise high connectivity rates.<sup>28</sup> Moreover, the digital divide both “fall[s] along other disparities such as income and gender-based inequality,” and “can deepen other divides and inequalities,” including healthcare access and outcomes, and economic and educational opportunities.<sup>29</sup> In this respect the digital divide’s pervasiveness is particularly relevant to the broad topic of access to justice, given the focus of access to justice initiatives and civil legal services programming on those among us with the least resources and the fact that the digital divide is a significant characteristic of poverty: a 2021 Pew Research Foundation study found that 43% of adults with lower incomes lacked home broadband services and 41% lacked a desktop or laptop computer, whereas such technology is “nearly ubiquitous” for those in households earning over \$100,000.<sup>30</sup>

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<sup>26</sup> “At a high level, the digital divide is the gap between those with Internet access and those without it. But the digital divide is multifaceted and includes many factors such as access, affordability, quality, and relevance.” Charlie Muller & João Paulo de Vasconcelos Aguiar, What Is the Digital Divide, Internet Society (March 3, 2022), <https://www.internetsociety.org/blog/2022/03/what-is-the-digital-divide/>. The digital divide also has been understood to encompass, beyond lack of access to the internet, “vast inequities in technology access” more generally. See Phela Townsend, Disconnected: How the Digital Divide Harms Workers and What We Can Do about It, The Century Foundation (Oct. 22, 2020), <https://tcf.org/content/report/disconnected-digital-divide-harms-workers-can/?session=1&agreed=1>.

<sup>27</sup> Early in the pandemic, Phela Townsend of the Century Foundation observed that “[p]rior to the COVID-19 outbreak, an estimated forty-two million Americans did not have the ability to purchase broadband internet. And as the pandemic has ravaged the country, these vast inequities in technology access—which, together, have come to be known as the digital divide—have intensified and worsened. Roughly half of low income families have struggled to pay their internet and cell phone bills. Millions of unemployed workers had trouble navigating state unemployment websites, while almost 15 percent of students face barriers in remote learning conditions because they lack access to high-speed internet at home. Townsend, Disconnected, *supra* note 26.

<sup>28</sup> Muller & Vasconcelos Aguiar, What Is the Digital Divide, *supra* note 26.

<sup>29</sup> *Id.*

<sup>30</sup> Emily A. Vogels, Digital Divide Persists Even as Americans with Lower Incomes Make Gains in Tech Adoption, Pew Research Center (June 22, 2021), <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/#:~:text=Roughly%20a%20quarter%20of%20adults,incomes%20are%20not%20tablet%20owners>.

As hybrid work becomes the new norm for those with greater resources, those invested in increasing access to justice cannot overlook the fact that one of the pandemic's triumphs amidst adversity – the power that digital technology gave to so many of us to quickly and safely preserve our livelihoods by pivoting to a work-from-home world, not to mention access healthcare, education, and a range of other services (including legal expertise) - was less available if not unavailable to the poor, those in frontline services work, those for whom English is not a first language, and so many others. These same communities also had, and often still have, a harder time navigating an increasingly “virtual” world when it comes to accessing services and the courts and protecting themselves from increasing frauds/scams.

Data and practice experience from the Justice Center – which we would not be surprised to see mirrored by other providers – demonstrates why the civil legal services community should focus on this problem. Unsurprisingly, in the first year of the pandemic, Justice Center in-person intakes plummeted, but intakes conducted online rapidly rose – roughly doubling. Even as in-person services have returned, *intakes* conducted in-person have not returned to pre-pandemic levels, while online intakes continue to increase. Meanwhile, even as the Justice Center provided direct services in the past fiscal year benefiting over 25,000 New Yorkers in need, it additionally reached roughly 90,000 people through online resources and information.<sup>31</sup> Given what data show regarding the impact of the digital divide on persons of low income – who by definition are the consumers of pro bono legal services – it is clear that ongoing discussions of civil legal services funding ought to consider the extent to which narrowing the digital divide goes hand-in-hand with expanding access to justice.

## **B. Addressing the Digital Divide for New Yorkers Experiencing Homelessness**

Both the City Bar and the Justice Center continue working together and with other legal and nonprofit organizations and community groups to highlight the unique impacts the digital divide has on New Yorkers experiencing homelessness.<sup>32</sup> As noted in the preceding subsection, this is not a new problem, and has been exacerbated by the COVID-19 pandemic. Without access to the internet in shelters, individuals and families experiencing homelessness are unable to search and apply for permanent housing and jobs, participate in remote schooling, apply for government benefits, or obtain necessary medical care. Remote counseling, telehealth, and other internet-based health services have expanded since the start of the pandemic; however, these services are unavailable to those without a connection to a WiFi network.<sup>33</sup> As a result, poor or no internet connectivity leaves many shelter residents unable to effectively participate in critical services needed for their well-being and that could ultimately help them transition into stable, permanent housing.

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<sup>31</sup> City Bar Justice Center, Impact Report at 3 (June 2023), <https://www.citybarjusticecenter.org/wp-content/uploads/2023/06/2023-City-Bar-Justice-Center-Impact-Report.pdf>.

<sup>32</sup> See generally “Support for Legislation Providing Internet Access to Individuals Living in Temporary Housing Throughout New York State,” New York City Bar Association (Reissued May 4, 2022), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/digital-divide-free-wifi-for-homeless-shelter-residents>. For a definition and further discussion of the digital divide, see *supra* note 26.

<sup>33</sup> See, e.g., “#WiFi4Homeless: A Virtual Existence with Virtually No Internet,” City Bar Justice Center, <https://www.citybarjusticecenter.org/client-stories/wifi4homeless-a-virtual-existence-with-virtually-no-internet/>.

As we highlighted in our testimony in each of the past two years, the Justice Center first documented this problem in a May 2020 report, “Homeless Need Internet Access to Find a Home: How Access to Internet and Technology Resources can Support Homeless Families Transition out of Homeless Shelters,” and in the time since has consulted with the City Bar on efforts to ensure free, reliable internet access in temporary housing facilities across the state.<sup>34</sup> We have seen progress, but there is still more work to be done. Building on the Justice Center’s findings, the Legal Aid Society, along with Milbank LLP and Coalition for the Homeless, Inc., secured a major victory with a settlement with New York City in April 2021 that ensured that over 240 shelters housing school-age children were equipped with internet access.<sup>35</sup> In 2022, the New York State budget included the “Working to Implement Reliable and Equitable Deployment of Broadband Act (WIRED Broadband Act)” and funding for “ConnectALL” – policies and programs that would expand broadband access and affordability statewide.<sup>36</sup> In 2023, the New York State Senate passed S4561A, which would require all temporary housing facilities to provide high-speed internet access to all individuals residing in their facilities.<sup>37</sup>

While these are significant achievements, it does not eliminate the need for the State to affirmatively ensure *all* shelter residents *across the State* have internet access. Additionally, New York City’s efforts do not help adult shelter residents who do not live in qualifying shelters; this includes individuals engaged in GED, vocational, or college course work who face the same barriers to remote learning as school-aged children.<sup>38</sup>

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<sup>34</sup> See “Testimony to the Chief Judge’s Statewide 2021 Civil Legal Services Hearing,” New York City Bar Association (Sept. 13, 2021), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/testimony-to-the-chief-judges-statewide-2021-civil-legal-services-hearing>; see also “Homeless Need Internet Access to Find a Home: How Access to Internet and Technology Resources can Support Homeless Families Transition out of Homeless Shelters,” City Bar Justice Center (May 2020), <https://www.citybarjusticecenter.org/wp-content/uploads/2020/05/Homeless-Need-Internet-Access-to-Find-a-Home-2020-Report.pdf>.

<sup>35</sup> See, e.g., Noah Goldberg, “NYC must finish WiFi installation in family homeless shelters by August: suit,” *NY Daily News* (April 5, 2021), <https://www.nydailynews.com/new-york/ny-lawsuit-wifi-homeless-shelters-august-new-york-city-remote-learning-20210405-bp4lx2wfhzc65badzvspwihk4q-story.html>; David Brand, “NYC Installs WiFi at Every Family Homeless Shelter Following Legal Settlement,” *City Limits* (May 25, 2022), <https://citylimits.org/2022/05/25/nyc-installs-wifi-at-every-family-homeless-shelter-following-legal-settlement/>.

<sup>36</sup> The City Bar, in collaboration with outside partners, advocated for the State budget to include funding for internet access in temporary housing facilities. See “Letter Urging Governor Hochul to Fund Internet Access to all Individuals Residing in Temporary Housing in the 2022 Budget,” Dec. 17, 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/executive-budget-request-internet-access>.

<sup>37</sup> Kristen Gonzalez, Senator Gonzalez’s Bill Requiring Internet Access For Temporary Housing Residents Passes The New York State Senate (June 9, 2023), <https://www.nysenate.gov/newsroom/press-releases/2023/kristen-gonzalez/senator-gonzalezs-bill-requiring-internet-access>.

<sup>38</sup> Education is critical to an individual’s ability to participate in society. It promotes the social, economic, and intellectual well-being necessary to live a stable life and avoid homelessness. For shelter residents, education may reduce the length of their shelter stay and facilitate their exit into permanent housing. See, e.g., “Barrier to Education: How Homeless Students Are Being Impacted by Remote Learning,” New York City Bar Association, [http://documents.nycbar.org/files/2020744-InternetAccessHomelessShelters\\_EducationFactSheet.pdf](http://documents.nycbar.org/files/2020744-InternetAccessHomelessShelters_EducationFactSheet.pdf); see also “No Barriers: A Legal Advocate’s Guide to Ensuring Compliance with the Education Program of the McKinney-Vento Act,” National Law Center on Homelessness & Poverty, 2<sup>nd</sup> Edition (Nov. 2016), at 10, <https://homelesslaw.org/wp-content/uploads/2018/10/NoBarriers.pdf> (“Moreover, school stability is critical for homeless children and youth, not

The City Bar will continue to press this issue through its grassroots, collaborative campaign, by issuing reports, and supporting legislation, as well as through efforts of the Justice Center, and supported by pro bono counsel, representing the needs of individuals experiencing homelessness. An investment by the State in enhancing access to the internet in temporary housing facilities could lead to a reduction in the overall homeless population and a reduction in other costs associated with housing New York's homeless population.

### **C. Towards a More “Tech-Equitable” Civil Legal Services Ecosystem**

The preceding discussion makes clear that providers, funders, and all stakeholders must view expanding access to justice and narrowing the digital divide in tandem, and think creatively about how to equitably further the advance of online and other virtual mechanisms of delivering civil legal services. At least three related considerations might inform a more “tech-equitable” future for civil legal services.

First, “unbundling” pro bono civil legal services has become increasingly accepted as a means of providing some form of assistance to help narrow the justice gap where full-scope representation may be infeasible. To the extent the digital divide involves a corresponding knowledge access gap – i.e., increasingly, key information is available only online – the civil legal services community’s experience successfully delivering “brief information and advice” services (as contrasted with extended representation) provides a template for addressing that divide and knowledge gap. With that comes the need to ensure such services’ formats are as widely accessible as possible – including, e.g., by being available in multiple languages, and accessible for those who are sight- or hearing-impaired or have cognitive limitations. Examples of such a possibility include expanding public information and education efforts via “Know Your Rights” clinics and resources conducted in person for those with limited access to technology, but that are then simultaneously live-streamed and archived online for those who have more robust tech access.

Second, civil legal services providers can directly partner with local community organizations and elected officials to ensure that those in need of services know they exist and can access them. To the extent the pandemic worsened social and other forms of isolation for those living in poverty, not to mention inflicted disproportionate economic and health effects, entities whose mission it is to increase access to justice have a unique role to play in helping to restore the fabric of our communities. Because such entities have more finely tuned “hybrid” legal services delivery mechanisms over the past two-plus years, they are positioned – if appropriately funded to support the requisite technical platforms and expertise – to partner with community organizations and electeds to reach those in need of services and to deliver them competently and efficiently.

Third, with respect to the resource dimension of this task, the private bar and the business community have a role to play as well, by supporting efforts of civil legal services providers both financially and in terms of volunteer involvement. Themselves having successfully transitioned from in-person to virtual to now hybrid modes of work, the private bar and the business community

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only providing continuity during a turbulent time in their lives but also leading to improved academic outcomes. Continuity of education during homelessness is vital not only for children and youth’s mental and emotional health in the short-term, but for their future ability to succeed in a competitive job market and break the cycle of homelessness and poverty, because childhood homelessness is a strong predictor of adult homelessness.”).



have both the technical experience and the resources to help the legal services community deploy new methods of services delivery. From supporting the technological and logistical infrastructure required to operate and scale up hybrid clinics to providing a steady stream of volunteers to develop substantive content as well as provide direct client counseling for such services, the private bar and the business community can and should seize this moment to both advance access to justice and narrow the digital divide.

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The City Bar very much appreciates your consideration of these important issues. I am happy to answer any questions and provide any requested follow-up information once the hearings have concluded.

*The City Bar thanks the following individuals from the City Bar Justice Center for their significant contributions to this testimony: Kurt M. Denk, Executive Director; Kyla James, Operations and Program Associate; Scott Kohanowski, Director, Homeowner Stability and LGBT Advocacy Projects; Lisa Pearlstein, Director, Legal Clinic for the Homeless; and Libby Vazquez, Director of Legal Services and Director, Legal Hotline and Planning & Estates Law Project. Likewise, the City Bar thanks Alison King, Andrew Scherer and Sara Wagner, co-chairs of the City Bar's Task Force on the Civil Right to Counsel.*

**Contact**

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## **New York Health Foundation (NYHealth)**

**2023 Chief Judge's Hearing on Civil Legal Services**

September 13, 2023

## NYHealth Testimony to Chief Judge's 2023 Hearing on Civil Legal Services in New York

To the Honorable Chief Judge Wilson, Chief Administrative Judge Zayas, Justices of the Appellate Division, and esteemed members of the New York State judicial community, my name is David Sandman, Ph.D., President and CEO of the New York Health Foundation (NYHealth). I appreciate the opportunity to provide testimony on protecting New Yorkers from medical debt, the vital role of civil legal services in doing so, and further necessary reforms.

NYHealth is a private, independent, statewide foundation dedicated to improving the health of all New Yorkers, especially people of color and others who have been historically marginalized. Protecting New Yorkers from medical debt has been a signature area of attention.

NYHealth and our grantees and partners have galvanized policy changes that resulted in hard-won consumer protections. I encourage members of the Courts and judicial community to explore the work of these organizations, including the **Volunteer Lawyers Project of Central New York's (VLPCNY)** direct legal assistance and education; the **End Medical Debt in New York** organizing campaign spearheaded by the Public Policy and Education Fund; the **Community Service Society of New York's (CSS)** patient storytelling initiative and medical debt lawsuit research; and the **Health Care for All New York Coalition's** advocacy for consumer protections.

### Medical Debt is a Crushing Burden for New Yorkers

Medical debt has sometimes been described as a "uniquely American injustice."<sup>1</sup> No one should go into medical debt or financial ruin because of illness, injury, or disease. Yet, medical debt is the most common form of consumer debt and the leading cause of personal bankruptcy in the United States.<sup>2,3</sup> A 2022 report by the Consumer Financial Protection Bureau (CFPB) found that Americans have \$88 billion in medical debt in collections.<sup>4</sup> This is not just a crisis for those who are uninsured; another CFPB report found that 4 million adults ages 65 and older had unpaid medical bills, even though 98% had health insurance coverage.<sup>5</sup>

Medical debt threatens financial security and prevents individuals from building credit, securing housing and employment, and affording food and medical care. A recent survey found that more than half of New Yorkers struggle to pay medical bills.<sup>6</sup> Based on credit reports as of February 2022, an estimated 740,000

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<sup>1</sup> RIP Medical Debt, "RIP Medical Debt," <https://ripmedicaldebt.org/about/>, accessed September 2023.

<sup>2</sup> Consumer Financial Protection Bureau. (2022). "Medical Debt Burden in the United States". [https://files.consumerfinance.gov/f/documents/cfpb\\_medical-debt-burden-in-the-united-states\\_report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf).

<sup>3</sup> Himmelstein, DU.; Lawless, R.D.; Thorne, D.; Foohey, P; Woolhandler, S. (2019). Medical Bankruptcy: Still Common Despite the Affordable Care Act. *American Journal of Public Health*. 109(3), 431–433. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6366487/>.

<sup>4</sup> Consumer Financial Protection Bureau, "Medical Debt Burden in the United States". [https://files.consumerfinance.gov/f/documents/cfpb\\_medical-debt-burden-in-the-united-states\\_report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_medical-debt-burden-in-the-united-states_report_2022-03.pdf).

<sup>5</sup> Consumer Financial Protection Bureau, "Medical Billing and Collections Among Older Americans," <https://www.consumerfinance.gov/data-research/research-reports/issue-spotlight-medical-billing-and-collections-among-older-americans/full-report/>.

<sup>6</sup> Community Service Society, "Financial Hardship, Avoiding Care: Results from a Statewide Survey," <https://www.cssny.org/news/entry/financial-hardship-avoiding-care-healthcare-affordability-survey>, accessed September 2023.



New Yorkers were put into collections over medical bills; nearly half of them owed more than \$500.<sup>7</sup> This means that nearly half of New Yorkers with medical debt will still have medical debt appear on their credit reports, following a change in credit reporting practices by the three major credit reporting agencies to exclude medical debts below \$500 on credit reports.<sup>8</sup>

To collect medical debt, more than 53,000 lawsuits were filed against patients by hospitals across New York State between 2015 and 2020, including 4,000 during the height of the COVID-19 pandemic.<sup>9,10</sup> CSS analyses of civil court cases in all counties of New York State found that some judgments resulted in property liens or wage garnishment. Liens were placed on individuals' homes in nearly 5,000 judgments in just two years, and wages were garnished more than 1,600 times by five hospitals alone.<sup>11,12</sup> These extreme collection practices occurred disproportionately in low-income communities.

### **Medical Debt Disproportionately Harms Marginalized New Yorkers**

The Urban Institute, with NYHealth's support, analyzed a representative sample of credit reports to create a deeper understanding of the impact of medical debt on New Yorkers. The analysis uncovered widespread disparities in medical debt by region, race/ethnicity, income, and other factors throughout New York State.<sup>13</sup> The shares of consumers with medical debt ranged from 3% on Long Island and 4% in New York City to more than 10% in the Southern Tier, North Country, Mohawk Valley, and Central New York.

The highest rates of medical debt within regions were typically found in communities of color and lower income communities. For instance, in Central New York, 28% of patients in communities of color had medical debt in collections, compared with 12% in predominantly white communities. Communities of color also often owed medical debt in greater amounts. In the Capital District, for example, communities of color had a median medical debt of \$899—two times the median amount in predominantly white communities in the region (\$448).

### **New York State Has Advanced Consumer Protections from Medical Debt**

New York State has been a national leader with policies that protect consumers from unfair practices related to medical debt. Consumer protections secured in recent years include:

- Reducing the statute of limitations for medical debt lawsuits from six to three years ((N.Y.C.P.L.R. §213-d (2020));
- Lowering maximum interest rates on consumer debt (including medical debt) from nine to two percent ((N.Y.C.P.L.R. §5004 (2021));

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<sup>7</sup> Urban Institute, "Medical Debt in New York State and Its Unequal Burden across Communities," <https://nyhealthfoundation.org/resource/medical-debt-in-nys-and-unequal-burden-across-communities-report/>, accessed September 2023.

<sup>8</sup> Consumer Financial Protection Bureau, "Consumer Credit and the Removal of Medical Collections from Credit Reports," <https://www.consumerfinance.gov/data-research/research-reports/consumer-credit-and-the-removal-of-medical-collections-from-credit-reports/>, accessed September 2023.

<sup>9</sup> Community Service Society, "Discharged into Debt: New York's Nonprofit Hospitals are Suing Patients," <https://www.cssny.org/publications/entry/discharged-into-debt>, accessed September 2023.

<sup>10</sup> Community Service Society, "Discharged into Debt: A Pandemic Update," <https://www.cssny.org/publications/entry/discharged-into-debt-a-pandemic-update>, accessed September 2023.

<sup>11</sup> Community Service Society, "Discharged into Debt: Nonprofit Hospitals File Liens on Patients' Homes," <https://www.cssny.org/publications/entry/discharged-into-debt-nonprofit-hospitals-file-liens-on-patients-homes>, accessed September 2023.

<sup>12</sup> Community Service Society, "Discharged into Debt: New York's Nonprofit Hospitals Garnish Patients' Wages," <https://www.cssny.org/publications/entry/discharged-into-debt-new-yorks-nonprofit-hospitals-garnish-patients-wages>, accessed September 2023.

<sup>13</sup> Urban Institute, "Medical Debt in New York State and Its Unequal Burden across Communities," <https://nyhealthfoundation.org/resource/medical-debt-in-nys-and-unequal-burden-across-communities-report/>, accessed September 2023.

- Prohibiting liens and wage garnishment as means of medical debt collection ((N.Y.C.P.L.R. §§ 5201; 5231 (2022));
- Banning hospital facility fees for preventive care and requiring advance notice to consumers for instances in which fees will be charged ((N.Y. Pub. Health L. §2830 (2022));
- Requiring hospitals to use a uniform application to make it easier for patients to apply for financial assistance for medical bills ((N.Y. Pub. Health L. §2807-k(9) (2023)); and
- Closing a loophole in the State’s surprise billing law to cover emergency services (N.Y. Fin. Servs. L. §606).

In June 2023, both houses of the New York State legislature passed bills (S4907A/A6275A) to prohibit credit agencies from including medical debt of any amount on credit reports. The bills await Governor Hochul’s signature; New York would be the second state, after Colorado, to enact such a policy.<sup>14</sup>

### **Greater Support for Civil Legal Services Will Help New Yorkers Avail Themselves of Newly Secured Consumer Protections**

These laudable policies will realize their full potential on the ground. To make the most of this progress, New York should continue and expand support for civil legal services organizations. People burdened by medical debt require help to avail themselves of new consumer protections.

VLPCNY illustrates the importance of such services. As the largest provider of pro bono legal services in Central New York, it has developed a specialization in medical debt and has an attorney with dedicated expertise in medical debt. As examples of its impact, VLPCNY has:

- Assisted clients in disputing medical debt collections of approximately \$90,000.
- Provided on-site legal education and assistance at local patient town halls.
- Conducted trainings reaching nearly 150 consumers, legal professionals and students, health and human service professionals, and financial counselors throughout Central New York regarding consumers’ legal rights and recent changes in State law.
- Created plain-language client educational materials on topics including answering a judgment; understanding prohibited collection practices and maximum judgment amounts; understanding medical debt credit reporting practices; and disputing bills and seeking financial assistance.
- Educated State policymakers about the real-life issues New Yorkers face when dealing with medical debt.

Enhanced support will enable civil legal services groups to conduct education and advocacy that supports legal professionals, judges, and policymakers in enforcing new protections and advancing additional protections.

### **Further Reforms Are Needed**

New York has led the way on consumer protections from medical debt, but the work is far from complete. **The Courts play a central role in ensuring that the new consumer protections are enforced** when presiding over suits brought against patients. The Courts and the State should also consider procedural reforms, including:

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<sup>14</sup> Kona M; Raimugia V. “State Protections Against Medical Debt: A Look at Policies Across the U.S.,” Commonwealth Fund, [https://www.commonwealthfund.org/publications/fund-reports/2023/sep/state-protections-medical-debt-policies-across-us?utm\\_campaign=Controlling%20Health%20Care%20Costs&utm\\_medium=email&\\_hsmt=273390498&\\_hsenc=p2ANqtz-9Ckbh0s5CUcC5taZ\\_kWkf77Bf2b14ssI9epo7iBRoK33HjqZ0ggbq6tCTiGI0ku3cvroOPCPzelJDmy66aqHawBuAVg&utm\\_source=alert](https://www.commonwealthfund.org/publications/fund-reports/2023/sep/state-protections-medical-debt-policies-across-us?utm_campaign=Controlling%20Health%20Care%20Costs&utm_medium=email&_hsmt=273390498&_hsenc=p2ANqtz-9Ckbh0s5CUcC5taZ_kWkf77Bf2b14ssI9epo7iBRoK33HjqZ0ggbq6tCTiGI0ku3cvroOPCPzelJDmy66aqHawBuAVg&utm_source=alert), accessed September 2023.

- **Requiring that the summons or initial filing from a hospital contains a statement that the hospital has screened the patient for eligibility for hospital financial assistance and provided that information to the patient prior to filing suit.**
- **Ensuring defendants understand the proceedings and their rights. For instance, the Courts could promulgate a plain-language summons (as well as additional notice prior to default) that provides clear and understandable information about the proceedings and lists available resources for legal and other assistance.**
- **Creating a specialized part to preside over medical debt proceedings in a centralized docket.**
- **Improving documentation of medical debt cases to monitor trends.**
- **Restricting legal action from being brought against patients for medical debt, as three other states have done.**<sup>15</sup>

Thank you for the opportunity to provide testimony on progress and unmet needs in protecting consumers from medical debt and the vital role of civil legal services. If you have additional questions, please reach out to Ali Foti, program officer, at [foti@nyhealthfoundation.org](mailto:foti@nyhealthfoundation.org) or (212) 584-5659.

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<sup>15</sup> Kona M; Raimugia V. “State Protections Against Medical Debt: A Look at Policies Across the U.S.,” Commonwealth Fund, [https://www.commonwealthfund.org/publications/fund-reports/2023/sep/state-protections-medical-debt-policies-across-us?utm\\_campaign=Controlling%20Health%20Care%20Costs&utm\\_medium=email&\\_hsmt=273390498&\\_hsenc=p2ANqtz-9Ckbh0s5CUcC5taZ\\_kWkf77Bf2b14ssI9epo7iBRoK33HjqtZ0ggbq6tCTiGI0ku3cvroOPCPzelJDmy66aqHawBuAVg&utm\\_source=alert](https://www.commonwealthfund.org/publications/fund-reports/2023/sep/state-protections-medical-debt-policies-across-us?utm_campaign=Controlling%20Health%20Care%20Costs&utm_medium=email&_hsmt=273390498&_hsenc=p2ANqtz-9Ckbh0s5CUcC5taZ_kWkf77Bf2b14ssI9epo7iBRoK33HjqtZ0ggbq6tCTiGI0ku3cvroOPCPzelJDmy66aqHawBuAVg&utm_source=alert), accessed September 2023.

# **New York Legal Services Coalition**

**2023 Chief Judge's Hearing on Civil Legal Services**



### **Pay Equity for Advocates Serving Historically Disadvantaged Communities**

This testimony is respectfully submitted on behalf of the New York Legal Services Coalition (NYLSC). Our Coalition consists of almost 50 member organizations providing vital legal services in every Judicial District of the State of New York.

Low-income families who cannot afford to hire a lawyer rely on our agencies to provide effective and compassionate legal services when facing domestic violence, loss of income, housing instability, child support/custody disputes, or lack of immigration status. Our clients are disproportionately BIPOC and have been systematically denied equal access to justice. In addition to their specific legal problems, our clients also face the additional challenge of navigating a legal system which disadvantages individuals who lack equal resources to hire legal counsel. At a structural level, the system will continue to perpetuate this inequity unless and until it is addressed.

Our organizations have struggled to keep pace with exponentially increasing client needs despite almost exclusively flat funding. To better understand the scope of the problem, our Coalition conducted a survey of our members across the state. Preliminary data indicates that civil legal services attorneys earn approximately 20-75% less than their counterparts working directly for the government.

For example, in New York City, the average salary for a first-year civil legal services attorney is \$69,000. In contrast, the starting salary for an attorney at the Office of the Attorney General's (OAG) office in NYC is \$90,000. The contrast is even starker in the rest of the state, where OAG attorneys earn at least \$87,000 to start, while the highest starting salary for a legal services attorney outside of NYC or the Hudson Valley is approximately \$59,000. The disparity in pay only increases over time. An upstate attorney with 10 years of experience working for the OAG is paid an annual salary of \$131,000. The same attorney being paid by the government under a legal services contract would earn approximately \$74,000.

This extreme pay disparity impacts vital services for those who need them the most. Legal services organizations cannot compete in the present market for legal talent. Our organizations lose much of their top talent to municipal and state government employers, who also offer competitive health and retirement benefits packages as well as access to public interest loan forgiveness. Legal service attorney positions remain open for months with no qualified applicants willing to accept the market rate. As a result, organizations are not able to meet the needs of local litigants and community members are left to navigate the courts without the benefit of legal assistance.

Like most issues of structural inequity that may be observed in our system of government, this disparity is neither the result of an individual decision, nor can it be dismantled with a single-approach solution. Instead, those of us committed to equal justice must collectively address the issue and work together to close this “justice gap” in a way that does not further exacerbate the problem.

We look forward to engaging all three branches of the government in finding a solution. The Chief Judge’s leadership is greatly needed to engage the Governor and legislators in addressing pay equity at a systemic level. A commitment to equity requires increased resources to sustain and enhance legal services for communities who have been historically disadvantaged.

Respectfully Submitted,

New York Legal Services Coalition (NYLSC)

By: Tina M. Foster, President

A handwritten signature in dark ink, appearing to read "Tina M. Foster", is positioned below the typed name.

**New York Veterans Law Working Group  
Volunteers of Legal Services, Inc.**

**2023 Chief Judge's Hearing on Civil Legal Services**

September 8, 2023

New York State Permanent Commission on Access to Justice

c/o Jessica Klein, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
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New York, NY 10004-2498

**Chief Judge's Hearing on Civil Legal Services in New York**

**September 18, 2023**

Statement from members of the New York Veteran Law Working Group

Dear Commission Members,

On behalf of the New York Veterans Law Working Group (“Working Group”), we are writing to advocate for robust support of civil legal services funding to address the unique challenges faced by low-income veterans, military service members, and their families in New York State. We are honored to be able to submit this statement to the New York State Permanent Commission on Access to Justice for consideration in the Chief Judge’s 2023 Hearing on Civil Legal Services.

The Working Group is composed of legal service advocates from civil legal organizations and law-school affiliated entities across New York State with practices focused on serving veterans, military service members, and their families. The Working Group convenes on a regular basis to collaborate on solutions to civil legal issues facing the veteran community. The group’s members provide civil legal services to veterans in a broad array of practice areas, including discharge upgrades, eviction and foreclosure prevention, public benefits access, claims before the United States Department of Veterans Affairs (VA), estate planning, family, and health law matters. Some advocates specialize in serving particular populations, such as women, older adults, or LGBTQ+ veterans. The Working Group aims to advocate for increased veteran-focused civil legal services critically important to these vulnerable populations, while also striving to improve policies and practices as they relate to these clients.

The Working Group is co-chaired by Peter Kempner, the Legal Director of Volunteers of Legal Services (VOLS) and Adjunct Clinical Professor of the Veterans Justice Clinic at New York Law School, and Samantha Greer, Assistant Clinical Professor and Director of the Robert W. Entenmann Veterans Law Clinic at the Maurice A. Deane School of Law at Hofstra



University. Fordham Law School's Ferrick Center for Social Justice and its Veterans Rights Project convened the Working Group in 2019 and provides logistical support.

***U.S. Department of Veterans Affairs New Funding Recognizes Impact of Civil Legal Services for Veterans, But Falls Short of True Need***

In 2023, the United States Department of Veterans Affairs (VA) launched its Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grants (LSV-H), a first-of-its-kind direct legal services funding from the Department of Veterans Affairs. The funding is part of the VA's continued homelessness prevention efforts, which have found the inability to access civil legal assistance as a critical factor in veteran homelessness.

The VA's Community Homelessness Assessment, Local Education, and Networking Groups ("Project CHALENG"), conducts an annual assessment of homeless veterans to understand local challenges, identify unmet needs, and encourage partnership action to meet those needs. The 2022 CHALENG Survey found that legal services accounted for eight of the top ten unmet needs for homeless veterans. This list included: (1) criminal record expungement; (2) credit issues/debt collection; (3) court fees/court fines; (6) discharge upgrade appeals; (7) family law; (8) child support issues; (9) eviction and foreclosure; and (10) driver's license restoration. These results, which underscore the importance of civil legal assistance, have been consistent across the twenty years the CHALENG Survey has taken place.

The VA's LSV-H funding is significant, as it will provide crucial support to legal services organizations that have struggled to keep up with demand and will allow new organizations to increase their capacity to assist homeless veterans. However, LSV-H provides only \$11.5 million dollars for its nationwide initiative. According to the United States Census Bureau there were over 16.5 million veterans in 2021. While only a fraction of these veterans qualify for free legal services, it is clear that LSV-H funding will only meet a small portion of the civil legal services needs in the veteran community. In addition, the program also involves eligibility limitations, including those related to military discharge status and housing status, that will continue to prevent many low-income veterans from accessing the legal services they need.

New York has always led when it has come to initiatives supporting the military and veteran community. New York's commitment to its veterans is evident in the creation of Veterans Treatment Courts, which ensure justice-involved veterans receive the mental health and substance use treatment they deserve, and the enactment of the Restoration of Honor Act, which recognizes the role of sexual orientation discrimination and mental health symptoms on less-than-honorable discharge status.

The VA's decision to fund legal services should be viewed as confirmation of the immense need for civil legal assistance and its important impact in helping veterans and

preventing homelessness. New York should look to find ways to reinforce this effort with additional and more flexible funding, to ensure our most vulnerable veterans are not left behind.

***Access to Veteran-Focused Legal Services is Life Changing for Low- and Moderate-Income Veterans, and Simultaneously Provides Support to the Overburdened Court System***

The impact of free legal service providers with expertise in veteran benefits and veteran focused resources extends beyond individual representation and into the court system as a whole. Veterans Treatment Courts (“VTCs”) are a tremendous example of how cultural understanding and resource connection can be incorporated into the legal system to positively impact a veteran’s life. VTCs live up to their name of problem-solving courts, by connecting struggling veterans to substance abuse and mental health treatment, health care, housing, and employment services. Investment in experts allows participants to take advantage of the numerous federal resources that can help them attain long-term stability and security.

Similar investment in experts across other civil court systems can be just as impactful. For example, a veteran-focused legal services provider representing a veteran in an eviction matter will be knowledgeable about programs such as HUD-VASH Section 8 vouchers, Supportive Services for Veterans Families (“SSVF”) grants, the Homeless Providers Grant and Per Diem Program, and other programs that can enable their clients to avoid eviction and remain stably housed or find new housing if evicted. Civil legal services providers who do not screen for military service and do not have staff trained in veteran focused benefits and services may be unaware of these programs.

**Areas of Need**

***Legal Assistance with VA Benefits Increases Veteran Household Incomes and Reduces Local and State Expenditures of Public Benefits***

In 2019, the New York City Bar issued a report concerning inadequate financial support for legal services in connection with VA disability benefits. The report highlighted the fact that despite having the fifth largest veteran population in the country, New York veterans lagged far behind veterans in other states in benefits received from the VA. Per the VA’s own reporting, less than 17% of veteran’s statewide and only 15.5% of NYC veterans received either VA Disability Compensation or Pension benefits, compared to an estimated 23 to 24% of veterans nationally. If New York were to reach the 23 to 24% national average, it could mean more than fifty thousand additional New York veterans and their families would be receiving VA benefits worth tens of millions of dollars. This monetary compensation not only recognizes the sacrifices our veterans have made, but also enhances stability in our communities and fuels the state’s economy.

The inability to access these earned benefits drive many of the other legal concerns of low-income veterans. Rental arrears lead to eviction proceedings in which veterans often lack legal representation and are ordered to leave their home; insufficient income causes missed child support payments and potentially dire enforcement consequences including money judgments, driver's license revocation, garnishment of wages/benefits such as VA and Social Security benefits, and incarceration; and past-due bills can lead to harassment by debt collectors and civil litigation resulting in monetary judgments and ruined credit. Without the resources to afford legal assistance, these veterans must rely on a patchwork of civil legal services organizations to educate them about and protect their housing rights, their parental rights, and even their food security, or go it alone. However, without the ability of these organizations to invest in experts who understand the different federal benefits and resources available to the veteran community and who can help clients through the complex application and appeals processes, the veteran clients continue to remain more vulnerable to additional legal action. Robust civil legal services would ensure that our state's veterans are equipped to navigate the complex VA application and appeals processes and secure the benefits to which they are entitled. This would lead to improved outcomes for veterans and avoidance of the above-referenced corollary legal concerns.

The VA CHALENG Survey confoundingly does not categorize VA benefit access under the umbrella of legal services. In keeping with this misguided position, VA benefit applications and appeals routinely are not considered an issue that requires the assistance of an attorney. Historically, the VA benefits system operated without lawyers and, until 1989, had no mechanism by which to legally challenge VA benefit decisions. Today the landscape is markedly different. Attorneys are just as critical in the VA benefits system as in other federal administrative practices, like Immigration and Social Security. By allowing New York veterans to struggle to learn about and access benefits on their own, New York State will continue to leave veterans behind their counterparts in other states and have to pay the cost directly with public benefits and indirectly with overburdened courts.

New York already has an excellent model to address the gap and to assist New Yorkers to obtain federal benefits from the VA. The Disability Advocate Program ("DAP") has provided grants to not-for-profit legal services corporations and not-for-profit agencies who assist with the Social Security benefit process. DAP has proven extremely successful, connecting New Yorkers to federal benefits and reducing the burden on local taxpayers by removing beneficiaries from State and local benefit programs and boosting local economies with the federal dollars.

A 100% service-connected disabled veteran currently receives \$3,621/month. This monthly compensation would be in addition to any entitlement to Social Security benefits the veteran may have. New York has the blueprint in place to make sure the federal government is paying their share and that veterans are being fully compensated. Funds exist to support our state's veterans and their family members; what is needed are veterans-focused civil legal

services resources to ensure our veterans are fully and comprehensively accessing the benefits they have honorably earned.

### ***Legal Assistance with Medical Debt and Other Debt Collection Matters Protects Veterans' Resources***

A veteran who received service-connected disability benefits from the VA with a 100% disability rating for PTSD reached out to the New York Legal Assistance Group (NYLAG) this past year because his bank account was suddenly frozen. When he spoke to his bank about the issue, he learned that he had been sued on a purported debt from a cardiologist's office in 2015. The veteran was unaware of the lawsuit and did not believe he had incurred the underlying debt. The bank account that was frozen contained only Social Security and VA disability benefits. With NYLAG's help, the veteran was able to invoke his rights under the Exempt Income Protection Act (EIPA) and unfreeze his bank account, so he could access the benefits he relies on for daily living expenses. NYLAG was able to act fast and prevent the veteran from falling behind on any bills or rent. Even small amounts of medical debt can have a major impact on veterans with fixed income, and the complexity of the issues make quick access to legal assistance crucial, particularly for veterans with severe disabilities like PTSD.

### ***Housing and Benefits Representation Prevents Veteran Homelessness***

Evictions are another key area in which veterans are woefully underrepresented. Veterans also face housing issues disproportionately compared to the civilian population. While veterans account for 5% of the U.S. population, they comprise 11% of adults experiencing homelessness in the U.S. today, and nearly 40,000 veterans are unhoused on any given day. It is noteworthy the racial disparities among veterans. In 2018, just 18.4% of the total veteran population nationwide identified as BIPOC ( Black Indigenous People of Color) but nearly half (43.2%) of veterans experiencing homelessness identified as BIPOC. Sadly, a significant number of homeless veterans are BIPOC and lack access to civil legal services.<sup>1</sup>

A 60-year-old veteran residing in Manhattan fell behind on rent and utility payments due to loss of employment during the pandemic. He applied for New York State's Emergency Rental Assistance Program (ERAP), but his application was incorrectly denied by the Office of Temporary and Disability Assistance (OTDA). OTDA erroneously stated in their denial that the county he resided in did not participate in the ERAP program. When the veteran contacted OTDA to point out their error, he was told that the only way to challenge the denial was to file an Article 78 proceeding. The veteran had no idea what that was or how to go about filing the case, so he began to reach out to legal services offices. The Volunteers of Legal Service's (VOLS) Veterans Initiative, along with pro bono co-counsel, filed an Article 78 challenging this

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<sup>1</sup> <https://endhomelessness.org/resource/people-color-make-much-larger-share-homeless-veteran-population-general-veteran-population/>

erroneous denial, asking the Court to order arrears payments and to stay the Housing Court proceedings so the veteran would not be evicted while this case was pending. After being called out on their error, OTDA paid over \$14,000 towards both his rent arrears and utility arrears effectively preventing his eviction. Since the case was filed, the veteran was found to be 100% service connected disabled by the VA and now has stable income to be secure in his housing.

### ***Family Court Representation Protects Veterans's Parental Rights***

Family law encompasses a wide variety of some of the most urgent and deeply sensitive issues in a person's life, such as paternity, child support, custody and visitation, and domestic violence. Veterans and servicemembers encounter family law issues much as others do, but there are unique aspects to their situations and laws that impact the process and results for them. For example, VA benefits should generally be protected from state child support garnishment, though there is a federal administrative process through the VA called "apportionment" where a dependent can get support via the veteran's benefits. Further, the need for assistance in this area by homeless veterans, particularly surrounding child support, touches on half of the legal services mentioned in the top unmet needs in the 2022 CHALENG Survey (e.g., unpaid child support can lead to driver's license revocation, debt collection efforts, and bad credit).

These family law issues are largely addressed in New York State's family courts, which remain overburdened and underfunded, resulting in numerous cases not being heard for months. These delays are extremely consequential when a veteran's benefits are being garnished at a rate they cannot afford or should not have to pay. Child support laws are fairly rigid and administrative options available through the child support office are very limited unless the parent is able to pay the child support arrears. This can be crippling for veterans who are also struggling with other aspects of having served in the military.

Brian G. had a child support order entered against him for his two children after he had served in the military. This order was based on when he was able to work, but a few years later, he was diagnosed with PTSD and his experience of that condition made it too challenging to be around and interact with others in a work environment. He spent months in a lockdown PTSD facility and multiple other stints in care as well. All the while, the child support order was accruing arrears and he now owes over \$32,000. A social worker was supposed to file a child support modification petition for him in the past but did not. Brian has been trying to get more benefits from the VA to better support his children, but the mother will not provide their information to him. He is supplementing his benefits with public assistance and food stamps, but he still cannot afford child support and his other expenses. With the assistance of legal assistance from an attorney with Family Legal Care, Brian was able to file child support modification and visitation modification petitions to hopefully lower his child support obligation and arrears, visit with his children, and get the information he needs to apply for additional VA benefits.

## **Conclusion**

On behalf of the following members of the New York Veterans Law Working Group, we encourage policymakers in New York State, including the members of the New York State Permanent Commission on Access to Justice, to support funding to legal service providers focused on assisting New York's military and veteran population.

The VA's dedication of resources to help homeless veterans should be duly noted and deeply appreciated and should serve as a catalyst for New York to take additional steps in the form of enhanced civil legal services for veterans, active military service members, and their families that will make a deep and lasting impact in the community. Supportive funding to help with the mission of homeless and at-risk veterans, implementation of programs to connect veterans to their federal benefits, and resources within existing civil court systems to assist veterans involved, all show dedication to the individuals who sacrificed on behalf of our country at the time they are most at-need. Comprehensive, culturally sensitive, veteran focused civil legal services can make all the difference.

Respectfully,



Samantha Greer

Assistant Clinical Professor and Director Robert W. Entenmann Veterans Law Clinic  
Maurice A. Deane School of Law at Hofstra University  
Working Group, Co-Chair



Peter Kempner  
Legal Director  
Volunteers of Legal Service, Inc.  
Working Group, Co-Chair

### **Working Group Member Signatories:**

City Bar Justice Center, Veterans Assistance Project  
Family Legal Care  
Fordham Law School Feerick Center for Social Justice  
Legal Services of the Hudson Valley  
Legal Services NYC

Robert W. Entenmann Veterans Law Clinic at Maurice A. Deane School of Law at Hofstra University

Nassau Suffolk Law Services Committee, Inc.

New York Legal Assistance Group (NYLAG)

Volunteers of Legal Service, Inc.

## **Right to Counsel Submissions**



**American Association of Retired Persons  
(AARP) New York**

**2023 Chief Judge's Hearing on Civil Legal Services**



**AARP New York**

**Testimony before the  
Chief Judge of the Court of Appeals**

**The Chief Judge's 2023 Hearing On  
Civil Legal Services In New York**

**September 8, 2023**

**Beth Finkel, AARP New York State Director**

Thank you Chief Judge Wilson and Justices of the Appellate Division for the opportunity to submit testimony. I am Beth Finkel, and I am the State Director of AARP New York. AARP is a social mission organization with over 2.2 million members across New York State. We work on issues impacting people 50 and older, including issues such as housing and livable communities.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction and inspired a movement across the country. There are now over 20 cities, states and counties with a Right to Counsel. This legislation works to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases.

This is especially important as New York State's population is aging rapidly. According to a report by the Center for Urban Future, one in five New Yorkers is above the age of 65. However, the report also found that 1 in 8 older New Yorkers—with higher rates of African American, Latino, Asian American, and immigrant populations—were increasingly living in poverty.<sup>1</sup> Meeting this growing need for aging services and livable communities in New York State is an ongoing, systemic issue requiring collaborative policy responses.

AARP New York's report *Disrupt Disparities: COVID-19 wreaking havoc on communities of color* found that the majority of renters in New York State already pay more than 30 percent of their incomes towards housing costs, with 50-plus year old households headed by women and by immigrants more likely to be rent burdened than men and those born in the U.S. The report also found that African American households are at greatest risk of eviction; tenants living in majority African American zip codes between 2017 and 2019 were three times as likely to be evicted as tenants in majority white zip codes.<sup>2</sup> Data from the Census Bureau's latest pulse survey estimates that 1 in 4 Hispanic/Latino renters, 1 in 3 Asian American renters, and 1 in 2 African American renters in New York State had no confidence or were only slightly confident that they could afford next month's rent<sup>3</sup>. Unstable housing can have

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<sup>1</sup> <https://nycfuture.org/research/keeping-pace-with-an-aging-new-york-state>

<sup>2</sup> <https://online.flippingbook.com/view/301219/16/>

<sup>3</sup> <https://www.census.gov/data/tables/2022/demo/hhp/hhp45.html>

detrimental effects on vulnerable populations, especially older people that may be limited in their ability to move or find adequate housing to fit their needs.

Statewide Right to Counsel legislation is critically needed. With nearly 170,000 eviction cases pending across the state, New York tenants need Right to Counsel now more than ever. As landlords can often afford legal representation, older tenants facing eviction are left defenseless without the help and guidance of a lawyer. Statewide Right to Counsel is a significant step our society must take to enable older adults to remain in their homes.

In 2022, the financial firm Stout published a study<sup>4</sup> on the estimated cost of establishing Right to Counsel outside of New York City, which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that: At full implementation, approximately 46,600 tenant households outside New York City would receive legal representation under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%. Implementation of a statewide eviction Right to Counsel would decrease eviction filings outside of New York City by at least 19%.

Evictions are a core reason that renters experience housing instability. They are extremely disruptive and cause severe, life-altering economic, social, and health impacts. They can directly lead to homelessness and can make it more difficult to get or maintain a job. A public record of eviction makes it markedly more difficult to secure stable, affordable rental housing moving forward.

Older adults want to remain in their homes, in the communities they helped build, as long as possible. Right to Counsel helps level the playing field and gives tenants access to resources to have fair representation. This policy is critical to empowering older adults and improving equity in eviction cases.

Thank you again for the opportunity to testify today.

# **Catholic Migration Services**



## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK

September 18, 2023

Testimony on Need For Statewide Right to Counsel and Enforcement of Local Right to Counsel laws

Catholic Migration Services is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction.

Established in 1971, Catholic Migration Services ("CMS") is a not-for-profit legal services provider that provides free legal services and community legal education to low-income individuals regardless of race, religion, ethnicity, national origin, or immigration status. CMS is an affiliate of the Roman Catholic Diocese of Brooklyn. Our offices are located in downtown Brooklyn and in Sunnyside, Queens and are easily accessible by mass transit to immigrant communities throughout Brooklyn and Queens. CMS' mission is to empower underserved low-income immigrant communities in NYC primarily in Brooklyn and Queens by providing immigration, housing and employment legal services, tenant organizing, and community legal education.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen [over 20 cities, states and counties](#) win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

But the courts, as well as our city and state governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**
  - **pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly [170,000 eviction cases pending across the state](#), ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. In 2022, the financial firm Stout published a [study on the estimated cost of establishing Right to Counsel](#) outside of New York City, which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:



- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
- A statewide eviction Right to Counsel would **reduce the number of default judgments outside New York City, with an expected 32% decline in default rates**.

We encourage you to consider the [comprehensive summary](#) Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

# **Center for Independence of the Disabled, New York**

**2023 Chief Judge's Hearing on Civil Legal Services**





**Hon. Rowan D. Wilson, Court of Appeals  
2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK  
September 18, 2023**

**CIDNY's Testimony on Urgent Need for Statewide Right to Counsel  
and Enforcement of Local Right to Counsel laws**

Center for the Independence of the Disabled, NY (CIDNY) is the voice of people with disability in New York City. We are a nonprofit organization founded in 1978. We are part of the Independent Living Centers movement, a national network of grassroots and community-based organizations that enhance opportunities for all people with disabilities to direct their own lives.

CIDNY is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction.

New York City's Right to Counsel law was a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction. It inspired a movement across the country, which has now seen [over 20 cities, counties](#), and states win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases.

Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

But the courts, as well as our City and State governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**
  - **Pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **Pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Statewide Right to Counsel legislation is critically needed, regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly [170,000 eviction cases pending across the state](#), ALL New York State tenants need Right to Counsel now more than ever. In many localities across the State, only a fraction of these tenants is represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment, or illegal lock out. Most tenants outside of NYC experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.



CIDNY supports the Statewide committee and urges for legal representation of tenants before the eviction process. We know the challenges that folks are encountering before finding an affordable and accessible apartment or home. We advocate for independent living in their home with their families. As eviction may divide families, we want disabled families to stay together and thrive.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable, and enable tenants to remain in their homes. In 2022, the financial firm Stout published a [study on the estimated cost of establishing Right to Counsel outside of New York City](#), which anticipates that passing Statewide Right to Counsel legislation will have a tremendous beneficial impact on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
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We encourage you to consider the [comprehensive summary](#) Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the State. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes.

We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts. New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

**Mbacke Thiam** He/Him/His  
Housing, Health & CAN Community Organizer  
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# **Central Park Gardens Tenants' Association**

**2023 Chief Judge's Hearing on Civil Legal Services**

**THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK**  
**September 18, 2023**

**CENTRAL PARK GARDENS TENANTS' ASSOCIATION**  
**TESTIMONY**  
on the URGENT NEED for STATEWIDE RIGHT TO COUNSEL and  
ENFORCEMENT of LOCAL RIGHT TO COUNSEL LAWS

The Central Park Gardens Tenants' Association is a proud member of the Right to Counsel Coalition, which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction. We represent the tenants in 245 apartments in a former Mitchell-Lama rental building (now two-thirds rent stabilized and one-third market-rate) on the rapidly-gentrifying Upper West Side of Manhattan.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen over 20 cities, states and counties win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

But the courts, as well as our city and state governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**
  - **pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly 170,000 eviction cases pending across the state, ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

While our strong tenant association has discouraged more rampant efforts to evict our members, there are a few each year who face eviction. They need representation and generally cannot afford private counsel. Fortunately, because our building is in one of the first zip codes to get Right to Counsel, tenants here have benefitted from the beginning of this landmark law. We know how important it has been for us, and would be for other tenants statewide.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. In 2022, the financial firm Stout published a study on the estimated cost of establishing Right to Counsel outside of New York City,

which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
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We encourage you to consider the [comprehensive summary](#) Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

Central Park Gardens Tenants' Association  
% Sue Susman, president  
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**Church Avenue Merchants Block Association  
(CAMBA), Inc.**



## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK September 18, 2023

### CAMBA Legal Services - Testimony on Urgent Need for Statewide Right to Counsel and Enforcement of Local Right to Counsel laws

CAMBA Legal Services, Inc. (“CLS”), the legal services affiliate of CAMBA, Inc., is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure that New York City’s vanguard Right to Counsel law is upheld. To preserve the advances that have been made to date, further steps are needed now.

CLS and the Right to Counsel Coalition are also working to win a Statewide Right to Counsel for all New Yorkers facing eviction. Statewide Right to Counsel legislation is critically needed now, and can be enacted at the same time we take the necessary further steps to uphold the City’s Right to Counsel law.

CLS provides legal services through the Universal Access program to clients in Brooklyn and Staten Island, and is also a member of LEAP, a coalition of seventeen New York City civil legal services providers, many of which participate in the City’s Universal Access/Right to Counsel (“UA/RTC”) program.

New York City’s Right to Counsel law was a hard-fought victory. New York City became the first place in the nation to establish a Right to Counsel for tenants facing eviction. The law inspired a movement across the country, which has now seen [over 20 cities, states and counties](#) enact Right to Counsel laws. By all metrics, Right to Counsel in New York City has worked to keep City residents in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases.

The advances brought by New York City’s Right to Counsel law are now at risk. The court’s insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them. We have previously recommended to the New York City Office of Civil Justice to reduce the volume of eviction cases on court calendars so that the number of new cases each day matches legal service provider capacity, as well as provide sufficient time between court dates for lawyers to complete essential work, and calendar new eviction cases only after all eligible tenants with pending cases have retained counsel. Concerted effort across State and City departments is needed:

- **The New York State Court Administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.



- **New York City should fully fund RTC.** In the last city budget cycle, the Coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC. In contrast, the RTC RFX recently released by the NYC Department of Social Services, only funds the work at \$136 million.

Beyond New York City, statewide Right to Counsel legislation is critically needed to provide all New York State residents the same basic housing protections New York City residents have under the City Right to Counsel law. With nearly [170,000 eviction cases pending across the state](#), all New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

- **The New York State legislature should:**
  - **pass Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **pass Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.

To illustrate the good work achieved by the City’s UA/RTC program, we want to share the case of Ms. Jones (not her real name). We received her case at the beginning of 2022 and discovered that in a pre-pandemic stipulation, the landlord’s lawyers deceived Ms. Jones into surrendering succession rights to a rent stabilized apartment while also obligating Ms. Jones to pay her mother’s rent arrears. After filing a motion to vacate that stipulation, we were able to enter into a new stipulation which guaranteed our client and her young daughter the ability to stay in their home of over 10 years. Our office advocated with charities and the New York City Human Resources Administration to pay some of the arrears and also get our client a housing voucher so that Ms. Jones and her child had secure and affordable housing. Without UA/RTC her family might have lost their home in the midst of the pandemic.

Rent stabilization exists in New York municipalities outside of New York City, and tenants throughout the state deserve the ability to have their rights protected and their housing preserved. Amongst so many individuals like Ms. Jones who are eligible for essentially life-saving benefits under the City’s vanguard UA/RTC Law, there is both a shortage of funding and a shortage of qualified housing lawyers. Expanding RTC with Statewide Right to Counsel is a significant step our society must take now to stop displacement and transform courts into places that provide meaningful access to justice for tenants, upholding their rights, holding landlords accountable and enabling tenants to remain in their homes.

In 2022, the financial firm Stout published a [study on the estimated cost of establishing Right to Counsel outside of New York City](#), which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.



- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%.**
- A statewide eviction Right to Counsel would **reduce the number of default judgments outside New York City, with an expected 32% decline in default rates.**

We encourage you to consider the [comprehensive summary](#) Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state.

The statewide crisis will only get worse if we do not enact permanent solutions that strengthen tenants' rights and empower them to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must take the steps necessary to uphold the New York City Right to Counsel law, and preserve the advances it has made. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

## **Community Service Society (CSS) of New York**

**2023 Chief Judge's Hearing on Civil Legal Services**



*The Chief Judge's 2023 Hearing on Civil Legal Services on New York  
September 18, 2023*

Thank you for accepting testimony about Civil Legal Services in New York. My name is Oksana Mironova and I am a senior housing policy analyst at the Community Service Society of New York (CSS). We are a leading nonprofit that promotes economic opportunity for New Yorkers. We use research, advocacy, and direct services to champion a more equitable city and state.

We have been tracking New York's eviction trends for decades. From 2020 to 2021, New York held off a sharp increase in evictions with rental assistance programs and an eviction moratorium. With the end of the moratorium in early 2022, eviction filings climbed sharply. Our 2022 Unheard Third Survey—the longest running survey of low-income people in New York City—[shows that](#) 15 percent of all tenants were targeted for eviction, the highest share in a decade. Families with children under 18 account for nearly half of attempted evictions, while making up only 28 percent of New York City's households.

As a result of the uptick in evictions, one in five tenants of all incomes – and nearly one in four low-income tenants – have had to move in with others because of financial reasons in 2022.

In late 2017, New York became the first city in the country to implement a Right to Counsel (RTC) law. RTC proved to be effective from the onset. [Looking back at two years of data in late February 2020](#), we found that evictions in zip codes covered by RTC declined by 29 percent, 13 points more than in non-RTC zip codes with similar eviction, poverty, and rental rates. Further, 84 percent of tenants with access to counsel in eviction cases were able to stay in their homes. The data shows that RTC was extremely effective in bringing eviction rates down in NYC.

Unfortunately, today, more and more eligible tenants are facing housing court without legal counsel as thousands of eviction cases move forward without RTC. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases. In New York City, last year, [14,000 tenants with eviction cases](#) were denied their legal right to an attorney.

Further, with nearly 170,000 eviction cases pending across the state, ALL New York State tenants need Right to Counsel now more than ever. In most localities, only a fraction of tenants are represented. Most tenants outside of New York City experience housing court as a place that only exists to facilitate eviction—a place where they have little to no recourse to assert their own rights.

The courts, as well as our city and state governments, are all capable of addressing these crises:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**



- **pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
- **pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Thank you for the opportunity to submit our testimony. If you have any questions about my testimony or CSS's research, please contact me at [omironova@cssny.org](mailto:omironova@cssny.org).

**District Council 37**  
**Municipal Employees Legal Services**

**2023 Chief Judge's Hearing on Civil Legal Services**



## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK September 18, 2023

William Whalen, Director and Chief Counsel, District Council 37 Municipal Employees Legal Services  
Testimony on Urgent Need For Statewide Right to Counsel and Enforcement of Local Right to Counsel laws

District Council 37 Municipal Employees Legal Services (MELS) is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction. MELS is a free legal service benefit provided to 125,000 City, State and cultural employees and 59,000 retirees funded by employer contributions to District Council 37's Health and Security Plan. Since 1977 MELS has provided these employees and retirees a right to counsel in eviction proceedings, consumer, debt and bankruptcy matters, divorce and family court actions, purchase or sale of private homes, coops and condominiums and drafting of life planning documents. However, this benefit is only available within the City of New York, Westchester, Rockland, Nassau and Suffolk Counties.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen [over 20 cities, states and counties](#) win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

But the courts, as well as our city and state governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**
  - **pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

DC37 members and retirees residing outside of the MELS coverage area in Orange, Putnam and upstate counties are in desperate need of representation when their homes are at stake. Many of these DC 37 members were forced out of their New York City neighborhoods by gentrification and have no remaining housing options.

Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly [170,000 eviction cases pending across the state](#), ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. In 2022, the financial firm Stout published a [study on the estimated cost of establishing Right to Counsel outside of New York City](#), which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
- A statewide eviction Right to Counsel would **reduce the number of default judgments outside New York City, with an expected 32% decline in default rates**.

We encourage you to consider the [comprehensive summary](#) Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

**For the Many**





## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK September 18, 2023

For the Many - Testimony on Urgent Need For Statewide Right to Counsel and Enforcement of Local Right to Counsel laws

For the Many is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction. For the Many is building a grassroots movement to pass laws and win elections to transform the Hudson Valley and New York so that it works for all of us, not just the greedy few.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen [over 20 cities, states and counties](#) win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

But the courts, as well as our city and state governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**
  - **pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly [170,000 eviction cases pending across the state](#), ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Particularly in the Hudson Valley, where local Good Cause Eviction laws have recently been overturned, the vast majority of tenants are unregulated, and we've seen accelerating gentrification the past several years, we are seeing eviction cases skyrocket. We work with tenants across the Hudson Valley who are facing some of the most heartbreaking eviction cases - without representation. In many cases, they are choosing to abandon their homes altogether rather than resist an unjust eviction because of their lack of representation. Hudson Valley tenants deserve representation to defend against landlord abuse. That is why we need Right to Counsel.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in



their homes. In 2022, the financial firm Stout published a [study on the estimated cost of establishing Right to Counsel outside of New York City](#), which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
- A statewide eviction Right to Counsel would **reduce the number of default judgments outside New York City, with an expected 32% decline in default rates**.

We encourage you to consider the [comprehensive summary](#) Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

## **Housing Conservation Coordinators**



## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK September 18, 2023

Housing Conservation Coordinators - Testimony on Urgent Need For Statewide Right to Counsel, Enforcement of Local Right to Counsel laws, and Funding for Legal Service Providers

Housing Conservation Coordinators (HCC) is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction. HCC is a community-based, not-for-profit organization anchored in the Hell's Kitchen/Clinton neighborhood of Manhattan's West Side. We are dedicated to advancing social and economic justice and fighting for the rights of poor, low-income and working individuals and families with a primary focus on strengthening and preserving affordable housing.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen [over 20 cities, states and counties](#) win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

But the courts, as well as our city and state governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**
  - **pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly [170,000 eviction cases pending across the state](#), ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Housing Conservation Coordinators serves residents across Hell's Kitchen/Clinton and the Upper West Side of Manhattan. Over the course of 2022, 3206 evictions were filed in our catchment area. However in Assembly District 67 and Assembly District 75, the two districts overlapping with our catchment area, only 46% of tenants receive legal counsel in housing court. We depend on Right to Counsel funding to provide legal services to clients in need in our neighborhood. Fully funding Right to Counsel is vital to protecting thousands of tenants across the state in these challenging times.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. In 2022, the financial firm Stout published a [study on the estimated cost of establishing Right](#)

[to Counsel outside of New York City](#), which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
- Statewide Right to Counsel would **reduce the number of default judgments outside New York City, with an expected 32% decline in default judgments, one of the most tragic aspects of the court system.**
- **Since the beginning of 2022, over 32,000 eviction cases in NYC have been carried out without tenants receiving legal representation.** We can stop this by fully funding Right to Counsel and staying cases until tenants have an attorney. Fighting the homelessness crisis in NYC depends in great part on preventing tenants from unjustly losing their homes in the first place.

We encourage you to consider the [comprehensive summary](#) Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

Finally, we urge New York City to properly fund the work of legal service providers to ensure the right to counsel for tenants. The city's recently released Request for Proposals sets a case rate of a mere \$3,063 per unit of service for full representation, which amounts to a small fraction of what it costs to run this program. Additionally, the case rate would only be paid if the provider were to achieve more than 90% of the deliverable goals in the annual contract, which is unachievable given the lack of funding to hire, train, staff and retain attorneys to provide this representation. Fully funding the RTC program requires a significant increase in the case rate for full representation.

## **Housing Court Answers, Inc.**

**Written Testimony for the Chief Judge's 2023 Hearing on Civil Legal Services in New York**  
**by Jenny Laurie, Executive Director, Housing Court Answers, Inc.**  
**September 8, 2023**

Housing Court Answers provides assistance to litigants without attorneys in the New York City Housing Court. HCA staffs information tables in the four counties: Bronx, New York, Queens and Kings, and operates a hotline Monday through Friday, 9am to 5pm supported in large part by funding from the Office of Court Administration.

Since the end of the COVID pandemic protections, the demand for our services has steadily climbed to the level it is at today with between 200 to 450 calls each weekday coming into our hotline. Most of our callers are tenants facing eviction, and most of them are not able to obtain attorneys for their cases.

New York City's Right to Counsel law, starting in 2017, called for the city to provide full legal representation for all tenants facing eviction in Housing Court, or at a NYCHA administrative hearing, with an income at or below 200% of the federal poverty level. While implementation over the initial years grew to cover a larger percentage of tenants prior to the COVID pandemic, the current coverage of the law is probably under 50% of eligible tenants.

To get legal representation, a tenant must come to court on their first calendared date and follow instructions for screenings by either the legal service provider or court staff. Tenants who miss their first date are not guaranteed a screening for legal representation, and judging by what we see, those folks rarely get full representation. Tenants who are not named in the petition also are often not able to get legal representation. On a typical intake day in most of the county courts, tenants with later calendar times are told that the provider's list is full and they will get advice only. From what we are seeing, many of those who face eviction and are in real trouble, those who would be helped most by having a lawyer, are not getting it. New York's rent laws, succession rights regulations, rent arrears programs and eviction protections are complicated and difficult to navigate. The most vulnerable tenants are those least able to navigate and, often, are going through the process without counsel.

We join other advocates in New York City calling on the court to manage calendars so that the legal service providers can take all those eligible for full representation. We saw during the COVID pandemic the adjustments made by the court – in terms of timing and access – and wonder why we cannot return to some of those accommodations. We also join in the call for support for a statewide right to counsel law.

## **Housing Opportunities Made Equal (HOME)**





## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK September 18, 2023

### Housing Opportunities Made Equal - Testimony on Urgent Need For Statewide Right to Counsel and Enforcement of Local Right to Counsel laws

Housing Opportunities Made Equal (HOME) is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction. HOME assists tenants who face housing discrimination and landlord mistreatment, including those who are facing eviction.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen [over 20 cities, states and counties](#) win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

But the courts, as well as our city and state governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**
  - **pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly [170,000 eviction cases pending across the state](#), ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Buffalo has one of the highest rates of eviction in the country, and it is critical to expand the right to counsel statewide to address the epidemic of evictions here.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. In 2022, the financial firm Stout published a [study on the estimated cost of establishing Right to Counsel outside of New York City](#), which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to

community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.

- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%.**
- A statewide eviction Right to Counsel would **reduce the number of default judgments outside New York City, with an expected 32% decline in default rates.**

We encourage you to consider the [comprehensive summary](#) Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

# **Long Island Activists**



## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK

September 18, 2023

### Long Island Activists - Testimony on Urgent Need For Statewide Right to Counsel and Enforcement of Local Right to Counsel laws

Long Island Activists is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction. Long Island Activists is a civically centered grassroots organization that advocates for working class issues around healthcare, the environment, housing, tax reform, social justice, and the economy.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen [over 20 cities, states and counties](#) win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

But the courts, as well as our city and state governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**
  - **pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly [170,000 eviction cases pending across the state](#), ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Long Island Activists take an active role in housing advocacy and we have seen how many residents do not know their rights when it comes to the courts and dealing with the complex issues around housing and eviction. When members of our community lose their home it negatively affects not only their lives but the community as a whole. And it's irresponsible to ask individuals who are dealing with economic hardship to be their own lawyer. Housing is a human right and having legal representation provided by the state should be part of ensuring that to protect individuals from unfair treatment and abuse by landlords who would take advantage of a resident's inability to obtain legal representation.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. In 2022, the financial firm Stout published a [study on the estimated cost of establishing Right to Counsel outside of New York City](#), which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
- A statewide eviction Right to Counsel would **reduce the number of default judgments outside New York City, with an expected 32% decline in default rates**.

We encourage you to consider the [comprehensive summary](#) Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

# **New York Civil Liberties Union**

**2023 Chief Judge's Hearing on Civil Legal Services**



Legislative Affairs  
125 Broad Street  
New York, NY 10004  
212-607-3300  
www.nyclu.org

**Testimony of the New York Civil Liberties Union  
to the Chief Judge’s 2023 Hearing on Civil Legal Services in New York  
regarding the need for statewide right to counsel in eviction  
proceedings.**

**September 18, 2023**

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony to the Chief Judge’s 2023 hearing on civil legal services in New York regarding the urgent need to pass statewide right to counsel legislation (A.1493/S.2721).

**I. Introduction**

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, nonpartisan organization with eight offices throughout New York State and more than 95,000 members and supporters. The NYCLU’s mission is to promote and protect the fundamental rights, principles, and values embodied in the constitutions of New York and the U.S.

We at the NYCLU believe housing is a civil right. The effective protection of this right requires that tenants facing eviction be provided due process and guaranteed counsel. For this reason, the NYCLU is a proud member of the Right to Counsel Coalition, which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure all New Yorkers are guaranteed the right to counsel in eviction proceedings.

**II. New York is facing a housing crisis.**

New York State is experiencing a housing crisis. We’ve seen soaring rents, a shortage of affordable housing, mass evictions, increased homelessness, and an all-out assault on tenants’ rights by landlords.

While New York State issued an eviction moratorium to prevent individuals from being removed from their homes if they were experiencing hardships in paying rent due to the COVID-19 pandemic, hundreds of thousands of New Yorkers have received eviction notices since the moratorium ended on January 15, 2022. Data from the New York State Unified Court System shows that in 2021 there were 69,375 eviction filings in the state—a number

that spiked to 193,986 in 2022 (an increase of more than 179%).<sup>1</sup> And, we're currently on track to surpass last year's number: from the start of 2023 to September 1, 2023, there had been a total of 141,800 eviction filings statewide.<sup>2</sup>

While landlords nearly always have access to representation in these proceedings, tenants typically do not. Our nation's promise of "equal justice under the law" does not extend to all New Yorkers facing eviction, despite the fact that housing is a core human right, the loss of which has serious roll-over effects impacting access to education, employment, health, and childhood well-being.

### **III. People must be guaranteed the right to counsel when at risk of eviction.**

In 2017, the New York City Council passed a Right to Counsel initiative that guaranteed representation to tenants facing eviction. The historic initiative was fully phased in by 2021, eligible to any NYC renter at risk of eviction who is income-eligible (at 80% of AMI). Despite the fact that it has not been adequately funded,<sup>3</sup> where tenants have counsel in eviction proceedings there are overwhelming positive results. As a report by the New York City Department of Social Services' Office of Civil Justice notes, between July 1, 2021 and June 30, 2022, 78 percent of tenants represented in eviction proceedings in NYC were able to remain in their homes, "preserving . . . tenancies and promoting the preservation of affordable housing and neighborhood stability."<sup>4</sup>

With the Right to Counsel Coalition's NYS Eviction Crisis Monitor indicating that nearly 170,000 eviction cases pending across the New York State in mid-July 2023,<sup>5</sup> there is a clear and immediate necessity for a statewide right to counsel. In many localities across the state, only a fraction of tenants facing eviction are fully represented in housing proceedings. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*.

Providing the right to counsel statewide right will help keep New Yorkers in their homes and provide stability for New York families. Our state must level the playing field between tenants and landlords in eviction proceedings by providing tenants facing eviction with the right to have a lawyer at their side. Proposed legislation to establish a statewide right to counsel (A.1493/S.2721) would require that: (1) courts notify tenants of their right to counsel by mail upon the filing of a petition, (2) tenants be given information (e.g., a phone number or website) to contact a right to counsel lawyer, (3) judges verbally inform tenants of their right to counsel if they appear in court without a lawyer, and (4) cases be adjourned until the tenant can retain and consult with their lawyer. Under this law, the failure of a

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<sup>1</sup> NYCourts.Gov, Statewide Landlord-Tenant Eviction Dashboard, <https://ww2.nycourts.gov/lt-evictions-33576>.

<sup>2</sup> *Id.*

<sup>3</sup> Emma Whitford, 'Woefully Insufficient': Future Right-to-Counsel Terms Met With Protest, City Limits, Aug. 11, 2023, <https://citylimits.org/2023/08/11/woefully-insufficient-future-right-to-counsel-terms-met-with-protest/>.

<sup>4</sup> NYC Department of Social Services, Office of Civil Justice, *Universal Access to Legal Services: A Report on Year Five Implementation in New York City*, Winter 2022, at 8, [https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ\\_UA\\_Annual\\_Report\\_2022.pdf](https://www.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2022.pdf).

<sup>5</sup> Right to Counsel NYC Coalition, NYS Eviction Crisis Monitor, <https://www.righttocounselnyc.org/evictioncrisismonitor>.



court to comply with the tenant's right to counsel would result in vacating any eviction judgments and warrants.

It is critical that the right to counsel be guaranteed for *all* New Yorkers facing eviction, and that any measures passed to provide for the right to counsel at the city or state level be fully funded. Passing and appropriately resourcing right to counsel initiatives is critical in the effort to prevent displacement and transform courts into places that uphold tenants' rights, hold landlords accountable, and enable tenants to remain in their homes.

#### **IV. Conclusion**

Housing is a civil right, and New York should treat it like one. Every New Yorker deserves to have a champion at their side when they're faced with losing their home. As the panel considers how to respond to the unmet civil legal services needs in New York, we urge you to support the advancement of statewide right to counsel legislation and efforts to fully fund right to counsel initiatives. Passing and appropriately resourcing such initiatives will help respond to the current eviction crisis and protect the right to stable housing for all New Yorkers.

**People United for Sustainable Housing  
(PUSH) Buffalo**

**2023 Chief Judge's Hearing on Civil Legal Services**



## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK

### September 18, 2023

PUSH Buffalo (People United for Sustainable Housing)- Testimony on Urgent Need For Statewide Right to Counsel and Enforcement of Local Right to Counsel laws

PUSH Buffalo was founded over eighteen years ago in response to the affordable housing crisis in Buffalo, NY. Our mission is to mobilize residents to create strong neighborhoods with quality, affordable housing; to expand local hiring opportunities; and to advance racial, economic, and environmental justice in Buffalo.

PUSH Buffalo is a proud member of the Right to Counsel Coalition, which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen over 20 cities, states and counties win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

But the courts, as well as our city and state governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
- **The state legislature should:**
  - **pass our Statewide Defend RTC Legislation (S3254 / A4993)**, which would mandate that tenants have the time they need to get RTC, and
  - **pass our Statewide Right to Counsel Legislation (A.1493/S.2721)** for all New York tenants, which would also create rules for the courts to uphold and implement RTC.
- **New York City should fully fund RTC!** In the last city budget cycle, the coalition demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly 170,000 eviction cases pending across the state, ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. In 2022, the financial firm Stout published a study on the estimated cost of establishing Right to Counsel outside of New York City, which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
- A statewide eviction Right to Counsel would **reduce the number of default judgments outside New York City, with an expected 32% decline in default rates**.

We encourage you to consider the comprehensive summary Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

Thank you for your consideration,

Micaela Shapiro-Shellaby  
 Director Organizing  
 PUSH Buffalo

# **The Right to Counsel NYC Coalition**

**2023 Chief Judge's Hearing on Civil Legal Services**



## THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK

### September 18, 2023

Right to Counsel Testimony on Urgent Need For Statewide Right to Counsel and Enforcement of NYC's Right to Counsel

[The Right to Counsel NYC Coalition](#) unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction. We and members of our [Housing Courts Must Change! Campaign](#) collectively represent tens of thousands of tenants across New York State and are honored to be working on permanent and transformative solutions to New York's eviction crisis.

New York City's Right to Counsel law is a hard-fought victory, achieved by tenants and their allies who had identified housing court as a center of displacement and an engine of the eviction crisis—and sought to transform it. This historic victory made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen [over 20](#) cities, states and counties win a Right to Counsel.

By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing an increased volume of eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them. These tenants are overwhelmingly Black and brown, women and mothers, immigrants, and people who suffered the greatest losses during the pandemic, often while our society depended on their labor to keep functioning. Without Right to Counsel upheld, our court system continues to send a message to these tenants that it's acceptable for them to face eviction alone and navigate a confusing, traumatizing court system without an advocate. This failure to uphold Right to Counsel undermines any potential for equity in courts, entrenching them as eviction machines, and places where the rights of only the powerful and wealthy are upheld.

But the courts, as well as our city and state governments, are all capable of addressing this crisis:

- **The court administration should issue an administrative order**, mandating that all eviction cases where a tenant is eligible for RTC shall be administratively stayed until the tenant has retained a Right to Counsel attorney.
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- **New York City should fully fund RTC!** In the last city budget cycle, we demanded \$351 million to ensure there are enough attorneys to represent everyone entitled to RTC.

Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. This bill, introduced by Senator Rachel May and Assembly Member Latoya Joyner, would ensure that all New Yorkers have the right to a lawyer when facing an eviction and:

- Covers any legal proceeding that could result in a tenant losing their home.
- Requires that tenants be represented throughout their entire case, not just when they show up in court. This includes legal advice, advocacy, and assistance.
- Creates a New York State Office of Civil Representation that would administer the implementation of Right to Counsel statewide, including:
  - contracting with nonprofit legal services organizations to provide Right to Counsel and with non-profit community based organizations to provide tenants' rights education and tenant organizing.



- collecting and publicizing important data on evictions and representation, and holding public hearings on the efficacy of Right to Counsel.

With nearly [170,000 eviction cases pending across the state](#), New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented; for example, the city of Albany documented record low rates of tenant representation in the third quarter of 2022, with only about 1.3% of tenants having an attorney in eviction court, compared to 92-94% of landlords. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City understand housing court to be a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Statewide Right to Counsel is a significant step our society can take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. The financial firm Stout published a [study on the estimated cost of establishing Right to Counsel outside of New York City](#), which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
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Our coalition estimates that in total, NYS will need to appropriate approximately \$500-\$550 million annually at full implementation of Statewide Right to Counsel. This cost will be phased in across five years, and will pay for itself in the long run. Passing Statewide Right to Counsel will enable New York State to realize staggering fiscal and social cost savings: millions of public dollars (over and above the cost of providing the Right) that would otherwise be spent on shelter, emergency room costs, homelessness services, and more. Like most cities and states with an eviction Right to Counsel, **New York State could see cost savings of \$3 - \$6 per dollar invested in Right to Counsel**. Behind these fiscal savings are myriad gains for New Yorkers, who Right to Counsel will protect from disruptions to schooling and education; violent encounters with marshals, police and sheriffs; devastating mental and physical health repercussions of displacement; and many other destabilizing effects of eviction.

We encourage you to consider the [comprehensive summary](#) Stout compiled detailing the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can save the state money, improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

## **United Tenants of Albany**



**THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK**  
**September 18, 2023**

United Tenants of Albany - Testimony on Urgent Need For Statewide Right to Counsel and Enforcement of Local Right to Counsel laws

United Tenants of Albany is a proud member of [the Right to Counsel Coalition](#), which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction. UTA recognizes the need for tenant representation, as the average rate of counsel for tenants in eviction proceedings in the city of Albany is below 3%. For the last 30 years, UTA has staffed a 'court advocate' to fill the gap. They are not an attorney, but do assist tenants in understanding the eviction process, their rights and possible avenues, and negotiating fair deals for tenants at risk of displacement.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen [over 20 cities, states and counties](#) win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed—faster than any other type of civil court case—has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

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Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly [170,000 eviction cases pending across the state](#), ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Albany, Rensselaer and Schenectady Counties are all in the top 10 evictions per renter in New York State. As the only tenants rights organization in the Capital District, many of these tenants at risk of imminent displacement contact United Tenants of Albany seeking court advocacy, rental assistance, landlord-tenant mediation, and more. Unfortunately, UTA's staff of 11 is not fit to respond to the approximate 10,000 evictions filed each year. Accelerating this crisis is the fact that the Capital District has one understaffed Legal Aid Society also struggling to meet the needs of tenants across the region.

Otherwise, tenants have no options for representation, and therefore few rights when in front of largely conservative, Upstate judges.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. In 2022, the financial firm Stout published a [study on the estimated cost of establishing Right to Counsel outside of New York City](#), which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

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Canyon Ryan  
Executive Director  
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## **Westchester Residential Opportunities, Inc.**



## westchester residential opportunities

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Saving homes, saving families™

By email to [accesstojusticecommission@nycourts.gov](mailto:accesstojusticecommission@nycourts.gov)

### THE CHIEF JUDGE'S 2023 HEARING ON CIVIL LEGAL SERVICES IN NEW YORK September 18, 2023

Westchester Residential Opportunities, Inc. - Testimony on Urgent Need For Statewide Right to Counsel and Enforcement of Local Right to Counsel laws

Westchester Residential Opportunities, Inc. is a proud member of the Right to Counsel Coalition, which unites tenants, organizers, attorneys, faith communities and many others who are working to ensure New York City's Right to Counsel law is upheld, and to win a Statewide Right to Counsel for all New Yorkers facing eviction. Founded in 1968, Westchester Residential Opportunities, Inc. is a 501(c)(3) nonprofit organization whose mission is to promote equal, affordable and accessible housing opportunities for all residents in the Lower Hudson Valley of New York. WRO's programs include fair housing and fair lending investigation and enforcement; preventing eviction, mortgage default and utility shut-off and counseling by HUD-certified housing counselors; first-time home buying counseling; affirmative marketing of affordable housing; aging in place home modifications; and independent living programming for individuals living with mental illness.

New York City's Right to Counsel law is a hard-fought victory, which made NYC the first place in the nation to establish a Right to Counsel for tenants facing eviction, and inspired a movement across the country, which has now seen over 20 cities, states and counties win a Right to Counsel. By all metrics, Right to Counsel has worked to keep New Yorkers in their homes, reduce evictions, and empower tenants to organize in their buildings and show up to court to fight their cases. Now, all of that is at risk. The court's insistence on advancing eviction cases at such a rapid speed – faster than any other type of civil court case – has produced a situation in which legal providers cannot keep up with the pace of cases, and tens of thousands of tenants who are eligible for Right to Counsel have had this critical right denied to them.

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Statewide Right to Counsel legislation is critically needed regardless of how we remedy the undermining of NYC's Right to Counsel law. With nearly 170,000 eviction cases pending across the state, ALL New York State tenants need Right to Counsel now more than ever. In many localities across the state, only a fraction of these tenants are represented. This rate of representation is even lower when it comes to affirmative cases to protect against neglect of repairs, harassment or illegal lock out. Most tenants outside of New York City experience housing court as a place that *only exists to facilitate eviction*—a place where they have little to no recourse to assert their own rights, in particular, their right to a safe, habitable home.

Westchester Residential Opportunities is dedicated to helping households avoid homelessness in Westchester and the Lower Hudson Valley. In the communities where we operate, eviction often leads to homelessness, regardless of fairness of the circumstances leading to the eviction. Tenants do not have the knowhow and resources to protect their rights in housing court. The State is in a position to change that, leveling the playing field statewide. This would be an important step toward equal housing justice.

Statewide Right to Counsel is a significant step our society must take to stop displacement and transform courts into places that uphold tenants' rights, hold landlords accountable and enable tenants to remain in their homes. In 2022, the financial firm Stout published a study on the estimated cost of establishing Right to Counsel outside of New York City, which anticipates that passing Statewide Right to Counsel legislation will have a tremendous effect on evictions across the state. Stout estimates that:

- At full implementation, approximately **46,600 tenant households outside New York City would receive legal representation** under a Statewide Right to Counsel. Approximately 97% of tenants who appear in eviction court would benefit from Right to Counsel. With dedicated funding to community organizing and outreach, the percentage of tenants that accept free legal representation will likely be closer to 100%.
- Implementation of a statewide eviction Right to Counsel would **decrease eviction filings outside of New York City by at least 19%**.
- A statewide eviction Right to Counsel would **reduce the number of default judgments outside New York City, with an expected 32% decline in default rates**.

We encourage you to consider the comprehensive summary Stout compiled of the harms of eviction. Housing instability, evictions and displacement are tearing our communities apart across the state. The crisis will only get worse if we don't enact permanent solutions that strengthen tenants' rights and empower tenants to fight for their homes. We can improve equity in our justice system, and most importantly, protect and empower New Yorkers in their homes and in our courts by passing Statewide Right to Counsel legislation. At the same time, we can and must remedy the crisis in NYC's courts by enforcing our local Right to Counsel. We urge the Chief Judge to take swift action on both accounts: New Yorkers are looking to you to help our communities thrive by ensuring tenants have the fundamental right to representation.

Submitted by,

  
Marlene Zarfes, Executive Director  
Westchester Residential Opportunities, Inc.

**PERMANENT COMMISSION ON ACCESS TO JUSTICE**

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**REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK**

**APPENDIX 5:**

**Acknowledgment of Working Group Members,  
Permanent Commission on Access to Justice,  
2023**

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**NOVEMEBR 2023**

**Acknowledgment of Working Group Members  
Permanent Commission on Access to Justice  
2023**

<b>Funding Working Group</b>	
Neil Steinkamp, Chair Kristin Brown Robert B. Fiske, Jr. Rachel Chazin Halperin Adriene Holder	John S. Kiernan Mary C. Mone Christopher O'Malley Raun J. Rasmussen
<b>Future Access to the Courts Working Group</b>	
John Kiernan, Co-Chair Raun Rasmussen, Co-Chair Hon. Lucy Billings Kristin Brown Sal Curran Hon. Craig Doran Camille Siano Enders Rachel Chazin Halperin Adriene Holder	Hon. Anne-Marie Jolly Denise Kronstadt Sue Ludington Lori O'Brien Hon. Edwina G. Richardson Hon. Jean Schneider Neil Steinkamp Lisa M. Zayas
<b>Law School Involvement Working Group</b>	
Dean Matthew Diller, Chair Dean Aviva Abramovsky Michaela K. Rossettie Azemi Hon. Lucy Billings Kristin Brown Kim Diana Connolly Elyse S. Diamond Camille Siano Enders	Hon. Fern A. Fisher Andrew B. Isenberg Elisa D. Lackey Donna Lee Kristina Lively William J. Niebel Daniel Ortega

Technology Working Group	
Deborah Wright, Chair	Jeanne Ortiz-Ortiz
<b>Conference Planning Committee:</b>	Erin Riker
Tim Baran	Ellen Samuel
Glenn Baum	Chris Schwartz
Matt D'Amore	<b>Technology Survey Committee:</b>
Christine M. Fecko	Sarah Abdelhadi
Colleen Finan Fehringer	Erica Edwards
John Greiner	Glenn Baum
Jeff Hogue	Christine M. Fecko
Alexander Horwitz	Colleen Finan Fehringer
Erica Ludwick	John Greiner
Sateesh Nori	Scott D. Musoff
Pete Nowacki	Holly R. Stevens



**PERMANENT COMMISSION ON ACCESS TO JUSTICE**

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**REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK**

**APPENDIX 6:**

**Statements from Client Presenters from Prior  
Chief Judge's Hearings on Civil Legal Services  
in New York**

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**NOVEMBER 2023**

## Statements from Client-Presenters from Prior Chief Judge's Civil Legal Services Hearings

New York State Permanent Commission on Access to Justice

**Legal Aid Society of Northeastern New York**

**Statement of Rasaan Kellam**

**October 25, 2022**

My name is Rasaan Kellam. 11 years ago, I was represented by Robert Vanderbles of the Legal Aid Society of Northeastern New York. Rob represented me in an eviction case and was able to negotiate a settlement that allowed me to get the time I needed to pay my rent. I have always remembered how important it was to me to keep my housing. At that time, I worked for Time Warner Cable. I was able to keep my job and stay off drugs and stay on track. I did not become homeless, and I have always thought that if I had become homeless at that moment, I might have slipped and done some time at the City Mission before having another moment of clarity. At that point it would have been a significant step back, a big defeat, and I think that my life might have gone in a whole different direction

In addition to keeping a stable job, I eventually found a new position in the substance abuse field. I was a facilitator at Father Young's Altamont Program, and then at his Schenectady location, where I got a job as a case manager. I worked with group of about 10 parolees, and I was the one responsible to help them get housing and jobs. After a few years, New Choices Recovery Center came into Schenectady. I had gone to their program as a recovering addict and I reached out, applying for a position. They remembered me and hired me. I have succeeded here as a case manager and counselor helping substance abusers in recovery.

In addition to a stable job helping people whose struggle I understand, I have now been married for 10 years. Last week we bought our first house ever. I still live in Schenectady, and I am happy to have met the right woman and found the right profession and job. Being represented by the Legal Aid Society 11 years ago helped me stay on track and lead me where I am today. Thank you.

*Rasaan Kellam presented at the [2011 Civil Legal Services Hearing in the Third Department](#)*

**Legal Services of the Hudson Valley**  
**Statement of Corinna Carrillo**  
**October 2022**

My name is Corinna Carrillo and I appeared at the 2018 Statewide Civil Legal Services Hearing to speak about the representation I received from Legal Services of the Hudson Valley in my custody, child support, order of protection and divorce cases from Legal Services of the Hudson Valley. My husband was a terribly abusive and violent person, hurting me in many ways – including threatening me with a gun. We share three children. There were times that I was not sure that I was going to survive.

Legal Services of the Hudson Valley represented me throughout the course of a couple of years and I was able to obtain sole custody of my children, child support, an order of protection, and a divorce. It has not been easy for me or my children, but we are safe. My family has been a great support to me. Three years ago, I was able to move out from living with my mother and now I live with my children on my own in Poughkeepsie. I work in the mortgage industry. I am in a healthy relationship. If not for all of the guidance and support from my attorney, I would not be where I am today. I know my rights and I feel empowered in my life. I know what a healthy relationship looks like, and I feel strong.

I am a proud member of the Board of Directors of Legal Services of the Hudson Valley and I enjoy being an ambassador to the community to let others know the importance of civil legal services.

*Corinna Carrillo presented at the [2018 Civil Legal Services Hearing](#).*

**Legal Services of the Hudson Valley**  
**Statement of Evelicia Rodriguez**  
**October 2022**

My name is Evelicia Rodriguez and I presented at the 2020 Statewide Civil Legal Services Hearing about the representation I received from Legal Services of the Hudson Valley in my housing case. At the time, we were experiencing the height of the pandemic, and because of a hazardous leaking pipe, Con Edison had shut off the gas to my apartment building in Mount Vernon. My landlord failed to make the necessary repairs and as a result, I had no heat, hot water, or cooking gas for close to three months, including winter months. During this time, he also threatened and bullied me to leave the apartment. I have a child with special needs so this made me especially anxious.

Once Legal Services of the Hudson Valley got involved and represented me in court, my landlord was ordered to make the necessary repairs to get the gas restored and additionally, to stop threatening me. I continue to live in my same apartment. I now feel empowered to address issues with my landlord. When there are problems in my apartment, I take pictures of them and send them to the landlord. He has stopped harassing and intimidating me. Although he does not make repairs as quickly as he could, I do find that he eventually is making the needed repairs. Since my court case, I have had heat every winter. He is also repairing the roof, which has been leaking for many years.

Having an attorney represent me in my housing case and enforce my rights and hold my landlord accountable has empowered me and improved my living conditions for my family for the long-term. It also showed my landlord that he must keep up with the needed repairs to the apartment building. I am now a proud member of the Board of Directors of Legal Services of the Hudson Valley and speak to community members about the importance of civil legal services.

*Evelicia Rodriguez presented at the [2020 Civil Legal Services Hearing](#).*

**Legal Services NYC**  
**Statement of Joy Wefum**  
**October 23, 2023**

My name is Joy Wefum. I fled to the United States from Ghana right after college because I knew I could not survive in Ghana as I am an openly gay man. Homosexuality is criminalized in Ghana and if caught in the act, I could be jailed for up to 3 years. When I arrived in the United States, I tried my best to make a life here. Without an attorney to pursue asylum, I struggled. I did not know that I had only one year to apply for asylum, so I missed the deadline. The next few years were very challenging. I got involved in a relationship with an abusive partner who threatened to report my immigration status if I dared to leave the relationship. And then I got diagnosed with HIV. Shortly after my diagnosis, I lost my job and apartment in New Jersey and moved into a homeless shelter in New York City.

Seven years into my life in the States, I found myself extremely depressed and had no one to turn to. Returning to Ghana as an HIV-positive gay man would have been a death sentence. I attempted suicide more than once but found the strength to keep trying to get help. After being turned away by twelve different immigration organizations, I eventually found my way to Legal Services NYC. Their advocates discovered an exception to the one-year rule and, with pro bono support, helped me file for asylum. Just four months later, my asylum status was approved. One year after that, LSNYC partnered with a law firm to get me a green card. Now I am living in safe and affordable housing and am enrolled in college where I am pursuing a nursing degree. I am also an executive committee member of LSNYC's board of directors. LSNYC and my pro bono attorneys rewrote my destiny, and I will be forever grateful for their help.

*Joy Wefum presented at the [2020 Civil Legal Service Hearing](#).*

