

# 2023 New York Statewide Civil Legal Aid Technology Conference

## 2B Rural Justice and Remote Proceedings

Wednesday, April 19, 2023

1:00 PM – 1:50 PM

Live Virtual Presentation

CLE Credits: 1.0 Practice Management

### CLE RESOURCES

[The Rural Representation Crisis](#)

[Report of the NYSBA Task Force on Rural Justice](#)

[Remote Court: Principles for Virtual Proceedings During the COVID-19 Pandemic and Beyond](#)

[New York Courts' Response to the Pandemic: Observations, Perspectives, and Recommendations](#)

### PRESENTERS

**Moderator:** [Danielle Elyse Hirsch](#), Managing Director, National Center for State Courts

**Panelists:**

[Hon. Elizabeth A. Garry](#), Presiding Justice, State of New York Supreme Court, Appellate Division, Third Judicial Department

[Hon. Craig J. Doran](#), NYS Supreme Court Justice and Chair of the NYS Pandemic Practices Working Group

[Taier Perlman](#), Former Staff Attorney, Legal Services of the Hudson Valley

[Alicia Bannon](#), Director, Judiciary Program, Brennan Center for Justice

## The Rural Representation Crisis

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### The Rural Representation Crisis

Elizabeth Garry, Presiding Justice of the Appellate Division, Third Department, writes: "I have continued to observe and hear from practitioners that circumstances have continued to decline. Rural communities are facing a legal representation crisis."

January 17, 2023 at 10:20 AM

By Elizabeth Garry, Presiding Justice, Appellate Division, Third Department | January 17, 2023 at 10:20 AM

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In 2019, I devoted this space to the serious concerns and challenges related to providing access to justice for all New Yorkers, with a focus on the unique obstacles present in our rural communities. As Presiding Justice of the Third Department, which includes just over half of New York's land area and many rural regions, I have continued to observe and hear from practitioners that circumstances have continued to decline. Rural communities are facing a legal representation crisis.

As I noted in my previous column, the New York State Bar Association (NYSBA) convened a Task Force on Rural Justice, co-chaired by my Third Department colleague Hon. Stan Pritzker, and attorney Taier Perlman. The report, which was adopted by NYSBA in April 2020, utilized empirical and anecdotal survey data gathered by Albany Law School's Government Law Center, as well as other resources, to describe the impacts of the rural representation crisis and offer some potential solutions ([Report of the NYSBA Task Force on Rural Justice](#) (April 2020); Taier Perlman, "[Rural Law Practice in New York State](#)" (April 2019)).

Aging attorneys reported that they could not retire because there were no lawyers to take over their practices. Solo and small practitioners shared their inability to refer clients in the event of conflicts of interest, and the challenges in sustaining their overwhelming caseloads. They described counties with dwindling 18-b panels, withered by attrition due to low rates of compensation and attorney retirements and relocation. More than half of rural attorneys have reached or are nearing retirement age, and far too few young attorneys practice in these communities to adequately replace them. At the Third Department we have also experienced these trends. In administering our Attorneys for Children program, we have seen steep and

troublesome declines in panel numbers, seriously threatening our ability to ensure high quality representation for young and vulnerable clients. We have also received markedly fewer applications for our legal and clerical support positions, particularly in our more rural locations.

With nearly a fifth of our state's population residing in rural communities, this growing crisis means that more than three million New Yorkers, as well as the organizations and businesses with which they are associated, are at risk of being unable to find an attorney to adequately assist them with their crucial legal needs—ranging from the pursuit of basic life necessities, to navigating life-changing family disputes, to transferring property and conducting business that helps support and strengthen the community, and so much more. The 2022 Justice Gap Report by the Legal Services Corporation revealed that nationwide, 77% of low-income households in rural areas experienced at least one civil legal problem in the previous year, 40% had five or more problems, and nearly a quarter experienced 10 or more civil legal problems in the past year; respondents reported that they did not receive any or enough legal help for 94% of their substantial problems, commonly including consumer issues, health care, and income maintenance (see Legal Services Corporation, [Justice Gap Report: Rural Americans](#) (April 2022)).

The COVID-19 pandemic exacerbated the access to justice crisis for rural New Yorkers. The Court System's Commission To Reimagine the Future of the New York Courts' Pandemic Practices Working Group recently held hearings throughout the state and received testimony from litigants, judges, court employees, members of law enforcement, legal services providers and private practitioners from myriad backgrounds and geographic settings regarding the Court System's approach to the COVID-19 pandemic. This is important work; we must carefully analyze these nuanced issues to prepare for the future, and to identify what pandemic solutions should be carried into the post-COVID world, to improve access to justice.

As addressed in the hearings, virtual court appearances have provided some relief, and may serve as a stopgap measure to address the rural attorney shortage. In conjunction with creative solutions—such as community center and courthouse kiosks that provide connectivity as well as other non-legal assistance—technological advancements precipitated by the pandemic may offer helpful tools to assist rural residents. There is no doubt, however, that remote representation by an attorney in another region falls far short of having ready access to a lawyer who lives nearby.

Attorneys are a critical part of the social fabric. They tend to be active, engaged, generous professionals whose contributions extend far beyond each discrete representation, who share their resources and expertise, and support and reinvest in their neighbors and community. So although technology may offer some makeshift measures, and the contributions of non-rural attorneys who represent rural clients undoubtedly have a significant impact, we must remain

focused on finding sustainable long-term solutions that will bring lawyers back to practicing in rural communities.

Prof. Hannah Haksgaard has written compellingly about rural private practice as public interest work (see [Hannah Haksgaard, Rural Practice As Public Interest Work, 71 Me L Rev 209, 210 \(2019\)](#)). Expanding our conception of public interest law—along with the attendant benefits and incentives—to include rural practice is an important step toward addressing this crisis. Not all rural communities are poor, but people living in rural areas are more likely to experience poverty than those in other settings (see [LSC Report](#)). And, to the extent that rural communities are languishing, the scarcity of attorneys is perhaps simultaneously a cause and effect of that poverty. Regardless of the setting—rural, urban or otherwise—access to an attorney is key to “many of the basic transactions that make a community function[;] poor communities, like all communities, include individuals with a range of economic and other interests ... [and] working class residents and small business owners of a poor neighborhood are critically important to building institutions in the community” ([Matthew Diller, Lawyering for Poor Communities in the Twenty-First Century, 25 Fordham Urb. L.J. 673, 682 \(1998\)](#)). If we, as a legal community, can work together to improve the status and conditions facing attorneys in rural settings, it could create a virtuous circle, helping to revitalize these communities, improving the quality of life for their residents and giving rise to additional opportunities for the professionals willing to invest their time and talent. And as we address recent reports that our state is lagging behind in reducing poverty (see [NYS Comptroller Report: New Yorkers in Need](#) (December 2022)), it is critical that rural parts of the state are not overlooked in anti-poverty efforts—such as ensuring access to attorneys to assist with basic life necessities.

The recommendations of the Rural Justice Task Force to promote and support rural practice included direct payment incentives to assist with student loan repayment and expanding tuition assistance programs, as well as raising the rate of compensation for assigned counsel. The Task Force noted the critical importance of pursuing broadband access for all communities, and NYSBA has called on the state of New York to provide funding for high speed access, particularly for rural areas. The Task Force addressed the importance of bar associations in offering assistance to lawyers in transition, as well as law schools in facilitating pro bono service in rural communities, and providing information to students about rural practice to foster a pipeline of young attorneys prepared to bring their talent to rural regions.

I encourage you to review the report of the Rural Justice Task Force, and to learn more about the work of the Rural Law Initiative, and the many other organizations that are doing their part to help meet the need for legal services of all kinds in rural communities, such as the Rural Law Center, the Legal Aid Society of Northeastern New York, Pro Bono Net, and others. I also hope that those of you who may be beginning your legal career, or who may be considering a change,

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may consider the existing opportunities outside urban settings. While rural law practice poses unique challenges, it also most certainly offers unique rewards. There is room in our rural areas; room to explore, room to grow, room for you! And, as attendees of this Annual Meeting surely know, many of the challenges of law practice in any setting are lessened by participation in professional organizations, and coming together with other members of our legal community.