

**Written Statements Submitted at the  
Fourth Department Hearing on October 6, 2011**

**Statements of Non-Testifying Witnesses**

Erie County Bar Association Volunteer Lawyers Project, Inc.

Farmworker Legal Services of New York, Inc.

Legal Aid Society of Rochester, NY

Legal Assistance of Western New York, Inc.

Legal Services of Central New York

Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc.

New York State Unified Court System Law Libraries Association

Syracuse Law School

Western New York Law Center

Women's Bar Association of the State of New York

**Erie County Bar Association  
Volunteer Lawyers Project, Inc.**

**The Task Force to Expand Access to Civil Legal Services in New York**

**Public Hearing**

October 6, 2011

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Comments of:

Robert M. Elardo<sup>i</sup>

Managing Attorney/CEO

Erie County Bar Association Volunteer Lawyers Project, Inc.

RE: Civil Legal Services

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**Intro:**

My name is Robert Elardo and I am the Managing Attorney/CEO of the Erie County Bar Association Volunteer Lawyers Project, often referred to as simply VLP. VLP is a member of the Legal Services Funding Alliance, a coalition of the 15 civil legal services providers from outside NYC.

I want to thank Judge Lippman and the Task Force for conducting these important hearings.

**Background About VLP:**

At VLP, our staff and volunteers have provided free civil legal services to low income people and smaller not for profit groups since 1983. Our staff that had shrunk to 13 people has now grown to 15 thanks to the funding that was recently awarded to us by the Oversight Board for Judiciary Civil Legal Services Funds. During 2010, our program represented clients on 3507 cases. Nearly 1,000 of those cases were handled by local attorneys that we recruit, train and coordinate to provide pro bono civil legal services for our clients. The remainder of the cases was handled directly by our staff.

VLP primarily serves people in Erie County, although an increasing array of our services, such as unemployment insurance benefits, Immigration, tax and help for

individuals and families affected with HIV/AIDS, extend into the surrounding counties of Niagara, Orleans, Genesee, Wyoming, Cattaraugus, Chautauqua, and Allegany.

### **Role of VLP:**

At VLP, we see the terrible choices that people near or below the poverty line face. Should they pay their car payment or the rent? Should they buy new school clothes for their kids or pay the electric bill? Our clients need to be continually making those choices because there simply is not enough money to take care of everything that they should be paying. When people are living constantly under that type of pressure, they get evicted or, if they were lucky enough to have had a house, it gets foreclosed upon. Their car gets repossessed, which leads to trouble getting to work and they lose their job. They end up needing to file bankruptcy and all of the stress and trouble leads to family problems that end up in divorce, custody battles and child support problems. Unfortunately, this is not an exaggeration. It is a reality for our clients and each problem in this continuum is a legal problem. VLP works cooperatively with the other legal services providers locally and state-wide to try to provide our services as efficiently as possible. The local providers are all in the same building and VLP has entered into a collaboration with Legal Services for the Elderly and the Western NY Law Center to share conference rooms, other space and a phone system.

At VLP, we try to keep people out of homeless shelters by providing eviction defense and mortgage and tax foreclosure defense. We try to keep people off of the welfare rolls by helping people with unemployment insurance claims and child support cases. We try to keep kids out of the expensive foster care system by handling adoptions, representing grandparents (and other relatives) who step in to seek custody when families become dysfunctional, and parents who setting up standby guardianships so that when they become incapacitated or die, the standby guardian seamlessly becomes the guardian. We try to help people with fresh starts financially and emotionally by providing assistance with bankruptcies and divorces.

I have attached a page briefly describing 5 other cases that were recently handled by VLP.

### **Overwhelming Need:**

In the past year, VLP handled about 3,500 cases and provided information and referral services to about 2,500 more. Yet we turn away more clients than we can fully help.

Working together with the other 4 local programs, we cumulatively served more than 11,000 low income and elderly clients last year. However, even with all of our collaborations, the need remains overwhelming. Statistics gathered over a sample 2 month period indicate that **40,000 low income clients in the Buffalo area per year are being turned away and facing their important civil legal problems without the help of a lawyer.**

In the past couple of years, the need has grown as previously middle class workers have lost their jobs and become eligible for our services (in many cases, for the first time in their lives). We have tried to focus increased resources on obtaining unemployment insurance benefits for displaced workers. If we can get them the benefits that they deserve, perhaps they can avoid homelessness, loss of health insurance, repossession of their car and other serious problems. We are using funding from the Oversight Board for Judiciary Civil Legal Services Funds to fund a full time attorney to work on these cases and we have expanded our geographic service area for UIB case from just Erie County to Erie, Niagara, Allegany, Cattaraugus, Chautauqua, and Orleans. Adding one staff attorney to our current efforts will not meet the need, but it will allow us to serve many more clients and keep their families afloat.

### **Pro Bono:**

The time, talent and expertise of the members of the private bar present a tremendous asset and opportunity for getting more clients served. Private attorneys will never be able to meet the entire need or replace the need for dedicated staff attorneys. However, with training and support, the private bar can fill a significant part of the need. Our program supported pro bono attorneys handling nearly 1,000 cases last year.

Pro bono is extremely cost effective, but it is not free. Coordinating the pro bono work of hundreds of lawyers takes a significant amount of our staff time, but it is well worth the effort.

When the funding for ProBonoNY was cut, we lost a terrific asset – the Pro Bono Coordinator for the Eighth Judicial District. She had been working to recruit, train and support pro bono attorneys throughout the entire Eighth Judicial District. She served as staff to the Eighth Judicial District Pro Bono Committee and kept pro bono in the news. Pro bono development is a long term commitment. The culture in the legal community does not change overnight. It is a gradual process. She was making progress, but it set things back when she was laid off.

We have used some of the funding from the Oversight Board for Judiciary Civil Legal Services Funds to hire her back on a part time basis to continue her work in Erie County.

## **Conclusion**

I want to close by saying, that it is in these very difficult economic times that the State must be more vigilant, more active and more aggressive in making sure that people in need do not fall prey to denial of life sustaining benefits, loss of their home or further injustice. It is in these times – at this very moment – that we should be expanding our investment in civil legal services and ensuring greater access to justice.

Access to justice – funding for legal services -- is NOT a special interest. Providing legal assistance to the poor and the elderly is a fundamental public interest.

The funded awarded by the Oversight Board for Judiciary Civil Legal Services Funds is making a difference, but much, much more is needed.

Thank you.

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<sup>i</sup> Robert M. Elardo has been the Managing Attorney of the Erie County Bar Association Volunteer Lawyers Project, Inc. (VLP) since 1984. During that time, he has also spent periods serving as President of the National Association of Pro Bono Coordinators (NAPBCO), Co-Chair of the New York Pro Bono Coordinators Network, and as a consultant to the American Bar Association's Center for Pro Bono. He is a member of the NY State Bar Association (NYSBA) President's Committee on Access to Justice and a member of the NYSBA Committee on Legal Aid. He has been a trainer numerous times on pro bono topics for the ABA, NYSBA and within Erie County. Prior to starting with VLP, he was an Associate Member of the Law Faculty at Boalt Hall, University of California at Berkeley. He was awarded a Distinguished Alumnus Award by the University at Buffalo Law Alumni Association in 2002 and an Award of Merit from the Bar Association of Erie County in 2009.

## ERIE COUNTY BAR ASSOCIATION

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## These are just five of the over 3500 cases that VLP handled last year:

1. A man who suffered a stroke during surgery and ended up in a skilled nursing facility received help from us with two matters. First, we helped with a supplemental needs trust. Then when he was served with divorce papers, we found a volunteer attorney to represent him in the action for divorce.
2. A man suffering from a traumatic brain injury lives in the home that was owned by his now deceased parents. He needed to get title into his name in order to qualify for community development funding to repair the home. We found a pro bono lawyer who opened the estate and obtained an administrator's deed to the client.
3. A man suffering schizophrenia was facing tax foreclosure for the home that he and his two children lived in. He had not been opening mail because it was too traumatic for him and the sale was imminent. He made it here and we found a law firm to assist him in getting a repayment plan to save his home.
4. Last year, the International Institute of Buffalo closed its Immigration Legal Department. VLP stepped in to keep the funding in WNY and to take on added responsibility for more immigration cases. One case handled by VLP's Immigration Project resulted in the Immigration Court granting asylum for a gay man from a country in Eastern Africa. We presented volumes of evidence from American medical professionals that he had been tortured by his own family and authorities in his country with violent beatings, electrical shocks, mock asphyxiation, and burning—all in an attempt to make him give up his "abhorrent" behavior. He was able to flee his country with a visa because he worked for an American company. He had hoped to get to Canada, but was stopped and detained by U.S. immigration officials. Today he is a patient at the Center for Victims of Torture in Minneapolis where he receives treatment for PTSD and is rebuilding his life. He is now working and studying English, and in one year, will apply for lawful permanent residence in the U.S.
5. A woman suffering from post traumatic stress syndrome stemming from severe domestic violence (at the hands of first her ex-husband and then by their adult son) came to us after these two men had intimidated her into signing a document which purported to give up her rights to pension payments from her ex-husband's pension that had been in payment status for several years. She came to VLP when her ex-husband brought an Order to Show Cause asking for vacature of the QDRO which provided for her pension rights. When she first came to us, she could barely describe what had happened. We obtained counseling for her through Haven House and successfully defended the Order to Show Cause so that she could keep her pension rights which she needed to support herself.

We are proud to coordinate and assist private attorneys in the delivery of effective pro bono legal services to indigent individuals and non-profit organizations.

**Farmworker Legal Services of  
New York, Inc.**

**Servicios Legales para Los Trabajadores Agrícolas**

**Farmworker Legal Services of New York, Inc.**

**Trayayè-Fèm Sèvis Legal de New York**

**1187 Culver Road**

**Rochester, New York 14609-5448**

**Tel: (585) 325-3050**

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**TESTIMONY OF FARMWORKER LEGAL SERVICES OF NEW YORK, INC**

**For**

**The Chief Judge's Hearings on Civil Legal Services  
FOURTH DEPARTMENT HEARING**

**October 6, 2011**

My name is Lewis Papenfuse and I am the Executive Director of Farmworker Legal Services of New York, Inc., (FLSNY). FLSNY is the only law project in New York State that provides legal representation and education on employment and housing issues to migrant and seasonal farm workers, regardless of their immigration status. FLSNY has been providing exceptional legal services to members of the most hidden and ignored populations for over thirty (30) years. FLSNY currently employs legal staff, including a contracted mentor/supervisor with experience ranging from six (6) to fifteen (15) years. Each of FLSNY's legal support staff that includes two (2) Domestic Violence advocate, a labor Human Trafficking expert and a workplace safety specialist have over ten (10) experience in the field. FLSNY's Domestic Violence Project works with the victim to access the courts to protect her, to file necessary papers to obtain documentation, and to insure she and her children get medical assistance, and provide her with a support network that is sensitive to her needs and culture. Likewise, FLSNY's trafficking project provides legal protection and representation to trafficked victims while working in tandem with law enforcement and other NGO's to provide services for the victims. FLSNY's workplace safety education program conducts extensive outreach to farm

workers to provide education on the dangers of pesticide exposure, other workplace hazards and the preventative measures they can take to protect themselves and their families. Our work at FLSNY means hours of travel to remote locations, repeated visits to these same locations and intensive advocacy for some of the most basic rights that all should have. The project has, for over thirty years, conducted outreach 3 to 4 times a week to labor camps, community sites and other farm worker housing to conduct community legal education and for case development work.

We are part of a consortium of upstate legal services programs entitled PULSE, the Partnership of Upstate Legal Services. PULSE was established as part of an effort to respond to the unmet legal needs of the underserved and rural poor in upstate New York. We foster collaboration and resource sharing among our members in the provision of direct legal services and statewide policy advocacy to low-income, rural and other underserved populations. PULSE consists of Farmworker Legal Services of New York, Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc., the Rural Law Center of New York and The Legal Project. Our intent is to enable our programs to expand our current individual capacities to provide services to New York's most vulnerable, including the elderly, the disabled, the working poor, the farm worker community, and domestic violence and sexual assault victims, as well as other underserved low-income rural residents of upstate New York. Additionally, FLSNY partners with a migrant health center, two worker centers and other legal service providers to work with prospective clients at sites throughout New York State. FLSNY is constantly accessing new forms of telecommunication and specifically teleconferencing to interview clients at remote locations throughout the state. Additionally, FLSNY has partnered with another OCA recipient, the Workers' Rights Law Center, to staff an office in the Hudson Valley Region of the State. We are currently involved in merging the two entities to reduce costs and increase coverage to our client base.

The Court System and Chief Judge have been tremendous supporters of civil legal services, and we know that you are well aware of the importance of the work that we do across the state to help provide a vital safety net to the poor and working poor with life crises such as domestic violence, unemployment, wage theft and homelessness. The economic downturn has only added to the overwhelming needs of our clients. We appreciate that the Office of Court Administration has been supportive of the variety of programs throughout New York State. Our state simply is too large and too diverse to apply a "one-size-fits-all" approach to legal services delivery and we hope that the court system will continue to encourage the creativity that occurs when many types of programs are maintained and, hopefully, expanded. Specialized programs for special populations such as the elderly, farm workers, rural poor and domestic violence victims ensure that the most vulnerable among us will not be forgotten.

In conclusion I would like to offer a view of the type of work we do and a picture of the clients we serve. Below are three vignettes that attempt to illustrate the quality of work that is being done while highlighting the courage and tenacity our clients possess.

## CASE EXAMPLES

J....., is a person we first encountered on general outreach. He was living in a building that had no heat, no running water, sewage on the bathroom floor and was infested with rats and cockroaches. J....., was not paid for his last few weeks of work, continually getting promises of pay that never came. He was out of food and had no transportation to either go to a food bank or seek other assistance. Our first step was to take care of his immediate needs of warm clothing, bottled water and food. Once these immediate needs were taken care of, we then were able to address his legal issues. Had he received his wages promptly, he would not have been in such desperate need. Unfortunately, J...’s situation is more the rule than the exception. Most farm workers are victims of multiple employment violations. Many are victims of human trafficking, both labor and sex. Many are victims of gender discrimination in employment and domestic violence at home and at work.

M... lived with her parents in Mexico. She was just 14 years old when her parents arranged for her to marry a much older man. Her husband often hit her, called her names, and degraded her in front of her family. He told her that if she told anyone about the beatings he would kill her and her family. She believed him. She once called the police but they told her it was her fault and she should go home and be a “good wife”. This treatment continued for 6 years. In 2008, her husband came to the United States. He begged her to come and live with him and that he had changed. She came to the United States and worked in the fields picking crops. The abuse, however, continued. When she became pregnant, he beat her so badly that she was hospitalized and lost the baby. She still didn’t tell anyone about being abused. She was told by her husband that the police would not believe her and they would send her back to Mexico and take her children away from her. She didn’t speak any English so she didn’t know that this was not true. Finally, she could hide the abuse no longer. The police were called and she showed them the bruises that nearly covered her entire body. The police arrested her husband. She was then referred to Domestic Violence Program that Farmworker Legal Services operates. When our advocates met her and talked to her about her case, we told her that she could be protected from her husband, that we would help her with the immigration court so she wouldn’t be deported. Her husband was deported and she feared that she would be deported and she would be under the control of her husband again. FLSNY conducts monthly meetings with many farm worker women to talk about domestic violence and how the laws in the United States can protect them from being beaten and abused. At the meetings, we provide food, babysitting, and transportation for the women to come together to learn about the laws that help protect them and their families.

J... was 16 when he came to the United States to work on a farm. He was told that he could make enough money that he will be able to send extra money back to his family. He also was told that he would have a place to live. He was also told that he would have “legal” papers. He was taken across the border in the back of a truck that was packed with 15 other workers. They first took him to Arizona where he spent many days in a trailer with other workers. He was told that if he wanted to work, he would have to pay the crewleader \$2,000 and the cost of his

transportation. He was told that by working in New York State that he would easily make this much money. He agreed to come to New York. When he came to New York, he was put in a house with many other workers. He did not have a bed. He slept on the floor in the kitchen with an old blanket someone had given him. He worked for two weeks and when he received his pay, he was surprised at how little he received. He was told that the rest was used for rent and expenses from his transportation. To cash the check, he had to give it to the crewleader who took some of it as a check cashing fee. After buying food, he did not have any money to send home. After two months, he asked how much more he owed and found out that the debt had decreased very little. He realized that he would never be free of the debt. He was told that if he complained he would be deported and sent back home in shame. The crewleader had taken his papers so he couldn't prove who he was or how old he was.

FLSNY's outreach worker met J.... He suspected that J.... was underage, but J....told him he was 19. J.... was told that he must not tell people his real age. Our staff member talked to J....and the other workers in the house about their legal rights, he told them that some crewleaders did illegal things, like making people work off a debt by threatening them with physical harm. After several visits, J....finally told our staff member about the threats, how he was tricked into coming to New York, how many promises were made to him and finally about how old he really was. Our staff member explained to J....that he appeared to be a victim of human trafficking. We told J,... that we could help him by using the United States and New York laws to free J.... from his bondage.

Sincerely,

Lewis Papenfuse  
Executive Director

# **Legal Aid Society of Rochester, NY**

TO: Task Force to Expand Access to Civil Legal Services in New York

FROM: The Legal Aid Society of Rochester, NY

Contact: Carla M Palumbo, Esq, One W Main St Suite 800 Rochester NY  
14606 585-295-5760, [cpalumbo@lasroc.org](mailto:cpalumbo@lasroc.org)

DATE: October 6, 2011

RE: Impact on Funding from the Oversight Board

The Legal Aid Society of Rochester is grateful for the funding spearheaded this year by Chief Judge Lippman and received from the Oversight Board. This funding will allow us to retain 3 attorney positions and maintain services in our Housing, Family Law and Immigration Units.

Without this funding, and given reductions from other funding sources, LAS was facing the loss of, at a minimum, three attorneys. Two support staff positions were already eliminated from the budget. Unfortunately, even given funding from the Oversight Board, we are not able to restore the support staff positions.

The loss of three attorney positions would have had a devastating effect on our community. In our Family Law Unit, victims of domestic violence, parents seeking to settle their rights with regard to custody and visitation and litigants seeking financial resolution on issues such as child support would have been turned away. In our Housing Unit, tenants seeking homelessness prevention, foreclosure prevention, consumer help, bankruptcy and first time home-buyers seeking to stabilize their housing situation would not have had access to service. In Immigration our clients seeking legal status and asylum would not be assisted.

Even with current staff, LAS must turn away eligible clients who have meritorious causes of action but we cannot help given our resources. In 2011, we saw a 70% increase in the demand for service over 2009 for victims of domestic violence that we could not assist, even with an increase in staff for the domestic violence program. Also in 2011, there was a 67% increase over 2009 in “turn aways,” that is, people who qualify and who otherwise would have been accepted, if we had the resources to do that work. The areas of the highest unmet need for service at LAS were in divorce, orders of protection, foreclosure and consumer/bankruptcy issues.

Continued and increased funding is imperative in order to maintain our current service level and meet more of the needs of our community. Legal services in the area of foreclosure prevention, homelessness prevention, divorce representation, immigration and youth advocacy face severe cuts in 2012; if funding is not maintained and increased we will face the loss of services and program closures for the coming fiscal year.

The impact of this funding on our agency is clear, without it, programs will close and services will be reduced; ultimately however, it is the most vulnerable members of our community who will suffer and go without the legal assistance they so desperately need if funding is not maintained or increased.

**Legal Assistance of Western  
New York, Inc.**

**LEGAL ASSISTANCE OF WESTERN NEW YORK, INC.®**

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**TESTIMONY:**

**TASK FORCE TO EXPAND  
ACCESS TO  
CIVIL LEGAL SERVICES  
IN NEW YORK**

October 7, 2011

By: C. Kenneth Perri  
Executive Director



## **I. Introduction:**

On behalf of Legal Assistance of Western New York, Inc.<sup>®</sup> (hereinafter LawNY<sup>®</sup>), I thank you for conducting the hearings on civil legal services in the Second Department on September 20, 2011, in the First Department on September 26, 2011, in the Third Department on October 3, 2011 and in the Fourth Department on October 6, 2011. I thank you as well for the opportunity to share these very brief comments with regard to the crisis facing the civil legal services infrastructure in New York State and how it impacts those unable to access the justice system because of their inability to pay for an attorney.

I extend my thanks in particular to the Chief Judge of the State of New York, Honorable Jonathan Lippman, as well as the other members of the hearing panels, Chief Administrative Judge Ann Pfau, New York State Bar Association President Vincent E. Doyle, III and Presiding Justices Anthony V. Cardona, Luis A. Gonzalez, A. Gail Prudenti and Henry J. Scudder. I also extend my thanks to Helaine M. Barnett, the chair of the Task Force To Expand Access To Civil Legal Services In New York, as well as the other distinguished members of the Task Force.

## **II. LawNY<sup>®</sup>:**

My name is C. Kenneth Perri and I am the executive director of LawNY<sup>®</sup>. LawNY<sup>®</sup> is a 501(c)(3) not-for-profit law firm whose mission is to provide access to the justice system to low-income New Yorkers and other vulnerable populations in our 14 county service area. I have been a civil legal services practitioner for 29 years

LawNY<sup>®</sup> has seven staffed offices which provide services to low-income people in 14 counties. Our office in Bath serves the residents of Allegany and Steuben Counties. Our office in Elmira serves the residents of Chemung and Schuyler Counties. Our office in Geneva serves the residents of Livingston, Ontario, Seneca, Wayne and Yates Counties. Our office in Ithaca serves the residents of Tioga and Tompkins Counties. Our office in Jamestown serves the residents of Chautauqua County. Our office in Olean serves the residents of Cattaraugus County. Our office in Rochester serves the residents of Monroe County.

With the exception of the urban center in Rochester and the small cities of Canandaigua, Elmira, Geneva, Ithaca, Jamestown, Olean and Salamanca, the 14 county service area covered by LawNY is primarily rural. In the counties in which we do not have staffed offices, we have sites where we can meet with and interview clients located in Belmont, Lyons, Montour Falls, Mt. Morris, Ovid, Owego and Penn Yan.

## **III. Continued Need for Funding:**

On September 29, 2010 I submitted written testimony and had the honor of providing oral testimony at the Chief Judge's hearing held in Rochester, New York. At that time I provided detailed information regarding the extremely high demand for services from

LawNY<sup>®</sup> by the members of our low-income communities. The sum and substance of my September 2010 testimony remains unchanged, and is briefly able to be summarized as follows:

- the number of persons living in poverty in the 14 counties served by LawNY<sup>®</sup> continues to grow;
- Present economic conditions are dramatically affecting the demand for civil legal services among low-income people, including those who, because of loss of jobs, have recently fallen below the federal poverty level;
- The unemployment rate remains high;
- Employers continue to downsize, relocate or close;
- The number of people participating in the poverty programs of last resort – public assistance, food stamps and medicaid – continues to rise;
- LawNY<sup>®</sup> continues to struggle to meet gaps in our service delivery system which we have self identified, including in the areas of foreclosure prevention services, mobile home owners' rights, services for domestic violence victims, services for seniors and services in the areas of employment law, education law and land sale contracts; and
- LawNY<sup>®</sup> also continues to grapple with the barriers which we have identified to providing civil legal services, including our large geographic expanse; low starting salaries for our professional staff of attorneys; the difficulty of recruiting and retaining volunteer lawyers to provide pro bono services in the rural counties in our service area; recent reductions in and actual elimination of some of our state funding sources; and the impending loss of one-time funds from federal sources at the close of our current fiscal year on December 31, 2011.

Moreover, a new threat to our stability has emerged in connection with our funding from the Legal Services Corporation. For the federal fiscal year 2012 budget, the Appropriations Committee of the United States House of Representatives has reported out a Commerce, Justice and Science bill that reduces LSC funding for FY 2012 by \$104.2 million, entirely from basic field funding, amounting to a reduction of 27.5% for programs from FY 2011 levels. The possibility of this significant reduction in funding comes on top of the 4% reduction in funding which LSC grantees have already received in FY 2011.

In addition, at the present time, the board of directors of LSC is in the process of making a recommendation to Congress regarding the manner in which LSC funding should be reallocated among geographic areas in the United States based on updated poverty population determinations. Based on information presently available to us, the seven LSC

grantees in New York State estimate that we will collectively lose nearly 21% of our LSC basic field funds, a loss of nearly \$5,700,000 based on present FY 2011 funding levels.

#### **IV. LawNY<sup>®</sup>'s Use of Oversight Board Judiciary Civil Legal Services and IOLA Funds:**

In the current state fiscal year, which runs from April 1, 2011 – March 31, 2012, Chief Judge Lippman was able to secure funding for civil legal services in the sum of \$12.5 million allocated by the Oversight Board for Judiciary Civil Legal Services grants, as well as a supplemental allocation of \$15 million for the Interest on Lawyer Account Fund, which has seen a devastating reduction in its grant making ability due to low interest rates. Following competitive RFP processes for both funds, LawNY<sup>®</sup> was awarded a portion of each.

LawNY<sup>®</sup>'s fiscal year runs from January 1 – December 31. On December 14, 2010 the LawNY<sup>®</sup> board of directors adopted a budget for LawNY<sup>®</sup> which included a structural operating deficit of nearly \$1,100,000. We projected revenue to come in at \$4,989,000, while carrying expenses of \$6,080,000. Thanks in large measure to the sums awarded by the Oversight Board for Judiciary Civil Legal Services and by the IOLA Board of Trustees, LawNY<sup>®</sup>'s staffing and our service delivery system have, for the most part, been able to be maintained intact. In 2010, we lost one full-time administrative assistant position through attrition. We serve as a site for two very robust AmeriCorps programs, but we also had to reduce our AmeriCorps paralegal member staffing by 4.25 positions. In 2011, we reduced our staff by eliminating a case manager position. We also anticipate eliminating at least one attorney position in January 2012 due to the loss of one-time funds from federal sources.

Combined, the funds from the Oversight Board and IOLA allow LawNY<sup>®</sup> to retain approximately 15.5 FTE attorney staff members, three FTE paralegal staff members and two FTE support staff members. This provides LawNY<sup>®</sup> with the capacity to provide representation to approximately 2,775 families.

#### **V. Conclusion:**

For the period from January 1, 2010 – December 31, 2010, LawNY<sup>®</sup> staff in all seven offices, with all of our funding streams, cumulatively closed a total 6,668 cases benefiting 15,901 people. The three highest substantive law areas in which cases were closed were in those in which clients presented with legal problems affecting the essentials of life – government benefits (44%), housing (27%) and family law (14%). LawNY<sup>®</sup> used a variety of strategies to meet these critical legal needs of our clients, including representation in judicial and administrative forums, preventive legal education, pro se information, short-term services such as counsel and advice and holistic community partnerships.

In 2012, absent renewed funding from the Oversight Board for Judiciary Civil Legal Services and IOLA, LawNY<sup>®</sup> will need to develop and implement a plan for significant

reductions in force which will destabilize our ability to continue to provide civil legal services in a broad variety of areas affecting the essentials of life of the members of our low-income communities.

I am grateful for the efforts of the Chief Judge and the Task Force and fervently urge that the Task Force recommend that funding from New York State for the provision of civil legal services to low-income people be enhanced in the state fiscal year which begins on April 1, 2012 so that LawNY<sup>®</sup> and the entire community of civil legal services providers can continue to respond as effectively as possible to the ever growing need for our services. The continuing demand by our low-income neighbors for assistance from the legal services provider community in turn demands ongoing and stable funding for the providers from the State of New York.

LawNY<sup>®</sup> and the other civil legal services providers throughout New York State welcome the opportunity to work with the Task Force To Expand Access To Civil Legal Services In New York to achieve this result.

Thank you for your time and your consideration.

# **Legal Services of Central New York**



**Testimony of**

**Dennis A. Kaufman, Esq.**

**Executive Director, Legal Services of Central New York, Inc.**

**Before**

**The Task Force to Expand Access to Civil Legal Services**

**Fourth Department Hearing**

**October 7, 2011**

**Buffalo, New York**

My name is Dennis Kaufman and I am the executive director of Legal Services of Central New York. I thank the Task Force to Expand Access to Civil Legal Services for the opportunity to provide this written testimony.

In 2004, Legal Services of Central New York (LSCNY) and the Legal Aid Society of Mid New York (LASMNY) formed the Justice Alliance of Central New York. The Justice Alliance created a comprehensive civil legal services delivery system for low-income families and individuals in Central New York by ensuring that Legal Services Corporation (LSC) restrictions did not prevent region residents from having access to a full range of legal strategies to meet critical legal needs. LASMNY accepts all of the LSC funds for the region; LSCNY does not accept these funds, therefore, client representation is not prevented by LSC restrictions. This also ensures that state and local governmental and private funds are used solely for the purposes determined by the funder. When the New York LSC regions were reconfigured, only the Central Region adopted this comprehensive delivery system.

The Legal HelpLine of Central New York, a single point of entry to LSCNY and LASMNY services, operates at the heart of the Justice Alliance. The HelpLine gives advice and counsel and brief service to callers and refers callers in need of extended representation to experienced LSCNY or LASMNY staff, depending on the services required. More than 14,000 calls annually come through the single point of entry system. At current staffing levels, the HelpLine closes about 4,500 brief service or advice and counsel cases annually. Because callers can speak to a

HelpLine attorney immediately for a crisis, and usually on the day of the call for other legal matters, the advice and information can and does prevent matters from escalating. The access to early intervention is especially critical for the elderly, people with disabilities, people with limited means of transportation, and residents of rural areas who have difficulty travelling to a Justice Alliance office.

The Oversight Board's announced priorities of essentials-of-life legal services coincide with the core representation historically provided by LSCNY and LASMNY. The priorities for LSCNY and LASMNY have been established through a legal needs study completed following the reorganization, and current being updated, and an annual "gap analysis" by LSCNY staff. The analysis identifies legal matters and client populations where significant needs are unmet in the region. Identifying such gaps in available services prevents duplication and results in a more effective and efficient use of available resources.

For 2011, the gap coverage, funded in substantial part by the Oversight Board CLS grant recently awarded, is as follows.

**Housing.** LSCNY staff lawyers engage in housing advocacy in areas of law that are not being done by LASMNY lawyers. LSCNY reviews cases involving:

- Accessing subsidized housing,
- Systemic code enforcement problems,
- Water and utility shut-offs due to landlord failure to pay,
- Privatized municipal foreclosure on taxes,
- Property flipping schemes,
- Foreclosures,
- Tax foreclosures,
- Predatory mortgages,
- Mortgage scams,
- Housing discrimination, and

### Equity stripping schemes.

LSCNY currently receives state funding to represent homeowners in foreclosure. That funding ends on December 31, 2001. The Oversight Board CLS grant will help transition foreclosure work to the point where the state stream is, hopefully, again available.

**Income Security/Benefits.** LSCNY represents clients in both individual and systemic problems with public benefits. LSCNY lawyers recently settled class action litigation challenging a county Department of Social Services policy that unlawfully and arbitrarily delayed thousands of applicants for benefits, denying applicants even the opportunity to apply for public assistance, Food Stamps and Medicaid. Applicants would stand in line outside the Department starting at 6:00 am in order to obtain one of the limited number of appointments made available each day. Those turned away had to return repeatedly to just file an application. Applicants who had to get their children off to school often arrived too late to obtain an appointment. The settlement agreement, among other things, removes barriers to application, holds the department to mandated time periods for decisions on applications, and provides for compliance monitoring.

**Language Access.** LSCNY represents people who have had language issues with law enforcement agencies, access to health services, and access to government benefits and services. Resettlement efforts by local religious and human services organizations have made this problem more acute in communities served by LSCNY. LSCNY recently prevailed in a challenge to the Utica City

School District voter qualification policy mandating the ability to read and write English. LSCNY has also sued a local jail for failing to provide adequate interpretation services, resulting in physical injury and denial of medical care.

**Access to Health Care.** LSCNY will monitor the impact of the Patient Protection and Affordable Care Act of 2010 on New York residents as portions of the ACA become effective. Oversight Board CLS funds will continue LSCNY's pro bono/staff medical-legal partnership at local hospitals.

**Consumer/Debt Problems.** Specific issues for LSCNY representation include:

- Collection practices,
- Deceptive sales,
- Predatory lending,
- Gutter service in consumer collection cases,
- Payday loans, and
- Debt Rescue scams.

**Wage Theft Project.** With the former executive director of the National Employment Law Project on staff, LSCNY has initiated the Wage Theft Project.

Issues include, but are not limited to:

- Failure to pay minimum wage,
- Failure to pay for overtime,
- Miss-classifying workers as independent contractors,
- Miss-classifying workers as exempt, and
- Abuse of vulnerable workers, including domestic and farm workers.

**Access to Justice.** New Yorkers have a right to counsel in criminal and many Family Court cases, but our system of assigning competent lawyers is broken in many of the counties in the region. County systems often operate under

procedures that are designed to deny rather than facilitate representation. LSCNY has effectively advocated on behalf of people who have been denied assigned representation in criminal and Family Court matters. LSCNY is preparing to challenge, in one or more counties, policies and practices that inappropriately deny statutory and constitutionally protected rights to assigned counsel.

**Education.** LSCNY represents students subjected to disciplinary proceedings threatening their ability to stay in school, parents and students who have issues with school authorities because of language barriers, and students who have been denied registration in their home school district. Matters that relate to students with disabilities are referred to the LSCNY Protection & Advocacy Unit.

LSCNY, with the addition of Oversight Board CLS funding, will continue to represent clients in the following circumstances prohibited to LASMNY, an LSC grantee.

**Legislative and Administrative Advocacy.** LSCNY lobbies at the state and local level on issues impacting our clients. We comment on proposed legislation and regulations without restriction. We join coalitions to advocate for law changes in the state legislature.

**Class Actions.** LSCNY brings class actions. On referral from a LASMNY advocate, LSCNY successfully challenged the Oneida County Department of Social Service practice of limiting new applicants to 12 each day. Another pending class action has challenged the practice of evicting tenants from housing connected to social services programs without a court order. A class action challenges a county

sheriff's sale of "criminal background checks" to employers to "screen" applicants where the reports contain only arrest information in violation of the state Human Rights Law.

**Citizenship.** LSCNY represents clients without regard to their citizenship.

**Prisoners.** LSCNY can represent persons incarcerated in local, state and federal correctional facilities on most civil matters within our case priorities, including the pending language access litigation against a local jail.

**Welfare Reform.** Even after the US Supreme Court decision permitting LSC grantees some latitude in this area, there are systemic welfare issues where an LSC grantee may not represent. LSCNY represents clients in these matters.

**Client Identification.** If it is in a client's best interest not to comply with LSC regulation §1636.2 and sue as a "John Doe" plaintiffs, LSCNY can and does bring the litigation under fictitious names, as in the sheriff arrest report case described above.

**Restrictions on Certain Eviction Proceedings.** LSCNY can represent in cases without regard to issues of drug involvement in eviction cases.

**Solicitation.** LSCNY is not restricted in soliciting clients.

**Attorney fees.** Although LSC restrictions have recently been relaxed, LSCNY has experience in litigating potential fee-award cases to gain strategic advantages in settlement and create additional resources.

Funding from the recent Oversight Board Civil Legal Services grant has dramatically increased LSCNY's capacity to serve clients. Five staff attorneys have

been hired under the grant. Four attorneys have been assigned to the work described above and one staff attorney will work on the HelpLine. Previously, the work described above was conducted primarily through a grant from the NY Interest on Lawyer Account Fund. For the past several years, more than 1,525 cases were closed annually with that funding. We anticipate that at the current level of funding from the Oversight Board were extended, the work we do would double.

It is difficult to determine the number of people helped by LSCNY as the successful class actions help an unidentified number. For example, in the class action to prevent the county sheriff from selling unlawful “criminal background reports” for employment screening, we estimate that 4,000 people annually have these reports made available to prospective employers. The litigation against the county Department of Social Services benefits thousands of applicants for cash assistance, Food Stamps, and Medicaid in the future.

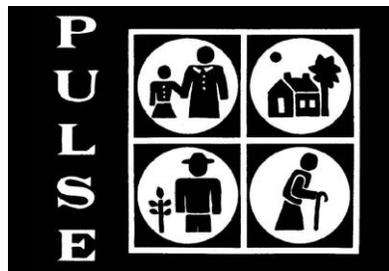
With the advent of the Oversight Board funding, our ability to meet the critical legal needs of low-income families and individuals in the region, while far from being completely met, has significantly increased. Undoubtedly, the thousands of people in our region who have civil legal needs appreciate the work of the Task Force. We are hopeful that the funding available in the future will increase so that many more of our neighbors will be helped.

**Legal Services for the Elderly,  
Disabled or Disadvantaged of Western  
New York, Inc.**

**TESTIMONY OF**

**Karen L. Nicolson, Esq.  
Chief Executive Officer  
Legal Services for the Elderly, Disabled or  
Disadvantaged of Western New York, Inc.**

**On behalf of PULSE, Partnership of Upstate Legal Services**



**on  
The Need for Civil Legal Services Funding**

**October 6, 2011**

My name is Karen Nicolson and I am the Chief Executive Officer of Legal Services for the Elderly, Disabled or Disadvantaged of WNY, Inc. (LSED). We are located in Buffalo and usually referred to as Legal Services for the Elderly. Since 1978 my program has provided free civil legal services to seniors, disabled and low income people in a six county area and the Seneca Nation of Indians reservation. We also provide guardian services to an additional 64 elderly and disabled individuals (soon to increase to 100). As guardian we are responsible for legal representation as well as, financial management, medical and end-of-life decision making and service coordination. Most of these clients are victims of elder abuse by family members and have no one left to help them.

At LSED our goal is to use the legal system to help our clients live independently and with dignity. As a small, non-restricted provider, we rely on our partnerships to stretch our resources. Our agency is networked not only with the statewide legal services community, but also with the aging services community. We are part of the patchwork of agencies that provide services to older adults and frequently apply for grants as part of a "team" of service providers.

We are part of a consortium of upstate legal services programs entitled PULSE, the Partnership of Upstate Legal Services. PULSE was established as part of an effort to respond to the unmet legal needs of the underserved and rural poor in upstate New York. We foster collaboration and resource sharing among our members in the provision of direct legal services and statewide policy advocacy to low-income, rural and other underserved populations. PULSE consists of Farmworker Legal Services of New York, Legal Services for the Elderly, Disabled or Disadvantaged of Western New York, Inc., the Rural Law Center of New York and The Legal Project. Our intent is to enable our programs to expand our current individual capacities to provide services to New York's most vulnerable, including the elderly, the disabled, the working poor, the farm worker community, and domestic violence and sexual assault victims, as well as other underserved low-income rural residents of upstate New York.

The Court System and Chief Judge have been tremendous supporters of civil legal services, and we know that you are well aware of the importance of the work that our programs do across the state to help provide a vital safety net to the poor and working poor. The economic downturn has only added to the overwhelming needs of our clients. Increasingly, seniors are sliding into the realm of poverty, many of whom saw their life savings evaporate in the stock market crash and no longer have the income, or time, left to rebuild their assets. With the needs ever increasing, the justice gap between those who can afford legal help and those who cannot is expanding exponentially.

## **CIVIL LEGAL SERVICES IS AN ISSUE FOR SENIORS**

Seniors, and other vulnerable populations, need lawyers to advocate for them in every aspect of their lives including housing, food, shelter and safety. In New York State, many seniors are left alone when their younger family members leave the area for better opportunities. They turn to legal services programs in greater numbers since their traditional supports are no longer available.

At the hearings held last year by the Task Force to Expand Access to Civil Legal Services in New York convened by Chief Judge Jonathan Lippman, many of our community partners testified to the importance of having available civil legal services for their clients. There was testimony from business leaders, educators, police, district attorneys, housing programs, domestic violence advocates, judges and many others who reinforced the critical need of support for legal services for the poor. Time after time, they made clear that available civil legal services help avoid further negative economic impacts not only for the individual, but for the community. Civil legal services is cost effective—, for every dollar spent on civil legal services in NYS, \$5 of federal funds funnel back into the state, and costly problems like increased homelessness, hunger and domestic violence can be avoided.

The need for specialized services for underserved populations has been a particular challenge. The partners in PULSE are examples of programs that do not receive any federal Legal Services Corporation funding and whose core programs provide services to the most vulnerable, hard-to-reach populations. We are independent, non-profit programs that get our support largely from private donations, foundations, government funding from a variety of sources and IOLA funds. At the same time that our funding has been cut, or is being threatened, we have seen a tremendous increase in demand for our services in responding to the needs of some of the most at risk—the elderly, victims of abuse, seasonal workers and the rural poor.

The demand on local senior services programs is overwhelming. In the 2000 census, Erie County had a percentage of seniors which was 3% higher than the National Average. That number continues to grow. By the year 2015, the Erie County Department of Senior Services estimates that nearly 1 in 4 residents will be age sixty or older and that there will be a 73.8% increase in the number of seniors age 85 and older as compared to 1990.

In order to meet the legal needs of older adults, senior legal services programs across the country rely on several core funding streams: Title III of the federal Older American Act, Federal Legal Services Corporation funding, Interest on Lawyer Account (IOLA) funds, and state funding. Neither Legal Services for the Elderly, nor any of the members of PULSE receive Legal Services Corporation funding.

**Federal Older American Act Funding** - Congress passed the Older Americans Act (OAA) in 1965 in response to concern by policymakers about a lack of community social services for older persons. The original legislation established authority for grants to States for community planning and social services, as well as legal services for seniors. However, the funding available for legal services has not kept up with the need. For the past decade, federal Older Americans Act funding has remained virtually stagnant, while programs funded by these dollars are seeing an increased demand for services due to the explosion of the over sixty population. Although this funding was our sole source of revenue upon our incorporation thirty years ago, our funding from this act has increased only \$60,000 in the last twelve years. In fact, that funding which represented 100% of our funding in 1978, now makes up less than one quarter of our yearly budget.

**State Funding** - While the Assembly has provided funding for civil legal services in their budget since 1993, that funding is not specifically allocated to senior civil legal services providers and senior programs get a much smaller share of these allocations. For example, my agency receives only about \$9,000 out of the 4.26 million allocated by the Assembly to the Department of State for civil legal services. Our state funding tends to be piecemeal and grant specific, in that we receive funding for specific projects such as the project through the Empire Justice Center to handle appeals under the Medicare Prescription Drug Plan, or funding for mortgage foreclosure prevention. However, these grants are often removed in the state budget process (which is what happened to all of our mortgage foreclosure funding this year) making planning impossible. The funding last year from OCA was a tremendous help; however, it simply made up for the state funding we lost for our mortgage foreclosure work.

**Interest on Lawyers Account (IOLA)** – One of our most significant funding sources is the money we receive from the IOLA Fund. It also funds most legal services organizations in New York State. Interest earned by attorney escrow accounts is pooled and used to fund programs that provide legal services to poor persons, including seniors. However, due to its reliance on interest rates, IOLA is facing another year of significantly reduced grant funds, which is directly tied to the economic downturn. This is particularly traumatic for smaller programs without a solid base of dedicated funding.

In addition to being the right thing to do, civil legal services programs make the courts run more efficiently. In Erie County, my program and the other legal services programs appear on landlord/tenant days to handle evictions, are at the courthouse everyday for one week prior to the City of Buffalo Tax Foreclosure sale and handle settlement conferences in mortgage foreclosure cases *mandated* by New York State Law. Most of our intake is done by lawyers and paralegals right at the courthouse. My program provides additional support to

the court, by appearing at the Veterans Treatment Court at each session to offer our services to the litigants and we accept referrals from the judges on indigent Guardian matters, often without any payment source, either private or public.

Although the United States Supreme Court has ruled that the federal constitution guarantees every person accused of a crime a right to free counsel, persons involved in civil litigation have no such federal right to an attorney. As a result, an estimated 2.1 million people appeared in court last year without an attorney. This places an enormous burden on the courts, which must take additional time with those litigants at a time when the courts are already overburdened with a record breaking court docket of 4.7 million new cases. As Chief Judge Lippman said:

*“And of course, the ones who suffer the most in this situation are the vulnerable in our society-the elderly, children, struggling families, disabled people, and abuse victims. How many of us can imagine what it would be like to have to fight for life’s most basic necessities- shelter, person safety, health services- and to have to fight alone without the help of a trained professional who knows the ins and outs of the law and our complex legal system? Today, unfortunately, too many of our citizens never feel, or have reason to believe, that justice is available to them-the very justice that most of us take for granted as our God given right. From my perspective as Chief Judge, no issue is more fundamental to the mission of the courts than ensuring that the scales of justice are balanced for every one of our citizens.”*

### **Conclusion**

We appreciate that the Office of Court Administration has been supportive of the variety of programs throughout New York State. Our state simply is too large and too diverse to apply a “one-size-fits-all” approach to legal services delivery and we hope that the court system will continue to encourage the creativity that occurs when many types of programs are maintained and, hopefully, expanded. Specialized programs for special populations such as the elderly, farmworkers, rural poor and domestic violence victims ensure that the most vulnerable among us will not be forgotten.

**New York State Unified Court System  
Law Libraries Association**

Email to [CivilLegalServices@nycourts.gov](mailto:CivilLegalServices@nycourts.gov)

I respectfully submit these written comments on behalf of the New York State Unified Court Law Libraries Association.

The officers of the Association are:

John W. Handler, President  
Senior Law Librarian  
Supreme Court Law Library (Central Islip/Suffolk County)

Andrew Kloc  
Automation Services Law Librarian, Appellate Division, 4th Department Law Library, Rochester

Laura Barber  
Principal Law Librarian, 3rd Judicial District  
F. Warren Travers Supreme Court Library (Rensselaer County)

Cindy Kesler  
Principal Law Librarian, 5th Judicial District  
Syracuse Supreme Court Library (Onondaga County)

Deborah Payne  
Senior Law Librarian, 5th Judicial District  
Syracuse Supreme Court Library (Onondaga County)

## Written Comments of the New York State Unified Court Law Libraries Association

Submitted to the Task Force to Expand Access to Civil Legal Services, Fourth Department Hearing

September 26, 2011

The New York State Unified Court Law Libraries Association is a well established organization within the state court system whose mission is to help ensure that court system law libraries develop and evolve to meet the legal information needs of all persons accessing the libraries for essential resources, services and information. We truly thank Chief Judge Lippman and the Task Force to Expand Access to Civil Legal Services for conducting these hearings and appreciate the opportunity to submit written comments.

The New York State Unified Court System (UCS) operates and maintains a network of libraries that are both unique and geographically diverse. In their traditional role, court libraries provide resources and reference services to the judiciary, bar and the public. Library services to the public are extensive and offer public access to legal information including:

- Internet access to the locations and phone numbers of the public access court libraries.
- Internet access to an online searchable catalog of the trial court collections including online hypertext links where available.
- Internet access to an online index for the Appellate Division Records and Briefs and other useful finding aids.
- Access and use of the libraries' state and federal primary and secondary resources, including electronic media and print collections. While not permitted to provide legal advice, library staff can assist patrons in locating legal information, sample forms and basic legal research instruction in researching legal issues.
- Public access computers with subscription access to premium legal databases at no cost to users to retrieve caselaw, statutes, regulations, and secondary materials and to formulate natural language searching of legal issues. Library staff can provide computer resource instruction.
- UCS Do It Yourself (DIY) forms and instructions for patrons as well as other CourtHelp forms and information. Court librarians have participated in several DIY workshops initiated by the New York State Courts' Access to Justice Program and given to public and special librarians throughout the state.
- Library Document Delivery service, where email requests for caselaw and other queries are filled by court librarians in a timely manner.

- 1-800-CourtNY, a toll free number answered daily by a team of librarians and court personnel, including interpreters when needed.
- Library Resources for the Public Program (LRPP), a program in some public access libraries which helps unrepresented litigants with procedural advice and forms. LRPP patrons often come back to the library for additional forms and to research their issues.
- Interlibrary loan services for legal materials. Court libraries participate in library networks that share their collections and resources and can provide access to legal materials on demand.
- General reference services and referrals to other agencies.
- The distribution and dissemination of government agency, non-profit organization brochures and other reference and resource information. Libraries routinely post test and civil service announcements for state and local public employment opportunities.

Although the libraries and their staff cannot provide legal advice, the libraries can and do provide access to timely legal information in a variety of electronic and print formats. Library standards set forth from the American Association of Law Libraries State, Court and County Law Libraries Special Interest Section state that “access to justice is a fundamental right of every citizen of the United States. Legal information is an essential element of this right. Law libraries are integral to the administration of justice as providers of legal resources.”<sup>1</sup> As Hon. Fern Fisher, Director, New York State Courts Access to Justice Program and Deputy Chief Administrative Judge for New York City Courts, expressed in her written comments to the Civil Legal Services Hearings for the Second Department in 2010, “we must fit in maximizing the use of pro bono attorneys and self-help measures where appropriate and insure that all civil legal services are delivered efficiently and effectively”<sup>2</sup>. The public access libraries of the Unified Court System provide reliable reference and resources to the courts and deliver legal information to the unrepresented, pro bono attorneys, and all seekers of legal resources. The Law Libraries Association looks forward to a renewed collaboration with all interested parties, including the Task Force to Expand Access to Civil Legal Services and the New York State Courts’ Access to Justice Program, in effecting solutions to the urgent need for civil legal services for all.

<sup>1</sup> Standards for Appellate Court Libraries and State Law Libraries, American Association of Law Libraries, State, Court and County Law Libraries Special Interest Section, Approved by the AALL Executive Board, July 2005  
[http://www.aallnet.org/main-menu/Publications/llj/LLJ-Archives/Vol-98/pub\\_llj\\_v98n01/2006-08.pdf](http://www.aallnet.org/main-menu/Publications/llj/LLJ-Archives/Vol-98/pub_llj_v98n01/2006-08.pdf)

<sup>2</sup> Closing Statement of Justice Fern Fisher, Deputy Chief Administrative Judge for New York City Courts, Director, New York State Access to Justice Program, 2010 Hearings on Civil Legal Services, Second Department, October 7, 2010,  
<http://www.nycourts.gov/ip/access-civil-legal-services/PDF/2d-Dept-Testifying-Witnesses.PDF>

# **Syracuse Law School**

Testimony of Dean Hannah R. Arterian  
Dean and Professor of Law  
Syracuse University College of Law

Prepared for the Task Force to Expand Access to  
Civil Legal Services in New York  
Hearing on October, 6, 2011, Buffalo, New York

Syracuse University College of Law has a very strong commitment to providing access to civil legal services. In 1971 the first official clinical programs were offered, followed shortly by externship program offerings. In 1977, the College of Law committed itself to clinical legal education by appropriating funds to hire faculty to teach clinics.

In addition to the programs offered by the Office of Clinical Legal Education, the Office of Student Life directs the Pro Bono Program that collaborates with legal service providers and pro bono attorneys to enhance the delivery of legal services to those most in need. I will address programs offered by the clinic, first, and then follow with a description of activities conducted by the Office of Student Life.

**The Office of Clinical Legal Education.** The Office of Clinical Legal Education operates an in-house law firm, where students provide legal services to low income clients in eight different practice areas (seven of which are civil). Students enroll for one or two semesters in the following clinical courses: Community Development Law Clinic; Children's Rights and Family Law Clinic; Elder Law Clinic; Low Income Taxpayer Clinic; Disability Rights Clinic; Securities Arbitration and Consumer Law Clinic; and the newest clinic: The Bankruptcy Clinic. Students represent low-income clients, not-for-profits, or small business owners who are low and moderate income. In addition to training students in the practice of law, a major objective of the programs is to provide much-needed legal services to individuals and entities that would not be able to secure representation otherwise.

**Description of the Clinics at Syracuse University College of Law and Collaborations with Other Agencies.**

*The Community Development Law Clinic* represents not-for-profit organizations and for-profit businesses in all aspects of creating their legal structures. After the corporation or business is created, the student attorneys act as general counsel, advising and representing clients in a variety of legal matters. The student attorneys also represent first-time home buyers in real estate closings.

*The Children's Rights and Family Law Clinic* represents families and children in federal and state courts and before administrative agencies. It is also engaged in limited non-litigation advocacy and outreach. Students provide services in a number of areas, including custody and visitation, child and spousal support, domestic violence,

matrimonial matters, general and special education issues and other children's rights issues.

*The Disability Rights Clinic* represents clients with disabilities facing discrimination or needing legal advice and unable to secure representation due to limited income, health or limited access to an attorney.

*Elder Law Clinic* represents clients aged 60 and older facing problems or needing legal advice and unable to secure representation due to limited income, health or access to an attorney.

*The Low Income Taxpayer Clinic* offers legal assistance to low-income taxpayers who have controversies with the Internal Revenue Service. Student attorneys represent clients in administrative proceedings before the I.R.S. and in judicial proceedings before the United States Tax Court or Federal District Courts.

*The Securities Arbitration and Consumer Law Clinic* assists small investors and other consumers with problems in the financial and consumer markets. Consumer cases range from shoddy home repairs to fraudulent car sales to aggressive collection practices. Students also become involved in policy advocacy and community education.

*The Bankruptcy Clinic* is an extension of the Pro Bono Bankruptcy Program that was started in 2009. In its first year of operation, the program received the President's Award from the New York State Bar Association for excellence in pro bono service. Clinic students will represent indigent individuals in need of bankruptcy protection.

*The Syracuse Medical Legal Partnership Program* is a medical/legal collaborative venture with SUNY Upstate Medical University through which student attorneys work with medical students and health professionals to address legal needs that affect a client's health.

Thirteen faculty and five staff support approximately 140-150 students each year who learn to become able practitioners while delivering a plethora of legal services to low-income clients and communities in Central New York. (This number includes students who participated in the Criminal Defense Clinic.) The Clinic estimated that it provided about 43,000 service hours in the 2009-2010 Academic Year (including the Summer 2010 session).

The Clinic also collaborates with a number of community agencies. In 2009-2010 the Clinic collaborated with SUNY Upstate, the Visiting Nurses Association, Onondaga County Office of Aging and Youth, Onondaga County Department of Social Services, ARISE, Enable, Vera House, Caring Community Advocates, St. Camillus Rehabilitation Hospital, Onondaga County Bar Association Pro Bono Program, Aurora of Central New York, AAPR, Oasis Program, Center for Community Alternatives, Home Headquarters, Veterans Administration, Legal Services of Central New York, Legal Aid of Mid-New York, Hiscock Legal Aid Society, Catholic Charities, Elderly Services, Jewish Family Services, Alzheimer's Association and other government agencies.

## **Description of Office of Student Life Programs.**

The Office of Student Life Pro Bono Programs offer students many opportunities to undertake important pro bono activities. This year the entering class of 255 performed 875 hours of community service during Orientation. The class of 2011 logged 6,579 hours of pro bono or community service; the class of 2010 logged 4,794 hours of pro bono or community service; the class of 2009 logged 3,701 hours of pro bono or community service.

All members of the College of Law community—students, faculty and staff—are welcome to become involved with the many pro bono activities. The Pro Bono Program partners with many community service organizations to make service opportunities available throughout the year. The College of Law hosts and participates in blood drives, walk-a-thons, and days of service on behalf of the United Way and other organizations. Several student-led organizations also sponsor service projects and volunteer opportunities.

The Pro Bono Program collaborates with legal service providers and pro bono attorneys to enhance the delivery of legal services to those in most need. Students are also able to assist in client intake, screening, law-related education, and community presentations. The new Pro Bono Legal Research Projects teams students with attorneys who need assistance with legal research and writing pertinent to pro bono bases. Some of the projects our students are involved in follow.

*CCJI.* The Cold Case Justice Initiative (CCJI) project was founded in response to the 1964 Ferriday, Louisiana murder of shoe shop owner Frank Morris, which remains unsolved. The CCJI project conducts investigations and research on unresolved cases, offers academic courses, public forums and other special events, and serves as a clearinghouse for sharing and receiving information on active cases. The CCJI insists on vigilant attention to these long unresolved racially motivated killings and continuing issues of racial justice.

*Blodgett After School Project.* Students volunteer as mentors at the after school program for students in the first through eighth grades, located at the local Blodgett Middle School. The after school program focuses on academics, enrichment and various other activities.

*Family Law - Child Support Clinic.* The Family Law & Social Policy Center students assist with a new Child Support Clinic at Legal Aid Society of Mid-NY (Syracuse office). The students assist low-income parents with completing paperwork to be submitted to court regarding child support modifications, new orders, arrears, enforcement, etc.

*Family Law - Family Law & Policy Center.* The Center provides various opportunities for students to engage in service to the community. Many of these opportunities are "legal" in nature and require the assistance of a student with experience in family law.

*Onondaga County Pro Se Divorce Clinics.* Students assist clinic participants with completing required paperwork for court.

*Vera House (local battered women's shelter).* Students work at the Vera House Family Court Program, assisting domestic violence victims with petitions for orders of protection.

*Legal Aid Society of Mid-NY Child Support Clinics.* Students assist clinic participants with completing required paperwork for court.

*Housing Issues - Landlord Tenant Court.* This opportunity allows students to assist volunteer attorneys represent tenants facing eviction and to observe the landlord/tenant court proceedings and negotiation process. Responsibilities include interviewing tenants, collecting information, and presenting the case to an attorney.

The College of Law also supports summer public interest work. Throughout the year, the Professional and Career Development Office, along with the Pro Bono Program and the Syracuse Public Interest Network (SPIN) advertise summer employment opportunities and information on to receive funding for such positions.

In conclusion, the Syracuse University College of Law provides many opportunities for students to aid those less fortunate. The College of Law has a fully staffed clinic, offering seven civil clinics. Over 40,000 hours of service are provided each year by the clinics. The Office of Clinical Legal Education collaborates with many community groups and government agencies to provide excellent legal services to low-income clients and community organizations. The Office of Student Life encourages students to undertake many pro bono and community service opportunities. Recent classes have given thousands of service hours for pro bono and community service projects.

# **Western New York Law Center**

My name is Joseph Kelemen and I am the Executive Director of the Western New York Law Center (“WNYLC”) in Buffalo, NY. I would like to thank Chief Judge Lippman and the members of this Task Force for this opportunity to present written testimony on the issue of access to legal services.

The Western New York Law Center provides representation to individuals facing foreclosure in Erie County and litigates class actions on behalf of clients on a variety of issues such as denial of public assistance and illegal foreclosures.

There are two large categories of cases in Erie County in which current civil legal services needs are unmet, foreclosures and consumer debts. Erie County, which is the largest county in the service area of WNYLC, is home to Buffalo, the second largest city in the state, and the third poorest city in the nation.

According to statistics kept by the Office of Court Administration, in 2010, only six counties in the state had more residential foreclosure filings than Erie County. The counties with a higher number of foreclosure filings were in and around NYC, and all had significantly more population than Erie County. Therefore, proportionally, Erie County has an even higher number of properties in foreclosure than the statistics would suggest. For example, twice as many foreclosures per County resident have been filed in Erie County than have been filed in Bronx County since 2006.

Municipalities	2006	2007	2008	2009	2010	Total
Suffolk	2862	4679	7111	7531	8396	30579
Kings	2299	3128	3791	5484	5125	19827
Queens	2397	4007	5453	5839	4674	22370
Nassau	1781	2852	3920	5487	4649	18689
Westchester	883	1239	1676	1970	2173	7941
Bronx	892	1250	1589	1901	1863	7495
Erie	2285	2187	1971	1743	1616	9802

Because all people facing residential foreclosures are entitled to a mandatory settlement conference before the foreclosure action can proceed, these litigants all end up in courts seeking redress. Some unrepresented people default, and others turn to self representation. But as the NY Times noted:

*The law of mortgages and foreclosures is complicated even for many lawyers. It is hard to imagine what it must be like for a poor person with little legal knowledge to have to fight on his or her own to keep a home.*

*Homeowners often have legal defenses, but laypeople are unlikely to know what they are or how to use them. A lawyer can also persuade lenders to slow down foreclosure proceedings, or to renegotiate terms, by invoking the appropriate federal, state and local laws.*

Simply put, no matter how hard the court system tries to accommodate the unrepresented facing foreclosures, the unrepresented will simply not be able to attain justice in an adversarial system. In fact, over 75% of the clients we represent who have tried to obtain loan modifications on their own tell us that until an attorney became involved to advocate for them, no matter how many documents the clients submitted to the banks, the clients never satisfied the bank requests. Once an attorney became involved and told the banks and opposing counsel that adequate documentation had been submitted, the bank evaluation process for the loan modification truly began. And many of the clients homes were saved from foreclosure once we entered the case.

The issue of consumer debts in this area of the state is often closely tied to the issue of the high number of foreclosures because homeowners are often forced into foreclosures by questionable consumer charges. Homeowners often owe money for shoddy work done on their homes, or for loans they have already satisfied. This affects their ability to pay their mortgages.

With over 100 collection agencies locally, Buffalo has been called the epi-center of the national debt industry. In contrast to the strong presence of debt collectors, Western New York currently has no legal services offices offering representation to consumers engaged in debt litigation. Abusive debt collection practices, sewer service/inaccurate summons and complaints, and exorbitant plaintiff legal fees face low income debtors who have no means to file an answer in these cases, or to challenge the secondary debt buyers' system generally.

In the City of Buffalo alone, in 2010 15,163 Consumer Credit cases were filed in Buffalo City Court. 8920 of those cases resulted in default judgments, a clear indication that people are not addressing these problems locally because they do not have access to counsel. These figures reinforce the findings in *Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases*, a report done with the cooperation of Judge Fischer. That report noted that “[s]tudies show that less than 4 percent of defendants in consumer debt actions are represented by counsel, while 100 percent of plaintiffs bringing these actions have legal representation.” <http://bit.ly/j3cWnG>.

The economic and social harm to the community, both direct and indirect, when these critical legal needs are unmet is very great. The Journal of Housing Studies, Vol. 21, No. 6, 851–866, November 2006, noted:

*Foreclosures can entail significant costs and hardships for the families affected. [F]oreclosures can involve losing not only accumulated home equity and the costs associated with acquiring the home, but also access to stable, decent housing. Moreover, foreclosures can damage credit ratings, hurting the owners' prospects not only in credit markets but also in labor and insurance markets and in the market for rental housing. Moreno (1995) estimated average losses to a foreclosed family of \$7200. But the economic and social costs of foreclosures may affect more than the families most directly involved. Foreclosures can have implications for surrounding neighborhoods and even for their larger communities. Cities, counties and school districts may lose tax revenue from abandoned homes. In examining FHA foreclosures, for example, Moreno (1995) estimated average city costs of \$27,000 and neighborhood costs of \$10,000. Moreover, these figures do not account for all of the social and psychic costs of foreclosures, either to the family or the community. One of the possible social costs is increased crime.*

<http://www.prism.gatech.edu/~di17/HousingStudies.pdf>

The economic and human impact of not meeting the needs of litigants who have consumer issues is similarly devastating:

*A creditor with a judgment can garnish wages and freeze bank accounts. Once an account is frozen, the debtor may be unable to pay rent and utility bills, obtain medicine, or pay for food and other necessities. Often, due to additional penalties, interest, fees, and costs, the ultimate judgment obtained far exceeds any original debt that may have accrued. In some cases the defendant never owed the alleged debt, which may have been the result of identity theft, mistaken identity, clerical errors, or illegal fees and charges. In addition, when the judgment shows up on credit reports, it becomes difficult for the debtor to find an apartment, get a better job, and obtain credit. The result is that a single consumer credit judgment can severely impair a person's attempt to become self-sufficient, further perpetuating poverty.*

\* \* \*

*While debtors' prisons may have been abolished in the mid-1800s, many working families today find themselves in a virtual prison of debt. With household debt and credit default at an all-time high—and joblessness and underemployment on the rise—the effect of the current consumer credit crisis will be felt for the next decade. Although we no longer imprison debtors, the legal system and, specifically, the civil courts remain the epicenter in the cycle of debt.*

*On a daily basis, thousands of New Yorkers find themselves in the city's legal system as a result of alleged unpaid debt, facing complicated litigation and a daunting courtroom battle. Almost 100 percent of these defendants lack counsel of their own.*

<http://bit.ly/j3cWnG>

Local legal services providers have tried to address the foreclosure problem in Buffalo and Erie County by building a seamless network that provides representation to all homeowners in Erie County who cannot afford counsel. By piecing together funds from various sources, WNYLC has become the largest provider of foreclosure services in this judicial district and one of the largest in the state. We partner with the local courts and other legal services providers to send attorneys to court in Erie County to intake clients directly at the courthouse. We provide representation to clients showing up at settlement conferences when they cannot afford an attorney. We have an interactive website with pleadings for clients who want to know more about foreclosure, <http://foreclosure.wnylc.com/> and we own and manage another website that several community agencies participate in, <http://www.stopforeclosurewny.com/>. The stopforeclosure website intakes clients online, and the site directs clients to community agencies depending upon the answers a client enters on an online intake form. WNYLC has also just launched a foreclosure blog.

From April 1, 2010 – March 31, 2011, WNYLC alone prevented 364 residential foreclosures for low income homeowners after representing them in court. Other agencies we partner with have also had great success in helping property owners in Erie County remain in their homes. We have reached thousands of homeowners we never directly represented with spots we have done on local public access TV and radio which explain the foreclosure process and help educate homeowners on avoiding foreclosure, and we have organized and staffed events in the community at which loan officers from banks have come to help homeowners work out loan modifications prior to the foreclosure process beginning so that the homes will not go into foreclosure. These efforts have helped to reduce the burden on the courts and taxpayers, and have helped the community take a small step toward stabilizing the neighborhoods most affected by foreclosures.

These efforts were helped immensely by the Office of Court Administration funds provided to us through the New York State Interest on Lawyer Account Fund ("IOLA"). The state funds to fund such efforts will disappear on December 31, 2011. Without the help of the Office of Court Administration funds, most representation of clients facing foreclosure in Erie County would have ceased at the end of this year, and those unrepresented litigants would have had to try to negotiate the judicial system on their own, placing an extra burden on the already overworked courts.

On behalf of those clients who cannot appear in person, and on behalf of the staff of WNYLC, I offer my thanks for your work to insure financial stability for Civil Legal Services. Thank you for allowing me to provide input to the Task Force.

Joseph Kelemen

**Women's Bar Association of the State  
of New York**

# WOMEN'S BAR ASSOCIATION OF THE STATE OF NEW YORK



The Women's Bar Association of the State of New York ("WBASNY") maintains a statewide presence with 18 chapters throughout New York. Our membership is as diverse as our geographic scope, including judges in state and federal courts and attorneys in all areas of law. Our mission is to promote the advancement of women in the legal profession and in society, promote the fair and equal administration of justice and ensure access to the courts by all.

Many of our members work for organizations that receive funding for civil legal services from New York State. In fact, an informal telephone survey conducted in 2009 by The Legal Project, Inc. revealed that more than 70% of attorneys working at the major civil legal services programs across the state are women. In addition, the survey estimated that the majority of clients served are women. The Legal Services Funding Alliance estimates that more than 2/3 of legal services clients are women, many mothers with young children. As a result, the funding insecurities facing legal services providers and the effect on their clients are of tremendous concern to us.

WBASNY commends Chief Judge Lippman's commitment to this issue, as evidenced by the creation of this task force and the allocation of \$27.5 million in judicial funds for civil legal services this year. However, we also recognize that this funding, as well as funding from other sources, remains precarious. Therefore, we reiterate the need for a reliable source of adequate funding for civil legal services, as well as a predictable process for timely disbursement of these funds.

Stable funding will reduce turnover among civil legal service providers and allow programs to affirmatively plan to meet the growing and increasingly complex needs of the communities they serve. Stable funding will also allow organizations to develop programs that emphasize early intervention and reduce the stress on our overburdened court system.

WBASNY submitted written testimony to the Task Force during the public hearings on this issue last year. Since that time, funding cuts for civil legal services, combined with budget cuts to the court system, have exacerbated the difficulties confronting poor people seeking justice. In addition, the percentage of New York's population living in poverty is increasing – more than 40% of women who head families currently live in poverty -- leaving ever more citizens without the means to pay for private counsel and in

need of greater access to *pro bono* or reduced fee civil legal service programs and innovative dispute resolution mechanisms. The Legal Project, for example, reported a 40% increase in clients seeking representation within their domestic violence program last year and expects to exceed those numbers this year.

In addition, budget cuts to the court system have caused significant staff reductions, leaving fewer court personnel to assist increasing numbers of unrepresented litigants through the judicial process. As a result of reductions in hours of court operations, less time is available for judges to spend on each case. As a result of funding cuts to Children's Centers, more litigants are bringing children into the court room. It is not hard to imagine the chaos that the combination of these circumstances can create in our courtrooms on any given day. While our judges and court staff are to be commended for their commitment to minimizing the consequences of these circumstances, we must recognize that they are not conducive to the effective administration of justice.

As the Task Force's 2010 Report recognized, civil legal assistance can reduce litigation costs and relieve court congestion. Alternative Dispute Resolution programs are particularly effective in this regard, as they can offer parties the opportunity to frame their dispute in a constructive manner and to work together, with a mediator, to resolve the dispute, clarify rights and responsibilities or restructure relationships. Increased emphasis on alternative dispute resolution can resolve more disputes at lower cost and with higher participant satisfaction. Even when matters are not fully resolved in the alternative dispute resolution process, issues are often identified and narrowed so as to facilitate swift resolution by the courts.

In Western New York, for example, the Community Dispute Resolution Centers run by Child and Family Services' Center for Resolution and Justice offers a cost-efficient, consumer friendly program that mediates disputes involving divorce, special education, landlord tenant relationships, and contracts. One component of their program is a family court mediation program for parenting (Custody & Visitation) matters. Provided through a contract with OCA and working under the umbrella of the 8th Judicial District Martin P. Violante Alternative Dispute Resolution Program, this year the program has already resolved over 250 cases with payments to the roster of mediators of less than \$31,000.

However, a dramatic 40% retroactive funding cut has left the program without sufficient resources to fund parenting mediation sessions for the remainder of the year. In the absence of funding for the program, individuals have no option but to navigate a procedurally complex court system at significantly increased expense to both the individual and the judiciary.

It also bears repeating that the provision of civil legal services has a positive effect upon New York's economy, bringing federal benefit payments into New York and reducing reliance upon state funded social services. For example, the Mental Health Association of Erie County has received annual funding of approximately \$240,000 to represent approximately 300 individuals with mental illness each year, resulting in more than \$180,000 in retroactive federal benefits, not to mention ongoing future benefits. However, funding cuts of 20% necessitated the elimination of a full-time employee to the program, creating a wait list of deserving clients and incurring costs to local social service programs in the interim.

Simply put, the cost of providing adequate civil legal services pales in comparison to the economic and human costs of failing to meet the basic legal needs of our citizens. WBASNY commends this task force for its continuing efforts to address this problem and offers its continued support for adequate and stable funding to achieve the fundamental ideal of justice for all.