

**Written Statements Submitted at the
Fourth Department Hearing on September 29, 2010**

Statements of Non-Testifying Witnesses

Erie County Bar Association, Volunteer Lawyers Project, Inc.

Legal Aid Bureau of Buffalo, Inc.

Legal Services for the Elderly, Disabled or Disadvantaged for WNY, Inc.

Western New York Law Center

Erie County Bar Association,
Volunteer Lawyers Project Inc.

ERIE COUNTY BAR ASSOCIATION
VOLUNTEER LAWYERS PROJECT, INC.

237 Main St., Suite 1000 - Buffalo, NY 14203 - (716) 847-0662 - FAX (716) 847-0307

BOARD OF DIRECTORS

Kevin M. Kearney
President
Melinda G. Disare
Vice President
Howard S. Rosenhoch
Treasurer
Brian R. Welsh
Secretary

Katherine J. Bestine
William J. Brennan
Anna Marie Cellino
Lenora B. Foote
Gary R. Gaffney
Robert P. Heary
Tracy Jordan-Cardwell
Anthony D. Mancinelli
Timothy M. O'Mara
Philip A. Perna
Suzanne Risman
Nicole Roberts
Marylou K Roshia
Arthur A. Russ Jr.
Melinda R. Saran
Ellen S. Simpson
John J. Weinholtz

STAFF

Robert M. Elardo
Managing Attorney/CEO
Gregory J. Stewart
Supervising Attorney
Sophie I. Feal
Supervising Immigration
Attorney
Lillian Medina
Staff Attorney
Amanda M. Warner
8th Judicial District
Pro Bono Coordinator
Jessica M. Lazarin
Immigration Staff Attorney
Sarah A. Frederick
Staff Attorney
Hannah Vickner Hough
Immigration Staff Attorney
Emma Buckthal
Law Graduate
Christine C. Biggie
Volunteer Attorney Coordinator
Paula Sharen
Office Manager
Dilma J. Rosales
Clerical Supervisor/ Paralegal
Christine M. Sanchioni
Secretary
Aleatrice S. Louie
Secretary

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

Comments of:
Robert M. Elardo
Managing Attorney/CEO
Erie County Bar Association Volunteer Lawyers Project, Inc.

~
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 20 civil legal services providers from outside NYC.

At VLP, we provide free civil legal services to low income people and smaller not for profit groups and we recruit, train and coordinate local attorneys who provide pro bono civil legal services for our clients. VLP primarily serves people in Erie County, although some of services, such as Immigration and help for individuals and families affected with HIV/AIDS, extend into the surrounding counties of Niagara, Orleans, Genesee, Wyoming, Cattaraugus, Chautauqua, and Allegany.

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

My goals for today are to:

- 1) Provide you with a brief snapshot of the services we provide and VLP's role in the community
- 2) Explain how cost effective our services are

Role of VLP:

At VLP, we are witness to the terrible plight 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. In the past year, VLP handled about 2,800 cases and provided information and referral services to about 2,500 more. Yet we turn away more clients than we can fully help.

I wish that just one of our thousands of clients could share their story with you. One typical one is Bernice C. She would have told you that she and her husband both worked. They were struggling and juggling things ok until he left her and their 8 children. After that, she has been unable to juggle fast enough to keep things afloat. She found herself facing a tax foreclosure by the City of Buffalo.

We were able to explain the process to her and negotiate a settlement agreement for her. She borrowed money for the down payment and is working hard to earn enough money to make her monthly payments so she and the kids do not become homeless.

She would tell you how important our services were to her and her children and ask that you not let our services be cut.

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

Cost effectiveness:

Providing funding for civil legal services is cost effective in at least three (3) major ways. First, according to data from the New York IOLA Program, civil legal services programs in New York generate almost 93 cents in client financial benefit for every \$1 of funding that the programs receive.

Second, not only is this an incredible return upon investment, but putting extra money into the hands of low income people immediately stimulates a wide variety of sectors of the local economy. Low income people cannot afford the luxury of saving. Peter R. Orzag, Congressional Budget Office Director, wrote, "To boost cost-effectiveness further, policymakers would need to focus on lower-income households and those with difficulty borrowing. The studies of the 2001 tax rebate suggest that such lower-income and credit-constrained recipients increased their spending substantially more than the typical recipient."

Third, civil legal services programs generate millions of dollars in state and local tax payer savings, by helping clients to avoid homelessness, keeping kids out of foster care, and helping people to develop other income sources so that they can avoid welfare benefits. For example, our small program added approximately \$250,000 directly to our clients and saved an estimated over \$1 million in tax payer savings.

Fourth, our program and dozens of others around the State coordinate the work of pro bono

attorneys. In the past year, about 400 attorneys handled over 1,000 pro bono cases through VLP.

Pro bono is cost effective, but it is not free. To be done properly, staff is needed to screen the cases, prepare the cases, match them to the right volunteer, provided follow up and training, and to take the case back if an attorney is unable to complete it. A lot of time and effort goes into running a quality pro bono program, but it is worth it. Each year, our volunteer attorneys provide about \$1million in volunteer time for low income clients.

IOLA & State Funding situation:

As you may know, civil legal services providers received a 72% cut in statewide funding from New York State. At the same time, the recession had caused IOLA income to plummet.

Civil legal services providers face a stark reality. As the economic crisis deepens, more and more clients come to our doors in need of help. They've lost their job, they've lost their health benefits, they've lost their disability assistance, they are in foreclosure, they are being wrongfully evicted, they can't afford a lawyer and they need help. Yet in this time of crisis, our state funding has been cut in half. Before the economic downturn and before the state funding cuts, more than 80% of low income New Yorker's civil legal needs went unmet. Without immediate intervention, that already dismal number would have moved from crises to disaster.

If not for the IOLA rescue, our staff of 14 would have been cut to 10. Our services to clients would have been further slashed. We would have been able to assist fewer clients in need. We would have been able to work with fewer pro bono lawyers willing to assist these clients. In other words, even more people would be losing their homes, not getting the unemployment benefits that they deserve and not getting the child support that they deserve.

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.
Thank you.

Respectfully submitted by:
Robert M. Elardo
Managing Attorney/CEO
Erie County Bar Association
Volunteer Lawyers Project, Inc
237 Main St., Suite 1000
Buffalo, NY 14203
716-847-0662 ext. 312

ERIE COUNTY BAR ASSOCIATION
VOLUNTEER LAWYERS PROJECT, INC.

237 Main St., Suite 1000 - Buffalo, NY 14203 - (716) 847-0662 - FAX (716) 847-0307

The ECBA Volunteer Lawyers Project (VLP) provides free civil legal services for low income people and smaller not-for-profit groups. We also train, coordinate and support hundreds of local attorneys that provide pro bono (free) representation for VLP clients.

These are just five of the over 2800 cases
that VLP handled last year:

BOARD OF DIRECTORS

Kevin M. Kearney
President
Melinda G. Disare
Vice President
Howard S. Rosenhoch
Treasurer
Brian R. Welsh
Secretary

Katherine J. Bestine
William J. Brennan
Anna Marie Cellino
Lenora B. Foote
Gary R. Gaffney
Robert P. Heary
Tracy Jordan-Cardwell
Anthony D. Mancinelli
Timothy M. O'Mara
Philip A. Perna
Suzanne Risman
Nicole Roberts
Marylou K Roshia
Arthur A. Russ Jr.
Melinda R. Saran
Stephanie Saunders
Ellen S. Simpson
John J. Weinholtz

STAFF

Robert M. Elardo
Managing Attorney/CEO
Gregory J. Stewart
Supervising Attorney
Sophie I. Feal
Supervising Immigration
Attorney
Lillian Medina
Staff Attorney
Amanda M. Warner
8th Judicial District
Pro Bono Coordinator
Jessica M. Lazarin
Immigration Staff Attorney
Sarah A. Frederick
Staff Attorney
Hannah Vickner Hough
Immigration Staff Attorney
Emma Buckthal
Law Graduate
Christine C. Biggie
Volunteer Attorney Coordinator
Paula Shareno
Office Manager
Dilma J. Rosales
Clerical Supervisor/ Paralegal
Christine M. Sanchioni
Secretary
Aleatrice S. Louie
Secretary

1. A man in the last stages of a terminal illness was concerned about the long term care of his young child. There were no other relatives, but we were able to establish a Standby Guardianship with a family friend. When the client became too ill to continue to care for the child, we helped put the guardianship into place. The man is still able to visit with his child and has the peace of mind from knowing that she is being well cared for.
2. A woman who had fallen behind in her real property taxes because of illness faced a tax foreclosure and loss of the family home. A volunteer attorney was able to stop the sale with a stipulated repayment agreement that she is able to afford. This prevented the client and her children from becoming homeless.
3. A man who had worked at good job for over 20 years, lost his job and was then denied unemployment benefits. A volunteer represented him in a hearing and obtained the unemployment benefits that he was entitled to so that that he could support himself and his family.
4. An Iranian man who had converted from Islam to Christianity was thus subject to apostasy charges and faced death in Iran. We represented him in Immigration Court, obtained testimony from a local priest who knew the truth of the client's convictions and he was granted asylum by the Immigration Court.
5. A woman who had been a victim of severe family violence at the hands of both her now ex-husband and their adult son was badgered into signing an agreement which purported to sign over her post divorce/post DRO pension rights. When the ex-husband brought an action trying to enforce the alleged agreement, the Court referred her to VLP. We connected her with Haven House and succeeded in getting the Court action withdrawn.

“Speaking for those that are not heard”

The Legal Aid Bureau of Buffalo, Inc.

Statement of Paul B. Curtin, The Legal Aid Bureau of Buffalo, Inc.

My name is Paul Curtin. I am a staff attorney in the Civil Unit of the Legal Aid Bureau of Buffalo. Practically all my clients and the organizations that serve them benefit from IOLA and other civil funding. Cuts in such funding result in a catastrophic loss of those legal services that our clients cannot obtain anywhere else. Unable to resolve their housing, unemployment, matrimonial or foreclosure matters, these persons enter a cycle of financial distress from which they cannot escape.

Civil funding allows Legal Aid to provide services in a wide range of areas. These have traditionally been housing ordinance violation defense, landlord-tenant and eviction representation, tax foreclosure defense, mortgage foreclosure prevention, matrimonial issues, unemployment matters, and administrative proceedings. In addition, this funding is crucial to the work done by our sister organizations, such as Legal Services for the Elderly, Disabled or Disadvantaged, Volunteer Lawyers Project, the Western New York Law Center, the International Institute, and Neighborhood Legal Services. Cuts to any one of these organizations, as a practical matter, result in functional cuts to all of us.

Currently the largest portion of my caseload involves mortgage foreclosure defense. In my statement I would like to discuss the impact of the recession and funding cuts on individuals facing foreclosure and those who attempt to help them.

The Foreclosure Prevention Project of Buffalo and Western New York is a collaborative response to the mortgage foreclosure crisis. The partnership includes the Legal Aid Bureau of Buffalo, Inc, Legal Services for the Elderly, Disabled or Disadvantaged of

Western New York, and housing counseling agencies throughout the region. The project was established to fight the flood of foreclosure filings in Western New York. This work has become especially important in light of the mandatory settlement conferences established to give homeowners a court-sanctioned opportunity to negotiate a loan modification in order to prevent the foreclosure from proceeding. Given the statutory complexities and the institutional resistance amongst lenders and servicers, few homeowners are able to successfully navigate this process alone.

It would be impossible to overstate the impact of the recession on our clients. An overwhelming number of our new clients have never needed nor qualified for legal aid or indigent legal services. A cascade of related monetary woes complicate attempts to stabilize family finances and avoid foreclosure. The social and psychological strain of their situation often leads to a sense of hopelessness and inertia. Their attempts to communicate with lenders and servicers solidify feelings of frustration. Clients regularly express their loss of faith in financial institutions and a sharp erosion of any expectation of fair dealings on the part of banks and mortgage companies. Mortgage companies themselves are currently swamped by the crisis, resulting in difficulties communicating with mortgage officers and unpredictable and inconsistent decisions on the part of lenders.

The loss of IOLA funding and other state funding could not have come at a worse time. We are unable to hire attorneys, paralegals and other staff commensurate with the increased caseload. The need to make do with our already overburdened resources has

forced us to curtail representation in other vital civil law matters. Last year the Legal Aid Bureau used IOLA funds in the representation of more than a thousand individuals yet many persons in Western New York were turned away because there was no funding for their particular legal issue. I can state from personal experience that there is nothing more discouraging in indigent legal services than having to tell someone “I can’t help you”, not because that person lacks legal recourse or standing, but because we simply do not have the resources to help them.

It is a cruel fact that the same crisis that reduces funding for civil legal services increases the number of individuals in need of that help. Not only are the indigent and working poor hardest hit by the financial impact of the recession, they are also the first to see their access to legal help shut down. Reduced work hours, marginal employment and unemployment lead directly to a spike in evictions, bankruptcy, and foreclosures. Homeowners on the economic margins are unable to keep their houses up to code, financial workout plans that require clear title, perhaps through estate or matrimonial representation, cannot be completed in time to stop foreclosure. Suddenly, individuals who have never qualified for our services not only qualify, but are poised to join the thousands in our community who have lost everything and are unable to obtain assistance. It is beyond my strength to explain to them that, after all this, I cannot help them because an interest rate has been set too low.

Lack of civil legal assistance can be a major factor in keeping a family in a state of constant financial crisis. An individual who cannot resolve outstanding legal issues may be permanently unable to obtain and keep a job or benefit from programs designed to

lead to employment. We are thus discussing, not legal luxuries, but rather services that are prerequisite to the advancement and long-term wellbeing of a large number of our neighbors. New York should recognize this fact by establishing a broader right to counsel in civil matters.

Finally, I would like to suggest that the system by which civil legal funds are delivered be modified. The motivations for it are excellent, and it has funded many years of critical legal work. We cannot ignore, however, that it suffers from the unfortunate fact that its lean years tend to coincide with the periods when it is most needed. This funding roller coaster has a direct effect on indigent persons in New York. Legal programs that cannot predict their future funding are subject to service disruptions beyond their control. Staff cuts and changes interfere with the goal of consistent and professional representation. When funding does improve, time and resources are often needed to restart dormant programs, resulting in delays in services. A statewide funding agency would be in a position to monitor projected fluctuations in IOLA and other funds, adjust for shortfalls, and maintain a constant, mandated funding stream to civil legal service providers.

In closing, I thank you again for the opportunity to be heard, and I urge you to support legislation that will provide for secure, mandated funding in order to help those in our community who have nowhere else to turn.

Paul B. Curtin, Esq.
Staff Attorney
The Legal Aid Bureau of Buffalo, Inc.
237 Main Street, Suite 1602
Buffalo, NY 14203
(716) 853-9555

Legal Services for the
Elderly, Disabled or Disadvantaged
of WNY, Inc.



LEGAL SERVICES

FOR THE ELDERLY, DISABLED OR
DISADVANTAGED OF W.N.Y., INC.

716-853-3087 • Fax: 716-856-5317

237 Main Street • Suite 1015 • Buffalo, New York 14203-2717

Chief Executive Officer:

Karen L. Nicolson, Esq.

Supervising Attorney:

William W. Berry, Esq.

Attorneys:

Beata Banas, Esq.
Helen Ferraro-Zaffram, Esq.
Sarah R. Galvan, Esq.
David A. Shapiro, Esq.
Daniel F. Webster, Esq.

Clinical Instructor:

Anthony Szczygiel, Esq.

Paralegals:

Nicole Blackwell
Joanna M. Esquillin
Thomas E. Hayduk
Cheryl Kostrewa
Brenda A. Symans
Furnette Williams

Social Worker:

Kathleen M. Kanaley, BSW

Office Manager:

Michaelene Bauer

Administrative Assistant:

Robert S. Esposito

Board of Directors:

President:

Thomas F. Keefe, Esq.

Vice Presidents:

Giles P. Manias, Esq.
Frederic Paul Norton, Esq.
Randolph C. Oppenheimer, Esq.
Bruce D. Reinoso, Esq.

Treasurer:

Shari Jo Reich, Esq.

Deputy Treasurer:

Julie Plesh, CPA

Secretary:

David J. Starkey, Esq.

Directors:

Ericka N. Bennett, Esq.
Jan Berg
Jill K. Bond, Esq.
John C. Brady, III
Tracy Jordan-Cardwell
J. Michael Collins
Robert L. Marinelli, Esq.
Robert Meiss
Timothy O'Mara, Esq.
James P. Milbrand, Esq.
Jamie Smith, Esq.
Michele Sterlace-Accorsi, Esq.
Patrick Walh
Clifford E. Whitman

Honorary Board Members:

Elizabeth G. Clark, Esq.
Gayle L. Eagan, Esq.
Richard F. Griffin, Esq.
Hortense B. Nash

Comments of:

Karen L. Nicolson, Esq.

CEO Legal Services for the Elderly, Disabled or Disadvantaged of WNY, Inc.

237 Main Street, Suite 1015

Buffalo, NY 14203

(716) 853-3087 (#205)

We are pleased to submit this written testimony on behalf of Legal Services for the Elderly, Disabled or Disadvantaged of WNY, Inc. and usually referred to as Legal Services for the Elderly. The remarks have been prepared by CEO Karen L. Nicolson, an attorney who has been with the agency for more than 20 years.

Legal Services for the Elderly provides free civil legal services to seniors, disabled and low-income people in a six county area and on the Seneca Nation of Indians reservation. We also provide guardian services to an additional 67 elderly and disabled individuals and are trustees for another 300 disabled persons utilizing the Western New York Coalition Pooled Trust. We are members of the Legal Services Funding Alliance, a coalition of the civil legal services providers outside New York City (see attached list of members). The Legal Services Funding Alliance, as well as the entire statewide legal services delivery system, includes large LSC providers, as well as many smaller programs fulfilling critical needs for special populations and distinct neighborhoods throughout our very diverse state.

At Legal Services for the Elderly, our goal is to use the legal system to help our clients live independently and with dignity. Our primary source of funding comes from the Federal Older Americans Act and is passed through local Offices for the Aging. However, 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.

My agency was incorporated in 1978 to address the particular needs of elderly residents of Western New York. Our staff consists of attorneys, paralegals and social workers who provide free civil legal services to some of the most vulnerable members of our society: the cancer sufferer who needs home health care to avoid nursing home placement, the grandparent trying to obtain custody of a grandchild in foster care, the elderly woman talked into a second mortgage she cannot afford on her limited income. 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.

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. This increased demand is accelerating just when my office is facing its most significant funding crisis in our 30 year history.

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. Although some senior legal services programs receive Legal Services Corporation funding, Legal Services for the Elderly does not.

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. Although this funding stream initially provided 100% support to my agency thirty years ago, our funding from this act has increased only \$75,000 in the last twelve years. In fact, that funding is less now, in actual dollars, than it was in 1995 and now makes up less than a third of our 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 \$10,000 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. As a result, we do not have sufficient dedicated core support from the State to meet our mission.

Interest on Lawyers Account (IOLA) – A significant funding source is the money we receive from the IOLA Fund. It also funds most legal services organizations in New York State and is critical to the legal services delivery system 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 a crisis which is directly tied to the economic downturn.

The IOLA Crisis

In the past year, civil legal services providers faced a devastating reduction in our primary state level funding source, the IOLA Fund. We greatly appreciate the fact that Chief Judge Lippman put 15 million in his OCA budget as a one-time IOLA rescue, however, until and unless there is a permanent state funding source for civil legal services, such fluctuations will continue to threaten our ability to meet the legal needs of Western New Yorkers.

The loss in the IOLA Fund is staggering. The IOLA Board allocates civil legal services funding on a calendar year basis. In December 2008, IOLA made State-wide grants to civil legal services providers totaling over \$31 million covering a 15-month period. In March of this year, IOLA made grants totaling only 6.5 million for the remaining nine months of the year, a loss of nearly 80% in its grant-making capabilities.

Smaller programs are particularly reliant upon IOLA funding and critically impacted by the fluctuations in its grant-making capabilities. For the past several years, IOLA has accounted for approximately 25% of funding at Legal Services for the Elderly. IOLA has been our second largest funding source, right behind Older Americans Act funding, which accounts for about 31% of our revenue. Since IOLA is a crucial funding source for us and we do not have the resources available to larger programs, each IOLA reduction necessitates a reduction in our staff. If not for the assistance of the Chief Judge our small program was facing a loss of 3-4 positions- more than 20% of our staff.

Legal Services Programs Create Financial Security for New Yorkers who Subsequently Put Money into the Local Economy

According to the IOLA Fund, in 2006 IOLA grantees helped win \$131 million in benefits for their clients. This includes \$88 million in Social Security and SSI payments, over 12 million in child support payments, approximately \$3.5 million in Unemployment Compensation and over \$23 million in other federal benefits. Last year, my small program obtained more than \$300,000 in federal benefits for our clients. These clients then used those dollars to purchase food, clothing and shelter in Western New York.

The impact of these benefits on the local economy is substantial. Low income families primarily spend their income in their communities- from utility and grocery bills to paying for child care and transportation. As a result, the majority of benefits flow almost immediately into state and local economies. In January 2008 Federal Reserve Chairman Ben Bernanke testified that the greatest economic effect of the stimulus would come from people with lower incomes. "If you're somebody who has lots of financial assets and you receive an extra dollar, you may not change your spending much because you can simply either put the dollar in your bank account or take out a dollar as you need it. If you're somebody who lives paycheck to paycheck, you're most likely to spend that extra dollar." Legal Services programs get dollars into the pockets of those people who will support the economic recovery by spending their money locally.

Legal Services Programs Save the State and Counties Money

In addition, most of the above- described dollars are *federal* dollars. By bringing Federal dollars into the state, our clients need not utilize costly locally funded benefits programs. Every federal SSI or Medicare dollar we bring into our community is one less dollar of state temporary assistance expended. For example, Legal Services for the Elderly has a contract with the Erie County Department of Social Services to handle federal Medicare appeals for current Medicaid clients. By requiring that the federal Medicare program pay for covered home health care services, we are able to reduce the burden on the local Medicaid program as well as help our clients remain in the community with services.

Moreover, legal services programs are incredibly effective at working with families to keep them in their homes by avoiding foreclosure or eviction – many of whom would have had nowhere to turn but a local homeless shelter. In our program we work with the City of Buffalo to help seniors remain in their homes. Seniors are usually stabilizing factors in Buffalo neighborhoods- long-time residents who tend to keep their homes in good shape. We know that in Buffalo, mortgage and tax foreclosures lead to vacant homes or absentee landlords, which in turn contributes to urban blight. Last year, we saved 53 homes from tax foreclosure valued at 1.3 million dollars. These homes now can remain on the tax rolls and save the taxpayers the costs associated with abandoned properties.

Another example is in the area of the Medicare Prescription Drug Benefit. Through the Managed Care Consumer Assistance Program a group of civil legal services providers works with the New York State Office for the Aging to handle appeals of denials under the Federal Medicare Prescription Drug program for individuals who are “dually eligible” (eligible for both Medicare and Medicaid). Along with the Empire Justice Center, the Medicare Rights Center, Statewide Senior Action, New York Legal Assistance Group, the Community Service Society in New York City, Selfhelp Community Services and the Legal Aid Society of NYC, our group provides counseling, outreach and legal assistance to obtain full federal coverage of prescription drugs, thereby saving the state Medicaid program from having to cover those expenses.

Another way in which civil legal services programs provide substantial and immediate savings to state and local government is by working with families to stabilize their circumstances. Legal Service for the Elderly works with grandparents and other relatives to help them file for custody when a parent is unable or unwilling to parent. In 2009, our program saved Erie County \$91,571 in foster care payments.

Legal Services Programs Make The Courts Run More Efficiently

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

New York needs to do more to ensure meaningful access to the courts for our poorest and most vulnerable citizens. With jobless rates on the rise and the number of available jobs continuing to decline, increasing numbers of New Yorkers are coming to us for help, many for the first time. Legal services programs run the gamut from large LSC-funded programs to smaller programs focused on the needs of specialized populations such as seniors, victims of domestic violence, rural residents and farm workers. All of our legal services providers are in the unenviable position of experiencing increased demand during a period of recession, just when foundation and other financial supports are diminishing. In addition to providing a much needed services to residents of New York State, legal services programs save the state money, make the courts work more efficiently and stimulate the local economy. But more importantly, a dedicated and permanent funding stream fulfills the promise that our justice system works for each and every member of our society as exemplified by our Pledge of Allegiance, which ends with the words...and justice for all”.

Western New York Law Center

Written Testimony of Joseph Kelemen, Executive Director

Western New York Law Center

The Chief Judge's Hearings on Civil Legal Services

Western New York Law Center
237 Main Street, Suite 1130
Buffalo, NY 14203
716-855-0203
wnylc@wnylc.com

Submitted on 9/28/10

My name is Joseph Kelemen and I am the Executive Director of the Western New York Law Center 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 financial crisis has hit all parts of New York State hard, and Erie County has been particularly affected. This year, only five counties in New York State have had more housing foreclosure filings in court than has Erie County. Every one of those counties is in the NYC area, and one of the Counties, Bronx, just barely pushes Erie County out of the top five, even though the population of Bronx County is 52% greater than the population in Erie.

This economic climate has resulted in a huge demand for legal services. As the members of the Task Force know, ours is an adversarial system, and although the judiciary tries to help the unrepresented with procedural issues, they must and do remain neutral when judging disputes. As Judge Gonzalez noted during the hearings held before this task force on September 28, 2010, judges must not be forced to violate their neutrality in judging disputes, but are often conflicted because of the unequal status of parties with legal representation facing parties that are unrepresented. People need effective legal representation when they are in court. In Erie County, members of the Bar Association of Erie County unselfishly handle many pro bono cases for indigent clients. Unfortunately, the demand for legal services far outstrips the ability of the private bar to provide representation for those who cannot afford counsel.

Our office has used funds from the New York State Interest on Lawyer Account Fund (“IOLA”) to help clients in Erie County who cannot afford counsel. This help extends to a range of issues, but especially to the foreclosure issue because of the number of foreclosures we face in Erie County. Our office sends attorneys directly to the courts and we see clients right at court

when clients are facing foreclosure and cannot afford representation. The impact of legal counsel in a foreclosure proceeding is dramatic. Simply put, clients without representation lose their homes. When we appear in foreclosure cases, our attorneys have been successful in keeping homeowners in their homes in over 60% of cases. Our organization would not have been able to do a court based intake system without IOLA funds.

At the September 28, 2010 hearings, Benito Romano, Esq., Chair of the IOLA Fund of the State of New York, testified about the quantitative economic impact of IOLA funds in our communities. Our office does not have the resources to represent all clients facing foreclosures and I see the impact of a lack of funds for legal representation in our community when I see many of the properties in Buffalo that have been abandoned because of foreclosures. 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>

Our use of IOLA funds to represent homeowners facing foreclosure helps our community avoid the worst of those impacts and dramatically improves the lives of the people who can remain in their homes.

Although IOLA funding has played a critical role in helping to provide legal counsel for those who would otherwise be unrepresented, IOLA is vulnerable to fluctuations in interest rates. At the time that funding for legal services is most needed, interest rates have significantly dropped and lowered the amount of funding available. The result is the loss of millions of dollars in funding for civil legal services. According to its 2008 report, the IOLA Fund awarded grants totaling \$25 million. However, grants for the 2010-2011 fiscal years dropped to approximately 22% of that amount.

Unfortunately, New York does not provide a stable funding mechanism for civil legal services.

The New York State Bar Association ("NYSBA") has put forward several recommendations to address this issue. NYSBA has recommended:

- 1) The creation of a permanent Access to Justice Fund in the state budget;
- 2) The identification of a state level agency to assume responsibility for administration and oversight of this Fund; and
- 3) Working with the legal community to ensure that access to justice receives sufficient support, attention and priority.

I support these recommendations. I understand that New York State is experiencing an extreme budget crisis, and that funding sources in New York State must prioritize where state money should go. But I also know that fundamental individual rights are at stake whenever someone enters a courtroom. "Access to justice" for all people is a basic obligation of our

society. That obligation cannot be fulfilled, and people cannot have access to justice, when they do not have access to attorneys to help them with their cases. Legal services programs for the indigent are an important part of giving the poor access to justice in our society. Funding the access to legal services does have a cost. But there are also huge costs in failing to provide access to legal services, and those costs are borne by those least able to do so.

Thank you for the time and attention you are giving to this important topic, and for addressing the question of helping all members of our community attain equal access to justice.