

**TESTIMONY CONSIDERING THE CONCEPT OF
CONSOLIDATING THE NEW YORK STATE TRIAL COURTS**

Submitted to:
SENATE STANDING COMMITTEE ON THE JUDICIARY
ASSEMBLY STANDING COMMITTEE ON THE JUDICIARY
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We thank the New York State Joint Standing Committees on the Judiciary for holding this hearing and providing the opportunity to submit testimony. The Legal Aid Society supports the New York State Chief Judge's Court Consolidation proposal to transform the way all New York litigants, and especially those whose lives are most impacted by the decisions made in these forums, can more fully participate in the legal system.

The New York Court system is a labyrinth of jurisdictional and procedural traps with unequitable distribution of resources that pose major challenges to low-income and unrepresented litigants seeking transparency and access to justice. This is particularly problematic in the "high volume" courts (Family Court, Criminal Court, and the Housing Court of Civil Court) which primarily serve low-income litigants of color, and are often overcrowded and underfunded.

We recognize that in the last twenty years, New York State's Office of Court Administration (OCA), the administrative arm of the state court system, has developed a number of initiatives attempting to address the structural inefficiencies of the court system. These include the Integrated Domestic Violence Courts which bring together some of the separate cases that arise from a single family crisis; and the Community Courts which look more holistically at related housing, family, and criminal issues that may impact the litigants in particular communities. These initiatives have been very limited, and make the case for a comprehensive court restructuring or simplification in New York State creating a better structure for our courts and simplifying the court system for all litigants.

The Legal Aid Society

The Legal Aid Society annually provides legal assistance in more than 300,000 individual matters for low-income families and individuals with civil, criminal, and juvenile rights legal problems. For more than 140 years, The Legal Aid Society (LAS) has been a tireless advocate for those least able to advocate for themselves. Our vision is simple - we believe that no New Yorker should be denied equal justice because of poverty. Combining the expertise gained from representing a high volume of individual clients across diverse areas of law, with the significant affirmative litigation and law reform capacity with the broader public policy perspective of an advocacy group, we stand with marginalized individuals to enable them to advance themselves and their families. Part criminal justice defender, part juvenile justice advocate, and part direct legal services provider, we go beyond individual issues to effect change at a societal level.

Every day The Legal Aid Society's staff practices in every court in New York City. From the Juvenile Rights Practice, where we represent children who appear before the New York City Family Courts in proceedings affecting their rights and welfare; to the Criminal Practice, the primary public defender in New York City, where Legal Aid staff zealously and tirelessly work to protect the rights of the most marginalized and disenfranchised in society and to the Civil Practice where lawyers, paralegals, and social workers work with low-income New Yorkers experiencing a broad range of civil legal issues, help survivors of domestic violence, families torn apart by federal immigration policies, low-wage workers who experience chronic wage theft in the service industry, or help seniors age in place by maximizing access to government benefits and blocking eviction proceedings, The Legal Aid Society sees firsthand the confusion, inequity,

and lack of access and transparency the current court system creates for litigants. Our perspective comes from daily contact with low income New Yorkers and their families, and frequent interactions with the courts.

End Jurisdictional and Procedural Barriers Between Family Court and State Supreme Court

We ask that the proposed court restructuring end the jurisdictional and procedural barriers that negatively impact domestic violence survivors or children and families in transition or crisis including multiple court appearances in multiple courts.

In our Family Law/Domestic Violence practice, we often see the negative and traumatic impact of the current court structure. For example, our client Ms. S originally unrepresented, entered the court system through family court in New York City. A survivor of domestic violence, she originally went to family court for an order of protection. While in family court, she filed for custody of her two children. After her spouse was served, she went back to family court where she received assigned counsel for her cases. Her spouse also retained an attorney and her children were assigned lawyers. After several appearances, Ms. S filed for child support. She now had three cases going forward in family court before two separate judges on different days. When her spouse filed for divorce, they entered a new venue -- State supreme court. Hearing about the divorce, the Family Court judge dismissed the custody case, adjourned the order of protection and the support magistrate also adjourned the child support matter. Ms. S went to supreme court without an attorney for the first appearance because her family court attorney did not want to represent her in Supreme Court. The Supreme Court, aware of the pending family court matters, consolidated the order of protection but not the support case and Ms. S was assigned a new attorney for these matters. But she did not have a lawyer to help her to navigate the financial aspects of her case. Ms. S's children's attorney would also not appear in supreme court, so they were assigned another attorney. The supreme court refused to consolidate the child support, so even though that was integral in the divorce, it remained in family court. They originally did not want to consolidate the order of protection, even though the issues would have to be litigated because of the custody in supreme court, but they relented. Otherwise, she would have to endure the trauma of telling her story of abuse to two separate judges at different times.

Does this sound confusing and inefficient? It was both. Ms. S. was in two courts, before three judges and has had two attorneys (as have her children). She will continue to litigate in both family and supreme court – wasting resources, losing days from work, and trying to find child care while in court. Eventually, she was able to retain LAS and we stepped in on all of Ms. S's pending matters. Almost six years after Ms. S first entered a court, after three judges, two attorneys for her, two attorneys for her children, four separate proceedings and re-litigating the same issue over and over, Ms. S finally received a divorce, custody, an order of protection and support. That is the difficulty with the current court structure.

This structural barrier to effective access to the Family and Supreme Court for families and children is extremely difficult and costly to all, but it is particularly traumatic for our low-income clients who are domestic violence survivors or children and families in transition or crisis.

Ensure Greater Transparency For All Litigants

Litigants do not understand the court structure. They do not realize you cannot get a divorce in family court; that juvenile defendants go to family court when they are accused of committing a crime; that criminal matters are heard in multiple courts with different names; that ejecting a roommate is done in civil court and not housing court; or that guardianship proceedings happen in surrogates or family court; and the list goes on. Even the names of the courts do not always fit the case. Litigants often go to the wrong court, which can lead to their cases being dismissed. The lack of transparency and access to information leads to litigants not trusting the judicial system to arrive at a just outcome, or even worse, giving up and not utilizing the courts for important essentials of life matters. New Yorkers cannot take multiple days off, missing work and family, to run to various courts figuring out where and how to file their case.

When it is determined that a case should be transferred, time delays abound. For example, it takes 12 weeks to transfer a file from one court to another after a matter is consolidated. Twelve weeks without any relief, waiting for your case to go before a judge. Litigants do not understand the delays. They believe it is the attorneys fault, or the judges' fault, and they often become suspicious of the entire legal system. They are trapped, waiting for an outcome of a case, while the "file" is moving from one court to another, sometimes to court's only one block away.

Court restructuring would remove these obstacles. It would allow entire family or matrimonial matters to be litigated in the same court. It would eliminate the morass that is the current system of fourteen separate courts and simplify the structure.

Create Greater Equitable Distribution of Resources to All Courts

By consolidating the structure, the court system could focus more resources on the high volume courts, many of these courts are where the highest volume of *pro se* or unrepresented litigants appear. In New York City the vast majority of these litigants are low-income people of color who historically face racial disparities in the legal system. Litigants could lessen the possibility of lost wages or getting fired from their jobs, and lessen the time away from family or child care responsibilities. With the additional resources that a comprehensive court restructuring could bring, cases would move through the legal system more effectively, allowing them to move on with their lives instead of staying in a holding pattern of waiting for a court ruling. They would be able to understand the structure, know where to file and not have to navigate multiple courts.

Court restructuring could remove the current unequal administration of justice that is inherent in our current system. Litigating in the overcrowded and chaotic family court is different than litigating in the larger, quieter and distinguished courtrooms of supreme court. Housing court, with its lack of space and court parts opening into elevator banks, varies significantly from the solemn surrogates courts. This inequity has continued for far too long. Court restructuring would allow New York State to remove structural inequities, which lead to unequal justice

By focusing and consolidating resources, during the implementation the Chief Judge's Excellence Initiative, there will be great improvements immediately felt and capitalized on during the five-year phase-in period. For example, the self-help centers could assist more litigants; the litigants would have more access to clerks when beginning their cases and the attorneys would not have to run back and forth to different courts for daily appearances. Resources could be more evenly disbursed based on caseloads, thus removing structural inequality in our courts. Currently, some judges carry caseloads of 800 cases, while other judges carry cases load less than 100 cases. The current fragmented structure of our court system prohibits the efficient managing of cases in a way that would be natural and obvious in any rational organization. For example, a backlog that develops in one court cannot be readily ameliorated by transferring cases from that court to an underutilized but perfectly capable court across the street. Yet this is exactly what happens every day in the federal courts, and in virtually every other state court system in the nation.

Provide Greater Opportunities for Recent Criminal Justice, Juvenile Justice, and Housing Justice Reform Efforts to Thrive.

These last few years New York State has made tremendous strides in reforming our justice system. One of the first major achievements occurred in 2017 when New York State raised the age of criminal responsibility to 18 years of age, ensuring that young people in New York who commit non-violent crimes receive the intervention and evidence-based treatment they need. Then, earlier this year the state passed comprehensive criminal justice reform aimed at ensuring greater fairness in our courts and throughout our criminal justice system to attack racial and class disparities inherent in the system. Finally, the passage of the historic Housing Stability and Tenant Protection Act of 2019 (HSTPA), coupled with Universal Access to Counsel in Housing Court (UA), has the potential to dramatically strengthen tenants' rights, reduce evictions and homelessness across the City, prevent the loss of affordable rent-regulated apartments, and the displacement of long-time residents. All these reforms require the courts to accommodate litigants in different ways. For example, more space, judges, and judge training is required for the criminal, family and housing courts.

Opportunity to Comment on the Judicial Selection Process as Part of the Court Simplification

We understand that a key provisions of the Chief Judge's Court Consolidation Proposal includes the consolidation of New York's major trial courts with State Supreme Court, consolidation of the trial parts of lesser jurisdiction (not including the Justice Courts) in a new statewide Municipal Court, and permits the Legislature, once every ten years, to adjust the number of Judicial Departments. Consequently, the consolidation would designate New York City's Housing Court Judges as Municipal Court Judges, to be appointed by the Mayor to ten-year terms. Currently the Housing Court Act mandates that housing court judges be appointed for five year terms by the Administrative Judge from a list of candidates whom the Housing Court Advisory Council deems qualified by their training, interest, experience, judicial temperament and knowledge of federal, state and local housing laws and programs. Judges are then reappointed at the discretion of the Administrative Judge on the basis of performance,

competency and results achieved. Also, housing court judges are not subject to review by the State Commission on Judicial Conduct because they were not originally regarded as “judges.”

In the last 15 or more years serious questions have been raised about judges who are seen to be unsuitable for reappointment. Housing Court Judges can be denied reappointment if they are shown to lack judicial temperament, display racial or ethnic insensitivity or prejudice, fail to make timely decisions, or show bias towards either side in landlord-tenant disputes. Advocates and tenants must then consider filing complaints with the appropriate individuals, councils and committees. As part of the legal services community, it is important that we continue to participate in the judicial selection process and that we continue to have an opportunity to provide feedback and input on the effectiveness of sitting Housing Court Judges. Absent meaningful input from the legal services community, we would be concerned about extending Housing Court Judge terms beyond the existing five years to the proposed ten years.

In conclusion, the Legal Aid Society supports court restructuring. It would create a more equitable system for litigants, remove barriers to court access, reduce delays and allow our courts to be a truly Unified Court System. It would help all who interact with the court system. We thank you for the opportunity to speak on this important topic.