



Consolidation of the NYS Trial Courts Public Hearing

November 13, 2019

Her Justice Testimony

Thank you to the Senate and Assembly Standing Committees on the Judiciary for the opportunity to testify today regarding consolidation of the New York State trial courts. My name is Amy Barasch; I am the Executive Director of Her Justice, a not-for-profit that stands with women living in poverty by training and mentoring volunteer attorneys to provide free legal help to address individual and systemic legal needs. Since 1993, Her Justice has served women and children living in poverty in all five boroughs of New York City. We provide legal assistance in the areas of family, matrimonial and immigration law. Our volunteer lawyers come from over 90 law firms and corporations. Our clients hail from all five boroughs of New York City; 55% are Latina, 25% are Black, 11% are Asian or from another minority group, and 9% are White. More than half of Her Justice clients were born outside the United States. As a “pro bono first” organization, we have a rich understanding of the opportunities and barriers regarding the provision of pro bono representation in the family and matrimonial courts. Challenges facing litigants, such as delays, lack of times certain, few resources, and poor coordination across courts are also challenges to recruiting volunteer lawyers to represent these litigants. We are presenting this testimony because the proposed consolidation of the trial courts presents an opportunity to allocate resources equally across the system; “lift” the family court into the same tier of courts that hear matters currently heard in the Supreme Court; and reduce unnecessary adjournments over multiple court appearances. Those changes would reduce barriers to pro bono access, and result in improved access to justice for women like our clients, which is why Her Justice is a member of the Simplify the Courts Coalition.

Her Justice has deep expertise in providing pro bono representation to women living in poverty.

Through our unique “pro bono first” model, the 13 attorneys at Her Justice partner with 800+ volunteer lawyers to help 4,500 women for a total value of over \$42million of legal services every year. All

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of the women Her Justice serves have high stakes legal needs, many have suffered domestic violence and/or are immigrants who are isolated by language and cultural barriers. The individuals served cannot pay for legal services, and without Her Justice and its pro bono partners, would have to navigate the court system alone. Without representation, their outcomes would likely be less positive. Her Justice believes that pro bono advice and representation are necessary complements to representation by legal services organizations. Consolidation of the New York State trial courts offers an opportunity to encourage further pro bono representation in areas of the greatest need, such as family and divorce proceedings, to close the “justice gap” in our legal system.

The Office of Court Administration encourages and supports pro bono representation.

The New York State Court system has consistently championed efforts to close the justice gap in our state, advocating that low-income litigants in life-altering civil cases are entitled to, and must receive, effective legal representation. In 2010, Chief Judge Jonathan Lipmann established the Task Force to Expand Access to Civil Legal Services in New York. The Task Force recognized the essential role of pro bono work in closing the access-to-justice gap¹, and has noted that “the provision of civil legal services for low-income New Yorkers not only makes a profound difference in the lives of vulnerable individuals and families but also enhances court efficiency and reduces litigation costs.”² In 2015 J. Lippman transformed the Task Force into the Permanent Commission on Access to Justice (the “Permanent Commission”), and Judge Janet DiFiore has continued the Commission. The Permanent Commission is mandated to “study, analyze and develop recommendations on all aspects of civil legal services to low-income New Yorkers; to issue recommendations providing for improved and increased access; and to collaborate on access to justice issues, including expanded pro bono services and help for unrepresented litigants.”³

¹ Task Force to Expand Access to Civil Legal Services in New York, Report to the Chief Judge of the State of New York, November 2014, 4.

² N.Y. State Unified Court System, Press Release, “Chief Judge Announces Creation of Permanent Commission on Access to Justice,” https://www.nycourts.gov/PRESS/PDFs/PR15_07.pdf (July 22, 2015).

³ Permanent Commission on Access to Justice, “Overview,” <https://www.nycourts.gov/ip/access-civil-legal-services/index.shtml>.



Her Justice is a leading provider of pro bono services in family and matrimonial cases.

Her Justice and its partner firms and companies are similarly committed to improving access to justice for low-income litigants in New York’s courts. Our collective experience in Family and Supreme Matrimonial Court, gained over more than twenty-five years, gives us a unique perspective on the contribution of pro bono services to access to justice. With this testimony, we highlight some of the barriers we face trying to provide pro bono services to our clients, barriers that court consolidation could ameliorate. Court consolidation could not only offer a “good government” solution to an unnecessarily complex system, but also support the goal of the Permanent Commission in its mandate to “increase the availability of effective legal assistance for New Yorkers grappling with matters affecting their most basic needs.”⁴ The stories of our clients illustrate some of the challenges in the current system that court simplification could address. We invited a client to appear here before you, she wanted to tell her story hoping it would impact these hearings and your consideration of why change is so important. However, she was unable to get off work today because tomorrow she will already have to miss work to attend a child support proceeding.

Unnecessary and Harmful Delays: Three matters heard in multiple courts lead to harmful, unnecessary delays and unfair results.

Maria requested an order of protection against her abusive husband, a police officer; sole custody of her two young children; and child support, in Family Court. While she was waiting for the Sheriff’s office to serve her husband with the court papers, her husband, who had hired private counsel, filed for divorce against her in Supreme Court, Matrimonial part, and had her served by a private process server. So although Maria filed first, her husband was able to have her served first, so his case advanced.

Maria received two different dates to return to family court – one for the order of protection/custody cases, and another one for the child support case. At her first court appearance (for the order of

⁴ N.Y. State Unified Court System, Press Release, “Chief Judge Announces Creation of Permanent Commission on Access to Justice,” https://www.nycourts.gov/PRESS/PDFs/PR15_07.pdf (July 22, 2015).



protection/custody) an attorney was appointed for her children, and a forensic psychologist was assigned to assess the parents and the children. All parties agreed to consolidate the family court matters with the divorce. The next court appearance was again in family court for the support matter, and a temporary order was issued. Three weeks after that, the parties had their first appearance in Supreme Court for the divorce. The judge refused to consolidate the matters (despite the parties' consent) because an attorney for the child and a forensic psychologist had already been assigned; the child support case was consolidated into the divorce case. The family court order of protection/custody matters dragged on for a year. The family court delay in turn delayed the finalization of the divorce, the terms of which the parties had already settled (and which, importantly, would provide Maria with equitable distribution of the husband's pension and the marital home).

All told, a case in which most issues were agreed to by the parties took over two years to resolve. It took approximately 18 months, between two courts (originally three), to resolve all the matters for the family, and then an additional five months until the judgement of divorce was signed. Maria and all involved in the case were negatively impacted by these delays. It is quite probable that had all matters been decided together (and in the better-resourced Supreme Court), a year could have been saved. That year represented court appearances for our client with her abusive husband, days off of work, and more time during which her children were uncertain about their futures and Maria was not sure when she might begin to receive financial support. That year might also have permitted the attorney to assist an additional client. In addition, delays in the Family Court matters meant that a hearing on the order of protection was postponed. Because the cases dragged on for so long, Maria felt pressured to settle, and agreed to settle for joint legal and physical custody. The outcome might have been different had the litigation been more expeditious and the court held a hearing on the order of protection, and considered domestic violence in determining custody as the law requires. And because Maria settled for joint custody, she received less in child support. The husband also felt pressured to settle because of mounting legal fees. And the children were harmed by the prolonged litigation. With the pressure of the litigation (including interviews by forensic



psychologists) and family upheaval spanning such a long period, the parties' older child – a young teenager – began to engage in self-harm behavior. Because Maria did not have a final order of custody, she could not independently arrange for therapy for the child (and was not able to negotiate this with her abusive husband) so even treatment for this serious situation was delayed.

Unnecessary Complexity and Costly Burden: "Why is everything isolated even though it's together?"

Sandra's child was just a toddler when she separated from her abusive husband and filed for custody and an order of protection. The court consolidated these matters into an Integrated Domestic Violence court, where she was assigned counsel. Sandra then filed for child support, which was heard separately. She navigated that litigation on her own. Sandra was awarded child support, but believed the amount ordered was less than her husband could afford because she knew that he hid information about his business from the court and artificially decreased his income. When the husband stopped paying child support, Sandra filed a violation petition. Sandra's husband evaded service, so Sandra filed several petitions, each of which was dismissed. Finally, Sandra contacted Her Justice for help. Her Justice matched Sandra with a pro bono attorney who was able to convince the court to accept mail service of the child support petition; this along with a notice of warrant compelled the husband to appear in court. The pro bono attorney then represented Sandra in a proceeding to enforce and modify (increase) the order of child support, engaging in extensive discovery to prove that the husband earned more than he was claiming and had fewer expenses than he had presented in the initial case. Sandra had hoped to file for divorce, but was advised to wait for the custody and child support enforcement/modification matters to be resolved. She describes navigating the courts as a "nightmare" given the burden of missing work because of unnecessary delays, caring for her child, and shouldering most of the financial burden for her child, including child care. Sandra says she doesn't "understand why everything is isolated even though it's together."



Pro bono attorneys would be more active in family issues if the courts were less prone to delay.

These examples are typical of the stories our clients and lawyers share about the complicated path litigants must navigate to resolve family disputes; some women who contact us decide not to proceed with litigation when they learn what the road ahead will likely involve. Family and divorce cases represent two-thirds of the practice at Her Justice, and the most common request for assistance we receive is for divorce. Despite our relative success in placing family and divorce cases with pro bono attorneys, litigated divorces remain the greatest unmet need among our clients. Many disputes between married couples start in family court, since indigent litigants typically resolve most matters in family court before going before a separate court and judge to obtain a final judgment of divorce (as described above). Since Her Justice works with over 90 law firms and corporations, we engage in regular conversations with volunteer attorneys and pro bono coordinators about their perspective on pro bono practice in family courts, in particular, their experience of a high degree of procedural inefficiency. They report to us that some of the biggest challenges include:

- the procedure for requesting adjournments (typically in person);
- the frequency and duration of adjournments;
- the number of court appearances for relatively straight-forward cases; and
- the lack of communication with counsel concerning adjournments.

Pro bono attorneys understand that family court works with a very high volume of cases and that the challenges with adjournments are due, in large part, to insufficient resources. Yet these inefficiencies appear to pro bono attorneys to be worse in family court than in other similarly busy courts (like housing court).

In addition, they present a major deterrent to, and risk of alienating, attorneys voluntarily giving of their time. While the current practices present severe difficulties for litigants who must secure childcare and are likely to miss work (and the concomitant wages) to appear in court, they also create unnecessary



scheduling issues for attorneys who are in Family Court for only a single appearance. Delays in cases involving family matters make it difficult to place those cases with volunteer attorneys from law firms who are a critical complement to the available legal services for indigent litigants. For a third-year associate at a law firm to request of a partner that they forgo a full day of billable hours, to spend that day waiting in court for a 15-minute appearance that will likely result in an adjournment, is a big hurdle. We convince hundreds of attorneys to do just that, but they have expressed that they would take more of these cases, and encourage their colleagues to take them, if there were fewer unnecessary delays.

We believe that court consolidation could ensure better allocation of resources across the various courts that would address case delays and benefit our clients and their children, our pro bono partners, and all those engaging with the court system.

Pro bono attorneys excel at identifying hidden resources for clients, whereas unrepresented clients in the current system often lose time and money.

One way in which pro bono representation is an important complement to legal services is that volunteer attorneys can put the full weight of the private sector behind a case that might otherwise not receive representation at all. At Her Justice, we handle many child support cases since there is no right to counsel in those matters, so that about 90% of litigants proceed pro se. We take cases where there is reason to believe the opposing party has not disclosed or under disclosed resources. When volunteer attorneys take these cases they also work with volunteer accountants and investigators who are able to put together evidence to show actual ability to pay. Our clients see an average 70% increase in their income after representation. This outcome stands in stark contrast to the litigants who can literally not afford to litigate their cases because of the child care, transportation, and time off from work that prolonged litigation demands. In addition, when they proceed unrepresented, they are likely to receive low support awards, such that they end up behind, not ahead. If resources were better allocated across the courts, and child support proceedings ran efficiently, more volunteer attorneys would take them, and custodial mothers would be able to participate confident that they would ultimately receive a fair support order.



Court simplification can set the stage for improved access to justice.

Thank you for the opportunity to present this testimony. We are hopeful that the proposed consolidation of the trial courts will lead to improved resource allocation across the system and fewer procedural inefficiencies in the courts, benefitting pro bono attorneys and others throughout the courts and bridging the “justice gap” that traps many Her Justice clients and women like them in New York.