

Testimony of
New York Legal Assistance Group (NYLAG)

Court Consolidation

Senate Standing Committee on the Judiciary
Assembly Standing Committee on the Judiciary

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The New York Legal Assistance Group (NYLAG) uses the power of the law to help New Yorkers in need combat social and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. We tackle the legal challenges and systematic barriers that threaten our clients' economic stability, well-being, and safety.

The Domestic Violence Law Unit represents survivors of intimate partner violence and sexual assault, providing representation in Family and Supreme Court, and advocacy in pending criminal proceedings in which they are the protected party. Our attorneys litigate across the five boroughs, and are in court an average of three to four times a week. In the last year, we provided services to 1,200 survivors of intimate partner violence in these matters.

The current New York court structure perpetuates inequality in our justice system, especially for litigants with low-income. We have seen firsthand how the current court system in New York creates obstacles towards litigants achieving timely and just resolution to their matrimonial and family law cases. We support court simplification for these reasons, and also urge the Committee to review and reform the process of appointing and electing justices to these courts.

I. The current Court System in New York creates an undue burden on litigants

Neither an individual's income level, nor their family structure, should impact their ability and their experience accessing justice in New York State Courts. As practitioners appearing in both Supreme and Family Courts across all five boroughs, we observe firsthand how litigants in Supreme Court are more likely to be married, moneyed, and able to retain private attorneys, whereas litigants in Family Court are more often unmarried and

lack the financial means to retain an attorney. There are multiple factors that may cause this, including the lack of filings fees in Family Court and an onerous waiver process in Supreme Court; clerks in Family Court assisting *pro se* litigants in preparing petitions and filing documents, with no similar level of assistance available in Supreme Court or the Appellate Courts; and complicated and particularized rules for the preparation of and filing of documents in Supreme Court and the Appellate Courts, which does not exist in Family Court. There are significant consequences to the disparate systems.

- a. Under the current system, those with means access different justice than those without

Individuals with multiple legal issues who appear in Family Court (e.g. support and custody/visitation) will appear before several jurists. Assigning multiple jurists to the same family to address different issues is inefficient. This practice often leads to inconsistent orders and determinations,¹ including credibility determinations, because more than one jurist is hearing issues that affect the parties. This makes the case more protracted, necessitating multiple court dates to appear before each separate jurist and creates obstacles for individuals who are experiencing poverty.

Protracted litigation benefits no one. It overburdens an already overburdened court system; keeps families in court, in contentious proceedings, without being able to achieve a final resolution on their case and move forward with their lives; and creates a higher burden on individuals experiencing poverty to continue with their case - who have to take days off work in order to appear.

¹ As an example, we frequently see Respondents' arguing poverty and inability to work in support parts while simultaneously arguing their financial support, resources, and stability as a positive factor in custody proceedings.

For example, NYLAG has represented a survivor of domestic violence, J.L., a single mother of three children, one of whom has special needs, for over five years in New York County Family Court. She had an order of protection and a custody/visitation case pending in New York County Supreme Court's Integrated Domestic Violence (IDV) Part. That case was resolved in 2015 with an order of sole custody and a final order of protection in her favor. After the father of her children unilaterally withdrew all financial support for the children when she sought court intervention to protect her and her children, she needed to file for child support. However, because the parties were no longer married, she had to file for child support in New York Family Court while her custody case in Supreme IDV. We are now only mid-trial on the support proceeding, with our next court dates in 2020.

Why did this happen? First, multiple court dates were required for the litigants who could not take off multiple days each month from work as they are paid daily wages. The Supreme Court case moved more quickly, whereas the Family Court Case did not. In 2017, mid-way through the first trial, the Support Magistrate retired, and there was a mistrial. The second magistrate assigned did not move the case towards trial as she was being re-assigned and did not want another mistrial. The case now is on its third magistrate with a trial scheduled in 2020.

This has been devastating for our client. Besides the obvious burden of taking days off work every few months for years, lessening her take home pay and perhaps impacting her long-term employment and opportunities for advancement at her job given her consistent, years long, pattern of taking a day off work every other month, our client has been left with an ineffective temporary child support order and no recourse. Notwithstanding the temporary order of support, the non-custodial parent has only been

paying her, at most, 25% of the order for over five years. Despite the failure to adhere to the court order, our client is unable to file a violation petition to seek enforcement of the order. Violations, and consequences for non-payment, only exist after the issuance of a final order of support. She and her children have suffered tremendously during this time. She lost one job because she cannot afford child care and had to take off work every time a child was sick or had a school vacation. She has over \$10,000 in credit card debt, just to pay for basic expenses like food and clothing. Her children no longer participate in the extracurricular activities that they used to because she can't afford the uniforms, bus fees and other expenses. If this family had one jurist presiding over the custody, visitation, and support matter, the case would have been completed in 2015. Instead, she faces ongoing protracted litigation, that in no way responds to the real issues which individuals in New York face who are dependent on getting a resolution from court.

- b. Multiple filings, in courts with all different rules and procedures, impedes *pro se* litigants' access to justice

Pro se litigants, who are overwhelmingly individuals experiencing poverty, face numerous hurdles in litigating their cases. These hurdles increase dramatically when they are forced to litigate in different court buildings, each with different rules for the preparation and filing of documents, and different policies and practices within each courtroom. This creates unnecessary obstacles to accessing justice that should not exist. Consolidating our courts, and creating uniform rules for filing and practice, will greatly enhance access to courts for *pro se* litigants.

II. Consolidation of Courts has been shown to be effective in New York

In 2001, New York introduced the Integrated Domestic Violence Courts as a “problem-solving” court aimed to expedite the judicial process for couples and families

who have cases in multiple venues, namely, civil, family and criminal courts. For the past 18 years, the IDV courts have remained open to help facilitate and expedite the judicial process for individuals who have simultaneous cases open in civil, family and criminal court.

This model has proven helpful to survivors of domestic abuse and trauma, appearing before one judge who understands the entirety of the family history and can ensure consistent orders are being issued between all of the different matters before the court. Having the entirety of the case before them also allows judges to better assess safety concerns for survivors, best interest considerations for children, and even financial abilities of parents when considering appropriate support orders. Many institutional providers who serve as public defenders are also able to represent the same client in custody and visitation cases, which also provides continuity of services and legal representation for defendants. And for both parties, appearing before one judge helps lift economic strain, when every day in court may jeopardize job security.

Despite the great strides the IDV courts have made in streamlining cases, there are still areas for improvement. Kings County, one of the busiest boroughs, previously had two judges presiding over two separate IDV parts, but since approximately 2016, one judge has taken over two judges' work. In Bronx County, the assignment to the IDV part was met with such derision by the assigned judge in 2018, that the part sat vacant for months before a new judge was appointed. And despite the clear issues related to custody and visitation, Article 10 cases remain in the Family Court, even where there is an existing matrimonial matter in Supreme or IDV Court.

New York County Family Court had instituted a domestic relations part presided over by a Supreme Court judge that heard Family Court cases involving married parties when the parties indicated a plan to separate and divorce, including pending Article 10 cases. This part greatly streamlined the separation process for couples who had issues of equitable distribution, support, and custody and visitation. With the most recent judge's departure, no judge has been assigned to replace him and the part remains unused.

Similarly, Queens Supreme Court piloted a special designated part to hear cases where there were intersecting matrimonial and foreclosure actions, if both cases were pending at the time. However, access to this part has been limited.

There are many areas of the trial court system in which clients' legal matters intersect – housing court, criminal court, surrogate's court, family court, and civil court. Requiring litigants to attend multiple hearings and conferences, in different courtrooms is a huge economic strain not only on the litigants themselves, but on the court system and on legal service providers. Where one judge or one legal service organization may be able to help address a litigant's legal problems if courts were integrated, instead, multiple judges and multiple legal service providers address overlapping issues without understanding how one affects another. For example, we have cases where an order of protection from criminal court protects the child from a parent and has no carve-out for visitation; but the family court judge issues an order of visitation between that same parent and child. This necessitates extra work, filings, and court appearances to address issues that could easily be avoided if one jurist was hearing the entire case.

As another example, NYLAG's client, B.B., will soon have three cases pending in three different courts. Her custody and ACS case are before one judge in Family Court,

while her divorce case is before another in Supreme. Now, she has just been served with a 10-day notice to quit by her in-laws, who are seeking to evict her from her home, necessitating another case in Housing Court. All the while, B.B. is caring for two young children while trying to enforce an order of protection against her husband, cooperate with ACS supervision, and find a job to support herself and her children. At NYLAG's Domestic Violence Law Unit, we seek to limit multiple jurisdictional issues when possible. If it is feasible, we always advocate for cases to be moved to the IDV part so that one jurist can preside over the entire case and clients do not have to run to two or sometimes three different courts. On average, cases in integrated parts, or presided over by one judge, are completed months faster than those where the issues are split up among different courts. Integrated courts also provide for more holistic representation by attorneys and legal providers on both sides of the table.

We urge the legislature to strongly consider and explore court simplification legislation that will streamline court appearances, representation, and judicial decision-making. Sensible integrated parts, in areas of law which commonly overlap, are one such way that the court system can be simplified, to the benefit of all. We also ask the legislature to examine the process of judicial appointment and selection to ensure that those that are appointed and/or elected are appropriate candidates to preside over cases where expertise, sensitivity, judicial temperament and demeanor are critically important in cases that involve families such as those in the cases described above.

Respectfully submitted by the New York Legal Assistance Group