



Consolidation of the NYS Trial Courts Public Hearing

November 21, 2019

Legal Information for Families Today Testimony

Thank you to the Senate and Assembly Standing Committees on the Judiciary for the opportunity to submit testimony in support of the consolidation of the New York State trial courts. My name is Cathy Cramer and I am the CEO of Legal Information for Families Today (LIFT), a not for profit organization that works with pro se litigants in New York's Family Courts. We work to enhance access to justice for children and families on issues of child support, custody and visitation, and domestic violence.

The NYS Family Court receives over 600,000 filings a year and 80% of people who come to Family Court are unrepresented. These litigants cannot afford an attorney, are not entitled to one due to the types of cases they have, or do not meet the eligibility requirements to be assigned counsel. LIFT works with pro se litigants who have cases in New York from across the state, the country and around the world. We serve men and women and many of our clients are monolingual Spanish speakers, people of color and low income. LIFT serves close to 30,000 litigants a year through our court programs, our helpline, our multilingual educational materials, our pro bono programs and our community-based workshops and clinics.

The pro se litigants LIFT is working with face many challenges when they come to Family Court. Many know they have a problem that brings them to court, but they are not sure what to do when they get there. They do not know how to navigate the court system or understand legalese and there are so few resources -- other than LIFT -- available to them. Huge wait times, multiple court appearances, few court resources, and poor coordination across the courts create barriers to justice and add to the emotions, anger and fear already inherent in family-related cases. Many of our clients are employed and finding time to come to Family Court is difficult and

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can threaten the stability of their employment, which clearly impacts their families. Finding child care and the cost of transportation are other barriers to access.

Many of our clients have a number of cases in several different trial courts and this adds to the burden placed on the pro se litigant. For example:

- If a litigant gets court assigned counsel in Family Court, there is no guarantee that that representation will carry over into Supreme Court and vice versa.
- Litigants have trouble getting relief in Family Court while the divorce is pending in Supreme Court. The Family Court has no jurisdiction over a case until there is a final order and concurrent jurisdiction is granted by the Supreme Court.
- Family Court does not have access to Supreme Court records and cases have to be adjourned so records can be transferred over. The burden often falls on the litigants to obtain records and pay for these.
- If there is overpayment of Child Support, Family Court will not handle this and litigants are referred to civil court.
- Events in Surrogate's Court, criminal court and civil court all are handled outside of Family Court and the pro se litigant is responsible for keeping track of the various proceedings, informing the courts of what is going on in the other venues and finding legal support in each of the courthouses.

The following are some examples of LIFT cases involving pro se litigants who have had to maneuver between the many trial courts:

Divorce: Mary is the custodial mother. She and the non-custodial father, are married, but separated. Parties came to Family Court to establish orders of custody, visitation and child support. After this, they initiated the divorce proceeding, which is currently stalled. Mother has filed to increase child support and her case was dismissed because of the pending divorce action in Supreme Court. Mother's options are limited as a pro se litigant. She can either pay her divorce attorney to file additional paperwork to deal with this issue in Supreme Court, or mother would simply have to wait for the divorce to finalize before she can once again bring it in front of Family Court.

Civil Court: Ryan is the custodial father. He obtained custody after an ACS case against mother. After obtaining custody, father moved to terminate the Order of Support he was paying mother and establish a new Order of Support against mother. The case dragged on for close to a year, as most of these cases do, and in the meantime father continued getting his support payments garnished every two weeks. When the Order of Support was finally terminated, father had paid mother child support for a period of time (more or less 6 months) that she did not have custody of

the child. Family Court could not address this overpayment, and father was left with filing in small claims court for the overpayment.

Divorce/Criminal Court/IDV: Emily, the custodial mother, started by filing to establish child support in Family Court. Non-custodial father signed an Acknowledgment of Paternity at birth. On the court date, the father alleged that mother was married at the time, invalidating the Acknowledgment of Paternity. Because Family Court does not have access to Supreme Court records, they had to adjourn the matter so that mother could provide the court with her Judgment of Divorce, which confirmed that the child was not a product of the marriage. The case continued, and child support was established. Two years later, the parties are still in court. Father has filed multiple downward modifications, all of which were denied. Mother in turn has filed violations against father for nonpayment. There is also a custody and visitation matter that is still ongoing in Family Court. While all of this is going on, father pressed charges against mother for domestic violence, so now there is an ongoing case in Criminal Court. ACS also became involved, due to the Criminal Court matter, so at this point so much was going on that mother was forced to borrow money from friends and family to hire a lawyer. At no point was the case joined in IDV.

Surrogate's Court: Joe is the step-sibling to the subject child. The child and Joe share a father in common. Joe became the guardian of the child when their father passed away. At the time of his passing, the father had sole custody of the child and an active Order of Support against the non-custodial mother. In addition to being the child's guardian, Joe is also the executor of his deceased father's estate. Joe was never informed that there was an active Order of Support for his brother and that the Support Collection Unit had proceeded to close out the account once the father passed away.

Joe found out about the Order of Support when the noncustodial mother filed a downward modification on the order. At that point, Joe was instructed that he would have to file a brand new child support case, with him as the payee. Family Court could not do a change of payee from deceased father to Joe. In terms of the arrears that were owed to his father by mother, Family Court could not enforce these or transfer them to Joe. Joe had to file a separate petition through Surrogate's Court as the executor to claim the unpaid arrears.

Unifying the trial court system would help pro se litigants navigate the courts more efficiently and effectively and would lead to less confusion and delays. Instead of being mired in a system that does not relate to one another, cases could be streamlined and allow litigants to move on with their cases and focus on their lives and their

families rather than spending so much time in the court system. It would also engender more trust in the system for those who most need it. Right now people do not believe they are receiving a fair chance – especially when they are proceeding pro se! If resources were better allocated across the courts, we would see increased efficiencies, fewer delays and more confidence in the system.

At LIFT, we do have some concern that the interests of pro se litigants might be overlooked in a unified system. Although challenges certainly exist currently, the pro se structure of the Family Court, coupled with the lack of filing fees, creates a level of access in this court that does not exist in Supreme Court. The pro se experience at every level would need to be a consideration in the details of the consolidation to address the barriers these litigants face. We want to ensure that pro se litigants continue to have access to court appointed lawyers and clarity about what the process looks like. But we have every confidence that the five year implementation period proposed under the plan would ensure that these interests are protected so that pro se litigants would have the access and support they need as they proceed through the new system. LIFT would be happy to consult with the implementation team at any point to ensure these needs are supported and addressed under the new configuration.

Thank you for the opportunity to support the consolidation of the NYS trial court system. We look forward to working together to ensure that the resources of the judicial system are fair, accessible and open to pro se litigants, especially when family stability and futures are at stake.