

Testimony of
The Weinberg Center for Elder Justice
Before the
Senate Standing Committee on the Judiciary
Assembly Standing Committee on the Judiciary
Regarding
Court Consolidation

November 20, 2019

Chairmen Dinowitz and Hoylman and members of the Assembly and Senate Committees on the Judiciary, thank you for accepting this written testimony from The Harry and Jeanette Weinberg Center for Elder Justice at the Hebrew Home at Riverdale in support of a Chief Judge DiFiore's court consolidation plan.

The Weinberg Center for Elder Justice, the first comprehensive elder abuse shelter in the nation, was launched at the Hebrew Home at Riverdale by RiverSpring Health in 2005 to provide emergency shelter and wrap around support for victims of elder abuse living in all five boroughs of New York City, to increase professional and public awareness and knowledge about elder abuse, and to build collaborative working networks in the community. Our multidisciplinary professional team brings together expertise in the law, therapeutic and social services and public health.¹ Together, we work to identify existing knowledge and service gaps and develop nuanced techniques and strategies to address and prevent elder abuse.

An estimated one in ten older adults experience abuse² and research shows that this number is vastly underreported.³ The urgency of addressing and preventing the abuse of older adults will continue to rise as the population of older adults increases. Adults 85 and older are the fastest growing population in the country, and the population of adults 65 and older is expected to almost double from an estimated 43.1 million in 2012 to 83.7 million by 2050.⁴

Elder abuse has significant implications for the physical and financial health and well-being of older adults. Irrespective of co-morbidities, victims of elder abuse have a 300% higher risk of death than those who have not been abused even where the abuse is relatively mild.⁵ A victim of

¹ *The Harry and Jeanette Weinberg Center for Elder Justice at the Hebrew Home at Riverdale*, <https://theweinbergcenter.org/>.

² *Statistics and Data*, NAT'L CTR OF ELDER ABUSE, <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx> (last viewed Nov. 11, 2019); Mark Lachs & Karl Pillemer, *Elder Abuse*, 373 NE J. MED. 1947 (2015), <https://www.nejm.org/doi/full/10.1056/NEJMra1404688>.

³ *Under the Radar: New York State Elder Abuse Prevalence Study*, NY STATE OFFICE OF CHILDREN AND FAMILY SERVICES (2011), <https://ocfs.ny.gov/main/reports/Under%20the%20Radar%2005%2012%2011%20final%20report.pdf> (only 1 in 24 cases of elder abuse is reported to authorities).

⁴ *Statistics and Data*, NAT'L CTR. OF ELDER ABUSE, <https://ncea.acl.gov/What-We-Do/Research/Statistics-and-Data.aspx> (last viewed Nov. 11, 2019).

⁵ Xinqi Dong et al., *Elder self-neglect and abuse and mortality risk in a community-dwelling population*, 302 JAMA 517 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2965589/>.

elder abuse is also more than twice as likely to use a hospital emergency room than a counterpart who has not been the victim of abuse.⁶

I. Complex Court System Creates Barriers to Justice, Especially for Older Adults who have Experienced Abuse

Older adults—and particularly older adults who have experienced abuse and may be coping with trauma or have reduced capacity—face many barriers to accessing justice through our courts. One of these barriers is the sheer complexity of the New York court system. Our court system often requires victims of elder abuse to seek relief through multiple systems, resulting in long delays, arduous travel for repeat appearances, and unresolved matters that directly impact the wellbeing and safety of older adults.

Ms. A, a 91 year old woman from the Bronx, was experiencing financial and psychological abuse by her granddaughter, Tia. Ms. A suffers from advanced dementia and therefore requires twenty-four hour care. Her social worker identified this pattern of abuse and immediately referred the case to the Vulnerable Elder Protection Team at New York Presbyterian Hospital. Ms. A's court appointed guardian removed her from her home and had her hospitalized due to immediate safety concerns.

Soon after her hospitalization, Ms. A was admitted the Weinberg Center, and Ms. A's other granddaughter, Ellen, stepped up to serve as Ms. A's guardian. During the guardianship proceeding, it was uncovered that Ms. A had legal custody of her great-grandchildren. Due to her declining capacity and inability to care for herself, it was necessary for somebody else to take custody of the children.

To Ellen's surprise and devastation, the judge in the ongoing guardianship proceeding lacked authority to make that custody decision. Instead, a long, complicated process was initiated in the family court. Ellen, Ms A's guardian, filed for custody of the great-grandchildren. Soon after, Tia, Ms. A's abuser, also filed for custody of the great-grandchildren. The custody dispute now involved: Ms. A through her guardian, Ellen; Ellen on her own behalf; and Tia, Ms. A's abuser.

In family court, Ellen, a non-attorney without expertise in either Supreme or Family Court, was left to relay the complexities of the family dynamic, custody matter, abuse, and guardianship in this new forum. In Ms. A's case, a lawyer and social worker from the Weinberg Center were able to help guide the family through this complex process, serving as a source of information both to Ms. A's family and the court. Unfortunately, many older adults and families must face this system on their own.

The current system is not working for older adults, and barriers to accessing the courts disproportionately impact those, like Ms. A, who are seeking resolution of matters directly impacting their safety, security, and economic stability. Our clients and other older adult litigants face long delays, waiting long hours on hard benches, navigating sometimes inaccessible spaces

⁶ Xinqi Dong & Melissa Simon, *Elder Abuse as a Risk Factor for Hospitalization in Older Persons*, 173 *AMA INTERN. MED.* 911 (May 27, 2013), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1675876>.

to meet basic needs, and explaining the facts of their abuse in often confusing proceedings to even attempt to address their high stakes legal needs.

These persistent, inefficient, and costly proceedings particularly impact low income and unrepresented individuals. For many older adults, and particularly those with limited cognitive and physical capacity, these barriers can be insurmountable.

a. Court Simplification Increases Access to Justice

The court consolidation plan before the Committee would create a merged Supreme Court with six divisions: Family, Probate, Criminal, State Claims, Commercial, and General. Under this plan, Ms. A's guardianship and custody issues could have been resolved by the same judge, in a single forum.

The proposed system could have prevented hours and days of reliving the trauma of abuse; it could have avoided costly and difficult transportation to and from different courts on different days; importantly, it could have provided stability and peace of mind for Ms. A, Ellen, and her great-grandchildren.

Consolidating and modernizing the courts increases meaningful access to justice. The current web of courts has resulted in inefficient, costly, confusing, and sometimes re-traumatizing experiences for individuals seeking justice. Streamlining the court system is particularly important for older adults; decisions made by the court can directly impact their health, wellbeing, and quality of later life. For many older adults, justice delayed truly is justice denied.

II. Current Success of Integrated Parts

Consolidating the court system is an important step toward access to justice for older adults. We have seen the difference that it makes for older adult litigants to have their deeply intertwined legal issues resolved in a single forum.

This was the case for Ms. W and many other Weinberg Center clients. Ms. W, an 87 year old female, was admitted to the Weinberg Center from her apartment in Manhattan after being physically, financially, and psychologically abused by various young adults. Ms. W has a diagnosis of dementia. In addition to the abuse, she was also facing eviction due to the behaviors of the young adults residing in her apartment. They were allegedly using illegal substances, destroying various parts of the building, and threatening the building superintendent.

This was not the first time Ms. W was facing eviction because of these young adults. In a previous eviction proceeding, the landlord told Ms. W that he would drop the case, but only if Ms. W signed a stipulation that she would control the behavior of the young adults residing with her. In order to avoid the loss of her home, Ms. W signed, but, ultimately, she could not comply. Ms. W's housing issues and cognitive decline were deeply intertwined, and it became clear that Ms. W was in need of a guardian.

Typically, the landlord's case against Ms. W would proceed in housing court, while Ms. W's guardianship case proceeded in the guardianship court. Separate proceedings mean that: the

cases are resolved separately; neither judge may understand the full scope or context of the case; Ms. W could be evicted in the middle of her guardianship proceeding.

Fortunately, that is not what happened to Ms. W.

Instead, Ms. W's case was heard in the integrated guardianship part.⁷ This integrated part has authority to hear housing and guardianship cases simultaneously, allowing one judge to preside over these two deeply intertwined legal matters. Consolidating authority equips the judge to better understand the full facts of the case.

In Ms. W's case, she was appointed a guardian. Her judge understood the circumstances surrounding the stipulations submitted by the landlord. The eviction was stayed while the guardianship matter was resolved, and the landlord and guardian were empowered to negotiate with each other.

This integrated part is one small example of the transformative power that a consolidated court system could have. The court consolidation plan's five year implementation period is an important time for reflection on the continued importance of the integrated guardianship part, even within the consolidated court system.

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Court simplification is a crucial component of creating an accessible and functional court system.

Recommendations:

- Implement Chief Judge DiFiore's Court Consolidation plan.
- Maintain integrated parts when best situated to meet the needs of specific populations.

Court simplification is one necessary and critical tool for increasing access to justice. We must also take bold action to increase the accessibility of court room spaces, conduct ongoing training for all court personnel on aging and elder abuse, and implement a trauma-informed approach to the legal system.

Thank you again for the opportunity to submit written testimony to the Committees in support of the court consolidation plan. We look forward to continued improvements in the lives of our city's older adults through this important work and look forward to working with you to advance this important reform.

⁷ See *New York State Courts Access to Justice Program: Litigants with Diverse Needs*, NY STATE UNIFIED CT. SYSTEM, <https://www.nycourts.gov/ip/nya2j/diverseneeds/integratedpart.shtml> (last viewed Nov. 11, 2019).