

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

**NEW YORK
CITY BAR**

**The Chief Judge's Hearing on Civil Legal Services
September 26, 2011
Appellate Division, First Department
27 Madison Avenue, New York City**

**Testimony of the New York City Bar Association
By: Samuel W. Seymour, President**

Introduction

Chief Judge Lippman and distinguished panelists:

Thank you for the opportunity to testify on the important topic of civil legal services in New York. My name is Sam Seymour and I am the President of the New York City Bar Association. The City Bar is an organization of over 23,000 lawyers and judges dedicated to improving the administration of justice and insuring access to justice. In addition to having members who are active in legal services, and a committee devoted to studying ways to improve the delivery of pro bono and legal services in New York City, the Association has a public service affiliate - the City Bar Justice Center - whose mission is to leverage the resources of the City's legal community to increase access to justice for low-income individuals. The Justice Center does this by using a small staff to administer a program matching pro bono lawyers with thousands of clients, training them and supervising their work. The Justice Center assists more than 20,000 clients a year. Clients find the Justice Center through court referrals, the LawHelp website and a hotline which handles over 800 calls a month.

As with other legal services providers, the demand for the Justice Center's services has increased sharply since 2008 and shows no sign of abating. The number of clients the Justice Center served between September 1, 2010 and August 31, 2011 showed no significant decrease from the prior year, and we do not anticipate that this demand for our services will slow down. Exacerbating this situation, cases are persisting longer than expected, individuals and families are under significant strain as unemployment persists, and a slower than expected economic recovery continues to take its toll on low-income families who cannot meet their expenses. The

work performed by civil legal services programs is critically needed by New York City's poor now more than ever.

Like other providers during the recession, the Justice Center has created programs in the past few years that target what we believe are the greatest areas of unmet civil legal need. These include a Veterans' Advocacy Project, a Foreclosure Project, and an Immigrant Outreach Project. In addition, we have expanded our Consumer Bankruptcy Project. These projects ultimately help save taxpayer dollars by efficiently mobilizing private resources to help individuals get their lives stabilized and regain their footing. For the fiscal year ending April 30, 2011, the Justice Center leveraged over \$18 million in pro bono legal services. But despite the work of pro bono providers and direct legal services providers, the justice gap persists for low-income litigants in New York.

The Unmet Need

As documented by the Chief Judge's Task Force to Expand Access to Civil Legal Services in New York (the "Task Force")¹, the total caseload of the courts statewide has risen dramatically over the past five years, largely due to increased foreclosure filings. From 2005 - 2009, foreclosure filings increased 319% in Nassau County; 274% in Suffolk County; 200% in Kings County; 249% in Westchester County; 281% in Dutchess County; and 217% in Queens County.² OCA further reports that the caseload in New York City Civil Court and city courts outside of New York City nearly doubled in the past decade, mostly due to the growth in consumer debt filings, and that the number of family offense cases statewide increased 32% from 2006. Not only does the growth in caseload place added pressure on the courts, but many of the parties facing economic and family-related crises do not have legal representation.

The statistics regarding the number of unrepresented litigants are startling. As documented by the Task Force, over 95% of litigants are unrepresented in eviction, consumer credit and child support cases statewide and 44% of homeowners appearing in foreclosure cases

¹ <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>

² *Id.* at p. 16.

throughout New York State are unrepresented.³ In total, more than 2.3 million New Yorkers annually are unrepresented in civil legal proceedings in New York State courts, and civil legal services providers - at best - are meeting only 20% of need because of a lack of resources.⁴ Many of these unrepresented civil litigants (and their families) are unable to effectively represent themselves in court and suffer negative outcomes in legal proceedings. They are then forced to become consumers of state funded social services for their food, housing and medical care. There are also educational and juvenile justice costs and outcomes arising from families stressed by the inability to resolve their legal problems due to the absence of representation in civil proceedings.

As we've witnessed at the City Bar, the benefits of civil legal representation are very real: in our work representing individuals being foreclosed upon or sued for collection of a consumer debt allegedly owed, we have witnessed an enormous justice gap where parties without representation forego rights and defenses of which they are not aware. In addition, providing representation in these cases is critical to the function of the courts – it facilitates a quicker resolution, lessens the burdens on overworked court personnel and avoids improper default judgments. The Task Force findings concerning the need for and benefits of providing civil legal services representation are consistent with the conclusions reached by the City Bar and on which we have previously testified.

In addition, there are lost economic opportunities when there is a lack of representation. New York loses hundreds of millions of dollars each year because unrepresented New York State residents fail to retain or obtain federal funds for which they are eligible from programs benefitting veterans, persons with disabilities and others. According to the IOLA Fund's 2010 Annual Report⁵, the Fund distributed grants of \$31.8 million to legal services providers for the 15-month period of January 1, 2009 – March 31, 2010, which translated into direct representation of 650,000 clients who, in turn, recovered approximately \$577 million in federal and non-federal benefits and awards.⁶ This translates into a nearly twenty times return on

³ *Id.* at 16 – 17.

⁴ *Id.* at pp. 37 – 38.

⁵ <http://www.iola.org/Annual%20Report%202010%20Draft%206%20FINAL.pdf>

⁶ *Id.* at p. 2.

investment and provides ample evidence that legal services representation is a wise investment of money and time.

Our work at the Justice Center's Veterans Assistance Project serves to highlight this point: in the last month alone, four clients were awarded federal veterans benefits. One veteran received \$48,000 in retroactive benefits with \$1,400 a month going forward; another received \$182,000 in retroactive benefits with \$1,427 a month going forward; a third received \$61,400 in retroactive benefits with \$1,228 a month going forward; and the fourth received \$37,102 in retroactive benefits with \$1,427 a month going forward. These cases offer an excellent example of how legal services representation can assist individuals to obtain redress, efficiently and effectively. Obtaining federal veterans' benefits is an extremely difficult process. The claims process itself is lengthy, cumbersome and complex. As of June 30, 2011, the New York Regional Office of the Department of Veterans' Affairs ("VA") had over 19,000 claims in process. The average time to receive a decision on an initial application for benefits is 326 days (541 days if there are multiple medical concerns), and the average time to receive a decision on a reopened claim after denial is 312 days. The average appeal time: 538 days. In order to appear before the VA, lawyers must be trained and accredited. The biggest challenge is obtaining all of the evidence necessary to demonstrate the required nexus between the individual's injury and time in service. Add to that the unique needs of veterans returning from deployment, many of whom may suffer from post traumatic stress disorder, breakdown of family connections, and potential loss of employment and housing, and you have a situation that necessitates well-trained legal counsel. Counsel must recognize that the legal issues of veterans vary tremendously based on the circumstances of each individual's deployment, medical needs, housing needs and family situations.

Since the program's inception in October 2008, we have provided legal representation to 390 veterans and provided advice, brief services and referrals to an additional 700 veterans. We have 340 trained pro bono attorneys on our roster. Still, we need to reach more veterans so they can get the assistance they need. Currently, we reach our clients through the Mayor's office and 311 calls, advocacy organizations, homeless shelters and other veteran housing units, such as SRO's. When veterans do come to us, we assist primarily with obtaining disabilities benefits which are owed, but more often than not, our clients also have needs in family law, consumer

law, housing law, criminal defense, bankruptcy, trusts and estates and employment law. While we are able to assist those veterans if their needs fall within one of our practice areas, such as foreclosure, homelessness or bankruptcy, there are insufficient resources in the legal community to serve veterans, with their unique circumstances, whose needs fall outside the purview of the Justice Center. This is yet another area where a population with specific needs, facing its own set of hardships, cannot obtain adequate civil legal services due to lack of funding.

For all of these reasons, the City Bar supported the Judiciary budget's inclusion of \$25 million in the 2011-2012 Judiciary Budget in order to fund legal services programs and address the urgent need for expanded civil legal assistance to residents across New York State. Given that the number was ultimately reduced by half, we urge the Judiciary to include a total of \$37.5 million for this purpose in the 2012-2013 Budget, which would carry forward the Chief Judge's plan of adding \$100 million over four years to provide adequate legal representation for the poor. We recognize that this is a substantial request given the state's fiscal circumstances and this year's state budget process, but it addresses only a small portion of the need and, as I've described, represents an important investment in our state's needy population. Moreover, the need for an increased funding stream is glaringly apparent: income generated by IOLA accounts is dramatically down, other funding streams to support civil legal services are drying up, and federal cuts to Legal Services Corporation funding are deep and will only deepen. We commend and support Chief Judge Lippman for making this issue a priority and dedicating a portion of the Judiciary Budget to this cause.

Expanding Access to Civil Legal Services in the Areas of ADR/Mediation

This past June, our Committee on Pro Bono and Legal Services, along with our Committee on Alternative Dispute Resolution, issued a report recommending ways to incorporate ADR and mediation into civil legal services and pro bono practice, and ways to simplify court forms and processes. That report is attached to my testimony. I want to briefly highlight a few points from the report since it is one of the issues the panel wishes to explore at this hearing.

First, there is a need to equalize low income clients' access to the same process options wealthy parties can access – litigation, mediation, arbitration, collective practice, etc. In the vast majority of cases, low-income litigants are not only proceeding pro se but also have no idea that they have any other options available to them. This must change. Second, the City Bar is committed to ensuring that mediation remains a voluntary process option for clients and not exclude clients from choosing to litigate or from seeking or accessing legal representation. Third, the City Bar believes that mediation works best when there is a trained mediator and so long as there is not a significant, incurable power imbalance between the parties. As detailed in our report, we believe there are many cases where mediation would provide a more effective and efficient way of helping individuals and families resolve conflict and we make several recommendations for how such a process might be put into place. I hope the report is helpful and we are, of course, happy to assist in these efforts going forward.

In closing: the City Bar is in a unique position to witness the effects of lack of representation for low-income parties in civil matters, whether that representation occurs through mediation or litigation. In addition to coordinating pro bono representation by volunteer lawyers, our Justice Center provides direct legal representation in certain cases. Our committees that study these issues are comprised of both pro bono lawyers and legal services lawyers. As such, I am confident in stating that attorney volunteers cannot close the justice gap about which I've testified. While we can marshal volunteers – and the Bar has been generous in its volunteer efforts - there simply are not enough volunteer hours in a day to address this problem. Rather, there needs to be an increased and steady source of funding which can be used to provide civil legal assistance to low-income New Yorkers in cases involving life's essentials and to increase their access to alternative dispute resolution processes. This will not only assist the litigants and the courts, but it will also provide better outcomes for communities.



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**REPORT BY THE COMMITTEE ON PRO BONO & LEGAL SERVICES
AND THE COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION**

**RESPONSE TO THE NOVEMBER 2010 REPORT OF THE TASK FORCE TO
EXPAND ACCESS TO CIVIL LEGAL SERVICES IN THE AREAS OF
ADR/MEDIATION AND SIMPLIFICATION OF FORMS AND PROCESSES**

Outlined below are the recommendations of the New York City Bar with respect to (i) the incorporation of ADR and Mediation into a civil legal services and pro bono practice and (ii) simplification of forms and court processes.

I. ADR/MEDIATION

“The Task Force will also explore opportunities for the increased use of mediation, alternative dispute resolution initiatives and the simplification of the legal process for the benefit [of] all litigants, including low-income New Yorkers, and the judicial system as a whole.”

Mediation has traditionally been an alternative to litigation in the event of a conflict between two or more parties – which would require the consent of both parties (or be the required forum for conflict dispute resolution by prior agreement between those two parties). There are many instances where mediation would benefit low-income clients and is currently not an available option.

The New York City Bar commends the New York State Office of Court Administration (OCA) for working towards incorporating mediation into a civil legal services practice, and, if appropriately incorporated, believes that expanding access to high-quality mediation services would benefit clients

without compromising their rights. We have a valuable opportunity here to equalize the ability of low-income clients to choose the appropriate dispute resolution process for their conflict (e.g., litigation, mediation, etc.), an opportunity that well-resourced New Yorkers already have by virtue of being able to pay for it.

The New York City Bar believes that, in order for it to be effective, we must be committed to ensuring that mediation remain a voluntary process option for clients and not exclude clients from (i) choosing to litigate their cases, (ii) seeking legal representation for a case they have chosen to litigate, or (iii) accessing counsel in cases in which an individual is entitled by statute to representation by counsel.

In addition, the New York City Bar believes that Mediation works best when there is not a significant, incurable power imbalance between the parties (i.e., where one party is unaware of his/her rights or unable to express his/her needs and interests openly in the mediation). The assistance of a skilled mediator, facilitated access to clear legal information and legal consultations, as well as different forms of mediation (including shuttle diplomacy) can address many power imbalances. But, where a power imbalance is incurable, mediation is not appropriate.

THRESHOLD CONSIDERATIONS

The New York City Bar recommends the following threshold considerations with respect to incorporating ADR and Mediation into a civil legal services and pro bono practice:

- Clients in mediation should have access to relevant legal information regarding their conflict. Although we believe that clients in mediation should only give as much weight to the law as they choose to, we do think it is crucial that they base their mediated agreement on truly informed consent, which includes knowledge of the relevant law and court practices.
- In order to ensure that clients understand the court process and the implications of mediation, beginning the process post-filing of an action – when the client is more likely to have an attorney – is recommended.
- In more legally complex cases, where a client is appearing pro se, the client should have access to “consulting attorneys” – *pro bono*, where necessary – not only to give them a sense of how a court is likely to handle their dispute but also answer questions along the way and to review the content of their mediated agreement.
- Mediation agreements should ultimately be “so ordered” so as to bear the same level of enforceability as a court order that results from litigation.
- We must ensure that mediators have a base level of competence not only in the process of mediation but also, ideally, in the law and court practice

relevant to the case before them. Thus, the City Bar also strongly recommends that in the context of incorporating ADR/Mediation into a pro bono and civil legal services practice that funded programs and projects use mediators with a base of knowledge and experience in the relevant subject matter area. Mediation is not the same as a settlement conference or settlement negotiations, and it calls on a unique set of skills. Therefore, lawyers who have not had a 30+-hour, dedicated training in mediation most likely are not appropriately skilled to provide high-quality mediation services.

Areas Over Which OCA Can Directly Implement or Support Projects

- ***Housing:*** Services typically offered by legal services providers include defending clients in nonpayment, holdover and other eviction proceedings, helping them pursue rent overcharge claims, reasonable accommodations, and actions to improve housing conditions.
 - i. Opportunities for mediation in this context include:
 - Noise complaints and neighbor-neighbor disputes
 - Variety of landlord-tenant disputes
 - Rent disputes and H/P Actions.
 - ii. Mediation/ADR services are also useful before litigation ensues because it can prevent tenant “blacklisting”, which helps to save city resources.
 - iii. If the government entity (NYCHA, HPD) is not on board, mediation would not be useful.
- ***Surrogate/Trusts & Estates:*** Trusts & Estates/Surrogate issues typically arise in elder practices, general practice units that provide assistance to persons with HIV and AIDS, and sometimes in foreclosure actions (e.g., needing to clear title to a property before suing a bank).
 - i. Opportunities for mediation include will contests, distribution of estates, decision-making for residence/care/etc., plans for the elderly, and integrating family and friends into plans developed for the elderly.
- ***Family:*** Providers are predominantly divided into those serving adults and those providing services for children. Children receive mandated representation in abuse, neglect, voluntary foster care, PINS and delinquency proceedings, and are assigned attorneys at the discretion of the court in other matters, including custody, visitation, paternity, guardianship and adoption proceedings. In custody/visitation cases, unless the subject-child is an infant, the Family Court's practice is to assign counsel to the child in the vast majority of cases (this is not always so in Supreme Court). Adults are entitled to representation in (i) custody/visitation cases, (ii) order of protection cases, (iii) child support

cases in which they are a respondent and face jail time for non-payment, (iv) cases in which they oppose an adoption, (v) paternity cases in which they are a respondent, and (vi) child protective proceedings in which they are a respondent. Although they may be assigned 18-b counsel at the discretion of the court in other matters, in practice, this rarely happens. They are not entitled to representation in a divorce. Services typically offered to adults by legal services providers are predominantly focused on assisting victims of domestic violence with divorce, custody, orders of protection and some child/spousal support cases. Given the limited resources of most legal services programs, it is very difficult for an adult who is not a victim of domestic violence to access traditional legal services in divorce, custody or support cases. A very small number of organizations may assist with some guardianship/adoption cases. The vast majority of low-income adults end up representing themselves where representation is not otherwise guaranteed.

i. Opportunities for Mediation: Some Family Law cases are well-suited to mediation given the ongoing nature of the relationships between the parties to the dispute. In addition to a number of court-annexed ADR programs under the auspices of OCA's Office of Alternative Dispute Resolution and Court Improvement Programs, opportunities for mediation in this context include divorce (all issues, including distribution of property), custody/visitation, and child support and spousal support cases. (In custody and visitation cases, the court must retain oversight to insure that any mediated resolution reflects the wishes and interests of the subject-children.) Divorce cases in which clients would otherwise be proceeding *pro se* – i.e., the vast majority of low-income cases – would be well-served in mediation, especially where the mediator has dual expertise in mediation and divorce. There is also an opportunity here to reach the underserved, low-income LGBT community by offering mediation not only for second-parent adoptions but also for donor/co-parenting agreements as well as dissolution of domestic partnerships.

ii. Examples of Family Law Mediation Projects

- *LEGAL SERVICES NYC FAMILY & DIVORCE MEDIATION PROJECT*

The Legal Service Project provides mediation services to a select group of low-income clients in contested divorce and custody matters. Experienced matrimonial attorneys mediate between the parties to resolve disputes concerning divorce grounds, custody and visitation arrangements, child support, spousal support and equitable distribution, and they provide parties with referrals to a pre-screened network of volunteer attorneys who consult with the parties to inform them of their

right and confirm the settlement terms. Where appropriate ethical standards have been met, following outside attorney review, attorneys may draft stipulations of settlement reflecting the parties' ultimate agreement and assist parties in filing the papers with the relevant authorities.

- ***OCA'S COLLABORATIVE FAMILY LAW CENTER***
The Office of Court Administration's Office of Alternative Dispute Resolution invited Legal Services NYC, the Legal Aid Society and NYLAG to participate in a pilot project to represent low-income parties in collaborative divorces and to serve as consulting counsel to low-income parties in a divorce mediation process. This project is based out of OCA's Collaborative Family Law Center. Family law practitioners from all three legal services organizations, as well as legal services provides for the DC 37 Union, participated in a five-day training program in mediation and collaborative divorce sponsored by OCA and given by the Center for Mediation in Law in collaboration with OCA. In return, each legal services lawyer agreed to accept one collaborative divorce client and acts as consulting counsel with two mediation clients. This expands the legal services' organizations matrimonial practices beyond the domestic violence cases they have traditionally been funded to handle and makes services that do not currently exist available to low-income clients. Legal Services organizations only can continue with this project if they receive funding beyond the commitment that was made to each take one collaborative case and two mediation cases.

Other Areas

- ***Small business/Non-Profits:*** Services typically offered by legal services providers to small businesses and non-profits (community based and/or small businesses that cannot afford to pay an attorney) are "start-up" services such as drafting articles of incorporation and by-laws to "in-house counsel" services that community-based organizations and small businesses do not have the financial resources to obtain, such as: contract review, drafting and negotiation; representation in corporate, tax, real estate, and financing matters; representation in administrative, licensing and regulatory proceedings and litigation; strategic consultation for long range community planning; and analysis of the legal and financial impact of program and policy options. There is a difference between negotiation in a transactional context and dispute resolution in a litigation context. However, there are a few areas of recurring conflict which often arise in a litigation context that could benefit from mediation:

- i. Slip and falls (personal injury actions):
 - Examples: child participant in after-school program trips and injures his or herself and parent sues school and nonprofit after-school provider; construction worker or passerby at construction site alleges injury from site condition (falling debris, cracked sidewalk) and sues non-profit owner/developer along with construction lenders and general contractor.
 - Potential for mediation: If the nonprofit has general liability and/or builder's risk/property insurance then it will likely be covered by its insurance for legal representation and obtain representation through counsel assigned by insurance carrier. These matters in litigation are often given the opportunity to mediate or settle and that is a decision made by a client in consultation with its assigned counsel.
 - ii. Employee law matters (EEOC and Human Rights Commission complaints and administrative hearings; wrongful discharge claims):
 - Example: former employee alleges age discrimination or other type of basis for wrongful termination
 - Potential for mediation: If the nonprofit has general liability insurance then it will likely be covered by its insurance for legal representation and obtain representation through counsel assigned by insurance carrier. These matters in litigation are often given the opportunity to mediate or settle and that is a decision made by our client in consultation with its assigned counsel.
 - iii. Contract Disputes:
 - Example: Dispute between nonprofit developer and general contractor for failure to complete construction on time and/or contractor claim for additional funds due it under terms of agreement; nonprofit tenant claim for repairs due it from nonprofit landlord under lease; vendor's claim for payment for goods delivered and/or services provided.
 - Potential for mediation: Generally nonprofits must secure either pro bono or private (fee charging) counsel to represent them in these matters. Mediation could be an option if it was inexpensive, fast and fairly composed mediation panel (i.e., in the construction context a panel made up of not just construction professionals)
- **Employment:** Services typically offered by legal services providers address the challenges that workers face when recently unemployed or when transitioning into work. Services provided include legal advice and representation at hearings and in unemployment insurance appeals, requests for reasonable accommodations, wage theft, denial of

employment (employees have a right to know the cause when denied employment based upon a background check), challenging employment discrimination, and assisting with consumer debt-related legal problems that can create barriers to getting work (for example, consumer debt problems that create bad credit that impedes one's ability to get hired). Providers also provide "Know Your Rights" trainings at job training sites.

- i. Opportunities for mediation in this context include:
 - wrongful termination;
 - working conditions;
 - workplace relationships;
 - harassment at work;
 - disputes regarding terms of employment;
 - wage theft; and
 - accommodation requests.
 - ii. Example - ADR/Mediation Committee's pilot project in District Court
- **Education:** Services typically offered by legal services providers include representing students in school disciplinary proceedings, and in advocating for appropriate accommodations in special education matters.
 - i. Opportunities for mediation include conflict resolution in special education matters, i.e., between parents and school personnel (and the student, when appropriate) around the educational needs of/issues related to the student
 - ii. In order for mediation to be possible here, there has to be an interest in the government actor, probably pressure politically to agree to incorporate mediation.

TRAINING/EDUCATION

- Training in ADR skills is useful to almost every area of a legal services/pro bono practice, both in facilitating productive communication between lawyers and clients as well as in helping lawyers effectively conduct settlement negotiations. It does not need to be limited to just those who are engaging in a mediation project.
- Ideally, we would want a mediator who has an underlying knowledge of the substantive area of law, which means we would want to design trainings in both the substantive area and the mediation skills. In cases where the relevant law is complex, an additional procedural protection would be to ensure that parties have access to a knowledgeable consulting attorney outside of the mediation process. Attorneys with training in mediation could also provide review of mediated agreements.
- Below is a very good example of how a training can be developed.

- A training for legal services attorneys was designed and given by Jack Himmelstein of the Center for Mediation in Law and Dan Weitz of OCA in Oct 2010, and sponsored by OCA. A legal services attorney helped adapt the training materials to the legal services audience (e.g., developed relevant case studies) and helped co-facilitate the training. This model was extremely effective -- sponsorship by OCA, substantive training by the Center for Mediation in Law (which specializes in working with attorney-mediators to effectively bring the law into a mediation, in contrast to the prevailing CDRC model), and tailoring to the legal services community/co-facilitation by a member of that community.

CONCLUSION

There is a vast unmet need among low-income families for assistance in resolving the conflicts they find themselves in. Currently, those families are mostly forced to bring their conflicts to the court for resolution and navigate the legal system pro se. In certain types of cases, we believe that mediation would provide a more effective and efficient way of helping individuals and families resolve conflict.¹

In the vast majority of cases, low-income folks are not only proceeding pro se but also have no idea that they have any other process options (e.g., mediation, collaborative law) available to them. At a minimum, it is crucial that every litigant is informed at the outset of his/her case about the different types of dispute resolution processes (litigation, mediation, etc.), their respective potential strengths and weaknesses, and how to obtain assistance with each process. It is clear that many litigants are in court simply because they are unaware that they have any other option for resolving their conflict.

Equalizing low-income clients' access to the same process options wealthy parties can access – litigation, mediation, arbitration, collaborative practice, etc. – is something the Committee commends and values highly. Just as we believe that all individuals, regardless of means, should have access to the court system, so should they have access to high-quality alternative dispute resolution processes.

Mediation has many unique strengths as a process option for conflict resolution that distinguish it from litigation:

- Greater opportunity for self-determination and empowerment through parties' ownership over process and outcome.

¹ We acknowledge that there are a number of ADR/mediation-related efforts and programs in place that we have not mentioned in this report. Our intention in mentioning the projects above was only to give examples of the type of ADR/mediation-related efforts that are currently reaching clients and improving their experience of the legal system.

- Higher instances of adherence to final agreement because parties have created the agreement themselves.
- More room for creativity in crafting solutions that work for individual parties and families.
- Far less time- and resource-intensive than litigation.
- Facilitates preservation of relationships between parties in conflict, where possible. In family conflicts, the preservation of relationships has a significant positive impact on the children involved.

While we value the speedy resolution of cases for clients, we must also ensure that ADR/Mediation does not replace the need for real advocacy and litigation on important issues because of economics or a need to manage the high number of cases in our courts. Particularly in Family and Housing Courts, which are “low-income people’s” courts, we do not want clients’ issues to be given “short shrift” and forced into mediation. Mediation should always be a voluntary alternative, and is precluded by New York case law from being a State-mandated substitute for litigation. It is important that clients who choose to mediate their cases not lose the opportunity to return to litigation if they do not reach a satisfactory resolution.²

II. SIMPLIFICATION

“Simplification” of processes and forms as defined in the Task Force report:

[S]implification of the legal process for the benefit [of] all litigants, including low-income New Yorkers, and the judicial system as a whole. Simplification of forms and procedures, particularly in family law, consumer credit, landlord-tenant and foreclosure matters, in combination with increased community legal education by providers may reduce the number of low-income New Yorkers who seek legal assistance from providers, thereby achieving better outcomes for New Yorkers and further controlling costs. Such simplification is necessary to enhance the effectiveness of brief advice in resolving legal problems when it may be possible to do so without full representation.

LawHelp.org is an excellent resource that should be leveraged, and the courts through NYCourtHelp.gov are also working on simplification matters, such as the A2J forms. There should be more collaboration between OCA and LawHelp.

Following are specific recommendations:

² While we have not explored certain, more complex subjects, such as Domestic Violence and Foreclosure, as opportunities for ADR/Mediation, it is not our intention to suggest that they are not or should not be considered candidates for ADR/mediation programs. They simply require a much more in-depth consideration than we are able to give within the confines of this report.

- ***Housing***
 - i. The translation of forms is something that advocates have been working on but there is an issue with having the actual form in a language other than English. Translated instructions would be useful.
 - ii. A simplified form for an Order to Show Cause for tenant screening and vacating judgments would be enormously helpful.
 - iii. A2J Forms in Housing Court –
 - These forms could be expanded as a pro se model.

- ***Family***
 - i. In divorce cases, parties are required to exchange affidavits of net worth. The standard form is about 15 pages long and asks about things like yachts and maids. Advocates at LawNY developed a simplified form (attached) for low-income clients. Uniform Rule 201.16(b) requires a statement of net worth in substantial compliance with Appendix A, which is the long form. If an exception is made the judge will need to be convinced. In the rare case in which the other side requests more details, a supplemental affidavit can be done.

- ***Plain Language Forms***
 - i. Not enough forms/materials are in plain language and more could use a bold, plain language warning.
 - ii. Also, many forms do not have handy instructions.

- ***Forfeiture***
 - i. A short form or otherwise easier paperwork should be developed in forfeiture cases (where, for instance, the defendant needs to file a standard answer to a complaint).

June 2011

_____,
Plaintiff,

**STATEMENT OF
NET WORTH**

(DRL §236)

-against-

_____,
Defendant.

Date of commencement of
Action _____

Complete all items marking "NONE", "INAPPLICABLE" and "UNKNOWN", if appropriate.

STATE OF _____ COUNTY OF _____ ss:

_____, the (Plaintiff) (Defendant) herein, being duly sworn, deposes and says that the following is an accurate statement as of _____, of my net worth (assets of whatsoever kind and nature and wherever situated minus liabilities), statement of income from all sources, and statement of assets transferred of whatsoever kind and nature and wherever situated:

I. FAMILY DATA:

- (a) Husband's age _____ (a) Wife's age _____
- (b) Date married _____
- (c) Date separated _____
- (d) Number of children of the marriage under 21 years _____
- (e) Names and ages of children:

- (f) Physical Custody of Children: _____ Husband _____ Wife
- (g) Minor children of prior marriage: _____ Husband _____ Wife
(Husband) (Wife) (Paying) (Receiving) \$ _____ as (Maintenance) and/or
\$ _____ as child support (not from current spouse).
- (h) My children of prior marriage:
Name: _____
Address: _____
- (i) Is marital residence occupied by Husband _____ Wife _____
Both _____ Neither _____
- (j) Husband's present address:

Wife's present address:

- (k) Occupation of Husband _____
Occupation of Wife _____
- (l) Husband's employer _____
- (m) Wife's employer _____
- (n) Education, training and skills (Include dates of attainment of degrees, etc.)
Husband _____
Wife _____
- (q) Husband's health _____
- (r) Wife's health _____
- (s) Children's health _____

II. GROSS INCOME: (State source of income and annual amount.)

Salary or wages: (State whether income has changed during the year preceding date of this affidavit:_____. If so, set forth name and address of all employers during preceding year and average weekly wage paid by each.) Indicate overtime earnings separately. Attach previous year's W-2 and income tax return.

	\$ _____
	\$ _____
(a) Weekly deductions:	
Federal tax.....	_____
New York State tax.....	_____
Social Security.....	_____
Medicare.....	_____
Other payroll deductions (specify)_____	_____
(b) Social Security Number_____	
(c) Number of dependents claimed:_____	
(e) Bonus, commissions, fringe benefits (use of auto, memberships, etc.).....	_____
(f) Partnership, royalties, sale of assets (Income and installment payments).....	_____
(g) Dividends and interest (state whether taxable (or not).....	_____
(h) Real estate (income only).....	_____
(i) Trust, profit sharing and annuities (principal distribution and income).....	_____
(j) Pension (income only).....	_____
(k) Awards, prizes, grants (state whether taxable).....	_____
(l) Bequests, legacies and gifts.....	_____
(m) Income from all other sources..... (including alimony, maintenance or child support from prior marriage).....	_____
(n) Tax preference items:	
1. Long term capital gain deduction....	_____
2. Depreciation, amortization or depletion.....	_____
3. Stock options - excess of fair market value over amount paid.....	_____
(o) If any child or other member of your household is employed, set forth name and that person's annual income.....	_____
(p) Social Security.....	_____
(q) Disability benefits.....	_____
(r) Public Assistance.....	_____
(s) Other.....	_____
TOTAL INCOME: \$ _____	

CHILDREN, AND OTHER HOUSEHOLD MEMBERS LIVING WITH YOU:

	<u>NAME</u>	<u>AGE</u>	<u>RELATIONSHIP</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

HEALTH INSURANCE COVERAGE:

Family health insurance coverage is available through an employer or other organization to:
_____ the wife _____the husband _____ both _____ neither party.

The identity of the wife's / the husband's current health insurance plan is:_____, and the address for the plan provider is:_____. The type of coverage provided is: _____, and the policy or plan number is _____. The current cost to the parent of said insurance for said children is \$_____ per _____. [Attach proof of cost/benefit list from employer]

III. ASSETS

SAVINGS Account: Bank(s)_____Balance:\$_____

CHECKING Account: Bank(s)_____Balance:\$_____

Residence Owned (address):_____

Market value: \$_____ Mortgage Owed:\$_____

Date Acquired:_____ Title owner_____

Other real estate owned: Address _____

Market value: \$_____ Mortgage Owed:\$_____ Date Acquired:_____

Other Property:(specify) (for example: stocks and bonds, trailer, boat, etc.)

Value: \$_____
\$_____

Automobile(s), Year & Make: _____Value: \$_____
\$_____

Retirement Funds or pensions:

Type and location:_____ Amount:\$_____

(Attach relevant statements)

LIST ALL ASSETS TRANSFERRED IN ANY MANNER DURING PRECEDING THREE YEARS, OR LENGTH OF MARRIAGE, WHICHEVER IS SHORTER:

Table with 3 columns: Description of Property To Whom Transferred, Date of Transfer, Value

IV. EXPENSES

(You may elect to list all expenses on a weekly basis or all expenses on a monthly basis, however you must be consistent. If any items are paid on a monthly basis, divide by 4.3 to obtain weekly payment; if any items are paid on a weekly basis, multiply by 4.3 to obtain monthly payment.)

Table with 4 columns: Living Expenses, Children, Self, Monthly Amount. Rows include Rent/Mortgage, Taxes, Utilities (Heat, Gas, Electric, Telephone, Water, Garbage Removal), Groceries/Food, Lunches, Medical/Prescriptions.

Clothing..... _____
Insurance: Auto..... _____
 Life..... _____
 House/Renters.... _____
Car Payment/Bus Fare..... _____
Gas/maintenance/..... _____
Home Maintenance & Repairs... _____
Laundry/Dry Cleaning..... _____
Baby Sitting/Day Care..... _____
Recreation..... _____
Other Support Orders: _____
Paid To:_____ _____
Miscellaneous..... _____
Miscellaneous..... _____

TOTAL LIVING EXPENSES: _____

LIABILITIES, LOANS & DEBTS

- (a) Owed to whom?_____ \$ _____
1. Purpose _____
2. Date Incurred _____
3. Total Balance Due:\$ _____
4. In whose name: _____
- (b) Owed To Whom?_____ \$ _____
1. Purpose _____
2. Date Incurred _____
3. Total Balance Due:\$ _____
4. In whose name? _____
- (c) Owed To whom?_____ \$ _____
1. Purpose _____
2. Date Incurred _____
3. Total Balance Due:\$ _____
4. In whose name? _____
- (d) Owed To Whom?_____ \$ _____
1. Purpose _____
2. Date incurred _____
3. Total Balance Due:\$ _____
4. In whose name? _____
- TOTAL MONTHLY DEBT PAYMENTS \$ _____

Other Financial Data should be brought to attention of Court:
(include amount of public assistance, supplemental Social Security income, NYC or Yonkers Tax paid):

***YOU ARE REQUIRED TO ATTACH A CURRENT AND REPRESENTATIVE PAYCHECK STUB AND MOST RECENTLY FILED STATE AND FEDERAL INCOME TAX RETURNS TO THIS FORM. EMPLOYER STATEMENTS; PAY STUBS; CORPORATE, BUSINESS OR PARTNERSHIP BOOKS AND RECORDS; CORPORATE AND BUSINESS TAX RETURNS; AND RECEIPTS FOR EXPENSES OR SUCH OTHER MEANS OF VERIFICATION MAY BE REQUIRED AS THE COURT DEEMS APPROPRIATE.**

The foregoing statements have been carefully read by the undersigned who states that they are true and correct.

Sworn to before me this _____
day of _____, 200_____

I, the undersigned attorney, hereby certify the above net worth statement of my client, pursuant to the requirement of 22 NYCRR §130-1.1-a .

NOTARY PUBLIC-STATE OF _____