

New York City Bar Association

Council on Children

Testimony Before the New York State Bar Association Task Force on the Family Court

January 11, 2012

Good Morning. My name is Jane Golden and I am the Secretary of the Council on Children of the New York City Bar Association. The Council on Children is comprised of representatives of all the City Bar committees that focus on issues pertaining to children, education, family, family court, juvenile justice, and the needs of lesbian, gay, bisexual and transgender youth. Also sitting on the Council are representatives of the child welfare, juvenile justice and foster care communities, including attorneys representing parents and children.

The City Bar and the Council on Children are grateful to the New York State Bar Association Task Force on Family Courts for holding this series of hearings to closely examine the complex issues facing the State's Family Courts. Through the Council on Children, as well as the Family Court and Family Law Committee, the City Bar Association has worked with our NYC Family Court colleagues to address the many challenges facing the City's Family Courts, the litigants and the practitioners.

The City Bar Association commends the work of all of the Judges, attorneys, court officers, court personnel, caseworkers, witnesses and of course litigants who work tirelessly to making the five City Family Courts provide the highest quality court system they possibly can. The efforts of so

many have not gone un-noticed by the City Bar. And we realize that this work and the commitment to improved justice, timeframes and serving families are being demonstrated despite the budget cuts that the courts, providers and agencies have all faced throughout the economic downturn. We understand that the increased child poverty rate, numbers of unemployed parents, number of homeless families and need for government supports means that the work of the family courts today is as critical as ever.

While the Family Court system and all of the stakeholders have made numerous efforts, and developed many pilot programs, best practices and new initiatives designed to improve the practices and efficiency of the Family Court process, the current lengths of time to fact-finding and disposition are too lengthy, leading to long lengths of stay in foster care. We believe that increasing the number of Family Court Judges would go a long way towards addressing this issue of delay.

While foster care is intended to be temporary, children in New York State have some of the longest lengths of stay in the nation. In 2010, New York failed the federal Child and Family Service Review, ranking almost last among states with regard to length of stay in foster care. This means that too many children in New York are growing up in foster care, and thus without the stability that only a permanent family can provide.

Protracted stays in foster care can have lasting, detrimental effects on children. In December 2005, the New York State Legislature enacted the Permanency Legislation in order to achieve faster permanency for children placed in foster care, by providing more frequent and continuous judicial review of a child's safety and well-being as well as the family's progress in addressing

the issues which brought the child into care and resolving those issues.¹ The law's objective was to ensure that children did not remain in foster care longer than necessary and that they receive all of the services they need while dependent on the family court. Key provisions of the Permanency Legislation include requiring a permanency hearing once every six months for every child in foster care, including for the first time, those 18-21 year old voluntarily-placed children, continuing Family Court jurisdiction over parties after a child enters foster care until permanency has been achieved, providing for continuous legal representation and requiring that foster care agencies provide the Family Court and all attorneys with a detailed report on the child and his/her family at least 14 days prior to each permanency hearing.

Sadly, at the end of 2005 and beginning of 2006, the tragic deaths of several children, some of whom were under the Administration for Children's Services ("ACS") supervision, led to a 30% increase in calls to the New York State Central Registry. In addition to investigating the calls made to the child abuse hotline, ACS also reevaluated all ACS families in which a child remained with a respondent on an abuse or neglect petition. The result was a huge previously unanticipated increase in abuse and neglect filings before the Family Court.

The Permanency Legislation's mandated additional hearings along with scores of new abuse and neglect petitions overwhelmed the Court and further strained a child welfare system that was already overextended. Emergency hearings took precedence over previously set hearing dates. Existing cases and families were put aside until the new matters could be addressed. According

¹ Laws of 2005, ch.3, hereinafter the "Permanency Legislation."

to the New York City Family Court 2010 Annual Report (“Annual Report”), it took four years for dispositions to begin to exceed filings of new petitions.²

The Courts’ Workload Causes Pervasive Delays in Achieving Permanency

If implemented as designed, the Permanency Legislation would speed reunification for children who can return home safely and achieve other permanent living situations including adoption for those who cannot. In practice, however, the State’s failure to provide the necessary resources to implement the law has jeopardized the system’s ability to process cases efficiently and has resulted in children spending longer periods in care. The Permanency Legislation significantly increased workload pressure in Family Court and for all practitioners; permanency hearings every six months doubled court time for attorneys and judges as well as necessitated increased case preparation and motion practice for attorneys. The Permanency Legislation mandates expedited time frames for filing a petition and holding a hearing when a child is removed from his or her home. The first permanency hearing must be held eight months after a child has been remanded to foster care. When children have been removed from their parents, the need for speedy adjudication is all the more urgent, yet delays and the harm that comes with those delays persist.

Lengthy delays in the adjudication of child protective cases is still the norm in New York City Family Court. It is common for cases at every stage – including fact finding, disposition, and post-dispositional/ permanency hearings – to be adjourned for 3 – 6 months between court dates.

² New York City Family Court 2010 Annual Report at 33
<http://www.courts.state.ny.us/courts/nyc/family/2010%20Annual%20Report%20NYC%20Family%20Court.pdf>
(last accessed January 5, 2012)

During this time, children and families suffer the trauma and uncertainty of not knowing when they will have permanency or what that will look like.

While judges are better able to schedule permanency hearings within the statutory time frames, the workload crisis in the New York City Family Courts has resulted in substantial delays in other stages of a child protective case that lack statutorily-mandated shorter time frames as well as delays in actually holding the permanency hearings. Judges have to routinely adjourn cases from one permanency hearing date to the next permanency hearing date, even cases that are pre-fact finding or pre-disposition. Sometimes a judge will find a half hour, or put two cases on for the same time slot, to try to accelerate the process. Some judges' practice of setting conference and fact finding dates only when issue is joined, while understandable in a less congested system, can be an additional source of delay when the earliest available fact finding dates are then as much as *eight months away* in some of the boroughs. This is an unconscionable period of time to wait for a child and his/her family.

In The Long Road Home: A Study of Children Stranded in New York City Foster Care, (November 2009), Children's Rights reviewed the case records of 153 children in foster care whose permanency goals for two years or more were to return them to their parent/caregiver or adoption. Children's Rights conducted interviews and focus groups with judges, attorneys, foster care agency caseworkers, parents and other participants in the system. As to Family Court legal proceedings, the authors of the report cited long delays for both fact findings in abuse and neglect cases and dispositions for the children in the study sample:

The mean length of time between children's placement in foster care and completion of the Disposition by the Family Court was 14 months; the median was 11 months. Disposition took *more than a year* for 44 percent of the children and more than two years for 15 percent.³

The study also examined a sub-sample of children who entered foster care after the enactment of the Permanency Legislation and found that disposition took more than eight months for 72 percent of them.⁴ The authors acknowledged that although there might be many factors accounting for the length of time between initially entering foster care and disposition, "it does suggest that this length of time has not changed substantially since the Permanency Law was enacted."⁵ Additionally, for 55 percent of the children in the study sample, at least one permanency hearing over a two-year period was not completed within the required thirty days.⁶ Many factors contributed to the delays, including lack of sufficient court time for the hearings.

We believe that a substantial amount of the delay is caused by an insufficient number of Family Court Judges to address the number of filings in the City's five Family Courts. Since 1991 (over 20 years ago), New York City has been statutorily limited to 47 Family Court Judges.⁷ There is a crisis in New York City's Family Courts; overburdened judicial caseloads are leading to long adjournments, protracted trials, and unconscionably long foster care lengths of stay for both children who return home to their families and who are eventually adopted.

While there have been significant legislative changes regarding enhanced judicial oversight of children in foster care (the 1999 NY Adoption and Safe Families Act and the 2005 New York

³ Id. at 13. (emphasis added)

⁴ Id.

⁵ Id. at 14.

⁶ Id.

⁷ Family Court Act Section 121.

Permanency Law), legislation increasing the responsibilities for Family Court Judges (the 2008 intimate partners order of protection law), and a sustained increase in Family Court filings, there has not been an increase in the number of Family Court Judges in nearly three decades. New York City has not had an additional Family Court Judge since 1991.

In Chief Judge Kaye's final State of the Judiciary address, she said, "I arrived at the State's High Court directly from a commercial litigation practice, but I stand before you 25-plus years later convinced beyond all else that we must summon our resources and efforts to help the children in our Family Courts."

The cover of the New York City Family Court's 2010 Annual Report shows a picture of a family and underneath the picture are the words: "Justice, Respect, Due Process."⁸ The first mission statement in the Annual Report is "to provide the highest standard of justice" followed by "to decide cases as quickly as practicable."⁹ The Report details many initiatives for accomplishing all of its goals and we applaud the innovative thinking and specific programs described in the Annual Report. But there is still so much to do on behalf of New York's children and families who, once they are involved in the child welfare system, continue to wait for permanency. New York's Family Courts must have the necessary resources, and notably a sufficient number of judges, to do justice and do it in a timely manner. Only then will New York's children and families truly receive the due process and family court processes that they deserve.

⁸ New York City Family Court 2010 Annual Report, <http://www.courts.state.ny.us/courts/nyc/family/2010%20Annual%20Report%20NYC%20Family%20Court.pdf> (last accessed January 5, 2012)

⁹ New York City Family Court 2010 Annual Report at i, <http://www.courts.state.ny.us/courts/nyc/family/2010%20Annual%20Report%20NYC%20Family%20Court.pdf> (last accessed January 5, 2012)

